

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL**

PREAMBLE

1. Sections Affected

Rulemaking Action

Article 9	Renumber
Article 9	New Article
Part A	New Part
R18-9-A901	New Section
R18-9-A902	New Section
R18-9-A903	New Section
R18-9-A904	New Section
R18-9-A905	New Section
R18-9-A906	New Section
R18-9-A907	New Section
R18-9-A908	New Section
R18-9-A909	New Section
Part B	New Part
R18-9-B901	New Section
R18-9-B902	New Section
R18-9-B903	New Section
R18-9-B904	New Section
R18-9-B905	New Section
R18-9-B906	New Section
R18-9-B907	New Section
Part C	New Part
R18-9-C901	New Section
R18-9-C902	New Section
R18-9-C903	New Section
R18-9-C904	New Section
Article 10	Renumber
Article 10	Amend
R18-9-1001	Renumber
R18-9-1001	Amend
R18-9-1002	Renumber
R18-9-1002	Amend
R18-9-1003	Renumber
R18-9-1003	Amend
R18-9-1004	Renumber
R18-9-1004	Amend
R18-9-1005	Renumber
R18-9-1005	Amend
R18-9-1006	Renumber
R18-9-1006	Amend
R18-9-1007	Renumber
R18-9-1007	Amend
R18-9-1008	New Section
R18-9-1009	Renumber
R18-9-1009	Amend
R18-9-1010	Renumber
R18-9-1010	Amend
R18-9-1011	Renumber
R18-9-1011	Amend
R18-9-1012	Renumber
R18-9-1012	Amend
R18-9-1013	Renumber
R18-9-1013	Amend
R18-9-1014	Renumber
R18-9-1014	Amend

Arizona Administrative Register

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R18-9-1015	Renumber
R18-9-1015	Amend
Appendix A	Renumber
Appendix A	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. §§ 49-203, 49-255.01(B), 49-255.02(A), 49-255.03(A)

Implementing statutes: A.R.S. §§ 49-255.01, 49-255.02, 49-255.03

3. The effective date of the rules:

December 7, 2001

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

Notice of Recodification: 7 A.A.R. 2522, June 15, 2001

Notice of Rulemaking Docket Opening: 7 A.A.R. 2777, June 29, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 3532, August 17, 2001

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

Name: Shirley J. Conard

Address: Arizona Department of Environmental Quality
3033 N. Central Avenue, M0401A-422
Phoenix, AZ 85012-2809

Telephone: (602) 207-4632 (Metro-Phoenix area) or 1-800-234-5677, ext. 4632 (other areas)

Fax: (602) 207-4674

E-mail: conard.shirley@ev.state.az.us

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

This rulemaking implements HB 2426, passed in the 2001 legislative session, by establishing an Arizona Pollutant Discharge Elimination System (AZPDES) program that is consistent with but not more stringent than the National Pollutant Discharge Elimination System (NPDES) program and the requirements of sections 402(b) (state permit programs) (33 U.S.C. 1342) and 402(p) (municipal and industrial stormwater discharges) (33 U.S.C. 1342) of the Clean Water Act. The rules also include requirements consistent with section 307(b) (toxic and pretreatment effluent standards) (33 U.S.C. 1317) and requirements for the control of discharges consistent with sections 318 (aquaculture) (33 U.S.C. 1328) and 405(a) (disposal and use of sewage sludge) (33 U.S.C. 1345).

Licensing time-frames are not addressed in this rulemaking. Time-frames applicable to individual permits will be promulgated separately.

Background

The NPDES program has achieved significant reductions in pollutant discharges since it was established by the Federal Water Pollution Control Act Amendments of 1972. The development of this permitting program has, in turn, resulted in tremendous improvement to the quality of this country's water resources.

Twenty-five years ago, only a third of the nation's waters were safe for fishing and swimming. Wetland losses were estimated at 460,000 acres annually. Agricultural runoff resulted in the erosion of two and a quarter billion tons of soil and the deposit of large amounts of phosphorus and nitrogen into many waters. Sewage treatment plants served only 85 million people.

Over the last 25 years, the quality of rivers, lakes, and bays has improved dramatically as a result of the cooperative efforts by federal, state, tribal, and local governments and communities to implement the public health and pollution control programs. Today, two-thirds of the nation's surveyed waters are safe for fishing and swimming. Wetland losses are estimated at 70 to 90 thousand acres annually. The amount of soil lost due to agricultural runoff has been reduced by one billion tons annually, and phosphorus and nitrogen levels in water sources have decreased. The number of people served by modern wastewater treatment facilities has more than doubled to 173 million people.

After the initiation of the Water Pollution Control Act in 1948, which focused on protection of human health rather than the environment, Congress passed the Water Quality Act of 1965. This Act represented a major regulatory advance in water pollution control by requiring states to develop water quality standards for interstate waters. The Water Quality Act also called for states to develop wasteload allocations to quantify pollutant loadings that could be discharged without exceeding the water quality standards. Only about half of the states developed water quality standards by 1971 and enforcement of the federal legislation was minimal because the regulatory agencies had to prove that pollutant loadings had an impact on human health or violated water quality standards in order to take action. Additionally, there were no criminal or civil penalties to enforce the regulation.

The lack of success in developing water quality standards, along with the growing concern about the environment, prompted the President to form the United States Environmental Protection Agency (EPA) in 1970 to enforce environmental compliance and consolidate federal pollution control activities.

In November 1972, Congress passed a comprehensive remodification and revision of the federal water pollution control law, known as the Federal Water Pollution Control Act Amendments of 1972, marking a distinct change in the philosophy of water pollution control in the United States. The Amendments maintained the requirements for water quality-based controls, but added an equal emphasis on technology-based, or end-of-pipe, control strategies. The goals of these Amendments were:

- To eliminate the discharge of pollutants into navigable waters by 1985;
- By July 1, 1983, achieve water quality that provides for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on the water; and
- Prohibit the discharge of toxic pollutants in toxic amounts.

The Federal Water Pollution Control Act Amendments contained four other important principles:

1. The discharge of pollutants to navigable waters is not a right;
2. A discharge permit is required to use public resources for waste disposal and limits the amount of pollutants that may be discharged;
3. Wastewater must be treated with the best treatment technology economically achievable, regardless of the condition of the receiving water; and
4. Effluent limits must be based on treatment technology performance, but more stringent limits may be imposed if the technology-based limits do not prevent violations of water quality standards in the receiving water.

Evolution of the NPDES Program

Title IV, Permits and Licenses, of the Federal Water Pollution Control Act created the system for permitting wastewater discharges known as the National Pollutant Discharge Elimination System (NPDES). Under NPDES, all facilities that discharge pollutants from any point source into waters of the United States are required to obtain a permit. The permit provides two levels of control: technology-based limits (based on the ability of dischargers in the same industrial category to treat wastewater) and water quality-based limits (if technology-based limits are not sufficient to provide protection of the receiving waterbody).

When the first round of permits was developed, there were no nationally uniform effluent limits for removal of traditionally regulated pollutants. Rather than a corps of professionals combining their expertise to set national limits for an industry, a single permit writer developed discharge limits based on knowledge of the industry and the specific discharge.

The 1977 Amendments to the Clean Water Act shifted the emphasis from controlling “conventional” pollutants to controlling toxic discharges. Eventually 126 pollutants and classes of pollutants were listed in 40 CFR 401.15 as *priority pollutants*. The Clean Water Act recognized that the technology-based limits were not always able to prevent the discharge of toxic substances in toxic amounts in all waterways. EPA initiated a national policy in February 1984 to control toxics based on a water quality approach. On February 4, 1987, Congress amended the Clean Water Act with the Water Quality Act of 1987, which outlined a strategy to accomplish the goal of meeting water quality standards set by states.

EPA has estimated about 30 percent of known pollution to our nation’s waters is attributable to stormwater runoff. The Water Quality Act also established schedules for industrial and municipal stormwater discharges to be regulated by NPDES permits. In addition to meeting water quality-based standards, industrial stormwater discharges must meet the equivalent of Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) effluent quality standards. Discharges from municipal separate storm sewer systems (MS4s) are required to have controls to reduce pollutant discharges to the “maximum extent practicable.”

Under the NPDES program, all facilities that discharge *pollutants* from any *point source* into *waters of the United States* are required to obtain a NPDES permit. Understanding how each of the key terms (“pollutant,” “point source,” and “waters of the United States”) have been defined and interpreted by the regulations is the key to defining the scope of the NPDES Program.

Pollutant

The term *pollutant* is defined very broadly by the NPDES regulations and litigation and includes any type of industrial, municipal, and agricultural waste discharged into water. For regulatory purposes, pollutants have been grouped into three general categories under the NPDES Program: *conventional*, *toxic*, and *non-conventional*. There are five *conventional pollutants*: (1) Five-day biochemical oxygen demand (BOD₅), (2) Total suspended solids (TSS), (3) pH, (4) Fecal coliform, and (5) Oil and grease (O&G). *Toxic pollutants*, or *priority pollutants*, are those defined in section 307(a)(1) of the Clean Water Act (33 U.S.C. 1317) and include metals and manmade organic compounds. *Non-conventional pollutants* are those that do not fall under either of the previous categories, and includes ammonia, nitrogen, phosphorus, chemical oxygen demand (COD), and whole effluent toxicity (WET).

Point source

Pollutants can enter waters of the United States from a variety of pathways including agricultural, domestic, and industrial sources. For regulatory purposes, these sources are generally categorized as either *point sources* or *non-point sources*. Typical *point source* discharges include discharges from treatment works that treat domestic sewage (publicly owned or privately owned), discharges from industrial facilities, and discharges associated with stormwater runoff. While provisions of the NPDES program do address certain specific types of agricultural activities such as concentrated animal feeding operations (CAFOs), the majority of agricultural facilities are defined as *non-point sources* and are exempt from NPDES regulation.

Pollutant contributions to waters of the United States may come from both *direct* and *indirect* sources. *Direct* sources discharge wastewater directly into the receiving waterbody, whereas *indirect* sources discharge into a publicly owned treatment works (POTW), which in turn discharges into the receiving waterbody. Under the national program, NPDES permits are issued only to direct point source dischargers. Industrial and commercial indirect dischargers are addressed by the National Pretreatment Program.

The primary focus of the NPDES permitting program is domestic and non-domestic (industrial) direct discharges. Within these major categories of dischargers, however, there are a number of more specific types of discharges that are regulated under the NPDES program.

Domestic sources are POTWs or privately owned treatment works that receive primarily domestic sewage from residential and commercial customers. Larger POTWs will also typically receive and treat wastewater from industrial facilities (indirect dischargers) connected to the POTW sewage system. The types of pollutants treated by a POTW will always include conventional pollutants, and may include non-conventional pollutants and toxic pollutants depending on the unique characteristics of the commercial and industrial sources discharging to the POTW.

Non-domestic sources, which include industrial, mining, and commercial facilities, are unique with respect to the products and processes present at the facility. Unlike domestic sources, at non-domestic facilities the types of raw materials, production processes, treatment technologies used, and pollutants discharged vary widely and are dependent on the type of industry and specific facility characteristics.

Waters of the United States

EPA defines the term *waters of the United States* to include:

- Navigable waters;
- Tributaries of navigable waters;
- Interstate waters; and
- Intrastate lakes, rivers, and streams that are:
 - Used by interstate travelers for recreation and other purposes,
 - Sources of fish or shellfish sold in interstate commerce, or
 - Used for industrial purposes by industries engaged in interstate commerce.

This definition has been interpreted to include virtually all surface waters in the United States, including wetlands and ephemeral streams. As a general matter, groundwater is not considered a water of the United States; therefore, discharges to groundwater are not subject to NPDES requirements. (For purposes of this rulemaking, the term “navigable waters” means “waters of the United States.”)

NPDES Program Areas

The NPDES program includes provisions that address several different types of discharges from domestic and non-domestic sources.

Process and Non-Process Wastewater Discharges

Direct discharges are regulated by permits. Permit conditions are developed depending on the source of the wastewater, the treatment technology, and the receiving water.

The treatment provided for domestic wastewater typically includes physical separation and settling such as screening, grit removal, and primary settling; biological treatment such as trickling filters and activated sludge; disinfection such as chlorination, ultraviolet radiation, or ozone; and solid treatment processes such as centrifuge dewatering or sodium hydroxide sludge conditioning. These processes produce the treated effluent (wastewater) and a biosolids (processed sewage) residual, which is managed under the Municipal Sewage Sludge Program. A number of municipalities have MS4s that are also subject to NPDES requirements.

The operations at industrial facilities are generally carried out within a clearly defined plant area; thus, the collection systems are typically less complex than those for POTWs. In addition, industrial facilities may have stormwater discharges contaminated by manufacturing activities, contact with raw materials or product storage activities, and may have non-process wastewater discharges such as non-contact cooling water.

Municipal Stormwater Program

EPA has determined that stormwater runoff from major metropolitan areas is a significant source of pollutants discharged to waters of the United States. While rainfall and snow are natural events, the nature of runoff and its impact on receiving waters is highly dependent on human activities and use of the land. Runoff from lands modified by human activities such as metropolitan areas, can affect surface water resources in two ways: (1) natural flow patterns can be modified, and (2) pollution concentrations and loadings can be elevated.

To address these discharges, the 1987 Amendment to the Clean Water Act added a provision that directed EPA to establish NPDES requirements for stormwater discharges. Section 402(p) of the Clean Water Act (33 U.S.C. 1342) identifies discharges covered under the Stormwater Program, includes discharges associated with industrial activity and from MS4s serving a population of 100,000 or more, and identifies the standards for MS4 permits. These standards mark the significant difference in permits that address stormwater discharges from MS4s versus permits that address other more traditional sources such as POTWs and non-municipal sources.

EPA regulations addressing stormwater discharges define an MS4 as any conveyance or system of conveyances that is owned or operated by a state or local government entity designed for collecting and conveying stormwater. Under Phase I of the Stormwater Program, only those MS4s that served a population of 100,000 or more were required to apply for a NPDES permit. Unlike permits that are developed and issued to individual POTWs, permits that address stormwater discharges from MS4s may be issued on a jurisdiction-wide basis to the operator of the stormwater collection system such as a county or city public works department.

The Phase I permit for MS4s requires larger cities to develop a stormwater management program, track and oversee industrial facilities regulated under the NPDES stormwater program, conduct some monitoring, and submit periodic reports.

The second phase of the stormwater program (Phase II, which is effective in 2003), expands the existing program to include discharges of stormwater from smaller municipalities in urbanized areas and from construction sites that disturb between one and five acres of land. [An urbanized area (UA) is a land area comprising one or more places – central place(s) and the adjacent densely settled surrounding area (urban fringe) at together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile. It is a calculation used by the Bureau of the Census to determine the geographic boundaries of the most heavily developed and dense urban areas.] Certain sources may be excluded from the national program based on a demonstrable lack of impact on water quality. The program also allows other sources not automatically regulated on a national basis to be designated for inclusion based on increased likelihood for localized adverse impact on water quality.

The term MS4 does not solely refer to municipally-owned storm sewer systems, but rather is a term of art with a much broader application that can include, in addition to local jurisdictions, state departments of transportation, universities, local sewer districts, hospitals, military bases, and prisons. An MS4 also is not always just a system of underground pipes – it can include roads with drainage systems, gutters, and ditches.

Any MS4 covered by an automatic nationwide federal designation, or designated by the Department on a case-by-case basis as contributing to the impairment of a receiving waterbody, must establish a stormwater discharge management program that (1) reduces the discharge of pollutants to the “maximum extent practicable,” (2) protects water quality, and (3) satisfies the appropriate water quality requirements of the Clean Water Act.

The Phase II operators are required to submit:

- Best management practices for each of the following six minimum control measures:
 1. Public education and outreach on stormwater impacts,
 2. Public participation and involvement,
 3. Illicit discharge detection and elimination,
 4. Construction site stormwater runoff control,
 5. Post-construction stormwater management in new development and redevelopment, and
 6. Pollution prevention and good housekeeping for municipal operations.
- Measurable goals for each minimum control measure;
- Estimated months and years in which actions to implement each measure will be undertaken, including interim milestones and frequency; and
- The person or persons responsible for implementing or coordinating the stormwater program.

The program allows for a great deal of flexibility in how an operator of a regulated small MS4 is authorized to discharge under an AZPDES permit by providing various options for obtaining permit coverage and satisfying the required minimum control measures.

Once the official 2000 Census listings are published by the Bureau of the Census (Summer 2002), operators of small MS4s located within the revised boundaries of former 1990 UAs, or in any newly defined 2000 UAs, become regu-

lated small MS4s and must develop a stormwater management plan. Once a small MS4 is designated into the Phase II stormwater program based on the UA boundaries, it cannot be waived from the program if in a subsequent UA calculation the small MS4 is no longer within the UA boundaries. An automatically designated small MS4 will remain regulated unless, or until, it meets the criteria for a waiver.

National Pretreatment Program

The national pretreatment program regulates the discharges of wastewater from non-domestic (industrial and commercial) facilities that discharge to POTWs (indirect discharges). The pretreatment program requires industrial and commercial indirect dischargers to “treat” their wastes, as necessary, before discharging to POTWs, to prevent interference or upset to the operation of a POTW. The federal program also requires many indirect dischargers to meet technology-based requirements similar to those for direct dischargers. The pretreatment program is generally implemented directly by the POTW receiving indirect discharges, under authority granted through the NPDES permit. The federal regulations specifying which POTWs must have pretreatment programs, and authorities and procedures that must be developed by the POTW before program approval are found in 40 CFR 403. The implementation of a local pretreatment program is typically included as a special condition in NPDES permits issued to POTWs.

Municipal Sewage Sludge Program

Section 405 of the Clean Water Act (33 U.S.C. 1345) requires that all NPDES permits issued to POTWs and other treatment works treating domestic sewage contain conditions implementing 40 CFR 503, standards for the use or disposal of sewage sludge. POTWs and other treatment works treating domestic sewage must submit permit applications for their sludge use or disposal practices. Treatment works treating domestic sewage include sewage sludge incinerators, sewage sludge surface disposal sites, and facilities that do not discharge to waters of the United States (sludge-only facilities such as sludge composting facilities that treat sewage sludge).

Combined Sewer Overflows

Combined sewer systems (CSS) are wastewater collection systems designed to carry sanitary wastewaters, including commercial and industrial wastewaters, and stormwater through a single conduit to a POTW. As of 1995, CSSs serve about 43 million people in approximately 1,100 communities nationwide. During dry weather, CSSs collect and convey domestic, commercial, and industrial wastewater to a POTW; however, during periods of rainfall or snowmelt, these systems can become overloaded. When this occurs, the CSS overflows at designated relief points, discharging a combination of untreated sanitary wastewaters and stormwater directly to a surface waterbody. These overflows, called combined sewer overflows (CSOs), can be a major source of water pollution in communities served by CSSs. CSOs often contain high levels of suspended solids (SS), pathogenic microorganisms, toxic pollutants, floatables, nutrients, and other pollutants, causing exceedances of water quality standards. There are no CSSs in Arizona.

Industrial Stormwater Program

In addition to the development of effluent limits and conditions for discharges of process and non-process wastewater from direct dischargers, the NPDES program also includes provisions for control of stormwater discharges from industrial sources.

All stormwater discharges associated with industrial activity that discharge through MS4s or that discharge directly into the waters of the United States are required to obtain NPDES permit coverage, including those that discharge through MS4s located in municipalities with a population of less than 100,000. Discharges of stormwater to a sanitary sewer system or to a POTW are excluded.

EPA regulations define stormwater discharges associated with industrial activity as discharges from any conveyance used for collecting and conveying stormwater directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The following 11 industrial categories are considered to be engaging in “industrial activity” for purposes of the definition of “stormwater discharges associated with industrial activity” in 40 CFR 122.26(b)(14).

1. Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR, Subchapter N (40 CFR 401 through 40 CFR 471);
2. Certain heavy manufacturing facilities such as lumber, paper, chemicals, petroleum refining, leather tanning, stone, clay, glass, concrete, and ship construction;
3. Active and inactive mining operations and oil and gas operations with contaminated stormwater;
4. Hazardous waste treatment, storage, or disposal facilities, including Resource Conservation and Recovery Act (RCRA) Subtitle C facilities;
5. Landfills, open dumps, and RCRA Subtitle D facilities;
6. Recycling facilities, including metal scrapyards, battery reclaimers, salvage yards, and automotive junkyards;
7. Steam electric power generating facilities, including coal handling sites;
8. Transportation facilities that have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations;

9. Major POTWs, including onsite application of sewage sludge;
10. Construction activities that disturb five acres or more; and
11. Light industrial manufacturing facilities.

The program conditionally excludes stormwater discharges from industrial facilities that have “no exposure” of industrial activities or materials to stormwater. The person responsible for a point source discharge from a “no exposure” industrial source must meet the conditions of the “no exposure” exclusion, and complete, sign, and submit the certification to the Department for tracking and accountability purposes.

The “no exposure” provision makes stormwater discharges from all classes of industrial facilities eligible for exclusion, except stormwater discharges from regulated construction activities. Regulated construction activities cannot claim “no exposure” because the main pollutants of concern, such as sediment, generally cannot be entirely sheltered from stormwater.

The “no exposure” provision provides a simplified method for complying with the Clean Water Act for all industrial facilities that are entirely indoors. This includes facilities that are located within a large office building, or at which the only items permanently exposed to precipitation are roofs, parking lots, vegetated areas, and other non-industrial areas or activities. Stormwater discharges from parking lots, roof tops, lawns, and other non-industrial areas are not directly regulated because they are not “stormwater discharges associated with industrial activity.”

Types of Permits

A permit is typically a license for a facility to discharge a specific amount of a pollutant into a receiving water under certain conditions; however, permits may also authorize facilities to process, incinerate, landfill, or beneficially use biosolids. The two basic types of NPDES permits issued are individual and general permits.

Individual Permits

An individual permit is a permit specifically tailored to an individual facility. Once a facility submits the appropriate application, the Department develops a permit for that particular facility based on the information contained in the permit application such as type of activity, nature of discharge, and receiving water quality. The Department issues the permit to the facility for a specific time period (not to exceed five years) with a requirement that the facility reapply before the expiration date.

An individual permit is used when the general permit requirements do not accurately represent the activity at a facility and a permit is customized to the site. An individual permit may be necessary if the Limitations on Coverage section of the general permit does not allow the facility’s discharge to be covered within the general permit. For example, if the stormwater discharge from the facility adversely affects an endangered species, an individual permit is required.

General Permits

A general permit covers multiple facilities within a specific category. General permits offer a cost-effective option for the Department because of the large number of facilities that can be covered under a single permit. 40 CFR 122.28 states that general permits may be written to cover categories of point sources having common elements such as:

- Stormwater point sources;
- Facilities that involve the same or substantially similar types of operations;
- Facilities that discharge the same type of waste or engage in the same types of sludge use or disposal practices;
- Facilities that require the same effluent limits, operating conditions, or standards for sewage sludge use or disposal; and
- Facilities that require the same or similar monitoring.

General permits, however, may only be issued to dischargers within a specific geographical area such as city, county, or state political boundaries; designated planning areas; sewer districts or sewer authorities; state highway systems; standard metropolitan statistical areas; or urbanized areas.

EPA offers the following general permits for Arizona dischargers:

1. The Concentrated Animal Feeding Operations General Permit,
2. The Construction General Permit (stormwater), and
3. The Multi-Sector General Permit (stormwater).

Concentrated Animal Feeding Operations (CAFOs) General Permit. Animal feeding operations are agricultural facilities that confine feeding activities, thus concentrating animal populations and manure. Animal waste, if not managed properly, can run off farms and pollute nearby waterbodies. Agricultural runoff has been linked to dangerous toxic microorganisms such as *Pfiesteria piscicida*, which is widely believed to be responsible for major fish kills and disease events in several mid-Atlantic states.

Existing EPA regulations, issued in the 1970s, require discharge permits for the largest animal feeding operations (about 6,600 out of 450,000 total facilities nationwide). However, EPA acknowledges that compliance and enforcement of these permit rules is poor and that the regulations are outdated. For example, they do not reflect changed waste management practices or address the need for management plans dealing with land application of manure.

EPA Region 9 developed a general permit for discharges from CAFOs in Arizona that was published in the *Federal Register* at 66 FR 38266, July 23, 2001. The permit became effective on August 27, 2001. CAFOs needing a permit that do not qualify for general permit coverage will need to apply for an individual permit.

Construction General Permit. Stormwater discharges generated during construction activities can cause an array of physical, chemical, and biological water quality impacts. Specifically, the biological, chemical, and physical integrity of the waters may become severely compromised. Water quality impairment results, in part, because a number of pollutants are preferentially absorbed onto mineral or organic particles found in fine sediment. The interconnected process of erosion (detachment of the soil particles), sediment transport, and delivery is the primary pathway for introducing key pollutants, such as nutrients (particularly phosphorus), metals, and organic compounds into aquatic systems.

Stormwater runoff from construction sites can include pollutants other than sediment, such as phosphorous and nitrogen, pesticides, petroleum derivatives, construction chemicals, and solid wastes that may become mobilized when land surfaces are disturbed. Generally, properly implemented and enforced construction site ordinances effectively reduce these pollutants. In many areas, however, the effectiveness of ordinances in reducing pollutants is limited due to inadequate enforcement or incomplete compliance with local ordinances by construction site operators.

The operator of the construction site, as with any operator of a point source discharge, is responsible for obtaining coverage under a NPDES permit. The operator could be the owner, the developer, the general contractor, or individual contractor. When responsibility for operational control is shared, all operators must apply.

EPA's construction general permit regulates the discharge of stormwater associated with construction activity on five or more acres (Phase 1). Smaller municipalities and construction sites that disturb at least one acre but less than five acres are expected to be regulated under other general permits.

Multi-Sector General Permit. The key issue in developing a workable regulatory program for controlling pollutants in stormwater discharges associated with industrial activity is the proper use and coordination of limited regulatory resources. This is especially important when addressing the appropriate role of municipal operators of large and medium MS4s in the control of pollutants in stormwater associated with industrial activity that discharges through MS4s.

The Multi-Sector General Permit authorizes stormwater discharges associated with industrial activity. It consists of generic requirements plus industry-specific requirements, including information concerning the specific types of operations that are present at the different types of industrial facilities, potential sources of pollutants at the facilities, industry-specific best management practices that are available, and monitoring data from the different type of facilities.

The volume and quality of stormwater discharges depend on the industrial activities occurring at the facility, the nature of the precipitation, and the degree of surface imperviousness. Industrial plants can control or reduce pollutants in stormwater discharges by eliminating pollution sources, implementing best management practices to prevent pollution, using traditional stormwater management practices, and providing end-of-pipe treatment.

Permitting Process

The primary focus of the process wastewater NPDES permitting program is domestic and non-domestic (industrial) direct dischargers. The sources of pollutants and the type of discharger determines the type of application form and information needed.

While the limits and conditions in an individual NPDES permit are unique to the permittee, the process used to develop the limits and conditions and issue the permit generally follows a common set of steps. The order of these steps may vary depending on whether the permit is an individual or general permit.

Individual Permits

The major steps for developing and issuing an individual NPDES permit are:

1. Receive application from permittee;
2. Review application for completeness and accuracy;
3. Request additional information as necessary;
4. Develop technology-based effluent limits using application data and other sources;
5. Develop water quality-based effluent limits using application data and other sources;
6. Compare water quality-based effluent limits with technology-based effluent limits and choose the more stringent of the two as the effluent limits for the permit;

7. Develop monitoring requirements for each pollutant;
8. Develop special conditions;
9. Develop standard conditions;
10. Consider variances and other applicable regulations;
11. Prepare the fact sheet, summarizing the principal facts and the significant factual legal, methodological, and policy questions considered in preparing the draft permit including public notice of the draft permit, and other supporting documentation;
12. Publish notice of the draft permit;
13. Analyze public comments;
14. Complete the review and issuance process;
15. Issue the final permit; and
16. Ensure permit requirements are implemented.

General Permits

The process for developing and issuing general NPDES permits is similar to the process for individual permits, however, there are certain differences in the order of events. EPA first identifies the need for a general permit by collecting data demonstrating that a group, or category, of dischargers has similarities that warrant a general permit. In deciding whether to develop a general permit, EPA considers the following:

- Are there a large number of facilities to be covered?
- Do the facilities have similar production processes or activities?
- Do the facilities generate similar pollutants?
- Do only a small percentage of the facilities have the potential for violations of water quality standards?

The remaining steps of the permit process are the same as for individual permits. EPA develops the draft permit and fact sheet, issues a public notice, addresses public comments, documents the issues for the administrative record, and issues the final permit. After the general permit has been issued, facilities that wish to be covered under the general permit generally submit a Notice of Intent (NOI) to EPA. The EPA or the Department may then either request additional information describing the facility, notify the facility that it is covered by the general permit, or require the facility to apply for an individual permit.

Watershed Planning

EPA and the Department have been focusing on implementing water quality programs on a watershed basis. The goal is to integrate the Department's regulatory, monitoring, permitting, and planning efforts with other government agencies and with the needs of communities within the watershed.

The Department divided the state along the natural watershed boundaries and is focusing resources on a rotational basis throughout those watersheds. Working closely with the local communities, the Department is conducting a detailed assessment of the water quality in the watershed. Over the course of a watershed cycle, problems and concerns are identified, prioritized, and developed into a plan to address them. At the end of the cycle, another detailed assessment will determine the success of the effort, identify new issues, and begin again.

An important aspect of the watershed management process is scheduling permitting activities at the appropriate time in the cycle. EPA and the Department are gaining insight into the best ways to refine the NPDES program to incorporate water quality information into NPDES permitting decisions based on a watershed analysis and to engage local leadership in planning for pollution control of both point and nonpoint sources. Since 1996, EPA and the Department have tried to coordinate the renewal of NPDES permits with the watershed rotation schedule. Adherence to this schedule depends on programmatic factors including prioritization of total maximum daily loads (TMDLs), local issues, and EPA commitments.

Roles and Responsibilities of the Federal and State Authorities

EPA is authorized under the Clean Water Act to directly implement the NPDES program. EPA, however, may authorize states, territories, or tribes to implement all or parts of the national program. States, territories, or tribes applying for authorization may seek the authority to implement the base program such as issuing individual NPDES permits for industrial and municipal sources, and additional parts of the national program including:

- Permitting of federal facilities,
- Administering the National Pretreatment Program, and
- Administering the Municipal Sewage Sludge Program.

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In general, once a state, territory, or tribe is authorized to issue permits or administer a part of the program, EPA no longer conducts these activities. However, EPA has an opportunity to review each permit issued by the state, territory, or tribe and may formally object to elements that conflict with federal requirements. Once a permit is issued through a government agency, it is enforceable by the approved state, territorial, tribal, and federal agencies (including EPA) with legal authority to implement and enforce the permit, and also enforceable by private citizens (in federal court).

AZPDES Program

Arizona is one of only six states that have not obtained EPA approval to implement the NPDES program. To secure primacy, Arizona must demonstrate it has appropriate statutory authority to administer the program, rules to implement the program, and a Memorandum of Agreement with EPA on how the program will be managed, including financial and technical resources.

HB 2426, passed in the 2001 legislative session, adds a new article (3.1) in Chapter 2, of Title 49 authorizing a state NPDES program. This legislation establishes Department authority to adopt rules for an Arizona Pollutant Discharge Elimination System (AZPDES) program that is consistent with, but not more stringent than the NPDES program and the requirements of sections 402(b) (state permit programs) (33 U.S.C. 1342) and 402(p) (municipal and industrial stormwater discharges) (33 U.S.C. 1342) of the Clean Water Act. The legislation also specifies that the program must include requirements consistent with section 307 (toxic and pretreatment effluent standards) (33 U.S.C. 1317) and requirements for the control of discharges consistent with sections 318 (aquaculture) (33 U.S.C. 1328) and 405(a) (disposal and use of sewage sludge) (33 U.S.C. 1345) of the Clean Water Act. (A.R.S. § 49-255.01(B).)

The legislation provides the authority to adopt rules for a pretreatment program consistent with sections 307 (toxic and pretreatment effluent standards) (33 U.S.C. 1317) and 308 (records and reports, inspections) (33 U.S.C. 1318), and for a sludge program consistent with sections 402 (state permit programs) (33 U.S.C. 1342) and 405 (disposal or use of sewage sludge) (33 U.S.C. 1345) of the Clean Water Act.

This rulemaking establishes a state program that governs all facilities that discharge pollutants from a point source into navigable waters (waters of the United States). The rules incorporate by reference specific Code of Federal Regulations (CFRs) relating to NPDES program standards; revises and modifies CFR language for clarity and understanding; establishes an application process based on 40 CFR 122 and 40 CFR 124; and establishes a framework whereby both individual and general permits address water quality issues allowing for adjustments based on factors that vary with site-specific conditions. The AZPDES program mirrors the federal NPDES program through its incorporations by reference and the simple rewrite of the applicable regulations.

The Department is implementing section 405 of the Clean Water Act (33 U.S.C. 1345) through its administration of the biosolids rules, which were recodified from 18 A.A.C. 13, Article 15, Land Application of Biosolids, to 18 A.A.C. 9, Article 10, Arizona Pollutant Discharge Elimination System – Disposal, Use, and Transportation of Biosolids. This rulemaking updates this Article by adding R18-9-1008, which contains the management practices and application of biosolids to reclamation sites, prohibits the incineration of biosolids, specifies the requirements for disposal in a sewage sludge unit, and makes miscellaneous technical and clarifying corrections.

Additional Requirements not specified under the CFRs

40 CFR 503 does not require the land owner or lessee of land to notify subsequent land owners and lessees of site restrictions when the property is transferred, as specified under R18-9-1003(E). The Department believes that this is a necessary responsibility and continues this requirement in this rulemaking.

R18-9-1011, previously administered by the Solid Waste Division, and recodified from A.A.C. Title 18, Chapter 13, Article 15, implements A.R.S. § 49-761(I), which requires the Department to “adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste . . .” and A.R.S. § 49-255.03, which requires the Director to adopt rules that “provide for the regulation of all sewage sludge use or disposal practices used in this state.” Although 40 CFR 503 does not specifically cite transportation requirements in the regulation of biosolids, the Department believes that this Section is important in the administration of the biosolids program.

Permitting Process for General Permits

During the development of the AZPDES permitting program, questions were raised concerning whether any general permits authorized or issued by the Department must be contained in the Department’s rules. After a review of relevant statutes, the Department concludes that the general permits themselves need not be in rule, but a process for issuing general permits, which is consistent with procedures required by the Clean Water Act and Arizona law, must be developed in rule.

State law includes Department authority to adopt by rule a permit program for the point source discharge of pollutants into navigable waters, for example, the state program under which Arizona may administer the NPDES permit program required under section 402 of the Clean Water Act, 33 U.S.C. 1342. A.R.S. § 49-203(A)(2). In the 2001 legislative session, HB2426 was adopted and provides additional detailed authority in certain areas such as enforcement. Under the new Article 3.1, the Department may adopt rules to implement the statutory authority, guided by the

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requirement that the program be consistent with applicable provisions of the Clean Water Act and that any requirement adopted be no more stringent than, or conflict with, any requirement of the Clean Water Act.

Express authority to issue general permits is found in A.R.S. § 49-255.01(C)(1), which states that: “[t]he rules adopted by the Director shall provide for: [i]ssuing, authorizing, denying, modifying, suspending or revoking individual or general permits.” This provision states that the rules shall provide for both types of permits but does not limit how these permits might be issued or authorized. Additional authority is found in A.R.S. § 49-203(A)(7), which authorizes the adoption of discharge limitations and various management and performance standards “by rule or as permit conditions.” Use of the disjunctive “or” means that the legislature has authorized the Department to choose one option or the other, as appropriate and reasonable. Thus, within the statutory guidelines enacted, the Department may issue general permits that are not contained in rules.

The issuance of general permits that are not promulgated as rules is consistent with the practice of EPA, which is the agency responsible for implementing and enforcing the federal NPDES program. EPA adopted 40 CFR 122.28, which establishes criteria for coverage and administration of general permits. This rule is applicable to State NPDES programs. Permit conditions applicable to all permits, including general permits, are found in 40 CFR 122.41 and other regulations contain conditions specific to particular categories of discharges and procedures for establishing additional permit conditions to ensure that discharging facilities comply with applicable provisions of the Clean Water Act. EPA applied these regulations when developing, and issuing by publication, a few general permits, including the Stormwater Discharges From Construction Activities General Permit, 63 FR 7858, February 17, 1998, and the recently reissued Storm Water Multi-Sector General Permit for Industrial Activities, 65 FR 64746, October 30, 2000. The general permits themselves are not in rule. The Department intends to follow the EPA model for issuing general permits by publication, and therefore, is in compliance with the statutory mandate to adopt, by rule, a permit program that is consistent with the requirements of the Clean Water Act. See A.R.S. § 49-203 (A)(2).

Because the Department has chosen not to establish the general permits in rule, the rulemaking requirements of A.R.S. Title 41, Chapter 6, Articles 3 through 5 do not apply to development and issuance of these permits. Although a general permit is a type of license, the licensing time-frame statutes, A.R.S. §§ 41-1072 through 41-1079, and related Department rules do not apply because a general permit is not issued as a result of an application that requires an administrative completeness review or substantive review.

The Department believes that the issuance of a general permit is not a rule, and therefore, is not subject to the rule-making process. The point of issuing a general permit is to provide a speedier means of permitting a large number of sources and to save dischargers and the Department time and effort. A general permit is effective only with respect to those dischargers who choose to be bound by the permit. Thus, unlike the typical rule, the general permit does not impose immediately effective obligations of general applicability. A discharger must choose to be covered by this general permit and so notify the Department. A discharger always retains the option of obtaining an individual permit.

Specific general permits are not covered in this rulemaking, however, the process for developing and issuing a general permit is. The process establishes public participation requirements so that a wide range of parties are notified of the draft general permit. The Department hopes that many dischargers will make use of a general permit. Because the Clean Water Act requires the Department to provide an opportunity for “a hearing” before issuance of a permit, the Department, in R18-9-A907(B), provides the public with notice of a draft general permit and an opportunity to comment on it. From public comments, the Department will learn how to better craft a general permit to make it appropriate for, and acceptable to, the largest number of potential permittees. This same process also provides an opportunity for the Department to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities. This process, however, is voluntary, and does not trigger rulemaking.

The Department has been meeting with stakeholders, not only to discuss this rulemaking, but to craft language for general permits. The Department and stakeholders have drafted a DeMinimus General Permit and a Multi-sector General Permit for industrial activity. The Department is currently reviewing these general permits. Other general permits will be reviewed and discussed before the applicable EPA-issued general permit expires or if a general permit is requested by the public.

7. A reference to any study that the agency relied 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

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:

From the 1948 Water Pollution Control Act to the 1977 Clean Water Act to the Water Quality Act of 1987, the NPDES permitting program evolved from environmental legislation to control water quality degradation. Improvements to the quality of water in this country can be directly linked to the implementation of the NPDES program and

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the control of pollutants discharged from both municipal and non-municipal point sources into navigable waters (waters of the United States). Individual and general permits set technology-based and water quality-based effluent limits to maintain environmental standards that ensure safe water for the enjoyment of all.

I. Estimated Costs and Benefits to State Agencies.

Arizona Department of Environmental Quality.

Currently the Department assists EPA with the NPDES program by developing draft permit language and conditions, assisting with technical assistance and outreach efforts, conducting certain inspections, and offering limited compliance assistance. The Department also reviews final draft permits to certify that the permit conditions protect state water quality standards. Arizona currently has 155 individually permitted facilities and more than 6000 general permitted facilities.

The Department has 10 federally funded FTEs to provide assistance for the NPDES program. An additional nine FTEs were approved as part of the Department's FY 02-03 budget appropriations. These new positions will provide the Department with the resources necessary to fully operate the program and implement the final permitting and enforcement functions currently performed by EPA.

The following table includes a summary of actions taken in the last five calendar years by EPA and the Department:

PERMITS / REGISTRATIONS / APPROVALS / WAIVERS	1997	1998	1999	2000	2001
Stormwater					
Municipal Individual Permits	0	8	0	0	0
Construction General Permits	819	1084 ¹	1052	966	549
Multi-Sector General Permits	584	240	172	141	627 ²
Individual Permits (Non-municipal)	0	0	0	1	0
Individual Permit					
Major Facilities	3	6	3	20	4
Minor Facilities	18	7	17	35	16
Biosolids Registrations	3	8	3	31	27

¹ The total for Construction General Permits is artificially inflated because the construction general permit expired in 1998 and facilities wishing coverage under the new general permit had to re-apply.

² Due to the expiration and reissuance of the Multi-sector General Permit, the Notices of Intent have been resubmitted, inflating the total permit number for 2001.

Pretreatment approvals

Although no pretreatment approvals have been issued in the time period from 1997 to 2001, currently there are 15 Arizona pretreatment programs in Arizona.

No formal approvals for pretreatment were given by EPA in the last five years, but "two or three municipalities," including Nogales, Arizona, were allowed to adopt new local limits.

No formal determinations for categorical determinations were given by EPA, but EPA conducts at least 10 informal determinations each year.

Other State Agencies

This rulemaking completes the EPA requirements for state management of the federal NPDES program and does not impose more stringent requirements upon regulated entities.

State agencies such as the Department of Corrections, Game and Fish Department, and State Parks that are subject to NPDES program requirements will benefit from faster processing of applications and having to submit applications and monthly reporting data to the Department instead of both the Department and EPA.

II. Estimated Costs and Benefits to Political Subdivisions.

This rulemaking completes EPA requirements for state management of the federal NPDES program and does not impose more stringent requirements upon regulated entities.

Political subdivisions will benefit from faster processing of applications and having to submit applications and monthly reporting data to the Department instead of both the Department and EPA.

III. Costs and Benefits to Businesses Directly Affected By the Rulemaking.

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This rulemaking completes EPA requirements for state management of the federal NPDES program and does not impose more stringent requirements upon regulated entities.

Businesses will benefit from faster processing of applications and having to submit applications and monthly reporting data to the Department instead of both the Department and EPA.

IV. Reduction of Impacts to Small Business.

This rulemaking incorporates most of the NPDES program requirements by reference. Only the permit application process and portions of the program that make the permitting process easier to understand are offered in rule language.

R18-9-1008, Management Practices, Application of Biosolids to Reclamation Sites, benefits the reclamation site owners by enabling them to apply a greater quantity of biosolids, which will assist in faster land restoration. Subsection (A)(8) requires that biosolids must be at least 10% solids. From a reclamation perspective, the dryer the biosolids, the better. It is more expensive to transport biosolids that have a high liquid content. Additionally small businesses are interested in applying the biosolids only once. More applications are generally necessary when the biosolids are more liquid.

There are no new or additional financial burdens on small businesses. Currently small businesses do not pay for a NPDES permit and A.R.S. § 49-255.01(J) specifies that “. . .the department shall not charge a fee to issue, deny, modify, suspend or revoke a permit under this Article or to process permit applications.” Therefore, a permit will remain free of charge after Arizona gains primacy.

V. Estimated Costs and Benefits to Consumers and the Public.

This rulemaking continues the federal NPDES program and does not impose requirements or enforcement upon consumers or the public.

VI. Estimated Costs and Benefits to State Revenues.

This rulemaking has no impact on state revenues.

Requirements of A.R.S. § 41-1035.

1. Establish less stringent compliance and reporting requirements for small businesses.

HB2426, passed in the 2001 legislative session, specifies that the AZPDES program shall be consistent with, but not more stringent than, the NPDES program and the requirements of sections 402(b) (state permit programs) (33 U.S.C. 1342) and 402(p) (municipal and industrial stormwater discharges) (33 U.S.C. 1342) of the Clean Water Act. The legislation also specifies that the program must include requirements consistent with, but no more stringent than, section 307 (toxic and pretreatment effluent standards) (33 U.S.C. 1317) and requirements for the control of discharges consistent with sections 318 (aquaculture) (33 U.S.C. 1328) and 405(a) (disposal and use of sewage sludge) (33 U.S.C. 1345). (A.R.S. § 49-255.01(B).) The Department will continue to apply any flexibility that the federal program allows.

2. Establish less stringent compliance or reporting schedules or deadlines for small businesses.

The AZPDES program provides flexibility in setting reporting schedules and where necessary compliance schedules. The Department will take into account many factors such as the amount of the discharge, the characteristics of the discharge, and the characteristics of the receiving water to determine the appropriate reporting schedule for individual permits. In addition, the Clean Water Act provides less stringent compliance and reporting schedules for stormwater discharges from small businesses.

3. Consolidate or simplify the rule's compliance and reporting requirements for small businesses.

Consolidation and simplification of the AZPDES program has been achieved for most, if not all, small business applicants with the development of the general permits issued by EPA. Most general permits require minimal monitoring requirements and no reporting requirements. This rulemaking establishes a process for the Department to follow to develop additional general permits that will benefit small businesses.

4. Establish performance standards for small businesses to replace design and operational standards.

The NPDES program is primarily a “performance-based” program. The performance targets are dependant on a variety of factors including the characteristics of the receiving water. This rulemaking develops a process for developing general permits. Most general permits will contain performance standards in addition to or in lieu of effluent limitations. If an applicant's activity qualifies for a general permit, the applicant should expect to experience an easy permitting process and simplified compliance activities.

5. Exempt small businesses from any or all requirements of the rule.

The facilities exempted or excluded from this program are listed under R18-9-A902(G) and R18-9-A902(H). It is neither legal nor feasible to exempt any other discharging facility from the requirements of this rulemaking.

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

Rulemaking changes made as a result of responses to comments are described in question #11, a summary of the principal comments and the agency response to them.

Minor grammatical, formatting, and other clarifying changes have been made throughout the rule package and have not been addressed in items #10 or #11.

R18-9-A901. Definitions. The definition for “aquaculture project” has been changed to parallel the definition under 40 CFR 122.25. The term “designated project area” applies only to aquaculture projects and has been included in the “aquaculture project” definition as follows:

“Aquaculture project” means a defined ~~management~~ managed water area that uses discharges of pollutants into that designated project area for the maintenance or production of harvestable freshwater plants ~~and~~ or animals. For purposes of this definition, “designated project area” means the portion or portions of the navigable waters within which the permittee or permit applicant plans to confine the cultivated species using a method or plan ~~or~~ of operation, including physical confinement, that, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

The term “discharge of a pollutant” (40 CFR 122.2) has been added to clarify the scope of the AZPDES program. This term provides an encompassing definition that includes “*any addition of any pollutant or combination of pollutants to a navigable water from any point source.*” The term makes it unnecessary to specify that stormwater, which is a surface runoff, and all biosolids activities, including those categories that do not include a discharge, are included as pollutants regulated by this rulemaking.

The term “draft permit” has been amended as follows to mirror 40 CFR 122.64(b) language and further qualify a draft permit in terms of a Notice of Intent to Terminate:

“Draft permit” means a document indicating the Director’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit.

- a. A notice of intent to terminate a permit is a type of draft permit unless the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well.
- b. A notice of intent to deny a permit is a type of draft permit.
- c. A proposed permit or a denial of a request for modification, revocation and reissuance, or termination of a permit, are not draft permits.

The definitions for “industrial materials and activities,” “material handling activities,” and “no exposure” pertain to the conditional no exposure exclusion requirement and have been moved to R18-9-A902(H).

The terms “log sorting and log storage facilities” and “rock crushing and gravel washing facilities” have been moved to the definition for “silviculture point source”.

The term “municipal separate storm sewer” (40 CFR 122.26(b)(8)) has been added to clarify the meaning of a “municipal separate storm sewer system.”

R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions. Requiring the Department, under subsection (A)(1)(c), to list every facility authorized to discharge under a general permit is not practical since there are over 2200 facilities currently authorized. Subsection (A)(1)(c) has been amended to specify that only the name of individual permitted facilities will be listed. Subsection (A)(1)(d) was added to specify this. Subsection (A)(1)(f) was added that requires the Department to provide notice of any “*information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit.*”

Subsection (B) defines the discharge categories regulated by this rulemaking, which include point source discharges, surface runoff, and all biosolids activities, including those categories that do not include a discharge. The opening sentence, however, implies that only point source discharges to navigable waters are regulated. Subsection (B) has been amended as follows:

Article 9 of this Chapter applies to any person who discharges a pollutant to a navigable water from a point source ‘discharge of a pollutant.’ Examples of point source categories that result in a ‘discharge of a pollutant’ requiring an AZPDES permit for discharge include:

The following clarification (40 CFR 122.23(b)(2)) was inadvertently left out of subsection (B)(2) and has been added:

d. Two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

The list in subsection (B) offers examples of pollutant discharge categories that require an AZPDES permit. This list is not inclusive, as the preliminary statement explains through the use of the words “examples . . . include.” The determining factor in whether a facility or discharge is covered under this rulemaking is if the discharge is a contribu-

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tor of pollution to navigable water. Making this determination on a case-by-case basis for concentrated animal feeding operations is currently listed, but has been amended to include the “significant contributor of pollution to a navigable water” criteria. The case-by-case basis for concentrated aquatic animal production facilities has been added to the list, and includes the same determination. These determinations are handled on a case-by-case basis when dealing with an individual permit and an individual permit is always based on the specific discharge.

Subsections (B)(8) and (B)(9) have been moved to new subsection (C), which includes biosolids categories. Previous subsection (B)(8) listed treatment works treating domestic sewage as a regulated entity, but did not address a treatment works that didn’t discharge or that was required to follow Article 9 and 10, whether or not the treatment works was required to obtain an AZPDES permit.

Proposed subsection (C) dealt with general pretreatment regulations for existing and new sources of pollution. This information has been moved to R18-9-A906 which deals exclusively with pretreatment.

New subsection (D) contains language from R18-9-B901(C) and R18-9-B903(B)(2) dealing with MS4 designations.

New subsection (E) contains language from proposed R18-9-B903(B)(3) and deals with petitions.

New subsection (F) contains language from proposed R18-9-B901(E) and deals with phase ins.

R18-9-A904. Effect of a Permit. The term “prohibition” has been added in subsection (A) to mirror the language in 40 CFR 122.5 and define the scope of section 307 of the Clean Water Act (33 U.S.C. 1317).

R18-9-A905. AZPDES Program Standards. The citations listed within this Section have been further distinguished within separate subsections to provide clear references to the citation or for permit issuance. A clarification has been made in the opening paragraph specifying that the CFRs incorporated by reference in this Section pertain only to the appropriate language regarding the NPDES program.

Subsection (A)(1)(b) has been changed to omit the exclusions to sections 40 CFR 122.21(m) through (o). These sections establish the procedures for variance requests, expedited variances, and time extensions and provide an applicant with an explanation of specific areas of the permitting process. 40 CFR 122.21(l) has been added to the list of exclusions in this subsection. Section (l) deals with special provisions for applications from new sources and is not a required component of the NPDES program under 40 CFR 123.25(a)(4).

Subsection (A)(1)(d). Application requirements are necessary if any large or medium MS4 allows their permit to expire by failing to reapply within the appropriate time period or if the Department designates a large or medium MS4 as part of the Phase II program. The proposed rules incorporated 40 CFR 122.26(d) by reference in R18-9-B904(A) for this purpose. It makes more sense to have the incorporations by reference in one location. Therefore, the exclusion to 40 CFR 122.26(d) in R18-9-A905(1)(d) has been deleted and the reference to 40 CFR 122.26(d) in R18-9-B904(A) is no longer incorporated by reference, but refers to the incorporation under R18-9-A905(1)(d).

Subsection (A)(1)(j). This subsection has been further defined by specifying the CFR sections ((a) and (b)) being incorporated.

Subsections (A)(2)(a) and (A)(2)(b). The information required in the fact sheets cited under 40 CFR 124.8 and 40 CFR 124.56 was originally included in the proposed R18-9-A906 and has since been deleted. This information is now incorporated by reference in subsections (A)(2)(a) and (A)(2)(b), except for 40 CFR 124.8(b)(3).

Subsection (A)(3)(a). 40 CFR 122.41(a)(2) dealing with federal criminal penalties and 40 CFR 122.41(a)(3) dealing with federal administrative penalties are not applicable to State rules and have been excluded from subsection (A)(3)(a).

Subsection (A)(4) has been amended to incorporate only subparts A, B, D, and H. Subpart G does not apply to a State program and subpart M, Ocean Discharge Criteria, does not apply to Arizona.

Proposed subsection (7) dealing with test procedures for the analysis of pollutants is the only incorporation by reference that is not from the Code of Federal Regulations. This language has been moved to subsection (B) for clarity.

Subsections (A)(10)(b) and (A)(10)(e) provide the reader with clarification of which Sections deal with individual permits and which Sections deal with general permits. Based on changes to the rulemaking, proposed subsections (10)(h) through (10)(k) and (10)(o) through (10)(q) are no longer necessary and have been deleted.

R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution. This Section originally contained information about the fact sheet, a document prepared by the Department that describes the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. This Section duplicated the information contained in 40 CFR 124.8 and 40 CFR 124.56. Because this Section establishes requirements on the Department and not the stakeholder, no benefit is derived from restating the 40 CFR 124.8 and 40 CFR 124.56 fact sheet information. These CFRs are now incorporated by reference in R18-9-A905 and the proposed language deleted.

The new Section explains and defines information relating to pretreatment previously located in R18-9-A902(C). The phrases “to receiving waters” and “to a treatment works” in previous subsection R18-9-A902(D)(2)(a) have been deleted as they are not found in 40 CFR 403.1(b)(1) and confuse rather than clarify the criteria. The terms “National Pretreatment Standard” and “Pretreatment Standard” have been defined under subsection (D).

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R18-9-A907. Public Notice. The proposed Section dealt only with individual permit notices. This Section has been expanded to deal with both individual and general permits.

During discussions with stakeholders and interested parties, permittees requested that they be notified when the Department receives a petition concerning their facility. Including a requirement that petitions be noticed as specified in subsection (A) and an opportunity provided for public comment isn't necessary at this point of the process. If the Director determines that the petition has merit and decides to modify the permit, the public will have opportunity to review and comment on the modification. New Section R18-9-A909 contains petition criteria.

Subsection (A)(1)(g) has been added to include language required under 40 CFR 124.57(a)(1) that requires the Department to include information regarding thermal discharges.

Subsection (A)(3) has been amended to include additional entities that will receive copies of the notice.

New subsection (B) contains general permit information moved from R18-9-C901(B)(1). Proposed subsections R18-9-C901(B)(2) and (B)(4) are no longer necessary as this information is contained within R18-9-A907. Subsection R18-9-C901(B)(3) is addressed under R18-9-A908.

R18-9-A908. Public Participation, EPA Review, EPA Hearing. The information relating to petitions has been deleted from this Section and moved to R18-9-A909.

Subsection (A)(1) has been amended to clarify that the Department will accept written comments from any "interested person" and also to include a reference to the new R18-9-A907(B).

Subsection (A)(4) has been amended to include the language under 40 CFR 124.59, which specifies the conditions requested by the Corps of Engineers and other government agencies.

Subsection (B)(2) has been amended to clarify that the notice mentioned refers to the notice in R18-9-A907.

Subsection (B)(3) has been amended to clarify the closing date for written public comments and that the person presiding at the public hearing may change the submittal date.

Subsection (C) has been clarified to show that this Section deals with draft and proposed permits for both individual permits and general permits. Subsection (C)(2) contains new language that informs stakeholders of the general permit EPA review process under 40 CFR 123.44.

Subsection (D)(2) describes the public participation process that takes place before EPA steps in and issues an individual permit. In the proposed rules this language combined the requirements under 40 CFR 123.44(h)(1) and (h)(2), but did not take into account the difference in the number of days for the Director to meet the EPA objections. The following language remedies this omission:

~~2. If no public hearing is held, or if following the public hearing, EPA reaffirms the original objection, or modifies the terms of the objection, and the Director does not resubmit a permit revised to meet EPA objection within 90 days of receipt of the objection, EPA may issue the permit.~~

2. If a public hearing is not held, and EPA reaffirms the original objection, or modifies the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 90 days of receipt of the objection, EPA may issue the permit for one term. Following the completion of the permit term, authority to issue the permit reverts to the Department.

3. If a public hearing is held and EPA does not withdraw an objection or modify the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 30 days of notification of the EPA objection, EPA may issue the permit for one permit term. Following the completion of the permit term, authority to issue the permit reverts to the Department.

4. If EPA issues the permit instead of the Director, the Department shall close the application file.

Subsection (E) has been amended to provide the applicant or permittee additional information when the Department responds to comments.

R18-9-A909. Petitions. The Section, as proposed, restated the requirements under 40 CFR 122.21(f) through (l) and 40 CFR 122.41(l). Both CFRs are already incorporated by reference in R18-9-A905 making this information unnecessary.

New R18-9-A909 now contains information regarding petitions.

R18-9-A910. Except for proposed subsection (C), recordkeeping requirements are already included under 40 CFR 122.21(p). After further review, the Department does not believe that it has the authority to require a permittee to "make all records, including a description of the stormwater management program, available to the public at reasonable times during regular business hours." This Section has been deleted.

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application. Subsection (A)(1) has been clarified to show that any category covered by R18-9-A902(B) and (C) must apply for a permit.

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Any person ~~discharging a pollutant to a navigable water from a point source~~ who owns or operates a facility covered by R18-9-A902(B) or R18-9-A902(C), shall apply for an AZPDES individual permit at least 180 days before the date of the discharge or a later date if granted by the Director, unless the person:

Subsection (A)(3) now contains the information regarding waivers, which was previously in R18-9-B901(D).

Subsection (B)(2) was amended to clarify the specific application requirement for other stormwater dischargers.

R18-9-B903. Individual Permit Issuance or Denial. Proposed subsections (B)(2) and (B)(3) have been moved to R18-9-A902(D).

Subsection (B) cites A.R.S. § 49-255.01(H) as the appropriate authority for establishing the effective date for an issued permit.

Subsection (C)(3) was added to clarify the effective date for a decision to deny a permit application.

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation. The following phrase has been added to subsection (A)(1) to clarify that a permit can be issued for any amount of time, up to five years as specified in 40 CFR 122.46(c).

The Director may issue any permit for a duration that is less than the full allowable term.

The language “revoke and” has been deleted from subsection (A)(2). A permit would not be revoked at this time.

Subsection (A)(3) has been amended to show that 40 CFR 122.26(d) has been incorporated by reference in R18-9-A905(A)(1)(d).

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits. The phrase “revoke and reissue” has been added to subsection (A)(1)(c) to modify the first part of the sentence, which includes the “revoke and reissue” determination.

Subsection (A)(3) has been added to clarify and emphasize that even though the Department may revoke and reissue a permit, the permittee must comply with the conditions of the existing permit until a new final permit is issued.

Subsection (B)(1)(h) has been amended to cite the appropriate CFR that deals specifically with POTW pretreatment programs and establishes the link of CFR incorporation in R18-9-A905(A)(7)(b).

PART C. GENERAL PERMITS

R18-9-C901. General Permit Issuance. The proposed subsection (B) has been moved to R18-9-A907(B).

When a person seeks coverage under a general permit, the conditions of the general permit will inform the person when a discharge is appropriate. The person does not have to wait for the Department to send an authorization to discharge. This requirement has been removed from the new subsection (B).

The March 8, 2003 date was incorrectly stated in subsection (D)(3)(h) and has been changed to March 10, 2003.

R18-9-C902. Required and Requested Coverage Under an Individual Permit. The following additional language has been added at subsection (A)(1)(e) to continue the listing of facilities where an individual permit may be required:

Circumstances change after the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary:

R18-9-C903. General Permit Duration, Reissuance, and Continuation. The following phrase has been added to subsection (A)(1) to clarify that a permit can be issued for any amount of time, up to five years as specified in 40 CFR 122.46(c).

The Director may issue any permit for a duration that is less than the full allowable term.

R18-9-C904. Change of Ownership or Operator Under a General Permit. This Section has been retitled to clarify the content of the rule.

Proposed subsection (2)(b) has been deleted. Current practice does not allow an amended Notice of Intent. The new owner must file a new Notice of Intent and provide sufficient information to show compliance with the general permit. Additional information has been added to new subsection (2)(c) to clarify when a Notice of Termination must be sent. The Section has been revised as follows:

If a change of ownership or operator occurs for a facility operating under a general permit:

1. Permitted owner or operator. The permittee shall provide the Department with a Notice of Termination by certified mail within 30 days after the new owner or operator assumes responsibility for the facility.

a. The Notice of Termination shall include all requirements for termination specified in the general permit for which the Notice of Termination is submitted:

i. ~~Any information that has changed from the original Notice of Intent, and~~

ii. ~~Any other transfer requirements specified for the general permit.~~

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b. A permittee shall comply with the permit conditions specified ~~under A.R.S. Title 49, Chapter 2, Article 3-1, and Articles 9 and 10 of this Chapter, regardless of whether until the permittee has sold or disposed of the facility, until the Director transfers the permit authorization in the general permit for which the Notice of Termination is submitted until the Notice of Termination is received by the Department.~~

2. New owner or operator.

a. The new owner or operator shall complete and file a Notice of Intent with the Department ~~at least two days within the time period specified in the general permit~~ before taking over operational control of, ~~or initiation of activities at, the facility.~~

b. ~~The new owner or operator may file an amended Notice of Intent with the Department referencing the facility's assigned permit number to request a simple name change.~~

b. ~~If the previous permittee was required to implement a stormwater pollution prevention plan, the new owner shall develop a new stormwater pollution prevention plan, or may modify, certify, and implement the old stormwater pollution prevention plan if the old stormwater pollution prevention plan complies with the requirements of the current general permit.~~

e. ~~The new owner or operator shall certify and implement the old stormwater pollution prevention plan or develop, certify, and implement a modified stormwater pollution prevention plan.~~

c. ~~The permittee shall provide the Department with a Notice of Termination if a permitted facility ceases operation, ceases to discharge, or changes operator status. In the case of a construction site, the permittee shall submit a Notice of Termination to the Department when:~~

i. ~~The facility ceases construction operations and the discharge is no longer associated with construction or construction-related activities;~~

ii. ~~The construction is complete and final site stabilization is achieved; or~~

iii. ~~The operator's status changes.~~

d. ~~The permittee shall provide the Department with a notice of termination, if a permitted facility ceases operation, or in the case of a construction site, construction is complete and final site stabilization is achieved.~~

**ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS**

R18-9-1001. Definitions. The term "dry-weight basis" has been clarified to show that the weight of biosolids must reach a constant mass.

The terms "land application," "apply biosolids," or "biosolids applied to the land" has been revised as follows to include the words *spraying or*. This definition now corresponds to 40 CFR 122.503.11.

"Land application," ~~or~~ "apply biosolids," or "biosolids applied to the land" means spraying or spreading biosolids on the surface of the land, injecting biosolids below the land's surface, or incorporating biosolids into the soil ~~in order to amend, condition, the soil or fertilize crops the soil.~~

The term "pollutant" was inadvertently deleted from the proposed rule and has been included in the final rulemaking.

The terms "sewage sludge unit" and "surface disposal site" have been added to identify the correct terms used for the surface disposal of biosolids.

R18-9-1002. Applicability and Prohibitions. The term "surface disposal," in subsections (A) and (E), has been replaced with the correct term, "sewage sludge unit," found in 40 CFR 503.21(n). The term "surface disposal" in subsection (E) has been modified to "surface disposal site" and defined under R18-9-1001(41).

R18-9-1004. Applicator Registration, Bulk Biosolids. The attempt to clarify the registration requirements for biosolids and exceptional quality biosolids caused confusion among the stakeholders. Except for the second sentence in subsection (C), which is now new subsection (D), and minor grammatical changes, the original wording remains.

R18-9-1006. Class A and Class B Pathogen Reduction Requirements. The equation shown in subsection (D)(1)(b) should also have been included in subsection (D)(1)(a). To remedy this, the phrase "*the temperature and time period is determined using the equation in subsection (D)(1)(b)*" has been added to subsection (D)(1)(a).

R18-9-1011. Transportation. Subsections (D)(1) and (D)(2) included new language requiring a transporter to "treat" spillage. This addition would require a transporter to obtain more pollution insurance and thus, create an economic impact that the Department did not intend. After further consideration, the Department deleted this language from the rule.

Grammatical and clarification rule changes were made at the request of Council staff.

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

General Comments

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Comment: Page 3539 of the Preamble states, “For example, if the stormwater discharge from the facility adversely affects an endangered species, an individual permit is required.” The commenter suggests that this should be a discretionary decision. “If this statement is true that the endangered species act forces an individual permit, it is not clear in the rule.”

Response: The Department agrees. The preamble references the Department’s understanding of the EPA permitting process, not the Department’s intent.

Comment: Item 7, page 3541 of the Preamble. The commenter does not believe that it is appropriate to develop monitoring requirements for each pollutant. The stormwater Phase II program does not require any stormwater monitoring and the pollutant by pollutant concept is addressed by the TMDL rule and should not be addressed by the AZPDES rule.

Response: The commenter was reviewing a list of steps used in developing permit conditions. The sixth step described the portion of the process for setting limitations by comparing technology-based effluent limitations with water quality-based effluent limitations. Once effluent limitations are set, the permit writer develops appropriate monitoring requirements for those pollutants. Monitoring requirements are typically only included for those parameters that are limited in the permit, however, the Department has the authority to require monitoring even if the pollutant is not limited.

Phase II involves expansion of the program in two areas: small municipalities and small construction sites. While the Phase II rules are currently in effect, EPA has yet to draft permits applicable to the small municipalities and small construction sites. It is unclear what monitoring requirements EPA will require. However, because of the anticipated July 1, 2002 EPA approval date of the AZPDES program, neither type of permittee should fall under EPA’s yet to be promulgated permits.

The permitting authority ALWAYS has the authority to require whatever monitoring it feels is necessary. This is the case for Phase I and Phase II. If the Department wished to require additional monitoring on a generally permitted facility, an “alternative general permit” would be used. This could be the same general permit requirements, but with additional monitoring. If the permittee did not agree with this approach, the Department could require an individual permit. If the Department does not believe that an existing general permit is sufficiently protective, the Department will require the appropriate monitoring based on the circumstances of the discharge.

Comment: Page 3542 of the Preamble. The commenter agrees with the concept that “[t]he goal is to integrate the Department’s regulatory, monitoring, permitting, and planning efforts with other government agencies and with the needs of communities within the watershed.” However, as a monitoring agency, the commenter does not feel that it is an extension of the Department’s monitoring/regulatory monitoring efforts. Monitoring efforts, like those of other local governmental entities, are specific to those required by client cities. As such, it is not appropriate for local entities to follow the Department’s credible data requirement outlined in R18-11-602 of the Department’s proposed TMDL rule.

Response: A.R.S. § 49-231et seq. requires that any data used in assessment or listing of impaired waters be credible so that any governmental entity choosing to submit data to affect the assessment or listing must demonstrate its compliance with those rules. These monitoring efforts are not requirements for AZPDES permit compliance.

Comment: Page 3544 of the Preamble. One commenter believes that the statement “The Department believes that the issuance of a general permit is not a rule, and therefore, is not subject to the rulemaking process” and is not in compliance with A.R.S. 49-203(A)(2) which requires that the Department adopt by rule a permit program. The commenter suggests that the use of the conjunctive “or” in A.R.S. 49-203(A)(7) refers to permit conditions, not the actual general permit that is adopted by rule, and that the state does not have any legal authority to adopt a general permit by any other process than by rule. Also, the general permit program could be subject to future challenge if not properly adopted.

Response: The Department establishes a framework in R18-9-A907(B) (proposed as R18-9-C901(B)) to inform the public of how a general permit will be issued. This process provides the public with an opportunity to comment upon the proposed general permit and sets up a process for requesting a public hearing. As mentioned in the Preamble, the issuance of general permits that are not promulgated as rules is consistent with the practice of the EPA, the agency responsible for implementing and enforcing the federal NPDES program. 40 CFR 122.28 establishes criteria for coverage and administration of general permits and is applicable to State NPDES programs. Permit conditions applicable to all permits, including general permits, are found in 40 CFR 122.41 and other regulations contain conditions specific to particular categories of discharges and procedures for establishing additional permit conditions to ensure that discharging facilities comply with applicable provisions of the Clean Water Act. EPA applied these regulations when developing, and issuing by publication, a few general permits, including the Stormwater Discharges From Construction Activities General Permit, 63 FR 7858, February 17, 1998, and the recently reissued Storm Water Multi-Sector General Permit for Industrial Activities, 65 FR 64746, October 30, 2000. Using EPA as a model for issuing general permits by publication, is in compliance with the statutory mandate to adopt, by rule, a permit program consistent with the requirements of the Clean Water Act. See A.R.S. § 49-203(A)(2).

Comment: Another commenter supports the Department’s decision to not issue general permits by rule. A public notice and comment process is adequate for development of a general permit, rather than formal rulemaking process.

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However, the commenter believes that the Department should respond to significant written public comments received on a draft general permit, and prepare a summary of the final permit provisions to assist regulated entities in understanding the permit. Proposed R18-9-C901(B) should be modified to include these requirements.

Response: The Department agrees and has revised subsection (E) to clarify the processes for both individual and general permits as follows:

E. Final permit determination.

1. Individual permits. At the same time the Department notifies a permittee or an applicant of the final individual permit determination, the Department shall send, through regular mail, a notice of the determination to any person who submitted comments or attended a public hearing on the final individual permit determination. The Department shall:

a. Specify the provisions, if any, of the draft individual permit that have been changed in the final individual permit determination, and the reasons for the change; and

b. Briefly describe and respond to all significant comments on the draft individual permit or the permit application raised during the public comment period, or during any hearing.

2. General permits. The Director shall publish a general notice of the final permit determination in the Arizona Administrative Register. The notice shall:

a. Specify the provisions, if any, of the draft general permit that have been changed in the final general permit determination, and the reasons for the change;

b. Briefly describe and respond to all significant comments on the draft general permit raised during the public comment period, or during any hearing; and

c. Specify where a copy of the final general permit may be obtained.

3. The Department shall make the response to comments available to the public.

Comment: A commenter hoped that the Department will, as a part of this rulemaking, propose rules for issuance of AZPDES permits to de minimus dischargers such as those associated with potable water well production. Because of the widespread confusion regarding the regulatory status of these types of discharges in Arizona, the commenter asks that the Department make the promulgation of de minimus permit rules a priority after obtaining program primacy.

Another hopes that the Department will move to develop at least some of the general permits (especially Multi-sector General Permits for industrial activity) soon after primacy is received. The commenter supports this approach as it makes little sense to transfer individual permit primacy to the state but effectively leave general permits under EPA's jurisdiction for an additional period of years. (Were the state to instead wait until the existing EPA permit expires, permittees would remain under EPA jurisdiction until 2005.)

A commenter states that the Department includes a discussion of general permits issued by EPA that are currently available for Arizona point source dischargers on page 3539-40 of the preamble. The Department should include language in this discussion regarding the Department's plans and authority to issue replacement state-specific general permits for such EPA-issued general permits.

Response: The Department intends to administer general NPDES permits and individual NPDES permits issued by EPA as described in R18-9-A902(A). In addition, the Department is currently meeting with interested stakeholders to discuss the DeMinimus General Permit. Any person interested in becoming involved in these discussions may contact the Department for information. During the rulemaking discussions, the Department met with stakeholders to develop a Multi-sector General Permit for industrial activity. The Department is currently reviewing this document and developing a schedule to comply with the public comment and public participation process after the AZPDES program is approved. The Department intends to work on general permits in the following order: new permits; permits that will expire before the target date for program approval; permits that expire shortly after the target date for program approval; and permits that expire 6-12 months after the target date for program approval.

The Preamble has been amended to clarify the Department's plans to issue general permits.

Comment: A commenter hopes that the Department and stakeholders will propose a Construction General Permit that fits Arizona before the expiration date of the current general permit.

Response: Because the permit does not expire until February 17, 2003, the Department plans to convene stakeholders to discuss renewal of the Construction General Permit starting in early 2002.

Comment: The commenter supports the Department obtaining NPDES program primacy, however the basis for this support flows from discussions with Department management, where assurances were given that the Department would obtain adequate funding and staffing to seamlessly carry out program activities. It is the commenter's understanding that the Department will voluntarily withdraw from the attempt to obtain primacy if adequate funding and staff cannot be obtained without adding permit fees to run an Arizona program. Due to these Department-made commitments, we ask the Department management to carefully assess the resources at its disposal before accepting program primacy.

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Response: The Department appreciates the commenter's concern and is aware of stakeholder apprehension regarding adequate funding and staffing, particularly during the recent events in national affairs and the resultant impact on the economy. As much as it is able at the present time, the Department wishes to assure stakeholders that every effort will be made to administer the AZPDES program according to the intent of HB 2426. In addition to State funding for the program, EPA provides funding in a lump sum to the Department. Because EPA does not specifically allocate funding for the NPDES program, the Department is able to allocate the appropriate amount to NPDES-related portions of the Division workload to ensure that the permit program is adequately funded even if EPA funding levels vary.

Comment: The commenter is concerned that the EPA may seek to take enforcement action, in the short period remaining before the state assumes primacy, to retain control over a greater number of permits. The commenter feels that the Department should communicate to EPA the state's strong desire – and readiness – to assume primacy over the program in the very near future, and its desire to see as few permits as possible held back under EPA's control. If the EPA were to begin numerous enforcement actions over the next year, it could interfere with the orderly transition of program primacy.

Response: The Department relayed the comment to EPA.

Comment: A commenter is concerned that the change in administrative responsibility may result in significant changes to the operational requirements of the NPDES permit issued by the EPA. The commenter mentions that during permit development, the ongoing efforts to improve the operation were considered and that the permit includes specific language that reflect unique approaches to international issues. The commenter states that it is not clear to them if the current permit will remain in effect as written, or if modifications will be made after the proposed change to the administration of the NPDES program.

Response: The Department expects that administering the NPDES program will be a transparent process and the permit conditions of an EPA-issued NPDES permit will not change as a result of EPA approval of the AZPDES program.

Comment: A commenter requests that, in addition to notifying the Secretaria de Medio Ambiente y Recurso Naturales in Mexico, the Department also forward copies of correspondence with agencies in Mexico to the United States Section of the International Boundary and Water Commission (UWIBWC). The UWIBWC has been authorized to address border sanitation issues in accordance with the Treaty of February 3, 1944, for "Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande."

Response: The Department revised R18-9-A902(A)(2) to include the Commission and also revised R18-9-A907(A)(3)(g) as follows:

The Secretaria de Medio Ambiente y Recursos Naturales and the United States Section of the International Boundary and Water Commission, ~~when~~ if the Department is aware the effluent discharge is expected to reach Sonora, Mexico, either through surface water or groundwater.

Comment: A commenter remarks that no licensing time-frames governing individual permits are contained in the rules. The commenter assumes that the Department will develop the time-frames applicable to the individual permit process as part of a separate rulemaking amending the time-frames rule, A.A.C. R 18-1-501 et seq. This should be clarified in the preamble to the final rule. (As noted in the preamble, the general permit process should not be subject to the time-frame rule because the Department does not review notices of intent in detail to determine eligibility; rather, coverage is generally automatically conferred upon submission of a notice by the permittee, as contemplated under proposed R18-9-C901(C). If the Department were to move to some process other than that, such as detailed review of a notice before general permit coverage is granted, time-frames may be required.)

Response: The commenter is correct in assuming that the Department will develop time-frames under another rulemaking. A statement clarifying the development of licensing time-frames has been included in the Preamble.

Comment: Page 3536 of the Preamble. In the preamble discussion to the proposed AZPDES rules, the Department states that the federal definition of "waters of the United States" "has been interpreted to include virtually all surface waters in the United States, including wetlands and ephemeral streams." Because of the recent U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 121 S. Ct. 675 (2001) ("SWANCC"), the Department should delete the phrase "and ephemeral streams" from the preamble language cited in the preceding sentence. While the SWANCC decision clearly forecloses the assertion of federal Clean Water Act jurisdiction over isolated, non-navigable waters under any theory, the SWANCC decision also arguably forecloses the assertion of Clean Water Act jurisdiction over ephemeral waters because such waters are not inseparably bound up with, and lack a clear nexus to, navigable waters.

The commenter supports the Department's statements in the preamble discussion on page 3536 regarding the non-application of the NPDES permit program to groundwater discharges. As stated by the Department, discharges to groundwater clearly are not subject to NPDES permit requirements. Congress has historically left regulation of groundwater and any discharges to groundwater, even if the groundwater is hydrologically connected to surface water, to the individual states. Consistent with this clear delineation, Arizona has adopted the Aquifer Protection Permit program for regulating discharges to groundwater. The Department's language clarifying this distinction in the preamble is therefore appropriate and necessary.

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Response: The Department agrees that the SWANCC decision affects isolated, non-navigable waters but we do not concur with the notion that the Clean Water Act has no jurisdiction over any ephemeral stream systems. That battle is still in the courts. In addition, the definition of “surface water” in the state’s surface water quality standards (A.A.C. R18-11-101(40)) clearly states that surface waters, including intermittent and ephemeral streams, are waters of the U.S.

Comment: The Department lists 11 industrial categories on page 3538 of the Preamble as requiring NPDES permits for stormwater discharges. However, the facilities within these categories only require permit coverage if they discharge stormwater associated with industrial activity to a water of the United States through a point source. In addition, the federal NPDES regulations describe the 11 industrial categories as facilities that are considered to be engaging in “industrial activity.” The federal regulations do not state that the industrial categories automatically require NPDES permits. The commenter requests that the sentence immediately preceding the list of the 11 industrial categories on page 3538 of the preamble be revised as follows: “The following 11 industrial categories ARE CONSIDERED TO BE ENGAGING IN “INDUSTRIAL ACTIVITY” FOR PURPOSES OF THE DEFINITION OF “STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY” IN 40 CFR § 122.26(B)(14) ~~require an NPDES permit for stormwater discharges.~~”

Response: The suggested change has been made.

Comment: R18-9-A901(4), R18-9-A907(C)(5), and R18-9-B901(B)(1)(d). The Department correctly recognizes on page 3536 of the Preamble that discharges to groundwater are not subject to the NPDES permit program. In addition, House Bill 2426 specifically limits the Department’s ability to adopt regulations implementing the AZPDES program that are in any way more stringent than or that conflict with any requirement of the federal Clean Water Act. Because of these clear limitations, the proposed definition of “border area” in proposed R18-9-A901(4), the language in proposed R18-9-A907(C)(5) regarding providing public notice to the Secretaria de Medio Ambiente y Recursos Naturales under certain circumstances, and the language in proposed R18-9-B901(B)(1)(d) regarding the potential of discharged effluents to cross the Arizona-Sonora border, should all be deleted because these requirements clearly are more stringent than and conflict with the federal Clean Water Act, including the regulations adopted pursuant to that Act. At the very least, the language in proposed R18-9-A907(C)(5) should be revised to remove any reference to groundwater. However, the simple removal of the groundwater reference would not resolve the issue of the border area notification and application submittal requirements being more stringent than requirements under the federal Clean Water Act.

Response: The Department included this language in response to a stakeholder request. The language does not place any requirements upon a permittee. The Department views this as a courtesy notice to the Secretaria de Medio Ambiente y Recursos Naturales whenever a discharge is expected to reach Sonora, Mexico.

Comment: Several commenters expressed support of the proposed rules and strongly support the Department in taking primacy over all permits in Arizona upon the date the program is approved by EPA.

A commenter stated that ample opportunity for stakeholder input was provided, with the result that comments on the proposal are likely to be relatively minor in nature. This stakeholder input resulted in stronger rules that are more likely to represent consensus.

A commenter commended the Department for its hard work in preparing “such a significant proposed rule.”

Response: The Department thanks the commenters for their support.

Comment: 40 CFR 122.21(a)(iv) requires States to use forms that require at a minimum the information EPA requires. If these forms need to go through a rulemaking, EPA should be afforded opportunity to review.

Response: The Department is not submitting forms as part of this rulemaking. State law requires that any information required from a stakeholder by the Department be noticed in rule. Most application requirements in this rulemaking are incorporated by reference and any additional information requested by the Department is specified under the appropriate Sections.

Comment: The rules should contain the “objectives of storm water regulations for small MS4s” under 40 CFR 122.30.

Comment: 40 CFR 122.33 and 40 CFR 122.34 should be included in the rules.

Response: 40 CFR 122.30 contains an explanation of 40 CFR 122.30 through 40 CFR 122.37 and specifies the “purpose of this portion of the stormwater program.” This language is general and informational in nature and is not used in Arizona rulemaking. Informing persons of the history of the stormwater program and encouraging partnership and watershed approaches may be more appropriate in the Preamble or in a guidance document. 40 CFR 122.33 and 122.34 were incorporated by reference in the proposed rule, now at R18-9-A905(A)(1)(g) and (A)(1)(h), respectively. No change has been made to the rule.

Comment: The rules should include 40 CFR 122.36.

Response: A.R.S. §§ 49-261, 49-262, 49-263.01 and 49-263.02 establish the enforcement actions and penalties that apply to this rulemaking. The Department believes that no further explanation is necessary. No change has been made.

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Comment: The term “associated with industrial activity” should be defined.

Response: The 40 CFR 122 does not specifically define “associated with industrial activity,” but does define stormwater associated with industrial activity under 40 CFR 122.26(b)(14). The Department believes that defining this term in this rulemaking is not necessary since 40 CFR 122.26(b)(14) is included in the incorporation by reference in R18-9-A905(A)(1)(d).

Comment: “The operators are required to submit...” should be changed to “The Phase II operators are required to submit...”

Comment: The paragraph beginning with “The second phase of the stormwater program (Phase II)...” should be moved up to the fourth paragraph of the Municipal Stormwater section. We believe this would improve the continuity of the preamble.

Comment: The next paragraph beginning with, “Phase II requires operators of small MS4s...” should be deleted. This is not something unique to Phase II. In the next paragraph August 2001 should be changed to Summer 2002.

Comment: In the section entitled “Industrial Stormwater Program,” change item 9 to “Major POTWs, including onsite application of sewage sludge.” As is, the section indicates that only the sludge handling facilities need a permit.

Response: The Department agrees and the requested changes have been made.

Comment: Under AZPDES Program section: “Arizona is only one of six states that have not obtained EPA approval...” should be changed to “Arizona is only one of seven states that have not obtained EPA approval...”

Response: The Department researched the six states vs. seven states issue and disagrees that there are seven states that have not obtained EPA approval to administer the NPDES program. To date, Alaska, Arizona, Idaho, New Hampshire, New Mexico, and Massachusetts are the only states that have not obtained EPA approval. Puerto Rico does not have program approval, but it is a U.S. Territory and not a state. No change has been made.

COMMENTS TO RULES NO LONGER IN THE FINAL RULEMAKING

[R18-9-A906. Fact Sheet]

Comment: 40 CFR 124.8(a) requires a fact sheet if a “major facility.” The rules requires a fact sheet if “major issues” are raised. The rules should be changed to include “major facility.”

Comment: 40 CFR 124.8(b)(9) requires that a fact sheet include any “justification for waiver of any application requirement under 40 CFR 122.21(j) or (q).” The rules should include this.

Response: The Department believes that the requirements proposed under R18-9-A906 are sufficient and cover the above comments. In fact, the Department paralleled its language in proposed R18-9-A906 after the Utah Pollutant Discharge Elimination System program, under Section 6.4, Fact Sheets. The UPDES program has been approved since July 7, 1987.

In reviewing this Section, however, the Department believes that the proposed R18-9-A906 simply restated 40 CFR 124.8 and 40 CFR 124.56. Therefore, this Section has been deleted from this rulemaking and 40 CFR 124.8, except 40 CFR 124.8(b)(3), which deals with a PSD permit, and 40 CFR 124.56 have been incorporated by reference in R18-9-A905(A)(2).

Comment: The EPA suggests that the Department define or incorporate by reference such terms as “case-by-case basis” under subsection (B)(6)(d) or “indirect dischargers” under subsection (B)(6)(e), or otherwise address definitions of terms not included in R18-9-A901 in the AG’s statement.

Response: As mentioned in the previous response, restating 40 CFR 124.8 and 40 CFR 124.56 was not providing a benefit for the applicant or any other person reading these rules. R18-9-A906, as proposed, has been deleted from this rulemaking and 40 CFR 124.8, except 40 CFR 124.8(b)(3), which deals with a PSD permit, and 40 CFR 124.56 have been incorporated by reference in R18-9-A905(A)(2).

[R18-9-A909. Reporting Requirements]

Comment: Include a reference in subsection (B)(1) to the criteria for determining a new source.

Response: The Department agrees that the reference to the new source criteria was missing from subsection (B)(1). Because this provision was already incorporated by reference in the proposed rule, the Department will rely on its incorporation by reference of 40 CFR 122.41(l) found in R18-9-A905(A)(3)(a).

Comment: The reporting requirement mandates that facilities monitoring more frequently than required in the permit report the results of such monitoring. This is a disincentive. The wording should be revised as follows: “*Permittee may include the results of the monitoring in the calculation if a pollutant is monitored more frequently than required by the permit using test procedures approved under...*”

Comment: The Associations are concerned that unnecessary reporting requirements for general permittees are contained in R18-9-A909(A) as proposed. This provision states that “A permittee shall comply with the reporting requirements under 40 CFR 122.21(f) through (l).” Under EPA’s NPDES program, no such reporting requirements

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exist for general permittees under 40 CFR 122.28. In addition, 40 CFR 122.21(a) indicates that general permittees are exempt from the reporting requirements of subsection (f). Moreover, 40 CFR 122.21(l) is inapplicable because it relates to the owner or operator of any facility which may be a new source *and* which is located in a *State without an approved NPDES program*. Thus, reference to 40 CFR 122.21(l) should be deleted, and R18-9-A909(A) should be revised to read: “A permittee, except persons covered by general permits under Parts C of this Article, shall comply with the reporting requirements under 40 CFR 122.21(f).”

Response: The proposed language modeled 40 CFR 122.41(l)(4)(ii). Because this provision was already incorporated by reference in the proposed rule, the Department will rely on its incorporation by reference of 40 CFR 122.41(l) under R18-9-A905(A)(3)(a).

[R18-9-A910. Recordkeeping]

Comment: Subsection (C) requires a permittee to make all non-confidential documents accessible to the public at all times. This requirement should be deleted because EPA is rethinking this requirement. EPA is thinking only stormwater pollution prevention plans need to be made available to public. Also, is the reasonable charge for copying the Department’s responsibility or the permittees? Clarify in rule.

Comment: “The Department may assess a reasonable charge for copying...” This may just be semantics or a drafting problem, but the Department should not have any authority over photocopy charges or rates the permittee may charge if they are requested to make copies. It is also not clear whether the Department or the permittee has the responsibility to respond to a copying/document request.

Response: Proposed R18-9-A910 was based on 40 CFR 122.21(p) and as a result of discussion with stakeholders. The Department has already incorporated this provision in R18-9-A905(A)(1)(b) and will rely on the incorporation by reference for recordkeeping requirements. R18-9-A910 has been deleted.

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM
PART A. GENERAL REQUIREMENTS

R18-9-A901. Definitions

Comment: The definition of “large municipal separate sewer systems” and “medium municipal separate sewer systems” are irrelevant because they relate to Federal definition and 1990 Census. If not listed or designated as such within Phase I, then it should fall under Phase II program, not Phase I. Problematic areas are at R18-9-A901(14)(c) and R18-9-A901(15)(c). The Department should not designate any more large or medium municipal separate sewer systems. If these provisions remain, it may be construed as being more stringent than the Clean Water Act.

According to fact sheet 2.0 relating to the stormwater Phase II final rule, “A small MS4 is any MS4 not already covered by the Phase I program as a medium or large MS4. The Phase II rule automatically covers on a nationwide basis all small MS4s located in “urbanized areas” as defined by the Bureau of the Census (unless waived by the NPDES permitting authority), and on a case-by-case basis those small MS4s located outside of urbanized areas that the NPDES permitting authority designates.”

Response: The terms “large” and “medium” municipal separate storm sewer system are taken directly from 40 CFR 122.26(b)(4) and (b)(7) and intended to be consistent with the current program. Although Phase I designations were based on the 1990 Census, this does not mean that the Director cannot designate new large or medium MS4s. CFR language currently provides this authority and the Department must have the mechanism to designate additional areas as large and medium municipal separate storm water systems or part of them in the future and to impose a variety of permitting conditions on those entities. The *Stormwater Phase II Compliance Assistance Guide* provides the following permitting options: (1) coverage under a general permit; (2) coverage under an individual permit, either the Phase II MS4 regulation (40 CFR 122.34), or Phase I MS4 regulation (40 CFR 122.26(d)); (3) modification of an existing Phase I individual permit – a co-permittee option with medium and large MS4s; (4) co-permittee with another operator of a regulated small MS4; and (5) relying on another entity to satisfy one or more of the minimum control measures. Since option (2) provides coverage under the Phase I MS4 regulation, EPA does not exclude the medium and large MS4s from designation under the Phase II program. No change has been made.

Comment: The paragraph number for the definition of “new discharger” in R18-9-A901(11) is a typographical error. The subsection number should be 20. This definition should be revised to exclude extensions of pipelines, roads, municipal storm water systems and other elements of municipal infrastructure to previously undeveloped or newly annexed areas. Under the rule as written, if a city extended a sewer line or storm drain to a newly constructed subdivision, for example, there is a risk that the new facilities could be classified as a “new discharger” that could not be operated until a separate AZPDES permit were issued. The commenter does not believe that this is consistent with the intent of either the federal or state programs. The problem arises by the fact that proposed R18-9-A901(11)(b) specifically includes discharges that did not commence “at a particular site before August 13, 1979.” It is simply not practical for a city to apply for new permits every time it extends municipal infrastructure to undeveloped areas.

Response: The definition language for the term “new discharger” is based on 40 CFR 122.2. EPA has not considered the additional flow due to extensions of sewer lines as a new discharger, rather it would just require an update to the application for the wastewater treatment facility. The Department will apply the rule consistent with the way that

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EPA has applied it over the years. After amending various subsections in this rule, the subsection number for “new discharger” has been changed to (18).

Comment: Definition of “pollutant” includes “heat” and “sand.” In the desert in Maricopa County heat is a factor as well as sand. Clearly the definition may have been targeted at heat associated with nuclear power plant thermal discharges and sand related to sand and gravel operations, however, the definitions do not distinguish between natural and other sources. This is not appropriate without clarification because of Arizona’s desert environment.

Response: The definition of “pollutant” is taken from 40 CFR 122.2. The Department added the term “discharge of a pollutant” to the rule at R18-9-A901(9) and revised the introductory sentence to R18-9-A902(B). The term “pollutant” is linked to “discharge” and it should be clear that the “heat” and “sand” of the discharge is what is regulated. The discharge of either of these pollutants (whether from natural or man-made sources) can cause adverse impacts to the receiving body depending on its designated uses.

Comment: Definition of “small MS4” should be incorporated straight from the CFR definition. The proposed definition seems to go beyond the CFR definition by hooking additional permittees (“smaller” than small) under Phase II.

Response: The definition of “small municipal storm sewer system” now at R18-9-A901(27) mirrors 40 CFR 122.26(b)(16) except for the reference to the designation criteria at R18-9-A901(27)(b). The designation criteria found now at R18-9-A902(D) follow the provisions at 40 CFR 122.26(a)(1)(v) and 40 CFR 123.35(d)(2)(iv) and (d)(2)(v). The Department believes it is consistent with the CFR and only applies to discharges as described under 40 CFR 122.26.

R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions

Comment: Subsection (A)(1) includes the statement “...except NPDES permittees discharging on tribal lands...” This exemption is unclear and needs further clarification. Does this mean that if a city has a street drain which ultimately discharges into an Indian Community they would have to give notice to EPA as opposed to the Department? The commenter is aware of several situations in the valley where runoff will be discharged into a water on Indian lands. It is unclear whether this statement refers to discharges entering Indian lands or whether it refers to discharges already existing on Indian lands.

Response: The Department does not intend to cover dischargers that are located on Indian land and that discharge directly to waters on Indian lands. To clarify this, subsection (A)(1) has been revised as follows:

The Director shall give notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging ~~on~~ to tribal lands, . . .

Comment: Because the reapplications for many of the individual municipal separate storm water permits will be submitted to EPA at the end of September, before the Department takes over the program, how will these applications be handled?

Response: As provided in R18-9-A902(A)(3), if the permit application is still pending at the time of program approval: “...the permittee may continue the process with EPA or request that the Department act on the permit application.” This flexibility was built in to statutory authority and now in rule to benefit the permittee. It is a decision that the permittee should make at the time when EPA approves the AZPDES program.

Comment: The second sentence in proposed R18-9-A902(B) should be revised as follows: “Examples of ~~point source~~ point source categories requiring an AZPDES permit for POINT SOURCE discharges OF POLLUTANTS TO NAVIGABLE WATERS include.” As currently written, the language arguably presumes that the listed categories require a permit, even absent a point source discharge of pollutants to navigable waters.

Response: This rulemaking applies to all point source discharges of a pollutant to waters of the United States, including stormwater runoff, treatment works treating domestic sewage, and other types of discharges that are not from a point source. The Department agrees however, that a permit may not be required in every instance. Subsection (B) has been amended as follows:

Article 9 of this Chapter applies to any ~~person who discharges a pollutant to a navigable water from a point source~~ ‘discharge of a pollutant.’ Examples of ~~point source~~ point source categories that result in a ‘discharge of a pollutant’ requiring and may require an AZPDES permit ~~for discharge~~ include:

Comment: Stormwater discharges from small construction activities (*i.e.*, construction activities that result in land disturbance of equal to or greater than one acre and less than five acres) are listed in R18-9-A902(B)(9)(d) as one of the categories subject to AZPDES permit requirements. However, the Department recognizes in the Preamble that permit coverage for stormwater discharges from small construction activities will not be required until 2003 (page 3540 of the Preamble), consistent with the deadlines in the federal Phase II stormwater regulations. The Department should either remove small construction activities from the list in proposed R18-9-A902(B)(9)(d) or clarify that regulation of stormwater discharges from small construction activities will not be required until March 10, 2003.

Response: 40 CFR 122.26(e)(8) states “For any storm water discharge associated with small construction activities....Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.” This means that an applicant may apply anytime before March 10, 2003. To clarify the due date, R18-9-A902(B)(9)(d) has been changed as follows:

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By March 10, 2003, from a small construction activity,....

Comment: It is not clear under R18-9-A902 where an applicant for a general permit must submit the Notice of Intent on the effective date of EPA's approval of the AZPDES program. The commenter suggests including this information in the rule.

Response: Persons responsible for discharges that are covered by a general permit before program approval will not be required to resubmit a Notice of Intent to the Department at the time of program approval. Instead, the Department will obtain the information from EPA. Notices of Intent for new discharges or Notices of Termination for all previously covered discharges will need to be submitted to the Department. The notice described in subsection (A) will provide general permittees with "the name and address of the contact person to which the permittee will submit notification and monitoring reports."

Comment: 122.23(b)(2) provides "Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes." This regulation should be included.

Response: The Department agrees and has made the addition to subsection (B)(2)(d). (See additional information in [\[a\] description of the changes between the proposed rules, including supplemental notices, and final rules \(if applicable.\)](#))

Comment: 122.23(c) allows the permitting authority on a case by case basis to designate any animal feeding operation as a concentrated animal feed operation upon a determination that it is a significant contributor of pollution based on certain criteria. This regulation should be included.

Response: This requirement is addressed in R18-9-A902(B)(2).

Comment: Federal regulation provides that "... may notify discharger that it is covered by a general permit even if discharger has not submitted an Notice of Intent" Department regulation should include this.

Response: The commenter is referring to 40 CFR 122.28(b)(2)(vi). Although, the Department did not include this provision, the Department believes that the discharger should decide among the available choices its preferred choice for permit coverage. The Department will notify the discharger that it needs to obtain a permit. If the discharger is discharging without a permit, then the Department has the authority under A.R.S. §§ 49-263.01 and 263.02 to take enforcement action.

Comment: The EPA disagrees with giving a blanket exemption for an AZPDES permit for discharges of residential evaporative cooler bleed-off water, residential swimming pools, and charitable noncommercial car washes under subsection (G)(8).

Response: During the meetings to discuss rule language stakeholders recommended that the above exemptions be included in this rulemaking. Stakeholders believe that these discharges are so insignificant that they should not be regulated. The Department cannot permit every homeowner who owns an evaporative cooler or swimming pool, and keeping appraised of every charitable noncommercial car wash would not be a wise use of Department staff. Discharges such as these do not add a significant amounts of pollutants and should not be permitted. No change has been made.

R18-9-A903. Prohibitions

Comment: Proposed R18-9-A903(2) provides that the Department may not issue an AZPDES permit before resolution of an EPA objection to a draft or proposed permit. In contrast, proposed R18-9-A908(C) establishes the procedures for EPA review of draft or proposed permits that are inconsistent with the broad language in proposed R18-9-A903(2). For example, proposed R18-9-A908(C)(1) and (C)(2) provide that the Department will send EPA a copy of a draft and proposed permit for its review and comment. If EPA objects to the draft or proposed permit within 30 days from the receipt of the permit, then the EPA comment period is extended for an additional 60 days from the receipt of the permit. Proposed R18-9-A908(C)(4) then provides that if EPA either withdraws its objections to the draft or proposed permit or does not submit specific objections within 90 days, the Department is required to issue the AZPDES permit. The Department should delete proposed R18-9-A903(2) in its entirety. The language in proposed R18-9-A903(2) is overly broad and also is inconsistent with proposed R18-9-A908(C). The language is not necessary because the status of a permit when subject to EPA review and whether the permit may be issued when undergoing EPA review is addressed sufficiently in proposed R18-9-A908(C)(4).

Response: R18-9-A903(2) is based on the provision at 40 CFR 122.4(c). To clarify the link between those provisions, the Department changed the language in R18-9-A903(2) as follows:

Before resolution of an EPA objection to a draft or proposed permit under R18-9-A908(C).

Comment: Clarifying language must be added to the proposed "Prohibitions" language at R18-9-A903(4), which prohibits the Director from issuing a permit "[w]hen, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable waters." This provision must be revised so that its intent to apply only to navigable waters regulated under Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403) is clear. Section 10 of the Act prohibits placement of obstructions, e.g., subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be

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susceptible for use to transport interstate or foreign commerce. As a practical matter, in Arizona, the Corps' jurisdiction likely extends under the Act to only the Colorado River. R18-9-A903(4) should read:

When, in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable waters as defined under Section 10 of the Rivers and Harbors Act.

Otherwise, the provision as proposed could be misinterpreted to apply to "navigable waters" as defined by the Clean Water Act. In the Clean Water Act, Congress broadened the Corps' mission beyond that contemplated under the Rivers and Harbors Act to include the purpose of protecting the quality of our Nation's waters for esthetic, health, recreational, and environmental uses. The scope of its jurisdiction over "navigable waters" was therefore redefined to encompass all of "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7). That definition requires neither actual nor potential navigability, which would be contrary to the intent of R18-9-A903.4 to prevent the discharge of material that substantially impair "anchorage and navigation."

Response: This language is taken from 40 CFR 122.4(e). The term "Secretary" is further defined under 40 CFR 122.2, and "navigable waters" is used rather than "waters of the United States" as defined under A.R.S. § 49-201. The terms "anchorage" and "navigation" limit the scope of any judgment made by the Secretary under R18-9-A903(4). Therefore, this provision could not be misinterpreted as feared by the commenter. This provision is consistent with the existing prohibition in federal regulation, and the Department is not aware of any such misinterpretation. Further, such a misinterpretation would render this rule more stringent than required by the Clean Water Act, which would be contrary to A.R.S. § 49-255.01 (B) and to the intent of the Department. No change has been made to the rule.

Comment: This Section leaves out "of all affected states." The Section should be changed to include language or Attorney General's statement should clarify that "applicable water quality requirements" (language in the proposed regulation) includes not only Arizona water quality requirements but also water quality requirements of all affected states.

Response: Subsection (3) has been amended as follows:

~~When~~ If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe;

R18-9-A905. AZPDES Program Standards

Comment: By deleting the term "small" in subsection (10)(k), everyone is incorporated into the definition of an MS4, including those exempt under the Phase II rule. A small MS4 is any MS4 not already covered by the Phase I program as a medium or large MS4. The Phase II rule automatically covers, on a nationwide basis, all small MS4s located in "urbanized areas" as defined by the Bureau of the Census (unless waived by the NPDES permitting authority), and on a case-by-case basis those small MS4s located outside of urbanized areas that the NPDES permitting authority designates." The word "small" should be kept in the definition and should be consistent with the federal definition.

Comment: Under R18-9-A905(10)(k) the word "small" is deleted all places it appears in the relevant rules for storm-water permits. The purpose of this change provides only one type of municipal storm water permit. However, evidence of the "small" versus "large" system continue in other places in the proposed rules. For the sake of consistency and to avoid confusion, the word "small" should be deleted wherever it appears in R18-9-B901(C) and (D).

Response: The Department agrees with the first commenter. It was not the Department's intent to include all MS4s under one category. Subsection (10)(k) has been deleted from the rulemaking.

Comment: 40 CFR 122.26(d), which is not incorporated by reference, sets forth application requirements for medium and large MS4s. The Department, under subsection (10)(k) deletes "small" from these regulations. Therefore, it appears that Arizona is proposing to use 40 CFR 122.31 through 40 CFR 122.35 regulations to cover all MS4s. 40 CFR 122.26(d) requirements are more extensive than those set forth in 40 CFR 122.31 through 40 CFR 122.35. Therefore, 40 CFR 122.26(d) should be included.

Response: The Department agrees that application requirements are necessary if any large or medium MS4 allows its permit to expire by failing to reapply within the appropriate time period and if the Department designates a large or medium MS4 as part of the Phase II program. The proposed rules incorporated 40 CFR 122.26(d) by reference in R18-9-B904(A) for this purpose. The exclusion to 40 CFR 122.26(d) in R18-9-A905(A)(1)(d) has been deleted and the reference to 40 CFR 122.26(d) in R18-9-B904(A) now references R18-9-A905(A)(1)(d).

Comment: 40 CFR 122.28(a)(3) provides "Water quality-based limits. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to 40 CFR 122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations." This regulation should be included.

Response: The Department believes that this is covered under the provision proposed in R18-9-C901(F)(2) (now R18-9-C901(E)(2)) and the incorporation by reference under R18-9-A905(A)(3)(d). No change has been made.

Comment: 40 CFR 124.6(d) establishes requirements for draft permit. The rules should be changed to include this.

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Response: The citations under 40 CFR 124.6(d) that specify the information required in a draft NPDES permit are currently incorporated by reference under R18-9-A905, specifically the conditions under 40 CFR 122.41, 40 CFR 122.42, 40 CFR 122.43, 40 CFR 122.44, 40 CFR 122.47, and 40 CFR 122.48. Although 40 CFR 124.55 applies to certification for discharges that affect surface waters of another state, R18-9-A903(3) has been revised as follows to state that the Director shall not issue a permit:

~~When~~ If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe:

Comment: 40 CFR 124.6(e) provides that “all draft permits must have statement of basis or fact sheet.” The rules should be changed to require a statement of basis.

Response: 40 CFR 124.6(e) specifies that “Draft permits prepared by a state shall be accompanied by a fact sheet if required under § 124.8.” This section does not require the state to submit a statement of basis. In fact 40 CFR 124.7 specifically states that “EPA shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8 is not prepared.” 40 CFR 124.7 calls out EPA’s responsibility for the statement of basis. It does not require a State to issue a statement of basis. No change has been made.

R18-9-A907. Public Notice

Comment: 40 CFR 124.57(a) establishes additional public notice requirements for a discharge where a § 316(a) request has been filed under 40 CFR 122.21(l). The rules should include this.

Response: The rules incorporate 40 CFR 122.21 by reference under R18-9-A905(A)(1)(b). The Department believes that this requirement is included in this incorporation. However, R18-9-A907(A)(1)(g) has been revised as follows:

A statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316); and

Comment: Subsection (C)(2) provides that notice shall be given to “any affected federal, state, local agency or council of government.” The Department needs to compare the following federal regulations, which require explicitly that the following entities receive notice:

40 CFR 124.10(c)(ii): Any other agency which the Department knows has issued or is required to issue a RCRA, UIC, PSD, NPDES, sludge management permit or ocean dumping permit.

40 CFR 124.10(c)(iii): Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, Advisory Council on Historic Preservation Officers, including any affected States and Tribes.

The rules should include specific references to the above listed Federal, State and Tribal entities.

40 CFR 124.10(c)(v) provides that “any user identified in the application of a POTW” shall be given notice.

Response: Subsection (A)(3) has been amended as follows:

Copy of the notice. The Department shall provide the following entities with a copy of the notice:

- a. The applicant or permittee, ~~or petitioner~~;
- b. Any user identified in the permit application of a privately owned treatment works
- c. Any affected federal, state, tribal, or local agency, or council of government;
- d. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Arizona Historic Preservation Office, and the U.S. Army Corps of Engineers;
- e. Each applicable county department of health, environmental services, or comparable department;
- f. Any person who requested, in writing, notification of the activity; and
- g. The Secretaria de Medio Ambiente y Recursos Naturales and the United States Section of the International Boundary and Water Commission, ~~when~~ if the Department is aware the effluent discharge is expected to reach Sonora, Mexico, either through surface water or groundwater.

R18-9-A908. Public Participation, EPA Review, EPA Hearing

Comment: The Department does not require that request for public hearing be in writing and that it state the nature of issues proposed to be raised in the hearing. The rule should include this or an Attorney General’s statement should address the issue.

Response: Subsection (A)(1) specifies that the “Director shall accept written comments from the public before a decision is made . . .” Subsection (B)(1) states that “the Director shall provide notice and conduct a public hearing . . . if . . . significant issues or information has been brought to the attention of the Director during the comment period . . .” The public comment period under subsection (A)(1) is the time when a request for a public hearing would be submitted and presumes that the request has been in writing. No change has been made.

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Comment: 40 CFR 124.10 provides that “any interested person” may submit comments. The rules provides that the Department shall accept comments from the “public.” The rules should be changed or the Attorney General’s statement should address this issue.

Response: Subsection (A)(1) has been amended to include “any interested person.”

Comment: 40 CFR 124.59(a) provides that if the Corps of Engineers advises a permitting authority during the public comment period, that anchorage or navigation of waters of the U.S. would be impaired by granting of permit, then permit should be denied. If Corps of Engineers advises a permitting authority that imposing specified conditions is necessary to avoid substantial impairment of anchorage or navigation, then permitting authority must include such provisions. The rules should include this.

Comment: 40 CFR 124.59(b) provides that if U.S. Fish and Wildlife, National Marine Fisheries Service or any other federal or state agencies with jurisdiction over fish, wildlife or public health advises the permitting authority in writing that the imposition of specified conditions are necessary to avoid substantial impairment of fish, shellfish or wildlife resources, the permitting authority may include. The rules should include this.

Comment: 40 CFR 124.59(c) provides that permitting authority may consult with resource agencies before issuing draft permit and may reflect their views in statement of basis, fact sheet or draft permit. The rules should include this.

Response: Subsection (A)(4) has been revised as follows:

4. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted. Comments filed during a reopened comment period are limited to the substantial new questions that caused its reopening.

a. Corps of Engineers.

i. If the District Engineer advises the Director that denying the permit or imposing specified conditions upon a permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall deny the permit or include the specified conditions in the permit.

ii. A person shall use the applicable procedures of the Corps of Engineers Review and not the procedures under this Article to appeal the denial of a permit or conditions specified by the District Engineer.

iii. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions are considered stayed in the AZPDES permit for the duration of that stay.

b. If an agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resource, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Clean Water Act.

Comment: The AZPDES proposed rules at subsection (C)(2) provide that “If EPA objects to the draft permit within 30 days from the date of receipt, the EPA comment period is extended to 90 days from the date of receipt of the permit and substantive review time-frame is suspended until EPA makes a final determination.” This section of rule contrasts with language found in the Memorandum of Agreement which states that “In the case of general permits, EPA shall have ninety (90) days from the date of the receipt of the draft general permit to comment upon, object to or make recommendations with respect to the draft general permit.”

We recommend that language be added to the proposed rule at this point, to clarify that the 30 day initial review period applies to all permits, except general permits.

Response: Individual permits and general permits are dealt with individually in subsection (C). Subsection (C) has been revised as follows:

C. EPA review of draft and proposed permits.

1. Individual permits.

a. The Department shall send a copy of the draft permit to EPA.

b. If EPA objects to the draft permit within 30 days from the date of receipt of the draft permit, the EPA comment period is extended to 90 days from the date of receipt of the draft permit and the substantive review time-frame is suspended until EPA makes a final determination.

c. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 30 days from the date of receipt of the proposed permit, the EPA comment period is extended to 90 days from the date of receipt of the proposed permit and the substantive review time-frame is suspended until EPA makes a final determination.

d. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.

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2. General permits. The Director shall send a copy of the draft permit to EPA and comply with the following review procedure for EPA comments:

a. If EPA objects to the draft permit within 90 days from receipt of the draft permit, the Department shall not issue the permit until the objection is resolved:

b. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 90 days from receipt of the proposed permit, the Department shall not issue the permit until the objection is resolved:

c. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.

Comment: The AZPDES proposed rules at R18-9-A908(C)(10)(b) state that “[t]he Department may issue the permit without further review by EPA if EPA has not objected to such draft permit within thirty (30) days of receipt.” This section of rule again conflicts with the Memorandum of Agreement that states that EPA shall have ninety (90) days to make comments in the case of general permits. The commenter recommends that language be added to the proposed rule at this point, to clarify that the 30 day initial review permit applied to all permits, except general permits.

Response: The Department agrees that the proposed rule did not provide the full 90-day review period to EPA for general permits. The Department addressed the specific review process for general permits in the new R18-9-A908(C)(2), as mentioned in the previous response.

Comment: A commenter proposes that language be added to subsection (C)(3) that indicates the following: “If public comments are received on a draft permit, and as a result of those comments the draft permit language is proposed to be changed, the subsequent review by EPA of the changed permit should be limited to the changed portion of the permit. A review of the entire proposed permit should not be allowed.”

This proposed language will prevent the inappropriate review of those sections of a permit that were not challenged during the initial comment period.

Response: The Department agrees that EPA should provide comments on draft individual permit conditions within the specified time-frames for the draft permit. As stated in the Memorandum of Agreement, EPA has agreed to providing comments or a general objection within 30 days of receiving the draft permit and to be timely in its responses. The Department anticipates that, in most cases, EPA will provide the comments during the period for review of the draft permit. The Department did not add the suggested language to the rule, however, because 40 CFR 123.44(j) provides EPA with another opportunity to comment on proposed permits without restriction. No change has been made to the rule.

Comment: R18-9-A908(D)(2) Language included in the July 2001-noticed Memorandum of Agreement has been left out of the rule language. We request that the following language be inserted into the rule for ease of use by the regulated community and for clarity. “2. If no public hearing is held, or if following the public hearing, EPA reaffirms the original objection, or modifies the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objections within 90 days of receipt of the objection, or 30 days following EPA’s reaffirmation of the original objection or modification of the objection, following a public hearing on the objection, EPA may issue the permit for one term. Following the completion of the permit term, authority to issue the permit reverts to the Department.”

Response: The Department agrees with the commenter. Subsections (D)(2) and (D)(3) have been amended as follows:

2. If a public hearing is not held, and EPA reaffirms the original objection, or modifies the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 90 days of receipt of the objection, EPA may issue the permit for one term. Following the completion of the permit term, authority to issue the permit reverts to the Department.

3. If a public hearing is held and EPA does not withdraw an objection or modify the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 30 days of notification, EPA may issue the permit for one permit term. Following the completion of the permit term, authority to issue the permit reverts to the Department.

Comment: The Department should include the 30 day public notice of a public hearing required under 124.10(b)(2).

Response: The Department must follow the Administrative Hearing Procedures under A.R.S. § 41-1092.05(D), which provides for a 30-day public notice of a public hearing for appeals or contested cases. No change has been made.

Comment: The rule does not provide that “all comments shall be considered in making final decision and shall be answered as provided in 40 CFR 124.17.”

Comment: 40 CFR 124.17(a),(c) requires response to comments when a final permit is issued which specifies changed provisions and describes comments, and responds to all significant comments. Response to comments shall

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be made available to public. The rules should include this or an Attorney General's statement should address this issue.

Response: The Department agrees to add this requirement. Subsection (E) has been amended as follows:

Final permit determination.

1. At the same time the Department notifies a permittee or an applicant of the final permit determination, the Department shall send, through regular mail, a notice of the determination to any person who submitted comments or attended a public hearing on the final permit determination. The Department shall:

a. Specify the provisions, if any, of the draft permit that have been changed in the final permit determination, and the reasons for the change; and

b. Briefly describe and respond to all significant comments on the draft permit or the permit application raised during the public comment period, or during any hearing.

2. The Department shall make the response to comments available to the public.

Comment: R18-9-A908(F), as proposed, should be revised to make clear that the "petitions" referred to are those specifically allowed pursuant to 40 CFR 122.26(f) and 40 CFR 122.28(a)(3), [sic (b)(3)] (c)(2).

Response: The Department agrees with the commenter. All language dealing with petitions has been moved to new Section R18-9-A909. Subsection (A) has been changed as follows:

Any person may submit a petition to the Director requesting:

1. The issuance of a general permit;

2. An individual permit covering any discharge into the MS4 under 40 CFR 122.26(f), which is incorporated by reference in R18-9-A905(A)(1)(d); or

3. An individual permit under R18-9-C902(B)(1).

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application

Comment: Subsection (B)(2) should recognize individual MS4 permit and stormwater industrial permits.

Response: The Department agrees. Subsection (B)(2) has been revised as follows:

2. Stormwater. In addition to the information required in subsection (B)(1)(c) and (B)(1)(d):

a. For stormwater discharges associated with industrial activity, the application requirements under 40 CFR 122.26(c)(1);

b. For large and medium MS4s, the application requirements under 40 CFR 122.26(d);

c. For small MS4s:

i. A stormwater management program under 40 CFR 122.34, and

ii. The application requirements under 40 CFR 122.33.

Comment: The rule states that the "Director may designate...including habitat and biological impacts." A commenter suggests that the habitat and biological impacts should be addressed through State Water Quality Standards not in the permit rule.

Response: The additional clarification on the factors for determining whether a discharge results in or has the potential to result in an exceedance of a water quality standard is based on 40 CFR 123.35(d)(2)(iv), and is appropriate in this rulemaking. The proposed R18-9-B901(C) has been moved to R18-9-A902(D)(1).

Comment: Subsection (C)(2). Why would a permit waived under subsection (D) have any requirements apply?

Response: 40 CFR 122.32(a) states that "Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including state departments of transportation; and:"

40 CFR 122.32(c). "The NPDES permitting authority may waive the requirements otherwise applicable to you if you meet the criteria of paragraph (d) or (e) of this section. If you receive a waiver under this section, you may subsequently be required to seek coverage under a NPDES permit in accordance with Sec. 122.33(a) if circumstances change. (See also Sec. 123.35(b) of this chapter.)

40 CFR 122.32(d). The NPDES permitting authority may waive permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria: (1) Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the NPDES storm water program (see Sec. 123.35(b)(4) of this chapter); and (2) If you discharge any pollutant(s) that have been identified as a cause of impairment of any water body to which you discharge, storm water controls are not needed based on

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wasteload allocations that are part of an EPA approved or established “total maximum daily load” (TMDL) that addresses the pollutant(s) of concern.

40 CFR 122.32(e). The NPDES permitting authority may waive permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria: (1) The permitting authority has evaluated all waters of the U.S., including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4; (2) For all such waters, the permitting authority has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern; (3) For the purpose of this paragraph (e), the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and (4) The permitting authority has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.”

(The language proposed in R18-9-B901(C) has been moved to R18-9-A902(D)(1).)

Comment: A commenter states that the criteria used in designation outlined in subsection (C)(1)(b) and (C)(1)(c) (high growth or growth potential or areas with high population density) specify factors that are not appropriate to the Department’s role. It is not the Department’s role to regulate growth.

Response: The criteria used in the designation listed in R18-9-A902(D)(1)(a) are based on 40 CFR 123.35(d)(1)(v), and therefore appropriate. The Department will not use these criteria to limit or affect growth, rather to determine the type of permitting requirements that apply to the discharge. No change has been made, however, please note that proposed subsection (C) was moved to R18-9-A902(D)(1).

Comment: The language in subsection (C) is in an inappropriate location and is too broad relative to the federal regulation. A separate section should be written that describes what falls into the definition of a small MS4. In all likelihood, anything that does not fall under the typical definition of a small MS4 that is designated by the Director is likely so small or borderline that they would want to be in the “General Permit Category.” The way the language is written, this forces those communities into an individual permit category, that may not be appropriate.

Response: This language is taken directly from 40 CFR 122.32 and 123.35. The language in proposed subsection (C) and the additional Director designation language for MS4s from 40 CFR 122.26(b)(4)(iii) and (b)(7)(iii) have been moved to R18-9-A902(D). No other changes have been made.

Comment: Federal regulation provides that when a facility or activity is owned by one person but is operated by another person, it is the responsibility of the operator to apply for a permit.

Response: R18-9-B901(A)(1) specifies that “any person who owns or operates a facility . . . shall apply for an AZPDES individual permit.” R18-9-C901(B) specifies that “any person seeking coverage under a general permit . . . shall submit a Notice of Intent . . .” If a person such as an operator, who is not ultimately responsible for the discharge, applies for the permit, enforcement authority may be compromised. The name of both parties must be submitted on the application or Notice of Intent, but the person “responsible” for the facility, whether owner or operator, must apply.

R18-9-B902. Requested Coverage Under a General Permit

Comment: A commenter strongly agrees with the inclusion of the language in this Section.

Response: The Department appreciates the comment.

Comment: 40 CFR 122.28(b)(3)(v) provides that “a source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.” The Department should include this.

Response: The Department believes that this is already covered under R18-9-B902.

R18-9-B903. Individual Permit Issuance or Denial

Comment: 40 CFR 124.6(a) provides that once the application is complete, the permitting authority shall tentatively decide to prepare a draft permit or to deny a permit. This requirement should be included.

Response: The Department believes that this is already covered under subsection (A).

Comment: 40 CFR 124.6(c) requires that a draft permit be prepared if the permitting authority decides to issue a permit. The rules should clarify that a draft permit will be prepared.

Response: R18-9-A907(A) specifies that “[t]he Director shall publish a notice that a draft individual permit has been prepared or a permit application has been tentatively denied . . .” R18-9-A908 establishes the criteria for public comments and public hearings, if any. R18-9-A907, R18-9-A908, and R18-9-B901, which are cited under R18-9-B903,

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are the bases by which the Director determines whether a permit is issued. The Department believes that the determination to prepare a draft permit is already covered.

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation

Comment: A commenter suggests that the language under subsection (A)(3) is irrelevant in Arizona. Permits held by Phase I municipalities are designed to expire on or about the same time (March 2002) with reapplications being submitted around September 30, 2001. "All Phase I cities should have their reapplications in before the Department takes over the program. It would be a violation of the federal regulation and not need to be addressed by the state."

Response: The Department disagrees. The provision is necessary to show that once a permittee was subject to individual stormwater permitting requirements, it must be covered under those permitting conditions. The provision is necessary to clarify that in case a permit is not reissued before the expiration dates, the applicant does not resubmit in a timely manner, and EPA approves the state program before the permit is reissued, the entity is still subject to the early phase of stormwater regulations and not the newest conditions.

Comment: The provision in subsection (B)(1) whereby individual construction permits reapply at least 90 days before the permit expiration should be deleted. The section should simply say that for all individual permits, the permittee must reapply within 180 days. The 90 days provision for individual construction permits only applies to the initial permit application.

Response: The Department believed that a person applying for a construction permit, had 90 days to apply, whether it was for a new permit or for a permit reissuance. The requirements under 40 CFR 122.21(d)(2), however, make clear that all permittees, other than a permittee mentioned in § 122.21(d)(1) must submit a new application 180 days before the existing permit expires. . . Subsection (B) has been amended as follows:

Permit reissuance.

4. ~~A permittee shall reapply for a individual construction permit at least 90 days before the permit expiration date.~~
1. ~~For all other individual permits,~~ A permittee shall reapply for an individual permit at least 180 days before the permit expiration date.

Comment: Under R18-9-B904(A)(2), all permits expire "if the director does not revoke and reissue a permit within the period specified in the permit." This conflicts with R18-9-B904(C), which provides that a permit continues beyond its expiration date if a timely application for renewal is filed, and is not entirely compatible with the reissuance provisions in subsection (B). Perhaps the best way to avoid confusion is to add the following as the introductory first line of subsection (A): "Except as provided in subparagraphs (B) and (C) of this section:..." The words "permit duration" should be stricken.

Response: Subsection (A)(2) has been revised as follows:

If the Director does not ~~revoke and~~ reissue a permit within the period specified in the permit, the permit expires, unless it is continued under subsection (C).

Comment: R18-9-B904(B)(3) apparently was intended to apply only to reapplications for permits for MS4s. This provision should be revised to expressly limit it to MS4s so that other types of permittees are not required to follow the reapplication procedure in that rule. Perhaps the first line of this subsection could be revised to add the words "for an MS4" immediately after the first use of the word "permit."

Comment: The submission of an annual report in subsection (B)(2) submitted 180 days before the permit expiration dates does satisfy the reapplication requirements of an MS4 permit, but it does not satisfy the requirements for other permits.

Response: Subsection (B)(2) has been amended as follows:

2. Unless otherwise specified in the permit, an annual report submitted 180 days before the permit expiration date satisfies the reapplication requirement for an MS4 permit. The annual report shall contain:

Comment: A commenter suggests that the word "complete" in subsection (C)(2) is deleted because the rule does not define "complete" application and does not provide deadlines for the agency to respond to an applicant with a determination of completeness.

Response: Under A.R.S. Title 41, Chapter 6, Article 7.1, a complete application means an application in which an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. Rules covering "completeness" are covered under the Department's licensing time-frame rules in A.A.C. Title 18, Chapter 1, Article 5. As mentioned in the Preamble, licensing time-frames are not addressed in this rulemaking and time-frames applicable to the individual permit process will be promulgated separately. However, as normal practice, the Department makes administrative completeness determinations for all permit actions, including NPDES permits.

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits

Comment: The Department should include the phrase "request of any interested person" specified under 40 CFR 124.5(a).

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Response: The Department agrees with the commenter and has made the following change to subsection (A)(1)(a):

1. The Director may modify, or revoke and reissue an individual permit for any of the following reasons:
 - a. The Director receives a written request from any interested person.

Comment: For permit modifications, the Department leaves out language from 40 CFR 124.5(c)(2), “all other aspects of existing permit shall remain in effect.” For revoked/reissued permits, the Department leaves out “permittee shall comply with all conditions of the existing permit until a new final permit is reissued.” Proposed regulation should be changed to include or if other state law exists that addresses these situations then Attorney General’s statement should address.

Response: New subsection (A)(3) has been added as follows:

3. During any modification, or revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

Comment: Revise the option for minor modification under subsection (B)(1)(c) to allow the Director to require more or less frequent monitoring based on historical analytical results. “c. Require an increase, decrease, or modification in more frequent monitoring or reporting by the permittee, based on historical analytical results.”

Response: R18-9-B906(B)(1)(c) is based on 40 CFR 122.63(b), which specifies a simplified public participation process for certain “minor modifications.” Increasing the frequency of monitoring or reporting makes the permit “more stringent” and therefore, the permitting authority need only provide the permittee the opportunity to comment on the change. Decreasing the monitoring or reporting requirements could be construed as a less stringent condition and the simplified public participation process established in 40 CFR 122.63 is not appropriate. A modification that involved decreasing the monitoring or reporting frequency would be subject to a broader public participation process as defined in 40 CFR 122.62. No change has been made.

R18-9-B907. Individual permit Variances

Comment: R18-9-B907(A)(4) allows the Director to grant a variance under R18-11-122 for water quality standards. R18-9-B907(D) does not include provisions for a draft permit to incorporate a variance for water quality standards. Revise the language in R18-9-B907(D) as follows: “If the EPA approves a variance under subsection (A), (B), or (C), the Director shall prepare a draft permit incorporating the variance.”

Response: It is not appropriate for the Department to revise R18-9-B907(D) as suggested because EPA does not have to approve all of the variances in R18-9-B907(A) before implementation. Subsection (D) has been revised as follows:

- D. If the Department approves a variance under subsection (A) or if EPA approves a variance under subsection (B) or (C), the Director shall prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing the decision.

PART C. GENERAL PERMITS

R18-9-C901. General Permit Criteria

Comment: Proposed R18-9-C901(B)(1) should refer to “a group of discharges” rather than “a discharge.”

Response: The language was moved to R18-9-A907(B) and revised as follows:

If the Director considers issuing a general permit applicable to a category of discharge...

Comment: At the end of subsection (B), the clause “unless the discharge is authorized by another permit” should be added. This would cover situations where an ongoing discharge is authorized under an EPA general permit but the discharger wishes to switch coverage to an analogous state permit.

Response: The Department agrees and added the language.

Comment: Does the Department intend to send an authorization to each applicant before it is authorized under general permit? If not, subsection (B) should include 40 CFR 122.28(b)(2)(iv), which provides that a general permit shall specify when a discharger is authorized to discharge under a general permit.

Response: The Department agrees with the commenter. Subsection (B) contains the 40 CFR 122.28(b)(2)(iv) information. The subsection has been amended as follows:

Any person seeking coverage under a general permit issued under subsection (A) shall submit a Notice of Intent on a form provided by the Department within the time-frame specified in the general permit ~~and receive an authorization to discharge~~ unless exempted under the general permit as provided in subsection (C)(2). The person shall not discharge before the time specified in the general permit unless the discharge is authorized by another permit.

Comment: Subsection (D)(3)(h) requires Notice of Intent filing before March 8, 2003 for small construction activities. This implies that permit coverage is not available for small construction sites that commence after March 8, 2003. It makes no sense to require a Notice of Intent for construction projects that complete discharging activities before that date and no longer need a permit. Please clarify the rule. Or revise as follows: “g. Stormwater discharges

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associated with small construction activity that commence on or after March 8, 2003 shall submit a Notice of Intent at least 90 days prior to the activity to obtain a General Permit, and 180 days prior to the activity to obtain an Individual Permit. A small construction activity discharger shall submit the Notice of Intent before March 8, 2003.

Comment: A commenter suggested that requiring notices of intent to be filed before March 8, 2003 for small construction activity is not clear. The commenter questions if this means that any future projects after March 8, 2003 will not require a notice of intent or does it mean that the state is expecting Phase II municipalities to take on this burden?

Response: R18-9-C901(C)(1)(h) is worded to mirror 40 CFR 122.26(e)(8) that requires an application for stormwater discharges associated with small construction activities to be exempted until March 10, 2003. The Department expects to develop a general permit for small construction activity before the effective implementation date for Phase II. March 10, 2003 is the date for all construction activities to be covered under a permit, but this doesn't mean only those in existence before this date will be covered under a general permit. The Department acknowledges an error in the date that was listed in the proposed rule. The Department agrees with the suggested wording and revised subsection (C)(1)(h) as follows:

Stormwater discharges associated with small construction activity. Any person discharging on or after March 10, 2003 shall submit a Notice of Intent at least 90 days before the activity to obtain authorization under a general permit, and 180 days before the activity to obtain an individual permit unless the discharge is authorized by another permit. A small construction activity discharger shall submit the Notice of Intent before March 8, 2003.

Comment: A commenter asks "what is the purpose of indicating toxics in the exemption from filing a Notice of Intent under subsection (D)(1)(c). This should refer back to the State Water Quality Standards that should form the basis for water quality related issues."

"What is the purpose of providing the exemptions from filing an Notice of Intent? It is hard to imagine what could be achieved by not making an applicant apply for but then not file an Notice of Intent. It is also not clear what kind of situations the state believe may not require an Notice of Intent."

Comment: Why would there be an exemption for filing a Notice of Intent? What situations would warrant not filing a Notice of Intent?

Response: R18-9-C901(C)(1), (C)(2) and (C)(3) mirror the language in 40 CFR 122.28(b)(2)(v). Based on that provision, the Department should consider whether toxic pollutants may be present in the discharge as part of the determination to exempt the discharger from submitting a Notice of Intent. Because the language is from 40 CFR 122.28, it is appropriate to include it in the permitting rule. Exemptions may apply for discharge types other than those listed in R18-9-C901(C)(1). The Department believes there are some discharges that may be covered by a general permit that do not warrant notice to the Department and preserves the ability to develop general permits with this exemption.

Comment: In proposed R18-9-C901(D)(6) (was proposed as R18-9-C901(E)(6)), why does a general permit applicant have to submit a list of all other environmental permits issued to or needed by the facility? The commenter does not have a problem with identifying other permits related to the discharge in question, but what (for example) does an air permit or solid waste permit have to do with obtaining coverage for storm water discharges? A large mining facility may have dozens of permits or authorizations, most of which are completely unrelated to stormwater. Requiring a list of all these permits is excessive. This requirement should be narrowed to address only permits related to the proposed discharge(s).

Response: After further review, the Department believes that this requirement is not necessary to the general permitting process and has deleted it from this Section.

Comment: In R18-9-C901(D)(7) the reference should be to "eligibility for" rather than "applicability with" general permits, since this provision deals with notices of intent (which are used to establish coverage).

Response: The Department agrees and made the change.

Comment: Subsection (F) provides that the Department shall inform a permittee if EPA requests the permittee's Notice of Intent. This provision should not be included.

Response: The Department included this at the request of stakeholders. The Department understands that there may be cases where notifying a general permittee of the request may affect an EPA enforcement related action. Subsection (F) has been revised as follows:

The Department shall inform a permittee if the EPA requests the permittee's Notice of Intent, unless EPA requests that the permittee not be notified.

Comment: In proposed R18-9-C901(F)(2), why must all general permits contain "measurable goals," and what is meant by that term? How do "measurable goals" differ from "permit requirements, permit conditions, [and] best management practices," which are referenced earlier in that same provision? The commenter is concerned that this phrase could be read to mandate sampling and/or numeric pollution reduction goals in every general permit (including storm water permits), which would be inappropriate and more stringent than the EPA general permit program.

Comment: The items listed in subsection (E)(2) appear to target only stormwater permits although the general permit section is applicable to all NPDES permits.

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Response: The Department made the following changes to subsection (E)(2):

The appropriate permit requirements, permit conditions, and best management practices, and measurable goals for MS4 general permits, under R18-9-A905(A)(1), (2), and (3) and determined by the Director as necessary and appropriate for the protection of navigable waters.

R18-9-C902. Required and Requested Coverage Under an Individual Permit.

Comment: A commenter suggests that the language under subsection (A)(1) does not fit in Part C of the general permits section and is more appropriate in Part B, individual permits.

Response: The Department believes that although this subsection requires a permittee to obtain an individual permit, a permittee operating under a general permit will first review Part C (dealing with general permits) to obtain the appropriate requirements. No change has been made.

Comment: In proposed R18-9-C902(A)(1): (1) the reference in the introductory sentence to a facility's "contribution to water pollution" is vague and should be deleted or modified. Subsections (A)(1)(a) through (A)(1)(e) do not relate to the facility's contribution at all, instead focusing on the development of other standards or plans that could apply to the facility. (2) With respect to subsection (A)(1)(f), the commenter believes a general permittee should be required to obtain an individual permit only if the permittee is a significant cause of a violation of a water quality standard. In the context of waters that meet standards, it is not clear what a "significant contributor" of pollutants means or how it will be measured. Basing revocation on significant contribution to a standards violation is more reasonable and clear than the proposed language. (3) The Department should emphasize in the preamble to the final rules that it has discretion to require an individual permit in these cases, not that an individual permit will always be required when one of the identified circumstances occurs. This seems to be the intent of the rule, but preamble language to that effect would be helpful.

Response: Except for the phrase "contribution to water pollution," this language is taken directly from 40 CFR 122.28(b)(3). The Department proposed this language to provide a basis for when the Director would require an individual permit. Since the cases already list the basis for the Director's decision, subsection (A)(1) has been amended as follows:

The Director may require a person authorized by a general permit to apply for and obtain an individual permit for any of the following cases:

Comment: 40 CFR 122.28(b)(3)(E) allows EPA to require a general permit permittee to obtain individual permit when "circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary."

Response: The Department agrees to include this criteria in subsection (A)(1)(e) to continue the list of facilities where an individual permit may be required.

Comment: In proposed R18-9-C902(A)(1)(f), the commenter assumes that the reference to sewage sludge use standards means standards other than those contained in Article 10. Otherwise, an individual permit could be required in every case because Article 10, when effective, already will contain "promulgated" standards for sewage sludge use.

Response: The language in subsection (A)(1)(f) was taken directly from 40 CFR 122.28(b)(3)(i)(F). This section specifies that when "*Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit*" the Director may require a discharger authorized by a general permit to apply for and obtain an individual permit. Currently no EPA-issued general permit exists to cover sewage sludge. A discharger will be required to obtain an individual permit until a general permit is promulgated. No change has been made.

Comment: 40 CFR 122.28(b)(3)(i)(G) provides that the permitting authority "may consider" certain criteria in determining whether a discharger is a significant contributor. Department regulations provide that Director "shall consider." The Department may want to change regulation.

Response: Using the term "may" in rulemaking requires a basis for when the Department "may" use this determination. The Department believes that there is no reason why it wouldn't consider the listed qualifications when determining if a discharge is a significant contributor of pollutants. No change has been made.

Comment: Subsection (B)(1) should include the 90-day deadline required in 40 CFR 122.28(b)(4)(iii).

Response: The Department agrees and the appropriate addition has been made to subsection (B)(1).

R18-9-C903. General Permit Duration, Reissuance, and Continuation

Comment: A commenter suggested that the words "the date" be included before each statement in subsections (B)(2), (B)(3), and (B)(4).

Response: The Department agrees and the subsections have been changed accordingly.

R18-9-C904. Change of Ownership or Operator Under a General Permit

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Comment: The Department's general permit transfer provision does not include an "automatic transfer" provision similar to the one provided under EPA's NPDES rule at 40CFR 122.61(b). As proposed, the AZPDES rules for general permit transfers, at R18-9-C904, leaves the general permittee who wishes to transfer the permit to a new owner or operator open to liability for an unspecified amount of time until the Department transfers the permit authorization pursuant to R18-9-C904(1)(b). Consequently, this burden on the general permittee would be more stringent than the counterpart federal regulation at 40 CFR 122.61(b). Thus, the Department needs to revise the proposed rule to add the following language:

R18-9-C904.3. Automatic transfers. As an alternative to transfers under paragraphs (1) and (2) of this Section, any AZPDES permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date in paragraphs 3.b of this section;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The Department does not notify the existing permittee and the proposed new permittee of the Department's intent to modify or revoke and reissue the permit.

This language will not only allow for regulatory flexibility, but should also relieve an unnecessary administrative burden for the Department.

Response: 40 CFR 122.61 deals with transfers by modification and automatic transfers and applies only to individual permits. General permits are not issued to individual dischargers. They can only be modified, revoked and reissued by the Department. Instead, if a discharger is able to meet the criterion of a general permit, the Department issues the discharger an "authorization to discharge" under the general permit. This is an "authorization" and is not transferrable. Therefore, anyone wishing to change ownership or operator under this "authorization to discharge under a general permit" must submit a new Notice of Intent to the Department. No change has been made.

Comment: The items listed in subsection (2)(c) appear targeted only to stormwater permits although the general permit transfer section is applicable to all NPDES permits.

Response: The Department agrees that the items listed in subsection (2)(b) and (2)(c) apply to stormwater discharges to be authorized by general permits. The Department also agrees that the rest of the Section applies to all other dischargers that may be covered under NPDES general permits. The Department does not see a conflict in the structure of the subsections with the overall section because stormwater general permits are one type of general permit.

Comment: Since subsection (2)(c) concerns notice of termination it should be put in a separate section.

Response: The Department disagrees. Subsection (1) applies to permitted owners or operators. Subsection (2) applies to new owners or operators. The Department believes that the requirements of each class of permittee should be separate. Subsection (1) has been amended to clarify that it deals with permitted owners or operators.

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM – DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

General Comments

Comment: 40 CFR 503.7 holds preparers of biosolids responsible for complying with sewage sludge application and surface disposal. The rule places primary responsibility for compliance on the applicator. The rule should incorporate 40 CFR 503.7 by reference, so that the Department has the authority to hold preparers responsible for biosolids treatment and use or disposal requirements.

Response: The Department did not include a specific provision to hold preparers responsible in rule. The Department's biosolids program is based on permitting for generators and preparers of biosolids (R18-9-A902(C)(2)), for owners or operators of surface disposal sites (R18-9-1002(E)), and registration of all land application sites (R18-9-1004(C)). The Department has authority under A.R.S. § 49-263.02(A)(3) to penalize any persons who "violate any condition of a permit or other authorization granted under the sewage sludge provision of Article 3.1." The Department believes that this approach is equally protective and consistent with overall purposes of the federal sewage sludge disposal program.

Comment: 40 CFR 503.5 allows the permitting authority to impose additional requirements on a case-by-case basis. Furthermore, 40 CFR 503.10(b)(2) allows the permitting authority to impose specific conditions on application of "exceptional quality" biosolids when the permitting authority determines this to be necessary.

These provisions are necessary so as to allow the Department to impose additional management practices when necessary, as in the case of new Class A treatment processes such as thermophilic digestion, where biosolids have high nitrogen content and their agronomic rates should be calculated as is required for Class B biosolids.

Other cases where the Department may want to impose additional requirements are: (1) sites with high winds or flash floods; (2) sites which are converting from agricultural to residential; (3) sites where there is a particular need to ensure that the correct agronomic rate is implemented by requiring pre-and-post-soils testing for nitrogen and crop yields, etc.

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Response: Regarding, the Department's ability to impose additional requirements on a case-by-case basis under 40 CFR 503.3, the Department believes it has already applied the authority for case-by-case requirements in general rule provisions as follows:

1. Incineration: The Department proposed to prohibit it. (R18-9-1002(F)).
2. Surface Disposal: The Department, in addition to proposing to incorporate 40 CFR 503, Subpart C by reference (R18-9-905(9)) and requiring pathogen reduction and vector attraction reduction to be performed on the biosolids, required the owner or operator to obtain an Aquifer Protection Permit. (R18-9-1002(E)).
3. Land Application: The Department has been registering land application sites since 1996. The registration program includes management practices beyond those specified in 40 CFR 503. These additional management practices restrict the type of sites that are suitable for land application based on: pH of soil (R18-9-1007(A)(1) and R18-9-1008(A)(1)); slope (R18-9-1007(A)(2) and R18-9-1008(A)(2)); depth to groundwater (R18-9-1007(A)(3) and R18-9-1008(A)(3)); storage location and distance from application site to wells, public right-of-way, or dwellings (R18-9-1007(A)(5), (A)(6) and (A)(12) and R18-9-1008(A)(5), (A)(6) and (A)(11)); whether crop was grown after agronomic rate was reached (R18-9-1007(A)(10)) and irrigation and dust control practices (R18-9-1007(A)(11) and R18-9-1008(A)(10)). In addition, the rule specifies that the Department may order the preparer or applicator to collect and analyze additional samples to measure pollutants of concern (R18-9-1012(D)).

Regarding the Department's ability to impose specific conditions on application of "exceptional quality biosolids," if a preparer uses a new pathogen reduction method to meet Class A biosolids, it is likely that the Department would request additional information under R18-9-1012(D) to ascertain the overall quality of the sludge.

Comment: 40 CFR 503.14(a) prohibits application which would adversely affect a threatened or endangered species. The rule does not reference endangered species.

Response: The rule does not specifically cover this provision. However, the Department believes that the prohibition of any application that would adversely affect a threatened or endangered species is covered under R18-9-A904(C), which states that "[t]he issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations."

Although the disposal, use, and transportation of biosolids may not require a permit in every instance (See R18-9-A902(C)), the applicability of a person regulated under Articles 9 and 10 of this Chapter, and the express or implied approval to use, dispose, or transport under these Articles, falls under the definition of "license" pursuant to Arizona Revised Statutes § 49-1001(10). The term "license" is defined to *includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes.*

Comment: 40 CFR 503.24(a) prohibits surface disposal which would adversely affect a threatened or endangered species.

Response: This provision is incorporated by reference in R18-9-A905(A)(9) and a reference to that incorporation was added to R18-9-1002(E)(1).

Comment: 40 CFR 503.3(b), known as the "direct enforceability" provision, allows enforcement against any person that engages in the use or disposal of sewage sludge without complying with the sewage sludge regulations, regardless of whether that person holds a permit for sewage sludge use or disposal.

This provision should be added or incorporated by reference to allow adequate enforcement of the Department biosolids regulations.

Response: A.R.S. §§ 49-262, 49-263.01 and 49-263.02 provide the Department with sufficient authority to enforce against a person who violates any condition under Articles 9 and 10 of this Chapter. After reviewing the above comment, the following changes were made to R18-9-1002(C) and R18-9-1015(B):

R18-9-1002

C. Except as otherwise provided in subsection (D) of this Section, the land application of biosolids in a manner that is not consistent with this Article ~~Articles 9 and 10 of this Chapter~~ is prohibited.

R18-9-1015

The following language proposed under subsection (B) has been deleted: "Any person who violates a permit issued under this Article, or who falsifies data or information submitted to the Department under this Article is subject to enforcement action prescribed under applicable state statutes."

Comment: 40 CFR 501.15 lists a number of requirements that a state must place in permits issued to preparers. This provision should be incorporated by reference unless the authorities to include these conditions exists in other statutes/rules.

Response: Permits for preparers are issued under the provisions in Article 9. The conditions of 40 CFR 501.15 are addressed through the incorporations by reference of 40 CFR 122.41 in R18-9-A905(A)(3)(a) with the exception of 40 CFR 501.15(b)(3) that is covered by the penalties in A.R.S. 49-263.02. No change has been made.

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Comment: 40 CFR 503.1(b)(2) and (b)(4) provide that the federal biosolids regulations apply to the sewage sludge applied to the land or placed on a surface disposal site, and to the land where sewage sludge is disposed of or applied. This general provision regarding the applicability of the biosolid regulations should be added or incorporated by reference.

Response: Because biosolids cannot arrive on a land area and land cannot receive biosolids without human influences, the Department believes that the rules need to focus on actions by a person and has crafted them as such. The Department believes that the rules are clear in that any person who applies biosolids to a land surface must do so in accordance with 18 A.A.C. 9, Article 10. R18-9-1002(A) specifically lists all persons who are covered and responsible under Article 10 of this Chapter. No change has been made.

Comment: Definitions and tables should be incorporated by reference or added *verbatim*. In their present form, the definitions and tables in the biosolids regulations are difficult to compare to the definitions and tables in the federal biosolids regulations because they are listed in different order and often have different wording. It is difficult to assess whether the Department's definitions and tables listing important requirements are in fact as stringent as the federal standards.

Response: The Department has reviewed the definitions and compared them with those in 40 CFR 503 and believes that except for "domestic septage" and "industrial wastewater," the definitions are consistent (although not exact) with 40 CFR 503. Many EPA terms are not defined in this rulemaking because they are not used in these rules.

R18-9-1002. Applicability and Prohibitions

Comment: Revise R18-9-1002(A)(3) by omitting the words "applicator of."

Response: The proposed rule language already omitted those words. No change has been made.

Comment: 40 CFR 503, Subpart C is incorporated by reference in this rulemaking, however, this Section does not specifically state this. It appears that Arizona's regulations will change as the CFRs change without putting the change through the public comment process. Previously sludge disposal was only permitted in sanitary landfills. What section within the Department will be responsible for regulating these "sludge-only" landfills?

Response: 40 CFR 503, Subpart C is incorporated by reference under R18-9-A905(A)(9). The opening statement of R18-9-A905 specifically states that the July 1, 2001 edition is incorporated by reference. This means that if EPA revises Subpart C or any of the other regulations that are incorporated by reference in this rulemaking, the Department will regulate under the July 1, 2001 edition until the appropriate regulation is updated through a rulemaking. The citation to this incorporation by reference has been added to R18-9-1002(E)(1).

Sludge-only landfills will be regulated by the current process governed by 40 CFR 258 and the Department's Waste Program Division under A.R.S. § 49-762(5).

R18-9-1004. Applicator Registration, Bulk Biosolids

Comment: GIS information would be even more helpful in subsection (D)(3) and more precise than the latitude and longitude, especially for the pollutant loading records where the size and shape of the area that received biosolids may change from year to year.

Response: This information, which is now in subsection (C)(5)(c), has not changed from the current language. Requiring a person to purchase a Global Positioning System (if they do not already have one) would create an economic factor that has not been considered in this rulemaking. The Department believes that before considering this addition that stakeholder input needs to be obtained. This could be a consideration in the next rulemaking. No change has been made.

Comment: The requirement in subsection (C)(5)(d) is too restrictive. Weather, soil conditions, and crop economics may cause farmers to change their minds or limit the fields use for land application. This language seems to say the sludge must be applied if the registration included it.

Response: The Department disagrees that the amended language changes the intent of the existing rule. The proposed language is in active voice, rather than passive voice -- which is a rulemaking requirement. When the applicator provides *[t]he number of acres or hectares at each site on which biosolids are planned to will be land applied* applied the applicator is not committed to those number or acres or hectares, but instead provides the Department with an overall projection of the biosolids use. The Department understands that due to a variety of reasons an applicator may not apply biosolids to an approved site for many years after the approval, if ever. The applicator provides actual site application information to the Department in the annual report. With respect to the commenter's concern, however, subsection (C)(5)(d) has been amended as follows:

The number of acres or hectares at each site ~~on which biosolids are planned to be land applied~~ used;

Comment: Strike "the effective date of this Article" in subsection (C)(5)(g). The sentence needs to read "by April 1996 (effective date of Title 18, Chapter 13, Article 15) because that was the date the requirement first came about.

Response: The Department deleted all text that referred to any effective date and amended subsection (C)(5)(g) as follows:

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f. ~~For sites on which biosolids have not been applied as of the effective date of this Article, proof of public notice of the potential use of the site for land application of biosolids by the placement of a notice in the largest newspaper in general circulation in the area in which the site is located. In order to satisfy this requirement, the notice shall appear at least once per week for at least 2 consecutive weeks. In the event a site is not used for land application for a period of 3 consecutive years or more, the applicator shall renotece the site prior to its use.~~

g. Public notice. Proof of placement of a public notice announcing the potential use of the site for the application of biosolids when a site has not previously received biosolids, or when a site has not been used for land application for at least three consecutive years.

i. The notice shall appear at least once each week for at least two consecutive weeks in the largest newspaper in general circulation in the area in which the site is located.

ii. If a site is not used for land application for at least three consecutive years, the applicator shall renotece the site following the process described in subsection (C)(5)(g)(i) before its reuse.

Comment: If the public notice is required prior to the request for registration and it must be done during the two weeks before the application, the application will occur at the same time the registration is submitted. Unless the public notice and the registration is allowed some time ahead of the application, the Department will not have the 15 business days (three weeks) to review the registration before application occurs. Previously, public notice could be done even months in advance of the application. The weeks prior to application can be extremely busy with other bureaucratic mandates from other agencies on the farming industry.

Response: The intention of the language in R18-9-1004(C)(5)(g), is to place the activity on public notice using the following criteria:

- 1) It must be placed in the largest newspaper of general circulation in the area in which the site is located,
- 2) It must appear at least once each week for two consecutive weeks, and
- 3) The conditions of 1) and 2) must be met before the proposed date of biosolids application.

The public notices may run at any time before the proposed date of land application. Subsection (C)(5)(g) has been revised as explained in the previous response:

~~f. For sites on which biosolids have not been applied as of the effective date of this Article, proof of public notice of the potential use of the site for land application of biosolids by the placement of a notice in the largest newspaper in general circulation in the area in which the site is located. In order to satisfy this requirement, the notice shall appear at least once per week for at least 2 consecutive weeks. In the event a site is not used for land application for a period of 3 consecutive years or more, the applicator shall renotece the site prior to its use.~~

g. Public notice. Proof of placement of a public notice announcing the potential use of the site for the application of biosolids when a site has not previously received biosolids, or when a site has not been used for land application for at least three consecutive years.

i. The notice shall appear at least once each week for at least two consecutive weeks in the largest newspaper in general circulation in the area in which the site is located.

ii. If a site is not used for land application for at least three consecutive years, the applicator shall renotece the site following the process described in subsection (C)(5)(g)(i) before its reuse.

Comment: The requirement for a notarized affidavit and copy of the public notice be attached to the Request for Registration should be added to this Section. The Department has stated the requirement on the form for registration but has not addressed it in the rule.

Response: The Department application form requires the applicant to attach “proof of public notice” to the request form, therefore R18-9-1004(C)(5)(g) supports that requirement in the request for registration. The registration form does not require a notarized affidavit and therefore is consistent with the rule requirement. No change has been made.

Comment: The Request for Registration for exceptional quality biosolids under subsection (D) should also include information on pollutant levels, a demonstration of how pathogen reduction is achieved, and a demonstration of how vector attraction reduction is achieved, so that it can be verified that the biosolids are exceptional quality at the time of acknowledgment of registration.

Response: The Department understands that pollutant levels, pathogen reduction demonstrations, and vector attraction reduction demonstrations may be valuable information to review for registration purposes. In the current rule, the Department had to weigh the economic impact with the economic benefit of such requirements. The Department maintains that the recordkeeping and reporting requirements in R18-9-1013(A), R18-9-1013(D), and R18-9-1014(F), along with the penalties for violation and additional presence in the field, are adequate means for ensuring that biosolids claimed to be exceptional quality biosolids truly meet the definition and are used appropriately. To ensure that specific details are reported annually, the Department revised subsections R18-9-1014(F)(5) and (F)(6) as follows:

5. ~~Pathogen~~ The pathogen treatment methodologies used during the year, including the results; and
6. ~~Vector~~ The vector attraction reduction methodologies used during the year, including the results.

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Comment: The Request for Registration under subsection (D) should include a list of proposed crops to be grown, the calculated agronomic rates for these crops and proposed application rates based on this, and other sources of nitrogen (residual nitrogen from previous application, other fertilizers, etc.).

Response: The Department understands that a list of proposed crops, the calculated agronomic rates and the proposed application rates would be valuable information to review for registration purposes. The Department believes that the management practices for applying at the agronomic rate (R18-9-1007(A)(7) and (A)(10)), the recordkeeping and reporting requirements, and the penalties for violation and additional presence in the field, are adequate means for ensuring that biosolids are applied in conformance with the rule. No change has been made.

Comment: Subsection (D)(7) requires a public notice in a newspaper. 40 CFR 501.15(a)(2)(ix)(E) requires that “[a]ll State programs under this part shall have legal authority to implement each of the following provisions and must be administered in conformance with each [provision] . . . Applicants intending to apply sludge to land application sites not identified at the time of application must submit a land application plan which at a minimum . . . provides for advance public notice as required by State and local law, but in all cases requires notice to landowners and occupants adjacent to or abutting the proposed land application site.” The Department should either revise the rule to reflect this, or as part of its program description, describe how applicators will be required to notify adjacent landowners and occupants.

Response: The Department believes that the management practice under R18-9-1007(A)(6) and R18-9-1008(A)(6) and the public notice requirements in R18-9-1004(C)(5)(g) meet the intent of 40 CFR 501.15(a)(2)(ix)(E) because depending on the distance of the intended application, the landowner or lessee of the adjoining property must be notified.

R18-9-1005. Pollutant Concentrations

Comment: Subsection (A) calls Table 1 “pollutant limits” although the Table is entitled “Ceiling Concentrations.

Response: Subsection (A) has been amended as follows:

A person shall not apply biosolids with pollutant concentrations ~~that exceed any of the instantaneous pollutant concentrations set forth~~ ceiling concentrations established in Table 1 ~~of this Section~~. . . .

Comment: R18-9-1005(A): Delete the second sentence which waives the selenium limit in Table 1 under certain conditions. The current version of 503 does not allow for this waiver, and EPA has no plans in the near future to amend the Table 1 selenium limit. This decision will not impact any POTWs in Arizona, since to our knowledge, there are no POTWs in Arizona that produce biosolids containing selenium levels at or even approaching 100 ppm.

Response: Although there may be a waiver from the limit in Table 1, the Table 2 and Table 3 limits still apply to the situation. The Department believes that the selenium limitation is essentially in effect even with the language in R18-9-1005(A). No change has been made.

Comment: Subsections (A) and (C)(4). “Low probability for child exposure” is less restrictive than a “low potential for child” exposure.

Response: The Department does not detect a difference in the wording, but will keep the current language: “low potential for child occupancy.”

Comment: If the “will be exceeded” is changed to “is exceeded,” in subsections (B) and (C), the Department is condoning the exceedance of its own limits.

Response: This wording was changed to meet rulewriting standards that require rule language be written in active, rather than passive, voice. The Department agrees, however, that the intent may have changed and will keep the current language.

Comment: Subsections (C)(2) and (C)(3). Actual analytical data should be available since 1993 when 40 CFR 503 was adopted. Much of the data should have been known since 1979. Land application has been regulated in Arizona since 1979. As much of the actual data as is available from before 1993 should be required to be used. Soil testing is inaccurate and will generally indicate a lesser amount of the pollutant than was actually loaded on the site. The Department did not have authority to require the use of analytical data for all of the Part 503 pollutants until April 1996. Using the effective date of these modifications essentially negates the last five years of regulation and potentially allows all of those sites used to exceed the cumulative pollutant loading rate.

Response: The Department disagrees with the commenter that using the effective date of these rules negates the last five years of regulation because R18-9-1005(C)(1) requires that all known data be used in the calculation for the cumulative rates. The Department had originally included the option for soil sampling in addition to actual application data in R18-9-1005(C)(2) because pre-1996 requirements did not monitor for all of the 8 metals listed in Table 4 and the Department believed that for those non-monitored pollutants, soils samples from the site would be the next best information. 40 CFR 503 is silent on the use of soils data. The Department believes that new soil sample data are appropriate only when actual loading data are not available for a site that receives biosolids before April 1996. Therefore, the Department revised R18-9-1005(C)(2) as follows:

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~~An applicator shall calculate~~ By calculating the existing cumulative level of the pollutants ~~set out established~~ in Table 4 using ~~either actual analytical data from the application events or if actual analytical data from application events before April 1996 are not available,~~ background concentrations determined by taking representative soil samples of a site, ~~when if it is know that the site received biosolids before April 1996 [effective date of rule].~~

Subsection (C)(3) has been amended to specify that if a site has not received biosolids, background tests are not required.

~~For Background soil tests are not required for those sites which that have not received biosolids prior to the effective date of this rule, background soil tests need not be conducted before (effective date of rule) before April 23, 1996.~~

Comment: R18-9-1005(C): It would be clearer to all parties involved if the numbering of tables is the same as in 503.13, i.e. Table 1: ceiling concentrations, Table 2: cumulative loadings, Table 3: pollutant concentrations, Table 4: Annual Pollutant Loading Rates.

Response: The Department retained the current order of the Tables in order to be consistent with the current rule. No change has been made.

R18-9-1006. Class A and Class B Pathogen Reduction Requirements

Comment: Subsection (A) requires that the applicator ensure that all biosolids meet pathogen reduction requirements. The rule also requires that the preparer maintain documentation and certifications of pathogen reduction (R18-9-1013). 40 CFR 503 places primary responsibility for ensuring pathogen reduction on the preparer (503.7, 503.17). The Department should verify that the requirements in R18-9-1013 give it the authority to hold the preparer as well as the applier responsible for compliance with pathogen reduction requirements.

Response: Although R18-9-1006(A) requires that the applicator ensure that all biosolids applied to the land meet Class A or Class B pathogen reduction at the time the biosolids are applied to the land, there are several other provisions that impose the responsibility for meeting the pathogen requirements on the preparer. The Department believes that the following provisions apply:

R18-9-1002(A)(1): The general requirement that Article 10 applies to any person who prepares biosolids for land application;

R18-9-1006(D): requirements that must be met for Class A Pathogen Reduction;

R18-9-1006(E): requirements that must be met for Class B Pathogen Reduction;

R18-9-1012(A): the preparer is responsible for conducting “self-monitoring” of the biosolids for pathogen reduction (Note this is not a requirement for the applicator);

R18-9-1013(A)(4): the preparer is required to collect and retain for five years the results of all pathogen density analyses and applicable descriptions of the methods used for pathogen treatment in R18-9-1006; and

R18-9-1014(A): The preparer must provide the applicator written notification of the pollutant concentrations as necessary for the applicator to comply with these rules.

Because of the above provisions, the Department believes that it may hold the preparer responsible for ensuring that the pathogen reduction requirements of R18-9-1006 are met.

Comment: The requirements for Alternative 3, in subsection (D), are somewhat different than in 40 CFR 503.32(a). Biosolids must show non-detects for helminth ova and enteric viruses prior to treatment, and the rule does not clearly state that helminth ova and enteric viruses must be tested during each monitoring event. Alternative 4 in 40 CFR 503.32(a) requires monitoring a finished batch of biosolids for the three categories of pathogens, which is not required in the Department’s rule.

Response: The Department believes that the current rule did not clearly capture the requirements in 40 CFR 503.32(a) and that the minor changes made in subsection (D)(3) clarify the process specified under 40 CFR 503.32(a). In addition, the Department disagrees that the rule does not clearly state that helminth ova and enteric viruses must be tested during each monitoring event. Subsections (D)(3)(a) and (D)(3)(b) contain the phrase “before pathogen treatment and until the next monitoring event.” Subsection R18-9-1006(D)(3) has been revised as follows:

3. Alternative 3. ~~The results of the pathogen treatment meet all of~~ If the following are met:
 - a. The biosolids, before pathogen treatment and until the next monitoring event, have an enteric virus density of less than ~~4~~ one plaque-forming unit ~~per 4~~ for four grams of total solids (dry-weight basis); ~~and~~
 - b. The biosolids, before pathogen treatment and until the next monitoring event, have a viable helminth ova density of less than ~~1 per 4~~ one for four grams of total solids (dry-weight basis); ~~and~~
 - c. Once the density requirements in ~~paragraphs (a) and (b)~~ subsections (D)(3)(a) and (D)(3)(b) are consistently met, after pathogen treatment and the values and ranges of the pathogen treatment process used are documented, ~~future compliance may be shown by reporting those values and ranges rather than by measuring virus and helminth ova densities~~ the biosolids continue to be Class A with respect to enteric viruses and viable helminth ova when the values for

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the pathogen treatment process operating parameters are consistent with the previously documented values or ranges of values.

Alternative 4 from 40 CFR 503.32(a)(6) was not addressed in the proposed rule, but has been added as follows in R18-9-1006(D)(4).

4. Alternative 4. If the following additional requirements are met at the time the biosolids are used or disposed or at the time the biosolids are prepared for sale or given away in a bag or other container for application to the land:

a. The biosolids have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis), and

b. The biosolids have a viable helminth ova density less than one for four grams of total solids (dry-weight basis).

Comment: Is the Director going to appoint a Pathogen Equivalency Committee? Didn't EPA set out criteria of who would sit on the committee? Was the responsibility of establishing a committee also delegated to the Department?

Response: 40 CFR 503.32(a)(8)(ii) and 40 CFR 503.32(b)(4) provide for the permitting authority to determine whether a process is equivalent to one of the "Process to Further Reduce Pathogens" for Class A biosolids and the "Process to Significantly Reduce Pathogens" for Class B biosolids from Appendix B of 40 CFR Part 503. Upon program approval, the Department will be the "permitting authority" and therefore will be responsible for making the determinations of equivalency. The Department does not wish to create its own Pathogen Equivalency Committee and therefore, has revised subsections R18-9-1006(D)(12) and R18-9-1006(E)(7) as follows, to rely on the existing EPA Pathogen Equivalency Committee:

R18-9-1006(D)(12)

~~Alternative 11 — Other processes determined by the EPA Pathogen Equivalency Committee to meet Processes to Further Reduce Pathogens may be authorized by the Director.~~ 12. The Director shall approve another process if the process is equivalent to a Process to Further Reduce Pathogens specified in subsections (D)(5) through (D)(11), as determined by the EPA Pathogen Equivalency Committee.

R18-9-1006(E)(7)

~~Alternative 7. — Other processes determined by the EPA Pathogen Equivalency Committee to meet Processes to Significantly Reduce Pathogens may be authorized by the Director.~~ The Director shall approve another process if it is equivalent to a Process to Significantly Reduce Pathogens specified in subsections (E)(2) through (E)(6), as determined by the EPA Pathogen Equivalency Committee.

Comment: Some members of the Pathogen Equivalency Committee recommend throwing out Alternatives 3 and 4 all together because of the unreliability of the helminth ova and enteric virus tests. EPA, Region IX agrees that Alternative 3 is very unreliable, and that it would be preferable to have facilities apply for an equivalency determination (Alternative 11 in subsection (D)). If it is kept, it should be clarified that pathogens be tested during each monitoring event. In the case of a small facility that only monitors once/year, more frequent pathogen monitoring should be considered.

On the other hand, Region IX believes that Alternative 4 is reliable in arid areas where POTWs dry biosolids over the course of more than a year and then sample the finished stockpiles for the three categories of pathogens. Alternatively, facilities using this process could also apply for an equivalency determination. If the Department does add this alternative, it may want to stipulate a minimum drying time, so that facilities which use long-term drying can use the alternatives while those with new treatment processes are required to pursue a Class A equivalency determination.

Alternative 11 should clarify that the Director will make the determination if a process is equivalent to a Process to Further Reduce Pathogens.

Response: The Department revised subsection (D)(3) and added subsection (D)(4). The Department agrees that after program approval it will be the responsible entity for determining whether another process is equivalent to a Process to Further Reduce Pathogens, but would like to rely on the recommendations of the EPA Pathogen Equivalency Committee. R18-9-1006(D)(12) and R18-9-1006(E)(7) were revised as in the previous response.

R18-9-1007. Management Practices and General Requirements

Comment: Subsection (A)(10). Agronomic rates are relative to the crop to be grown. Therefore, the requirement should read "... agronomic rate appropriate for that crop." The same site may have more than one type of crop each year.

Response: Subsection(A)(10) has been amended as follows:

~~Once a~~ Apply any additional biosolids before a crop is grown on the site if the site has received biosolids containing nitrogen at the equivalent of the agronomic rate appropriate for that site, a crop must be grown on the site prior to any additional biosolids application. ~~crop;~~

Comment: Subsection (A)(12). "To minimize odors," has been stricken. This was the clarifying statement for the regulation being above and beyond Part 503.

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Response: The Department agrees that this statement clarifies the basis for the requirement and has retained the language.

Comment: There is no requirement similar to 40 CFR 503.14(a) which prohibits an application that would adversely affect a threatened or endangered species. This should be added, or incorporated by reference to 40 CFR 503, Subpart B.

Response: The Department believes that the prohibition of any application that would adversely affect a threatened or endangered species is covered under R18-9-A904(C), which states that “[t]he issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, state, or local law or regulations.”

Although the disposal, use, and transportation of biosolids may not require a permit in every instance, the applicability of a person to Articles 9 and 10, and the express or implied approval to use, dispose, or transport under these Articles, falls under the definition of “license” pursuant to Arizona Revised Statutes § 49-1001(10). The term “license” is defined to *includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes.*”

R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites

Comment: This appears to allow additional pollutants to a permitted area without modifying the permit.

Response: The Department is not aware of a permit requirement and therefore the commenter’s intent is not clear. No change has been made.

Comment: Subsection (A)(7) does not state whether the 150 dry tons is per application per year, for the lifetime of the site, of biosolids, or of nitrogen. How does this compare to the agronomic rate of the crop to be grown?

Response: The 150 dry tons of biosolids per acre is for the lifetime of that portion of the reclamation site, as indicated by the word “total.”

Comment: This Section does not address flooded, frozen, or snow-covered sites. Is application under these conditions acceptable? How does application under these conditions contribute to the reclamation effort? If the application is not beneficial to reclamation, is it not simply disposal to be regulated as any other municipal waste?

Response: The Department directs the commenter to R18-9-1008(A)(9) that does address flooded, frozen or snow-covered sites.

R18-9-1009. Site Restrictions

Comment: Why is the sentence construction of R18-9-1009(A)(1)(c) different from R18-9-1009(A)(1)(b)?

Response: The Department thanks the commenter for noticing the variation in sentence construction. Subsection (A)(1)(c) has been revised as follows:

~~When the biosolids remain on the land’s surface for less than 4 months prior to incorporation, food crops with harvested~~ Harvest food crop parts growing in or below the land’s surface ~~shall not be harvested~~ for 38 months following application if the biosolids remain on the land’s surface for less than four months before incorporation;

Comment: R18-9-1009(B) and R18-9-1013(C). Why is this specifically called out? Domestic septage is already regulated under subsection (A) because the definition of biosolids states the biosolids means sewage sludge which by definition includes domestic septage.

Response: The Department agrees that domestic septage is already addressed within the definition of biosolids. 40 CFR 503 does contain specific provisions for domestic septage that would need to be applied. The Department reviewed subsection (B) and believes that it is necessary because it restricts the type of land to which domestic septage may be applied. The Department deleted the proposed R18-9-1013(C) and revised R18-9-1013(B)(8) as follows:

A description of the activities and measures used to ensure compliance with the management practices required by Section in R18-9-1007 and R18-9-1008, including information regarding the amount of nitrogen required for the crop grown on each site;

R-18-9-1013. Recordkeeping

Comment: The applicator should also maintain records in subsection (B) of the calculated Plant Available Nitrogen applied, and the calculated residual Plant Available Nitrogen, dates of seeding, crop grown, and dates of harvesting. The Department might also want to require crop yield, in cases where the true agronomic rate for the site may need to be established.

Response: The Department understands that the information listed in the comment above would be valuable for verifying compliance with the agronomic rate requirement of the rule. Similar to 40 CFR 503, the Department rule does not list the specific means for demonstrating compliance with the management practice in R18-9-1007(A)(7) (or 40 CFR 503.14(d)), instead it provides the applicator flexibility. During inspections and other opportunities, the Department will emphasize the applicator’s responsibility to ensure that the records include enough information to demonstrate that all conditions of the rule were met. No change has been made to the rule.

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R18-9-1014. Reporting

Comment: 40 CFR 503.18 and 40 CFR 503.28 require POTWs to submit reports for biosolids that are land applied or surface disposed. These reports must contain certifications that the information reported is true and accurate.

40 CFR 503 does not require reports from applicators, thus the rule is not self-implementing in this respect, and other means are necessary to obtain the applicators' reports. The rule does require reports from the applicator, which contain the POTW's documentation of pollutant concentrations, pathogen reduction, and vector attraction reduction. The Department should consider requiring POTWs to submit reports as well as applicators, or to have the POTW's reports and certification statements submitted as attachments to the applicator's reports. The POTW should be required to submit actual documentation of pathogen reduction and vector attraction reduction, not just a statement of the methodology used. The current requirement for the applicator to submit documentation from the POTW is necessary in order for the Department to obtain records of out-of-State POTWs to the Department.

The Department should require direct reports from POTWs in Arizona so that it can track what all POTWs are doing with their sewage sludge, including those who have long-term treatment, onsite storage for several years, or dispose it in landfills.

Response: R18-9-1013(A)(1) through (A)(6) require that preparers collect and retain information. R18-9-1013(B) requires that applicators retain information including "...all pathogen density analyses, and applicable descriptions of the methods used for pathogen treatment..." (R18-9-1013(B)(7)) and "vector attraction reduction" R18-9-1013(B)(9). The Department believes that R18-9-1013(B)(12) is appropriately applied to out-of-state preparers because, in-state preparers would report the information as part of the individual AZPDES permit requirements. The Department believes that before considering this addition that stakeholder input needs to be obtained. This could be a consideration in the next rulemaking. Subsection (A) has been changed as follows:

A person who prepares biosolids for application shall provide the applicator written notification of the pollutant concentrations, ~~including total nitrogen (as N on a dry weight basis) in accordance~~ as necessary for the applicator to comply with R18-9-1003(C).

Comment: The addition of "or gallons per acre" in subsection (E) requires another unit of measure be added to the databases. How will gallons per acre be compared to Table 3 which is in kilograms per hectare? The inclusion of tons per acre was for the ease of the regulated community while allowing the Department a means for conversion. Gallons per acre cannot be converted without knowing the percent solids.

Response: The addition was due to the language in 40 CFR 503. The Department understands that applicators typically are currently reporting "tons per acre" for applications of domestic septage. Because of the regulation and applicator practice, the Department has revised subsection (E)(2)(b) as follows:

b. ~~Application~~ The application loading rates (in ~~a~~ tons or kilograms per acre or hectare, and gallons per acre for domestic septage);

Comment: 40 CFR 503.18 and 503.28 require POTWs to submit reports for biosolids that are land applied or surface disposed. A problem with Part 503 as it is currently written is that it does not require reports from applicators. The Department could incorporate the requirement for POTW reporting by amending 1014 E to have the applicator or surface disposal site operator submit reports which include as appendices the POTWs' reports with pathogen and vector attraction reduction descriptions, and the POTWs certifications. The POTW should submit actual documentation of pathogen reduction and vector attraction reduction, not just a statement of the methodology used. The applicator would thus submit the reports from both in-State and out-of-State POTWs to the Department.

Response: The Department agrees that this information would be typically readily available to the applicator and should be a part of the report. R18-9-1014(E)(2)(d) and (E)(2)(e) was revised as follows:

d. ~~Pathogen~~ The pathogen treatment methodologies used during the year including the results; and

e. ~~Vector~~ The vector attraction reduction methodologies used during the year including the results.

Comment: While the requirement in subsection (A) to report total nitrogen reflects the requirement in 40 CFR 503.12(d), the applicator actually needs the organic nitrogen and ammonium nitrogen to calculate agronomic rate. We would recommend changing this provision to require these nitrogen forms. The preparer should also be required to submit a description and certification of pathogen and vector attraction reduction to the applicator or surface disposal site operator.

Response: The Department understands that the other parameters are needed to calculate the agronomic rate. Most preparers in this state have provided the entire suite of nitrogen parameters in the analytical data provided to the applicators. It is not a specific requirement in federal regulation. The Department believes that this language only provided an example of the type of information on biosolids constituents. To avoid having to list every parameter, the Department revised subsection (A) as follows:

A person who prepares biosolids for application shall provide the applicator written notification of the pollutant concentrations, ~~including total nitrogen (as N on a dry weight basis) in accordance~~ as necessary for the applicator to comply with R18-9-1003(C).

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Comment: The report mentioned in subsection (E)(2) should also include Plant Available Nitrogen applied, dates of seeding, crops grown, dates of harvesting, etc.

Response: The Department understands that the information listed in the comment above would be valuable for verifying compliance with the agronomic rate requirement of the rule. 40 CFR 503.17 does not require this specific type of information to be reported. The Department does expect that some of that information will be available as part of the recordkeeping requirements. No change has been made to the rule.

Comment: Preparers and applicators should be required to report violations upon becoming aware of them (24 hours for threats to public health or the environment, and 5 days for others). This requirement could also be included in a preparer's permit, but should be in the rule to cover the applicator.

Response: The Department agrees that this would be a good provision. However, the Department believes that before considering this addition that stakeholder input needs to be obtained. This could be a consideration in the next rule-making. No change has been made to the rule.

R18-9-1015. Inspection, Compliance, and Enforcement

Comment: The statement for affirmative action despite violating the regulations in subsection (B) has been removed. This was over and above Part 503 and made failure to begin mitigating action prior to the Department action an additional violation.

Response: The Department is eliminating the compliance and enforcement provisions from this rulemaking because they are sufficiently covered in statute.

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

None

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

R18-9-A905(A)(1)(a)	40 CFR 122.7, July 1, 2001 edition
R18-9-A905(A)(1)(b)	40 CFR 122.21, except (a) through (e) and (l), July 1, 2001 edition
R18-9-A905(A)(1)(c)	40 CFR 122.22, July 1, 2001 edition
R18-9-A905(A)(1)(d)	40 CFR 122.26, except 40 CFR 122.26(c)(2) and 40 CFR 122.26(e)(2), July 1, 2001 edition
R18-9-A905(A)(1)(e)	40 CFR 122.29, July 1, 2001 edition
R18-9-A905(A)(1)(f)	40 CFR 122.32, July 1, 2001 edition
R18-9-A905(A)(1)(g)	40 CFR 122.33, July 1, 2001 edition
R18-9-A905(A)(1)(h)	40 CFR 122.34, July 1, 2001 edition
R18-9-A905(A)(1)(i)	40 CFR 122.35, July 1, 2001 edition
R18-9-A905(A)(1)(j)	40 CFR 122.62(a) and (b), July 1, 2001 edition
R18-9-A905(A)(2)(a)	40 CFR 124.8, except 40 CFR 124.8(b)(3), July 1, 2001 edition
R18-9-A905(A)(2)(b)	40 CFR 124.56, July 1, 2001 edition
R18-9-A905(A)(3)(a)	40 CFR 122.41 except 40 CFR 122.41(a)(2) and (a)(3), July 1, 2001 edition
R18-9-A905(A)(3)(b)	40 CFR 122.42, July 1, 2001 edition
R18-9-A905(A)(3)(c)	40 CFR 122.43, July 1, 2001 edition
R18-9-A905(A)(3)(d)	40 CFR 122.44, July 1, 2001 edition
R18-9-A905(A)(3)(e)	40 CFR 122.45, July 1, 2001 edition
R18-9-A905(A)(3)(f)	40 CFR 122.47, July 1, 2001 edition
R18-9-A905(A)(3)(g)	40 CFR 122.48, July 1, 2001 edition
R18-9-A905(A)(3)(h)	40 CFR 122.50, July 1, 2001 edition
R18-9-A905(A)(4)	40 CFR 125, Subparts A, B, D, and H, July 1, 2001 edition
R18-9-A905(A)(5)	40 CFR 129, July 1, 2001 edition
R18-9-A905(A)(6)	40 CFR 133, July 1, 2001 edition
R18-9-A905(A)(7)(a)	40 CFR 401, July 1, 2001 edition
R18-9-A905(A)(7)(b)	40 CFR 403 and Appendices A, D, E, and G, July 1, 2001 edition

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R18-9-A905(A)(8)	40 CFR 405 through 40 CFR 471, July 1, 2001 edition
R18-9-A905(A)(9)	40 CFR 503, Subpart C, July 1, 2001 edition
R18-9-1010(A)(1)	“Environmental Regulations and Technology -- Control of Pathogens and Vector Attraction in Sewage Sludge,” EPA/625/R-92-013, published by the U.S. Environmental Protection Agency, Cincinnati, Ohio 45268, 1999 edition
R18-9-1012(G)	40 CFR 503.8, July 1, 2001 edition

14. Was this rule previously adopted as an emergency rule:

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL**

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART A. GENERAL REQUIREMENTS

Section

R18-9-A901. Definitions

R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions

R18-9-A903. Prohibitions

R18-9-A904. Effect of a Permit

R18-9-A905. AZPDES Program Standards

R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution

R18-9-A907. Public Notice

R18-9-A908. Public Participation, EPA Review, EPA Hearing

R18-9-A909. Petitions

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application

R18-9-B902. Requested Coverage Under a General Permit

R18-9-B903. Individual Permit Issuance or Denial

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation

R18-9-B905. Individual Permit Transfer

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits

R18-9-B907. Individual Permit Variances

PART C. GENERAL PERMITS

R18-9-C901. General Permit Issuance

R18-9-C902. Required and Requested Coverage Under an Individual Permit

R18-9-C903. General Permit Duration, Reissuance, and Continuation

R18-9-C904. Change of Ownership or Operator Under a General Permit

**ARTICLE 9. ARTICLE 10. LAND APPLICATION OF BIOSOLIDS
ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS**

Section

~~R18-9-901.~~ R18-9-1001. Definitions

~~R18-9-902.~~ R18-9-1002. Applicability and Prohibitions

~~R18-9-903.~~ R18-9-1003. General Requirements

~~R18-9-904.~~ R18-9-1004. Applicator Registration, Bulk Biosolids

~~R18-9-905.~~ R18-9-1005. Pollutant Concentrations

~~R18-9-906.~~ R18-9-1006. Class A and Class B Pathogen Reduction Requirements

~~R18-9-907.~~ R18-9-1007. Management Practices and General Requirements

R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites

~~R18-9-908.~~ R18-9-1009. Site Restrictions

~~R18-9-909.~~ R18-9-1010. Vector Attraction Reduction

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R18-9-910-R18-9-1011. Transportation
R18-9-911-R18-9-1012. Self-monitoring
R18-9-912-R18-9-1013. Recordkeeping
R18-9-913-R18-9-1014. Reporting
R18-9-914-R18-9-1015. Enforcement Inspection
~~Appendix A-Appendix A.~~ Procedures to Determine Annual Biosolids Application Rates

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART A. GENERAL REQUIREMENTS

R18-9-A901. Definitions

In addition to the definitions in A.R.S. §§ 49-201 and 49-255, the following terms apply to this Article:

1. “Animal feeding operation” means a lot or facility, other than an aquatic animal production facility, if the following conditions are met:
 - a. Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of at least 45 days in any 12-month period; and
 - b. Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
2. “Animal unit” means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.
3. “Aquaculture project” means a defined managed water area that uses discharges of pollutants into that designated project area for the maintenance or production of harvestable freshwater plants or animals. For purposes of this definition, “designated project area” means the portion or portions of the navigable waters within which the permittee or permit applicant plans to confine the cultivated species using a method or plan of operation, including physical confinement, that on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.
4. “Border area” means 100 kilometers north and south of the Arizona-Sonora, Mexico border.
5. “Bypass” means the intentional diversion of waste streams from any portion of a treatment facility.
6. “Concentrated animal feeding operation” means an animal feeding operation that meets the following criteria:
 - a. More than the number of animals specified in any of the following categories are confined:
 - i. 1,000 slaughter and feeder cattle.
 - ii. 700 mature dairy cattle (whether milked or dry cows).
 - iii. 2,500 swine each weighing more than 25 kilograms (approximately 55 pounds).
 - iv. 500 horses.
 - v. 10,000 sheep or lambs.
 - vi. 55,000 turkeys.
 - vii. 100,000 laying hens or broilers (if the facility has continuous overflow watering).
 - viii. 30,000 laying hens or broilers (if the facility has a liquid manure system).
 - ix. 5,000 ducks, or
 - x. 1,000 animal units; or
 - b. More than the following number and types of animals are confined:
 - i. 300 slaughter or feeder cattle.
 - ii. 200 mature dairy cattle (whether milked or dry cows).
 - iii. 750 swine each weighing more than 25 kilograms (approximately 55 pounds).
 - iv. 150 horses.
 - v. 3,000 sheep or lambs.
 - vi. 16,500 turkeys.
 - vii. 30,000 laying hens or broilers (if the facility has continuous overflow watering).
 - viii. 9,000 laying hens or broilers (if the facility has a liquid manure handling system).
 - ix. 1,500 ducks, or
 - x. 300 animal units; and
 - xi. Either one of the following conditions is met: pollutants are discharged into navigable waters through a man-made ditch, flushing system, or other similar manmade device; or pollutants are discharged directly into waters of the United States that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
 - c. An animal feeding operation is not a concentrated animal feeding operation if the animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.

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7. “Concentrated aquatic animal production facility” means a hatchery, fish farm, or other facility that contains, grows, or holds aquatic animals in either of the following categories:
 - a. Cold-water aquatic animals. Cold-water fish species or other cold-water aquatic animals (including the Salmonidae family of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
 - i. A facility that produces less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
 - ii. A facility that feeds the aquatic animals less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
 - b. Warm-water aquatic animals. Warm-water fish species or other warm-water aquatic animals (including the Ameiuridae, Centrarchidae, and Cyprinidae families of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
 - i. A closed pond that discharges only during periods of excess runoff; or
 - ii. A facility that produces less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
8. “Daily discharge” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
9. “Discharge of a pollutant” means any addition of any pollutant or combination of pollutants to a navigable water from any point source.
 - a. The term includes the addition of any pollutant into a navigable water from:
 - i. A treatment works treating domestic sewage;
 - ii. Surface runoff that is collected or channeled by man;
 - iii. A discharge through a pipe, sewer, or other conveyance owned by a state, municipality, or other person that does not lead to a treatment works; and
 - iv. A discharge through a pipe, sewer, or other conveyance, leading into a privately owned treatment works.
 - b. The term does not include an addition of a pollutant by any indirect discharger.
10. “Draft permit” means a document indicating the Director’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit.
 - a. A notice of intent to terminate a permit is a type of draft permit unless the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well.
 - b. A notice of intent to deny a permit is a type of draft permit.
 - c. A proposed permit or a denial of a request for modification, revocation and reissuance, or termination of a permit, are not draft permits.
11. “EPA” means the U.S. Environmental Protection Agency.
12. “General permit” means an AZPDES permit issued under 18 A.A.C. 9, Article 9, authorizing a category of discharges within a geographical area.
13. “Individual permit” means an AZPDES permit for a single point source or a single facility.
14. “Large municipal separate storm sewer system” means a municipal separate storm sewer that is either:
 - a. Located in an incorporated area with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census;
 - b. Located in a county with an unincorporated urbanized area with a population of 250,000 or more, according to the 1990 Decennial Census by the Bureau of Census, but not a municipal separate storm sewer that is located in an incorporated place, township, or town within the county; or
 - c. Owned or operated by a municipality other than those described in subsections (14)(a) and (14)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the large municipal separate storm sewer system.
15. “Medium municipal separate storm sewer system” means a municipal separate storm sewer that is either:
 - a. Located in an incorporated area with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or
 - b. Located in a county with an unincorporated urbanized area with a population of 100,000 or more but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or
 - c. Owned or operated by a municipality other than those described in subsections (15)(a) and (15)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the medium municipal separate storm sewer system.
16. “MS4” means municipal separate storm sewer system.
17. “Municipal separate storm sewer” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):

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- a. Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
 - b. Designed or used for collecting or conveying stormwater;
 - c. That is not a combined sewer; and
 - d. That is not part of a POTW.
18. “Municipal separate storm sewer system” means all separate storm sewers defined as “large,” “medium,” or “small” municipal separate storm sewer systems or any municipal separate storm sewers on a system-wide or jurisdiction-wide basis as determined by the Director under R18-9-C902(A)(1)(g)(i) through R18-9-C902(A)(1)(g)(iv).
19. “New discharger” includes an indirect discharger and means any building, structure, facility, or installation:
- a. From which there is or may be a discharge of pollutants;
 - b. That did not commence the discharge of pollutants at a particular site before August 13, 1979;
 - c. That is not a new source; and
 - d. That has never received a finally effective NPDES or AZPDES permit for discharges at that site.
20. “New source” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
- a. After the promulgation of standards of performance under section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, or
 - b. After the proposal of standards of performance in accordance with section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, but only if the standards are promulgated under section 306 (33 U.S.C. 1316) within 120 days of their proposal.
21. “NPDES” means the National Pollutant Discharge Elimination System, which is the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under sections 307 (33 U.S.C. 1317), 318 (33 U.S.C. 1328), 402 (33 U.S.C. 1342), and 405 (33 U.S.C. 1345) of the Clean Water Act.
22. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:
- a. Sewage from vessels; or
 - b. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of this state, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources. (40 CFR 122.2)
23. “POTW” means a publicly owned treatment works.
24. “Proposed permit” means an AZPDES permit prepared after the close of the public comment period (including EPA review), and any applicable public hearing and administrative appeal, but before final issuance by the Director. A proposed permit is not a draft permit.
25. “Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing the pollutants into a POTW.
26. “Silviculture point source” means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into navigable waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. For purposes of this definition:
- a. “Log sorting and log storage facilities” means facilities whose discharge results from the holding of unprocessed wood, for example, logs or round wood with or without bark held in self-contained bodies of water or stored on land if water is applied intentionally on the logs.
 - b. “Rock crushing and gravel washing facilities” mean facilities that process crushed and broken stone, gravel, and riprap.
27. “Small municipal separate storm sewer system” means a separate storm sewer that is:
- a. Owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, an Indian tribe or an authorized Indian tribal organization, or a designated and

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- approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharge to navigable waters.
- b. Not defined as a “large” or “medium” municipal separate storm sewer system or designated under R18-9-C902(A)(1)(g).
 - c. Similar to municipal separate storm sewer systems such as systems at military bases, large hospital or prison complexes, universities, and highways and other thoroughfares. The term does not include a separate storm sewer in a very discrete area such as an individual building.
28. “Stormwater” means stormwater runoff, snow melt runoff, and surface runoff and drainage.
29. “Treatment works treating domestic sewage” means a POTW or any other sewage sludge or waste water treatment device or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, “domestic sewage” includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

R18-9-A902.AZPDES Permit Transition, Applicability, and Exclusions

- A.** Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program, including an expired permit that EPA has continued in effect under 40 CFR 122.6.
- 1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging to tribal lands, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
 - a. The effective date of EPA approval of the AZPDES program;
 - b. The name and address of the Department;
 - c. The name of each individual permitted facility and its permit number;
 - d. The title of each general permit administered by the Department;
 - e. The name and address of the contact person, to which the permittee will submit notification and monitoring reports;
 - f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and
 - g. The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.
 - 2. The Department shall provide the following entities with a copy of the notice:
 - a. Each county department of health, environmental services, or comparable department;
 - b. Each Arizona council of government, tribal government, the states of Utah, Nevada, New Mexico, and California, and EPA Region 9;
 - c. Any person who requested, in writing, notification of the activity;
 - d. The Mexican Secretaria de Medio Ambiente y Recursos Naturales, and
 - e. The United States Section of the International Boundary and Water Commission.
 - 3. If a timely application for a NPDES permit is submitted to EPA before approval of the AZPDES program, the applicant may continue the process with EPA or request the Department to act on the application. In either case, the Department shall issue the permit.
 - 4. The terms and conditions under which the permit was issued remain the same until the permit is modified.
- B.** Article 9 of this Chapter applies to any “discharge of a pollutant.” Examples of categories that result in a “discharge of a pollutant” and may require an AZPDES permit include:
- 1. Concentrated animal feeding operations;
 - 2. Case-by-case designation of a concentrated animal feeding operation:
 - a. The Director may designate an animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to a navigable water. The Director shall consider the following factors when making this determination:
 - i. The size of the animal feeding operation and the amount of wastes reaching waters of the United States;
 - ii. The location of the animal feeding operation relative to waters of the United States;
 - iii. The means of conveyance of animal wastes and process waste waters into waters of the United States;
 - iv. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and
 - v. Any other relevant factor;
 - b. The Director shall not designate an animal feeding operation with less than the number of animals established in R18-9-A901(6) as a concentrated animal feeding operation unless:
 - i. Pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

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- a. “No exposure” means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and runoff.
- b. “Industrial materials or activities” include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products.
- c. “Material-handling activities” include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.

R18-9-A903.Prohibitions

The Director shall not issue a permit:

1. If the conditions of the permit do not provide for compliance with the applicable requirements of A.R.S. Title 49, Chapter 2, Article 3.1; 18 A.A.C. 9, Articles 9 and 10; and the Clean Water Act;
2. Before resolution of an EPA objection to a draft or proposed permit under R18-9-A908(C);
3. If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe;
4. If in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable water;
5. For the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste;
6. For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the Clean Water Act (33 U.S.C. 1288); and
7. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of a water quality standard. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet water quality standards or is not expected to meet those standards even after the application of the effluent limitations required under R18-9-A905(A)(8), and for which the Department has performed a wasteload allocation for the proposed discharge, shall demonstrate before the close of the public comment period that:
 - a. There are sufficient remaining wasteload allocations to allow for the discharge, and
 - b. The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with water quality standards.

R18-9-A904.Effect of a Permit

- A.** Except for a standard or prohibition imposed under section 307 of the Clean Water Act (33 U.S.C. 1317) for a toxic pollutant that is injurious to human health and standards for sewage sludge use or disposal under Article 10 of this Chapter, compliance with an AZPDES permit during its term constitutes compliance, for purposes of enforcement, with Article 9 of this Chapter. However, the Director may modify, revoke and reissue, suspend, or terminate a permit during its term for cause under R18-9-B906.
- B.** The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
- C.** The issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations.

R18-9-A905.AZPDES Program Standards

- A.** Except for subsection (A)(10), the following 40 CFR sections and appendices, July 1, 2001 edition, as they apply to the NPDES program, are incorporated by reference, do not include any later amendments or editions of the incorporated matter, and are on file with the Department and the Office of the Secretary of State:
 1. General program requirements.
 - a. 40 CFR 122.7;
 - b. 40 CFR 122.21, except 40 CFR 122.21(a) through (e) and (l);
 - c. 40 CFR 122.22;
 - d. 40 CFR 122.26, except 40 CFR 122.26(c)(2), and 40 CFR 122.26(e)(2);
 - e. 40 CFR 122.29;
 - f. 40 CFR 122.32;
 - g. 40 CFR 122.33;
 - h. 40 CFR 122.34;
 - i. 40 CFR 122.35;
 - j. 40 CFR 122.62(a) and (b).
 2. Procedures for Decisionmaking.
 - a. 40 CFR 124.8, except 40 CFR 124.8(b)(3); and
 - b. 40 CFR 124.56.
 3. Permit requirements and conditions.
 - a. 40 CFR 122.41, except 40 CFR 122.41(a)(2) and (a)(3);
 - b. 40 CFR 122.42;
 - c. 40 CFR 122.43;

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- d. 40 CFR 122.44;
 - e. 40 CFR 122.45;
 - f. 40 CFR 122.47;
 - g. 40 CFR 122.48; and
 - h. 40 CFR 122.50.
 - 4. Criteria and standards for the national pollutant discharge elimination system. 40 CFR 125, subparts A, B, D, and H.
 - 5. Toxic pollutant effluent standards. 40 CFR 129.
 - 6. Secondary treatment regulation. 40 CFR 133.
 - 7. Effluent guidelines and standards.
 - a. General provisions, 40 CFR 401; and
 - b. General pretreatment regulations for existing and new sources of pollution, 40 CFR 403 and Appendices A, D, E, and G.
 - 8. Effluent limitations guidelines. 40 CFR 405 through 40 CFR 471.
 - 9. Standards for the use or disposal of sewage sludge. 40 CFR 503, Subpart C.
 - 10. The following substitutions apply to the material in subsections (A)(1) through (A)(9):
 - a. Substitute the term AZPDES for any reference to NPDES;
 - b. Except for 40 CFR 122.21(f) through (q), substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122.21;
 - c. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 122;
 - d. Substitute R18-9-C901 for any reference to 40 CFR 122.28;
 - e. Substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122 subpart B;
 - f. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 123;
 - g. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 124;
 - h. Where 40 CFR 403.11(b) provides procedures for public notice or requesting and holding a public hearing, the Department shall instead publish notice of and hold a public hearing under R18-9-A907 and R18-9-A908;
 - i. Substitute R18-9-1006 for any reference to 40 CFR 503.32; and
 - j. Substitute R18-9-1010 for any reference to 40 CFR 503.33.
- B.** A person shall use the test procedures under 9 A.A.C. 14, Article 6 for the analysis of pollutants.

R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution

- A.** The reduction or alteration of a pollutant may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited under 40 CFR 403.6(d), which is incorporated by reference in R18-9-A905(A)(7)(b). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit calculated under 40 CFR 403.6(e), which is incorporated by reference in R18-9-A905(A)(7)(b).
- B.** Pretreatment applies to:
- 1. Pollutants from non-domestic sources covered by pretreatment standards that are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;
 - 2. POTWs that receive wastewater from sources subject to national pretreatment standards; and
 - 3. Any new or existing source subject to national pretreatment standards.
- C.** National pretreatment standards do not apply to sources that discharge to a sewer that is not connected to a POTW.
- D.** For purposes of this Section the terms “National Pretreatment Standard” and “Pretreatment Standard” mean any regulation containing pollutant discharge limits promulgated by EPA under section 307(b) and (c) of the Clean Water Act (33 U.S.C. 1317), which applies to Industrial Users. This term includes prohibitive discharge limits established under 40 CFR 403.5.

R18-9-A907. Public Notice

- A.** Individual permits.
- 1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied, in one or more newspapers of general circulation where the facility is located. The notice shall contain:
 - a. The name and address of the Department;
 - b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;
 - c. A brief description of the business conducted at the facility or activity described in the permit application;
 - d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;

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- e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
 - f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
 - g. A statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316); and
 - h. Any additional information considered necessary to the permit decision.
 - 2. The Department shall provide the applicant with a copy of the draft individual permit.
 - 3. Copy of the notice. The Department shall provide the following entities with a copy of the notice:
 - a. The applicant or permittee;
 - b. Any user identified in the permit application of a privately owned treatment works;
 - c. Any affected federal, state, tribal, or local agency, or council of government;
 - d. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Arizona Historic Preservation Office, and the U.S. Army Corps of Engineers;
 - e. Each applicable county department of health, environmental services, or comparable department;
 - f. Any person who requested, in writing, notification of the activity; and
 - g. The Secretaria de Medio Ambiente y Recursos Naturales and the United States Section of the International Boundary and Water Commission, if the Department is aware the effluent discharge is expected to reach Sonora, Mexico, either through surface water or groundwater.
- B. General permits.** If the Director considers issuing a general permit applicable to a category of discharge under R18-9-C901, the Director shall publish a general notice of the draft permit in the Arizona Administrative Register. The notice shall contain:
- 1. The name and address of the Department,
 - 2. The name of the person to contact regarding the permit,
 - 3. The general permit category,
 - 4. A brief description of the proposed general permit,
 - 5. A map or description of the permit area,
 - 6. The website or any other location where the proposed general permit may be obtained, and
 - 7. The ending date for public comment.

R18-9-A908. Public Participation, EPA Review, EPA Hearing

- A. Public comment period.**
- 1. The Director shall accept written comments from any interested person before a decision is made on any notice published under R18-9-A907(A) or (B).
 - 2. The public comment period begins on the publication date of the notice and extends for 30 calendar days.
 - 3. The Director may extend the comment period to provide commenters a reasonable opportunity to participate in the decision-making process.
 - 4. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted. Comments filed during a reopened comment period are limited to the substantial new questions that caused its reopening.
 - a. Corps of Engineers.
 - i. If the District Engineer advises the Director that denying the permit or imposing specified conditions upon a permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall deny the permit or include the specified conditions in the permit.
 - ii. A person shall use the applicable procedures of the Corps of Engineers Review and not the procedures under this Article to appeal the denial of a permit or conditions specified by the District Engineer.
 - iii. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions are considered stayed in the AZPDES permit for the duration of that stay.
 - b. If an agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resource, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Clean Water Act.
- B. Public hearing.**
- 1. The Director shall provide notice and conduct a public hearing to address a draft permit or denial regarding a final decision if:
 - a. Significant public interest in a public hearing exists, or

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R18-9-A909.Petitions

- A.** Any person may submit a petition to the Director requesting:
1. The issuance of a general permit;
 2. An individual permit covering any discharge into an MS4 under 40 CFR 122.26(f), which is incorporated by reference in R18-9-A905(A)(1)(d); or
 3. An individual permit under R18-9-C902(B)(1).
- B.** The petition shall contain:
1. The name, address, and telephone number of the petitioner;
 2. The location of the facility;
 3. The exact nature of the petition, and
 4. Evidence of the validity of the petition.
- C.** The Department shall provide the permittee with a copy of the petition.

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application

- A.** Time to apply.
1. Any person who owns or operates a facility covered by R18-9-A902(B) or R18-9-A902(C), shall apply for an AZPDES individual permit at least 180 days before the date of the discharge or a later date if granted by the Director, unless the person:
 - a. Is exempt under R18-9-A902(G);
 - b. Is covered by a general permit under Article 9, Part C of this Chapter; or
 - c. Is a user of a privately owned treatment works, unless the Director requires a permit under 40 CFR 122.44(m).
 2. Construction. Any person who proposes a construction activity under R18-9-A902(B)(9)(c) or R18-9-A902(B)(9)(d) and wishes coverage under an individual permit, shall apply for the individual permit at least 90 days before the date on which construction is to commence.
 3. Waivers.
 - a. Unless the Director grants a waiver under 40 CFR 122.32, a person operating a small MS4 is regulated under the AZPDES program.
 - b. The Director shall review any waiver granted under subsection (A)(3)(a) at least every five years to determine whether any of the information required for granting the waiver has changed.
- B.** Application. An individual permit applicant shall submit the following information on an application obtained from the Department. The Director may require more than one application from a facility depending on the number and types of discharges or outfalls.
1. Discharges, other than stormwater.
 - a. The information required under 40 CFR 122.21(f) through (l);
 - b. The signature of the certifying official required under 40 CFR 122.22;
 - c. The name and telephone number of the operator, if the operator is not the applicant; and
 - d. Whether the facility is located in the border area, and, if so:
 - i. A description of the area into which the effluent discharges from the facility may flow, and
 - ii. A statement explaining whether the effluent discharged is expected to cross the Arizona-Sonora, Mexico border.
 2. Stormwater. In addition to the information required in subsection (B)(1)(c) and (B)(1)(d):
 - a. For stormwater discharges associated with industrial activity, the application requirements under 40 CFR 122.26(c)(1);
 - b. For large and medium MS4s, the application requirements under 40 CFR 122.26(d);
 - c. For small MS4s:
 - i. A stormwater management program under 40 CFR 122.34, and
 - ii. The application requirements under 40 CFR 122.33.
- C.** Consolidation of permit applications.
1. The Director may consolidate two or more permit applications for any facility or activity that requires a permit under Articles 9 and 10 of this Chapter.
 2. Whenever a facility or activity requires an additional permit under Articles 9 and 10 of this Chapter, the Director may coordinate the expiration date of the new permit with the expiration date of an existing permit so that all permits expire simultaneously. The Department may then consolidate the processing of the subsequent applications for renewal permits.

R18-9-B902. Requested Coverage Under a General Permit

An owner or operator may request that an individual permit be revoked, if a source is excluded from a general permit solely because it already has an individual permit.

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1. The Director shall grant the request for revocation of an individual permit upon determining that the permittee otherwise qualifies for coverage under a general permit.
2. Upon revocation of the individual permit, the general permit applies to the source.

R18-9-B903. Individual Permit Issuance or Denial

- A.** Once the application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
- B.** Permit issuance. If, based upon the information obtained by or available to the Department under R18-9-A907, R18-9-A908, and R18-9-B901, the Director determines that an applicant complies with A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, the Director shall issue a permit that is effective as prescribed in A.R.S. 49-255.01(H).
- C.** Permit denial.
1. If the Director decides to deny the permit application, the Director shall provide the applicant with a written notice of intent to deny the permit application. The written notification shall include:
 - a. The reason for the denial with reference to the statute or rule on which the denial is based;
 - b. The applicant's right to appeal the denial with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the denial, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
 - c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
 2. The Director shall provide an opportunity for public comment under R18-9-A907 and R18-9-A908 on a denial.
 3. The decision of the Director to deny the permit application takes effect 30 days after the decision is served on the applicant, unless the applicant files an appeal under A.R.S. 49-255.01(H)(1).

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation

- A.** Permit duration.
1. An AZPDES individual permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
 2. If the Director does not reissue a permit within the period specified in the permit, the permit expires, unless it is continued under subsection (C).
 3. If a permittee of a large or medium MS4 allows a permit to expire by failing to reapply within the time period specified in subsection (B), the permittee shall submit a new application under R18-9-B901 and follow the application requirements under 40 CFR 122.26(d), which is incorporated by reference in R18-9-A905(A)(1)(d).
- B.** Permit reissuance.
1. A permittee shall reapply for an individual permit at least 180 days before the permit expiration date.
 2. Unless otherwise specified in the permit, an annual report submitted 180 days before the permit expiration date satisfies the reapplication requirement for an MS4 permit. The annual report shall contain:
 - a. The name, address, and telephone number of the MS4;
 - b. The name, address, and telephone number of the contact person;
 - c. The status of compliance with permit conditions, including an assessment of the appropriateness of the selected best management practices and progress toward achieving the selected measurable goals for each minimum measure;
 - d. The results of any information collected and analyzed, including monitoring data, if any;
 - e. A summary of the stormwater activities planned for the next reporting cycle;
 - f. A change in any identified best management practices or measurable goals for any minimum measure; and
 - g. Notice of relying on another governmental entity to satisfy some of the permit obligations.
- C.** Continuation. A NPDES or AZPDES individual permit may continue beyond its expiration date if:
1. The permittee has submitted a complete application for an AZPDES individual permit at least 180 days before the expiration date of the existing permit and the permitted activity is of a continuing nature; and
 2. The Department is unable, through no fault of the permittee, to issue an AZPDES individual permit on or before the expiration date of the existing permit.

R18-9-B905. Individual Permit Transfer

- A.** A permittee may request the Director to transfer an individual permit to a new permittee. The Director may modify, or revoke and reissue the permit to identify the new permittee, or make a minor modification to identify the new permittee.
- B.** Automatic transfer. The Director may automatically transfer an individual permit to a new permittee if:
1. The current permittee notifies the Director by certified mail at least 30 days in advance of the proposed transfer date and includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

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2. The Director does not notify the existing permittee and the proposed new permittee of the Director's intent to modify, or revoke and reissue the permit. A modification under this subsection may include a minor modification specified in R18-9-B906(B).

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits

A. Permit modification, revocation and reissuance.

1. The Director may modify, or revoke and reissue an individual permit for any of the following reasons:
 - a. The Director receives a written request from an interested person;
 - b. The Director receives information, such as when inspecting a facility;
 - c. The Director receives a written request to modify, or revoke and reissue a permit from a permittee as required in the individual permit; or
 - d. After review of a permit file, the Director determines one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.
 - i. If the Director decides a written request is not justified under 40 CFR 122.62 or subsection (B), the Director shall send the requester a brief written response giving a reason for the decision.
 - ii. The denial of a request for modification, or revocation and reissuance is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).
2. If the Director tentatively decides to modify, or revoke and reissue an individual permit, the Director shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application.
 - a. Modified individual permit. The Director shall reopen only the modified conditions when preparing a new draft permit and process the modifications.
 - b. Revoked and reissued individual permit.
 - i. The permittee shall submit a new application.
 - ii. The Director shall reopen the entire permit just as if the permit had expired and was being reissued.
3. During any modification, or revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

B. Minor modifications.

1. Upon consent of the permittee, the Director may make any of the following modifications to an individual permit:
 - a. Correct typographical errors;
 - b. Update a permit condition that changed as a result of updating an Arizona water quality standard;
 - c. Require more frequent monitoring or reporting by the permittee;
 - d. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
 - e. Allow for a change in ownership or operational control of a facility, if no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
 - f. Change the construction schedule for a new source discharger. The change shall not affect a discharger's obligation to have all pollution control equipment installed and in operation before the discharge;
 - g. Delete a point source outfall if the discharge from that outfall is terminated and does not result in a discharge of pollutants from other outfalls except under permit limits;
 - h. Incorporate conditions of a POTW pretreatment program approved under 40 CFR 403.11 and 40 CFR 403.18, which is incorporated by reference in R18-9-A905(A)(7)(b) as enforceable conditions of the permit, and
 - i. Annex an area by a municipality.
2. Any modification processed under subsection (B)(1) is not subject to the public notice provision under R18-9-A907 or public participation procedures under R18-9-A908.

C. Permit termination.

1. The Director may terminate an individual permit during its term or deny reissuance of a permit for any of the following causes:
 - a. The permittee's failure to comply with any condition of the permit;
 - b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact;
 - c. The Director determined that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
 - d. A change occurs in any condition that requires either a temporary or permanent reduction or elimination of any discharge, sludge use, or disposal practice controlled by the permit, for example, a plant closure or termination of discharge by connection to a POTW.
2. If the Director terminates a permit during its term or denies a permit renewal application for any cause listed in subsection (C)(1), the Director shall issue a Notice of Intent to Terminate, except when the entire discharge is terminated.

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- a. Unless the permittee objects to the termination notice within 30 days after the notice is sent, the termination is final at the end of the 30 days.
- b. If the permittee objects to the termination notice, the permittee shall respond in writing to the Director within 30 days after the notice is sent.
- c. Expedited permit termination. If a permittee requests an expedited permit termination procedure, the permittee shall certify that the permittee is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.
- d. The denial of a request for termination is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).

R18-9-B907. Individual Permit Variances

- A.** The Director may grant or deny a request for any of the following variances:
1. An extension under section 301(i) of the Clean Water Act (33 U.S.C. 1311) based on a delay in completion of a POTW;
 2. After consultation with EPA, an extension under section 301(k) of the Clean Water Act (33 U.S.C. 1311) based on the use of innovative technology;
 3. A variance under section 316(a) of the Clean Water Act (33 U.S.C. 1326) for thermal pollution, or
 4. A variance under R18-11-122 for a water quality standard.
- B.** The Director may deny, forward to EPA with a written concurrence, or submit to EPA without recommendation a completed request for:
1. A variance based on the economic capability of the applicant under section 301(c) of the Clean Water Act (33 U.S.C. 1311); or
 2. A variance based on water quality related effluent limitations under 302(b)(2) (33 U.S.C. 1312) of the Clean Water Act.
- C.** The Director may deny or forward to EPA with a written concurrence a completed request for:
1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline is based; and
 2. A variance based upon water quality factors under section 301(g) of the Clean Water Act (33 U.S.C. 1311).
- D.** If the Department approves a variance under subsection (A) or if EPA approves a variance under subsection (B) or (C), the Director shall prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing the decision.

PART C. GENERAL PERMITS

R18-9-C901. General Permit Issuance

- A.** The Director may issue a general permit to cover one or more categories of discharges, sludge use, or disposal practices, or facilities within a geographic area corresponding to existing geographic or political boundaries, if the sources within a covered category of discharges are either:
1. Stormwater point sources; or
 2. One or more categories of point sources other than stormwater point sources, or one or more categories of treatment works treating domestic sewage, if the sources, or treatment works treating domestic sewage, within each category all:
 - a. Involve the same or substantially similar types of operations;
 - b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
 - c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;
 - d. Require the same or similar monitoring; and
 - e. Are more appropriately controlled under a general permit than under an individual permit.
- B.** Any person seeking coverage under a general permit issued under subsection (A) shall submit a Notice of Intent on a form provided by the Department within the time-frame specified in the general permit unless exempted under the general permit as provided in subsection (C)(2). The person shall not discharge before the time specified in the general permit unless the discharge is authorized by another permit.
- C.** Exemption from filing a Notice of Intent.
1. The following dischargers are not exempt from submitting a Notice of Intent:
 - a. A discharge from a POTW;
 - b. A combined sewer overflow;
 - c. A MS4;
 - d. A primary industrial facility;
 - e. A stormwater discharge associated with industrial activity;
 - f. A concentrated animal feeding operation;
 - g. A treatment works treating domestic sewage; and

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- e. The applicant's right to appeal the individual permit requirement with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the individual permit requirement, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
 - f. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
 - 3. The discharger shall apply for a permit within 90 days of receipt of the notice, unless the Director grants a later date. In no case shall the deadline be more than 180 days after the date of the notice.
 - 4. If the permittee fails to submit the individual permit application within the time period established in subsection (A)(3), the applicability of the general permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.
 - 5. Coverage under the general permit shall continue until an individual permit is issued unless the permit coverage is terminated under subsection (A)(4).
- B. Individual permit request.**
- 1. An owner or operator authorized by a general permit may request an exclusion from coverage of a general permit by applying for an individual permit.
 - a. The owner or operator shall submit an individual permit application under R18-9-B901(B) and include the reasons supporting the request no later than 90 days after publication of the general permit.
 - b. The Director shall grant the request if the reasons cited by the owner or operator are adequate to support the request.
 - 2. If an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the discharge is automatically terminated on the effective date of the individual permit.

R18-9-C903. General Permit Duration, Reissuance, and Continuation

- A. General permit duration.**
- 1. An AZPDES general permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
 - 2. If the Director does not reissue a general permit before the expiration date, the current general permit will be administratively continued and remain in force and effect until the general permit is reissued.
- B. Continued coverage. Any permittee granted permit coverage before the expiration date automatically remains covered by the continued permit until the earlier of:**
- 1. Reissuance or replacement of the permit, at which time the permittee shall comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
 - 2. The date the permittee has submitted a Notice of Termination; or
 - 3. The date the Director has issued an individual permit for the discharge; or
 - 4. The date the Director has issued a formal permit decision not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

R18-9-C904. Change of Ownership or Operator Under a General Permit

If a change of ownership or operator occurs for a facility operating under a general permit:

- 1. Permitted owner or operator. The permittee shall provide the Department with a Notice of Termination by certified mail within 30 days after the new owner or operator assumes responsibility for the facility.
 - a. The Notice of Termination shall include all requirements for termination specified in the general permit for which the Notice of Termination is submitted.
 - b. A permittee shall comply with the permit conditions specified in the general permit for which the Notice of Termination is submitted until the Notice of Termination is received by the Department.
- 2. New owner or operator.
 - a. The new owner or operator shall complete and file a Notice of Intent with the Department within the time period specified in the general permit before taking over operational control of, or initiation of activities at, the facility.
 - b. If the previous permittee was required to implement a stormwater pollution prevention plan, the new owner shall develop a new stormwater pollution prevention plan, or may modify, certify, and implement the old stormwater pollution prevention plan if the old stormwater pollution prevention plan complies with the requirements of the current general permit.
 - c. The permittee shall provide the Department with a Notice of Termination if a permitted facility ceases operation, ceases to discharge, or changes operator status. In the case of a construction site, the permittee shall submit a Notice of Termination to the Department when:
 - i. The facility ceases construction operations and the discharge is no longer associated with construction or construction-related activities.
 - ii. The construction is complete and final site stabilization is achieved, or
 - iii. The operator's status changes.

~~ARTICLE 9. ARTICLE 10. LAND APPLICATION OF BIOSOLIDS~~
ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

~~R18-9-901. R18-9-1001. Definitions~~

The terms used in this Article have the following meanings: In addition to the definitions established in A.R.S. § 49-255, the following terms apply to this Article:

1. "Aerobic digestion" means the biochemical decomposition of organic matter in biosolids into carbon dioxide and water by microorganisms in the presence of air.
2. "Agronomic rate" means the whole biosolids application rate on a dry-weight basis ~~which that~~ meets ~~both of the following conditions:~~
 - a. The amount of nitrogen needed by existing vegetation or a planned or actual crop has been provided; and
 - b. The amount of nitrogen that passes below the root zone of the crop or vegetation is minimized.
3. "Anaerobic digestion" means the biochemical decomposition of organic matter in biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.
4. "Annual biosolids application rate" means the maximum amount of biosolids (dry-weight basis) that can be applied to an acre or hectare of land during a 365-day period.
- ~~4.5.~~ "Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to an acre or hectare of land during a 365-day period.
- ~~5.~~ "~~Annual biosolids application rate~~" means the maximum amount of biosolids (dry-weight basis) that can be applied to an acre or hectare of land during a 365-day period.
6. "Applicator" means the person who arranges for and controls the site-specific land application of biosolids in Arizona.
7. "Biosolids" means sewage sludge, including exceptional quality biosolids, ~~which that~~ is placed on, or applied to the land ~~in order~~ to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer. Biosolids do not include any of the following:
 - a. Sludge determined to be hazardous ~~in accordance with~~ under A.R.S. Title 49, Chapter 5, Article 2; and 40 CFR 261;
 - b. Sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry-weight basis);
 - c. Grit (for example, sand, gravel, cinders, or other materials with a high specific gravity) or screenings generated during preliminary treatment of domestic sewage by a treatment works;
 - d. Sludge generated during the treatment of either surface water or groundwater used for drinking water;
 - e. Sludge generated by an industrial facility during the treatment of industrial wastewater; or industrial wastewater combined with domestic sewage;
 - f. Commercial septage, industrial septage, or domestic septage combined with commercial or industrial septage; or
 - g. Special wastes, as defined and controlled under A.R.S. Title 49, Chapter 4, Article 9.
8. "Bulk biosolids" means biosolids that are transported and land-applied in a manner other than in a bag or other container holding biosolids of 1.102 short tons or 1 metric ton or less.
- ~~9.~~ "~~Business day~~" means ~~Monday through Friday, between the hours of 8 a.m. and 5 p.m., except for state and federal holidays.~~
9. "Clean water act" means the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376). A.R.S. 49-201(6)
10. "Coarse fragments" means rock particles in the gravel-size range or larger.
11. "Coarse or medium sands" means a soil mixture of which more than 50% of the sand fraction ~~will be~~ is retained on a No. 40 (0.425 mm) sieve.
12. "Cumulative pollutant loading rate" means the maximum amount of a pollutant ~~that can ever be~~ applied to a land application site.
- ~~13.~~ "~~CWA~~" means the Clean Water Act, 33 U.S.C. 1251 et seq., as amended.
- ~~14.~~ "~~Department~~" means the Department of Environmental Quality.
- ~~15.~~ ~~13.~~ "Domestic septage" means the liquid or solid material removed from a septic tank, cesspool, portable toilet, marine sanitation device, or similar system or device ~~treating that receives~~ only domestic sewage. Domestic septage does not include commercial or industrial ~~septage, wastewater~~ or restaurant grease-trap wastes.
- ~~16.~~ ~~14.~~ "Domestic sewage" means waste or wastewater from humans or household operations that is discharged to a publicly or privately owned treatment works. Domestic sewage also includes commercial and industrial wastewaters ~~which that~~ are discharged into a publicly-owned or privately-owned treatment works ~~where if~~ the industrial or commercial wastewater combines with human excreta and other household and nonindustrial wastewaters ~~prior to before~~ treatment.
- ~~17.~~ ~~15.~~ "Dry-weight basis" means the weight of biosolids calculated after the material has been dried at 105° C until reaching a constant mass.

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- 18-16. "Exceptional quality biosolids" means biosolids ~~which meet and have been certified under R18-9-1012 R18-9-1013(A)(6)~~ as meeting the pollutant concentrations in R18-9-1005 Table 2, Class A pathogen reduction in R18-9-1006, and ~~± one~~ of the vector attraction reduction requirements in ~~R18-9-1009, paragraphs (1) through (8) subsections R18-9-1010(A)(1) through R18-9-1010(A)(8).~~
- 19-17. "Feed crops" means crops ~~that are produced for animal consumption by animals.~~
- 20-18. "Fiber crops" means crops grown for their physical characteristics. Fiber crops, including flax and cotton, are not produced for human or animal consumption by humans or animals, ~~and include flax and cotton.~~
- 24-19. "Food crops" means crops ~~which are produced for human consumption by humans.~~
- 22-20. "Gravel" means soil predominantly composed of rock particles ~~of rock~~ that will pass through a 3-inch (75 mm) sieve and be retained on a No. 4 (4.75 mm) sieve.
23. ~~"Groundwater" means the water below the land's surface in the saturated zone which is sufficient to yield usable quantities of water to a well or spring.~~
- 24-21. "Industrial wastewater" means wastewater that is generated in a commercial; or industrial, ~~or manufacturing~~ process.
- 25-22. "Land application," ~~or "apply biosolids," or "biosolids applied to the land"~~ means spraying or spreading biosolids on the surface of the land, injecting biosolids below the land's surface, or incorporating biosolids into the soil in order to amend, condition, the soil or fertilize crops the soil.
- 26-23. "Monthly average" means the arithmetic mean of all measurements taken during a calendar month.
- 27-24. "Municipality" means a city, town, county, district, association, or other public body, ~~(including an intergovernmental agency of 2 two or more of the foregoing entities created by or under state law).~~ The definition term includes special districts such as water districts, sewer districts, sanitary districts, utility districts, drainage districts, or similar entities that have as a principal responsibility a water district, sewer district, sanitary district, utility district, drainage district, or similar entity that has as one of its principal responsibilities, the treatment, transport, use, or disposal of biosolids.
25. "Navigable waters" means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)). A.R.S. 49-201(21).
- 28-26. "Other container" means a bucket, bin, box, carton, trailer, pickup truck bed, or a tanker vehicle or an open or closed receptacle with a load capacity of 1.102 short tons or ± one metric ton or less.
- 29-27. "Pathogen" means a disease-causing organism.
- 30-28. ~~"Person" has the meaning set out in A.R.S. §§ 49-701 and also includes an agent or employee of an organization.~~ "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or a federal facility, interstate body or other entity, A.R.S. § 49-201(26)
- 34-29. "Person who prepares biosolids" means ~~either~~ the person who generates ~~the~~ biosolids during the treatment of domestic sewage in a treatment works, packages ~~the~~ biosolids, or derives a new product from ~~the~~ biosolids either through processing or by combining it with another material, including blending several biosolids together.
- 32-30. "pH" means the logarithm of the reciprocal of the hydrogen ion concentration.
- 33-31. "Pollutant" means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after release into the environment and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chain, could cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformities in either organisms or reproduced offspring.
- 34-32. "Pollutant limit" means:
- a. a numerical value that describes the mass or volume quantity of a pollutant allowed per in a unit of biosolids; such as milligrams per kilogram of total solids.
 - b. The quantity of a pollutant that can be applied to a unit area of land such as kilograms per hectare, or
 - c. the mass or volume of a pollutant biosolids that can be applied to an acre or hectare a unit area of land such as gallons per acre.
- 35-33. "Privately owned treatment works" means a device or system owned by a non-governmental entity used to treat, including recycle, and or reclaim, either domestic sewage or a combination of domestic sewage and industrial waste ~~which that~~ is generated off-site.
- 36-34. "Public contact site" means a park, sports field, cemetery, golf course, plant nursery, or other land with a high potential for public exposure to ~~the~~ biosolids.
37. ~~"Publicly owned treatment works" means a device or system owned by either a municipality or a state used to treat, including recycle and reclaim, either domestic sewage or a combination of domestic sewage and industrial waste.~~
- 38-35. "Reclamation" means using the use of biosolids to restore or repair mining or construction sites, landfill caps, or other drastically disturbed land.

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- ~~39-36.~~ “Responsible official” means a principal corporate officer, general partner, proprietor, or, in the case of a municipality, a principal executive official; or any duly authorized agent thereof.
- ~~37.~~ “Runoff” means rainwater, leachate, or other liquid that drains over any part of a land surface and runs off of the land surface.
- ~~40-38.~~ “Sand” means soil that contains more than 85% grains in the size range that will pass through a No. 4 (4.75 mm) sieve and be retained on a No. 200 (0.075 mm) sieve.
- ~~41.~~ “Sewage sludge” or “sludge” means solid, semi-solid, or liquid residue generated by publicly-owned or privately-owned treatment works during the treatment of domestic sewage. Sewage sludge includes domestic septage, scum removed in the course of treatment, and any material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge, or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.
- ~~39.~~ “Sewage sludge unit” means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include navigable waters.
- ~~42-40.~~ “Specific oxygen uptake rate (SOUR)” means the mass of oxygen consumed per unit time per unit mass of total solids (dry-weight basis) in the biosolids.
- ~~43-41.~~ “Store biosolids or storage of biosolids” means the temporary holding or placement of biosolids on land prior to before land application.
- ~~44.~~ “Surface water” means a water of the United States and includes the following:
- ~~a.~~ All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;
 - ~~b.~~ All interstate waters, including interstate wetlands;
 - ~~c.~~ All other waters, such as intrastate lakes, reservoirs, ponds, rivers, streams (including intermittent and ephemeral streams), creeks, washes, draws, mudflats, sandflats, wetlands, sloughs, backwaters, prairie potholes, wet meadows, or playa lakes, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce, including any such waters:
 - ~~i.~~ Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - ~~ii.~~ From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - ~~iii.~~ Which are used or could be used for industrial purposes by industries in interstate or foreign commerce;
 - ~~d.~~ All impoundments of surface waters;
 - ~~e.~~ Tributaries of surface waters; and
 - ~~f.~~ Wetlands.
- ~~42.~~ “Surface disposal site” means an area of land that contains one or more active sewage sludge units.
- ~~45-43.~~ “Ton” means a net weight of 2000 pounds, also and is known as a short ton.
- ~~46-44.~~ “Total solids” means the biosolids residue material that remain remains when the sewage sludge is dried at 103° C to 105° C.
- ~~47-45.~~ “Treatment of biosolids” means the thickening, stabilization, dewatering, and other preparation of biosolids for land application. Storage is not a treatment of biosolids.
- ~~48.~~ “Treatment works” means a federally-owned, publicly-owned, or privately-owned device or system used to treat, including recycle and reclaim, either domestic sewage or a combination of domestic sewage and industrial waste.
- ~~49-46.~~ “Unstabilized solids” means the organic matter in biosolids that has not been treated or reduced through either an aerobic or anaerobic process.
- ~~50-47.~~ “Vectors” means rodents, flies, mosquitos, or other organisms capable of transporting pathogens.
- ~~51-48.~~ “Volatile solids” means the amount of the total solids lost when the biosolids are combusted at 550° C in the presence of excess air.
- ~~52-49.~~ “Wetlands” means those areas that are inundated or saturated by surface water or ground water at a frequency and duration to support a prevalence of vegetation typically adapted for life in saturated soil conditions. “Wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and do under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, cienegas, tinajas, and similar areas.

~~R18-9-902, R18-9-1002.~~ Applicability and Prohibitions

- A. This Article applies to any person who:
- ~~1.~~ prepares Prepares biosolids for land application or disposal in a sewage sludge unit,
 - ~~2.~~ to transporters of Transports biosolids that are to be land applied, for land application or disposal in a sewage sludge unit,
 - ~~3.~~ to the applicator of Applies biosolids for soil amendment or disposes of biosolids in a sewage sludge unit, and or,
 - ~~4.~~ to the land owner and lessee of Owns or leases land to which biosolids have been are applied or placed for disposal in a sewage sludge unit.

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- B. The land application of biosolids in a manner consistent with this Article is exempt from the requirements of the aquifer protection program, ~~as established by under~~ A.R.S. Title 49, Chapter 2, Article 3 and 18 A.A.C. 9, ~~Article 1~~ Articles 1, 2, and 3.
- C. Except as otherwise provided in subsection (D) ~~of this Section~~, the land application of biosolids in a manner that is not consistent with ~~this Article~~ Articles 9 and 10 of this Chapter is prohibited.
- D. The Department may permit the land application of biosolids in a manner ~~which that~~ differs from ~~any of the requirements~~ in R18-9-1007 ~~and R18-9-1008 but is otherwise consistent with this Article~~ if the land application is permitted under the aquifer protection permit program established ~~by under~~ A.R.S. Title 49, Chapter 2, Article 3, and 18 A.A.C. 9, ~~Article 1~~ Articles 1, 2, and 3.
- E. Surface disposal site.
 - 1. Any person who prepares or places biosolids in a sewage sludge unit, or who owns or operates a biosolids surface disposal site shall comply with 40 CFR 503, Subpart C, which is incorporated by reference in R18-9-A905(A)(9), and:
 - a. The pathogen reduction requirements in R18-9-1006, and
 - b. The vector attraction reduction requirements in R18-9-1010.
 - 2. In addition to the requirements under subsection (E)(1), any person who owns or operates a biosolids surface disposal site shall apply for, and obtain, a permit under 18 A.A.C. 9, Articles 1 and 2.
- F. The incineration of biosolids is prohibited.

~~R18-9-903~~ **R18-9-1003. General Requirements**

- A. A person shall not transport or apply biosolids to land in ~~the state of~~ Arizona, except as ~~set forth~~ established in this Article.
- B. The management practices in R18-9-1007 ~~and R18-9-1008~~ do not apply ~~when if~~ biosolids are exceptional quality biosolids.
- C. The applicator shall obtain, submit to the Department, and maintain the necessary information needed to comply with the requirements of this Article.
- D. The applicator shall not receive bulk biosolids without prior written confirmation of the filing of a "Request for Registration" ~~pursuant to under~~ R18-9-1004 ~~from the Department.~~
- E. The land owner or lessee of land on which bulk biosolids, ~~which that~~ are not exceptional quality biosolids, have been applied shall notify any subsequent land owner and lessee of all previous land applications of biosolids and shall disclose any ~~of the~~ site restrictions listed in ~~R18-9-1008, which are still~~ R18-9-1009 that are in effect at the time the property is transferred.

~~R8-9-904~~ **R18-9-1004. Applicator Registration, Bulk Biosolids**

- A. Any person intending to land-apply bulk biosolids in Arizona shall submit, on a form provided by the Department, a completed "Request for Registration," ~~Any current applicator shall submit this request by June 15, 1996.~~
- B. An applicator shall not engage in land application of bulk biosolids ~~after July 15, 1996~~, unless the applicator has obtained a prior written acknowledgment of the request for registration from the Department.
- C. ~~The request for registration~~ Request for Registration for all biosolids, except exceptional quality biosolids shall include: ~~the following information. The request for registration for exceptional quality biosolids shall include information in paragraphs (1) through (4).~~
 - 1. The name, address, and telephone number of the applicator and any ~~agents~~ agent of the applicator;
 - 2. The name and telephone number of a primary contact person who has specific knowledge of the land application activities of the applicator;
 - 3. Whether the applicator holds a ~~National Pollutant Discharge Elimination System (NPDES)~~ NPDES or AZPDES permit, ~~or state equivalent~~, and, if so, the permit number;
 - 4. The identity of the person, ~~if different from the applicator, including the NPDES or AZPDES permit number, or persons who will prepare the biosolids for land application, if different from the applicator;~~ and
 - 5. ~~Unless~~ The following information, unless the information is already on file at the Department as part of an approved land application ~~land application~~ plan, for each site on which ~~land~~ application is anticipated to take place, ~~the following information:~~
 - a. The name, mailing address, and telephone number of the land owner and lessee, if any;
 - b. The physical location of the site by county; ~~and~~
 - c. The legal description of the site, including township, range, and ~~Section; section,~~ or latitude and longitude at the center of ~~the parcel~~ each site;
 - ~~e.d.~~ The number of acres or hectares at each site on which biosolids are planned to be land-applied used;
 - ~~d.e.~~ Except for sites described by R18-9-1005(D)(3) in R18-9-1005(C)(3), background concentrations of the pollutant parameters ~~pollutants~~ listed in Table 4 of R18-9-1005 from representative soil samples; ~~and~~
 - ~~e.f.~~ The location of any portion of the site having a slope greater than 6%; ~~and~~
 - f. ~~For sites on which biosolids have not been applied as of the effective date of this Article, proof of public notice of the potential use of the site for land application of biosolids by the placement of a notice in the largest newspaper in general circulation in the area in which the site is located. In order to satisfy this requirement, the notice~~

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shall appear at least once per week for at least 2 consecutive weeks. In the event a site is not used for land application for a period of 3 consecutive years or more, the applicator shall renotify the site prior to its use.

- g. Public notice. Proof of placement of a public notice announcing the potential use of the site for the application of biosolids when a site has not previously received biosolids, or when a site has not been used for land application for at least three consecutive years.
 - i. The notice shall appear at least once each week for at least two consecutive weeks in the largest newspaper in general circulation in the area in which the site is located.
 - ii. If a site is not used for land application for at least three consecutive years, the applicator shall renotify the site following the process described in subsection (C)(5)(g)(i) before its reuse.

D. The Request for Registration for exceptional quality biosolids shall include the information in subsections (C)(1) through (C)(4).

~~D.E.~~ A responsible official of the applicator shall sign the ~~request for registration~~ Request for Registration.

~~E.F.~~ The Department shall mail a written acknowledgment of ~~requests for registration~~ a Request for Registration, including supplemental requests, within 15 business days of receipt of the request.

~~F.G.~~ An applicator wishing to use a site ~~which that~~ has not been identified in a ~~request for registration~~ Request for Registration shall file a supplemental request with the Department ~~prior to~~ before using the new site. Public notice requirements under R18-9-1004(C)(5)(g) apply.

~~R18-9-905.~~R18-9-1005. Pollutant Concentrations

A. A person shall not apply biosolids with pollutant concentrations ~~which that~~ exceed any of the ~~instantaneous pollutant concentrations set forth~~ ceiling concentrations established in Table 1 of ~~this Section~~. Biosolids placed on public contact sites with a low potential for child occupancy are exempt from the selenium limit in Table 1.

B. ~~A person shall not apply exceptional quality biosolids that exceed any of the monthly average pollutant concentrations set out in Table 2 of this Section.~~

~~C.B.~~ A person shall not apply bulk biosolids ~~which that~~ are not exceptional quality biosolids to a site ~~on which the~~ if any annual pollutant loading ~~rates rate~~ in Table 3 of ~~this Section~~ will be exceeded. ~~Annual~~ A person shall determine annual application rates shall be determined using the methodology ~~set out~~ established in Appendix A.

~~D.C.~~ A person shall not apply bulk biosolids ~~which that~~ are not exceptional quality biosolids to a site ~~where any of the~~ if any cumulative pollutant loading ~~rates rate~~ in Table 4 of ~~this Section~~ will be exceeded. ~~Compliance with~~ A person shall determine compliance with the site cumulative pollutant loading rates ~~shall be determined~~ using the following:

1. ~~Cumulative pollutant rates shall be calculated using~~ By calculating all known biosolids ~~applications~~ application events and information relevant to a site since September 13, 1979.
2. ~~An applicator shall calculate~~ By calculating the existing cumulative level of the pollutants ~~set out~~ established in Table 4 using ~~either~~ actual analytical data from the application events; or if actual analytical data from application events before April 1996 are not available, background concentrations determined by taking representative soil samples of the site, ~~when~~ if it is known that the site received biosolids before April 1996.
3. ~~For~~ Background soil tests are not required for those sites ~~which that~~ have not received biosolids ~~prior to the effective date of this rule~~, ~~background soil tests need not be conducted before April 23, 1996.~~
4. Biosolids placed on public contact sites with a low potential for child-occupancy are exempt from the selenium limit in Table 4.

Table 1. Ceiling ~~Pollutant~~ Concentrations

Pollutant	Concentrations Ceiling concentrations (milligrams per kilogram) {1} (1)
Arsenic	75.0
Cadmium	85.0
Chromium	3000.0
Copper.....	4300.0
Lead	840.0
Mercury.....	57.0
Molybdenum.....	75.0
Nickel.....	420.0
Selenium	100.0
Zinc	7500.0

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~~{+}~~ (1) Dry-weight basis.

Table 2. Monthly Average Pollutant Concentrations

Pollutant	Concentrations <u>Concentration limits</u> (milligrams per kilogram) {+} (1)
Arsenic	41.0
Cadmium	39.0
Copper.....	1500.0
Lead	300.0
Mercury.....	17.0
Nickel.....	420.0
Selenium	100.0
Zinc	2800.0

~~{+}~~ (1) Dry-weight basis.

Table 3. Annual Pollutant Loading Rates

Pollutant	Annual pollutant Loading rate <u>loading rates</u> (in kilograms per hectare) {+}
Arsenic	2.0
Cadmium	1.9
Copper.....	75.0
Lead	15.0
Mercury.....	0.85
Nickel.....	21.0
Selenium	5.0
Zinc	140.0

~~{+}~~ Dry weight basis.

Table 4. Cumulative Pollutant Loading Rates

Pollutant	Cumulative pollutant Loading <u>loading rates</u> (in kilograms per hectare) {+}
Arsenic	41.0
Cadmium	39.0
Copper.....	1500.0
Lead	300.0
Mercury.....	17.0
Nickel.....	420.0
Selenium	100.0

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Zinc2800.0

~~(1)~~ Dry weight basis.

~~R18-9-906.~~ **R18-9-1006. Class A and Class B Pathogen Reduction Requirements**

- A. An applicator shall ensure that all biosolids applied to land meet ~~either~~ Class A or Class B pathogen reduction requirements as described in this Section, at the time the biosolids are land applied.
- B. Biosolids ~~which~~ that are sold or given away in a bag or other container, or ~~which~~ that are ~~to be~~ applied on a lawn or home garden, shall meet the Class A pathogen reduction requirements set out established in subsection (D) of this Section.
- C. Land on which biosolids with Class B pathogen reduction ~~have been~~ are applied is subject to the use restrictions ~~set out established in R18-9-1008~~ R18-9-1009.
- D. Biosolids satisfy the Class A pathogen reduction requirements when the density of ~~either~~ fecal coliform is less than 1000 Most Probable Number per gram of total solids (dry-weight basis), or the density of *Salmonella sp.* bacteria is less than ~~3~~ three Most Probable Number per ~~4~~ four grams of total solids (dry-weight basis); and any ~~1~~ one of the following ~~4~~ alternative pathogen treatment options is used:

1. Alternative 1₂ -- The pathogen treatment process meets ~~1~~ one of the following time and temperature requirements:
- a. When the percent solids ~~of the biosolids are 7% or greater~~ are seven percent or greater, the temperature of the biosolids shall be held at 50° C ~~or higher~~ for at least 20 minutes; ~~The temperature and time period is determined using the equation in subsection (D)(1)(b), except when small particles of the biosolids are heat-treated~~ heated by either warmed gases or an immiscible liquid, in which case the requirements of subsection (D)(1)(b) of this Section shall be met;
- b. When the percent solids ~~of the biosolids are 7% or greater~~ is seven percent or greater, and small particles of the biosolids are heat-treated ~~heated~~ by either warmed gases or an immiscible liquid, a temperature of 50° C ~~or higher~~ shall be held for ~~at least 15 seconds or longer~~; ~~in the event a higher temperature is held, the exact~~ The temperature and time period may be is calculated determined using the following equation:

$$D = \frac{131,700,000}{10^{(0.1400t)}}$$

~~Where:~~ D = time in days, and
t = temperature in degrees Celsius;

- c. When the percent solids ~~of the biosolids are less than 7%~~ seven percent, the temperature of the biosolids ~~shall be held at is~~ 50° C or higher for at least and the time period is 30 minutes or longer. ~~In the event a higher temperature is held, the exact time period may be calculated~~ The temperature and time period shall be determined using the following equation:

$$D = \frac{50,070,000}{10^{(0.1400t)}}$$

~~Where:~~ D = time in days, and
t = temperature in degrees Celsius; or

- d. When the percent solids ~~of the biosolids are less than 7%~~ seven percent, and the time of heating is at least 15 seconds, but less than 30 minutes, the ~~exact~~ time and temperature to be maintained is calculated determined using the following equation:

$$D = \frac{131,700,000}{10^{(0.1400t)}}$$

~~Where:~~ D = time in days, and
t = temperature in degrees Celsius.

2. Alternative 2₂ -- The pathogen treatment process meets all the following parameters:
- a. The pH of the quantity of biosolids treated is raised to 12 or higher and held ~~above 12 for~~ at least 72 hours;
- b. During the period that the pH is above 12, the temperature of the biosolids is held above 52° C for at least 12 hours; and
- c. At the end of the 72-hour period during which the pH is above 12, the biosolids are air dried to achieve a percent solids ~~of more in the biosolids~~ greater than 50%.
3. Alternative 3₂ -- ~~The results of the pathogen treatment meet all of~~ If the following are met:
- a. The biosolids, before pathogen treatment and until the next monitoring event, have an enteric virus density of less than ~~1~~ one plaque-forming unit ~~per 4~~ for four grams of total solids (dry-weight basis); ~~and~~

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- b. ~~The biosolids, before pathogen treatment and until the next monitoring event, have a viable helminth ova density of less than 1 per 4 one for four grams of total solids (dry-weight basis); and~~
 - c. ~~Once the density requirements in paragraphs (a) and (b) subsections (D)(3)(a) and (D)(3)(b) are consistently met, after pathogen treatment and the values and ranges of the pathogen treatment process used are documented, future compliance may be shown by reporting those values and ranges rather than by measuring virus and helminth ova densities the biosolids continue to be Class A with respect to enteric viruses and viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the previously documented values or ranges of values.~~
 4. Alternative 4. If the following additional requirements are met at the time the biosolids are used or disposed or at the time the biosolids are prepared for sale or given away in a bag or other container for application to the land:
 - a. The biosolids have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis), and
 - b. The biosolids have a viable helminth ova density less than one for four grams of total solids (dry-weight basis).
 - ~~4.5. Alternative 4— 5. Composting shall use either of the following:~~
 - a. ~~Using Use either the within-vessel or the static-aerated-pile composting methods method, maintaining the temperature of the biosolids is maintained at 55° C or higher for 3 three days; or~~
 - b. ~~Using Use the windrow composting method, maintaining the temperature of the biosolids is maintained at 55° C or higher for at least 15 days or longer. During the period when The windrow shall be turned at least five times when the compost is maintained at 55° C or higher, there shall be a minimum of 5 turnings of the windrow.~~
 - ~~5.6. Alternative 5— 6. Heat drying. The biosolids are dried by direct or indirect contact with hot gases to reduce the moisture content to 10% or lower by weight. During the process, either 1 of the following shall be met:~~
 - a. ~~The temperature of the sewage sludge particles exceeds shall exceed 80° C; or~~
 - b. ~~The wet bulb temperature of the gas as the biosolids leave the dryer exceeds shall exceed 80° C.~~
 - ~~6.7. Alternative 6— 7. Heat treatment. Liquid The quantity of liquid biosolids treated are heated to a temperature of 180° C or higher for at least 30 minutes.~~
 - ~~7.8. Alternative 7— 8. Thermophilic aerobic digestion. Liquid biosolids are agitated with air or oxygen to maintain aerobic conditions; and the mean cell residence time of the biosolids is 10 days at 55° to 60° C.~~
 - ~~8.9. Alternative 8— 9. Beta ray irradiation. Biosolids are irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20°C).~~
 - ~~9.10. Alternative 9— 10. Gamma ray irradiation. Biosolids are irradiated with gamma rays from certain isotopes, such as Cobalt 60 60Cobalt and Cesium 137, 137Cesium at dosages of at least 1.0 megarad at room temperature (approximately 20° C).~~
 - ~~10.11. Alternative 10— 11. Pasteurization. The temperature of the biosolids is maintained at 70° C or higher for at least 30 minutes.~~
 - ~~11.12. Alternative 11— Other processes determined by the EPA Pathogen Equivalency Committee to meet Processes to Further Reduce Pathogens may be authorized by the Director. 12. The Director shall approve another process if the process is equivalent to a Process to Further Reduce Pathogens specified in subsections (D)(5) through (D)(11), as determined by the EPA Pathogen Equivalency Committee.~~
- E. Biosolids satisfy the Class B pathogen reduction requirements when ~~it meets~~ the biosolids meet any ~~4 one~~ of the following 7 options:
1. ~~Alternative 1₁ — The geometric mean of the density of fecal coliform in 7 seven representative samples shall be is less than either 2,000,000 Most Probable Number per gram of total solids (dry-weight basis), or 2,000,000 colony forming units per gram of total solids (dry-weight basis);~~
 2. ~~Alternative 2₁ — Air drying. The biosolids are dried on sand beds or paved or unpaved basins for a minimum of at least 3 months. During at least 2 two of the 3 three months, the ambient average daily ambient temperature shall be is above 0° C;~~
 3. ~~Alternative 3₁ — Lime stabilization. Sufficient lime is added to the biosolids to raise the pH of the biosolids to 12 for after at least 2 two hours of contact;~~
 4. ~~Alternative 4₁ — Aerobic digestion. The biosolids are agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20° C and 60 days at 15° C;~~
 5. ~~Alternative 5₁ — Anaerobic digestion. The biosolids are treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35° C to 55° C and 60 days at 20° C; or~~
 6. ~~Alternative 6₁ — Composting. Using either the within-vessel, static-aerated-pile or windrow composting methods, the temperature of the biosolids is raised to 40° C or higher for 5 five consecutive days. For at least 4 four hours during the 5 five days, the temperature in the compost pile shall exceed exceeds 55° C; or~~
 7. ~~Alternative 7₁ — Other processes determined by the EPA Pathogen Equivalency Committee to meet Processes to Significantly Reduce Pathogens may be authorized by the Director. The Director shall approve another process if it is~~

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equivalent to a Process to Significantly Reduce Pathogens specified in subsections (E)(2) through (E)(6), as determined by the EPA Pathogen Equivalency Committee.

R18-9-907.R18-9-1007. Management Practices and General Requirements

- A. An applicator of bulk biosolids ~~which that~~ are not exceptional quality biosolids shall comply with the following management practices at each land application site; except a site where biosolids are applied for reclamation. The applicator shall not:
1. ~~Biosolids shall not be applied~~ Apply biosolids to soil with a pH of less than 6.5 at the time of the ~~sludge~~ application, unless the biosolids are either treated pursuant to ~~under one of the following procedures in subsections~~ R18-9-1006(D)(2), R18-9-1006(E)(3), or ~~R18-9-1009(A)(6); R18-9-1010(A)(6)~~, or the soil and biosolids mixture has a pH of 6.5 or higher immediately after land application;:
 2. ~~Biosolids shall not be applied~~ Apply biosolids to land with slopes greater than 6%, unless the site is operating pursuant to ~~an applicable~~ under an AZPDES permit or a permit issued pursuant to under section 402 of the CWA. Clean Water Act (33 U.S.C. 1342);
 3. ~~Biosolids shall not be applied~~ Apply biosolids to land under the following conditions:
 - a. Biosolids with Class A pathogen reduction, ~~shall not be applied to land where~~ If the depth to groundwater is ~~5~~ five feet (1.52 meters) or less;:
 - b. Biosolids with Class B pathogen reduction ~~shall not be applied to land where,~~
 - i. If the depth to groundwater is 10 feet (3.04 meters) or less; or
 - e. Biosolids with Class B pathogen reduction shall not be applied to
 - ii. To gravel, coarse or medium sands, and sands with > less than 15% coarse fragments, ~~where if~~ the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;:
 4. ~~Biosolids shall not be applied~~ Apply biosolids to land that is 32.8 feet (10 meters) or less from ~~surface water navigable waters~~ so that the biosolids enter the surface water or leach substances in concentrations that exceed water quality standards;:
 5. ~~Biosolids shall not be stored or applied~~ Store or apply biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well; and no closer than 250 feet (76.2 meters) from any other water well;:
 6. ~~Biosolids shall not be stored or applied~~ Store or apply biosolids within 25 feet (7.62 meters) of a public right-of-way or private property line unless the applicator receives permission to apply biosolids from the land owner or lessee of the adjoining property;:
 7. ~~Biosolids shall not be applied~~ Apply biosolids at an application rate ~~that is~~ greater than the agronomic rate of the vegetation or crop grown on the site, ~~except in the case of a reclamation site which may not exceed the agronomic rate averaged over a 5 year period;:~~
 8. ~~Domestic~~ Apply domestic septage, ~~and or~~ any other biosolids with less than 10% solids, ~~shall not be applied~~ at a rate ~~which that~~ exceeds the annual application rate, ~~which is~~ calculated, in gallons per acre ~~per for a~~ 365-day period; by dividing the amount of nitrogen needed by the crop or vegetation grown on the land, in pounds per acre per 365-day period, by 0.0026;:
 9. ~~Bulk~~ Apply bulk biosolids ~~shall not be applied~~ to land that is flooded, frozen, or snow-covered, so that the bulk biosolids enter a wetland or other ~~surface water navigable waters~~, except as provided in an AZPDES permit or a permit issued pursuant to Section under section 402 ~~or 404 of the CWA or an equivalent state permit. Clean Water Act (33 U.S.C. 1342);~~
 10. ~~Once a~~ Apply any additional biosolids before a crop is grown on the site ~~if the site has received biosolids containing nitrogen at the equivalent of the agronomic rate appropriate for that site, a crop must be grown on the site prior to any additional biosolids application. crop;~~
 11. ~~Irrigation~~ Exceed the irrigation needs of the crop of an application site ~~shall not exceed the needs of the crop; and~~
 12. To minimize odors, ~~biosolids applied~~ apply biosolids within 1,000 feet (305 meters) of a dwelling ~~shall be~~ unless the biosolids are injected or incorporated into the soil within 10 hours of being applied.
- B. ~~When~~ If biosolids are ~~to be~~ placed in a bag or other container, the person who prepares the biosolids shall distribute a label or information sheet to ~~persons~~ the person receiving the material. This label or information sheet shall, at a minimum, contain ~~at least~~ the following information:
1. The identity and address of the person who prepared the biosolids;
 2. Instructions on the proper use of the material, including agronomic rates; and an annual application rate ~~which that~~ ensures that the annual pollutant rates ~~set out~~ established in R18-9-1005 ~~will not be~~ are not exceeded; and
 3. A statement that application of the biosolids to the land ~~is prohibited to~~ shall not exceed application rates described in the instructions on the label or information sheet.

R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites

- A. An applicator of bulk biosolids that are not exceptional quality biosolids shall comply with the following management practices at each land application site where the biosolids are applied for reclamation. The applicator shall not:
1. Apply biosolids unless the soil and biosolids mixture has a pH of 5.0 or higher immediately after land application;

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2. Apply biosolids to land with slopes greater than 6% unless:
 - a. The site is operating under an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
 - b. The site is reclaimed as specified under A.R.S. Title 27, Chapter 5, and controls are in place to prevent runoff from leaving the application area; or
 - c. Runoff from the site does not reach navigable waters;
 3. Apply biosolids to land under the following conditions:
 - a. Biosolids with Class A pathogen reduction. To land if the depth to groundwater is 5 feet (1.52 meters) or less;
 - b. Biosolids with Class B pathogen reduction.
 - i. To land if the depth to groundwater is 10 feet (3.04 meters) or less; and
 - ii. To gravel, coarse or medium sands, and sands with less than 15% coarse fragments if the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;
 4. Apply biosolids to land that is 32.8 feet (10 meters) or less from navigable waters;
 5. Store or apply biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well, unless the applicator justifies and the Department approves a shorter distance, and apply biosolids closer than 250 feet (76.2 meters) from any other water well;
 6. Store or apply biosolids within 1,000 feet (305 meters) of a public right-of-way or private property line unless the applicator receives permission to apply biosolids from the land owner or lessee of the adjoining property;
 7. Exceed a total of 150 dry tons per acre to any portion of a reclamation site if biosolids are applied;
 8. Apply biosolids with less than 10% solids;
 9. Apply bulk biosolids to land that is flooded, frozen, or snow-covered so that the bulk biosolids enter a wetland or other navigable waters, except as provided in an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
 10. Apply more water than necessary to control dust and establish vegetation; and
 11. Apply biosolids within 1,000 feet (305 meters) of a dwelling unless the biosolids are injected or incorporated into the soil within 10 hours of being applied.
- B.** The requirements of R18-9-1007(B) apply if biosolids are used to reclaim a site.

R18-9-908. R18-9-1009. Site Restrictions

- A.** The following site restrictions ~~shall~~ apply to land where biosolids, which do not meet the Class A pathogen reduction requirements ~~set out established in~~ R18-9-1006, ~~have been~~ are land-applied:
1. A person shall not:
 1. ~~a. Food crops with harvested~~ Harvest food crop parts that touch the biosolids, or biosolids and soil mixture, but otherwise grow above the land's surface ~~shall not be harvested~~ for 14 months following application;
 2. ~~b. When the biosolids remain on the land's surface for 4 months or more, food crops with harvested~~ Harvest food crop parts growing in or below the land's surface ~~shall not be harvested~~ for 20 months following application if the biosolids remain unincorporated on the land's surface for four months or more;
 3. ~~c. When the biosolids remain on the land's surface for less than 4 months prior to incorporation, food crops with harvested~~ Harvest food crop parts growing in or below the land's surface ~~shall not be harvested~~ for 38 months following application if the biosolids remain on the land's surface for less than four months before incorporation;
 4. ~~d. Food~~ Harvest food, feed, and fiber crops ~~shall not be harvested~~ for 30 days after application;
 5. ~~e. Animals shall not be allowed to graze~~ Graze animals on the land for 30 days after application; or
 6. Public access to public contact sites shall be restricted for 1 year after application;
 7. Public access to land with a low potential for public exposure shall be restricted for 30 days after application.
 8. ~~f. Turf~~ Harvest turf to be used at a public contact site or private residence ~~shall not be harvested for 1 one year from after application.~~
 2. A person shall restrict public access to:
 - a. Public contact sites for one year after application, and
 - b. Land with a low potential for public exposure for 30 days after application.
- B.** If the vector attraction reduction requirement is met using the method:
1. In R18-9-1010(C)(1) or R18-9-1010(C)(2), the requirements of subsection (A) apply to domestic septage applied to agricultural land, forests, or reclamation sites; or
 2. In R18-9-1010(C)(3), the requirements of subsection (A)(1)(a) through (A)(1)(d) apply to domestic septage applied to agricultural land, forests, or reclamation sites.
- B.C.** Once application is completed at a site, the applicator shall, in writing, provide the land owner and lessee with the following information:
1. The cumulative pollutant loading at the site ~~when if~~ it is greater than or equal to 90% of the ~~site's~~ available site capacity ~~according to established in~~ Table 4 of R18-9-1005;
 2. Any ~~of the restrictions set forth~~ restriction established in this Section that ~~apply~~ applies to the property; and ~~if so, the applicator shall state the nature of such restrictions~~ the restriction; and

3. ~~A~~ The signature of a responsible official of the applicator ~~shall sign this document and include on this document that includes~~ the following statement:

"I certify under penalty of law, that the information ~~contained herein~~ is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are ~~substantial~~ significant penalties for false representations, including fines and imprisonment."

~~C.D.~~ The land owner or lessee shall provide each applicator with a signature indicating receipt of the site restriction statement.

~~R18-9-909.~~ **R18-9-1010. Vector Attraction Reduction**

- A. Except as provided in subsection (B), an applicator or person who prepares biosolids shall use ~~4~~ one of the following vector attraction reduction procedures ~~when if~~ biosolids are land-applied:
1. Reducing the mass of volatile solids by a minimum of 38% using the calculation procedures ~~set out established in~~ "Environmental Regulations and Technology -- Control of Pathogens and Vector Attraction in Sewage Sludge," (EPA-625/R-92/013,) 1992, EPA/625/R-92-013, published by the U.S. Environmental Protection Agency, Cincinnati, Ohio 45268), 1999 edition. This material is incorporated by reference, ~~and no further editions does not include any later amendments or editions of the incorporated matter,~~ and is on file with the Department and the Office of the Secretary of State;
 2. ~~For an~~ If the 38% volatile solids reduction cannot be met for anaerobically digested biosolid, biosolids the reduction can be met by ~~anaerobically re-digesting~~ digesting a portion of the previously digested material anaerobically in a laboratory in a bench-scale unit for 40 additional days at a temperature between 30° C and 37° C. Vector attraction reduction is achieved ~~where if,~~ at the end of the 40 days, the volatile solids in the material at the beginning of the period are ~~further~~ reduced by less than 17%;
 3. ~~For an~~ If the 38% volatile solids reduction cannot be met for aerobically digested biosolids, the reduction can be met by ~~aerobically re-digesting~~ digesting a portion of the previously digested material, (which has a percent solids of 2% or less), aerobically in a laboratory in a bench-scale unit for ~~an 30~~ additional ~~30~~ days at 20° C. Vector attraction reduction is achieved ~~where if,~~ at the end of the 30 days, the volatile solids in the material at the beginning of the period are ~~further~~ reduced by less than 15%;
 4. ~~Subjecting Treat~~ the biosolids ~~to in~~ an aerobic process during which the specific oxygen uptake rate (SOUR) is equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry-weight basis) at ~~a temperature of~~ 20° C;
 5. ~~Subjecting Treat~~ the biosolids ~~to in~~ an aerobic process for 14 days or longer, during which, the temperature of the biosolids ~~shall be is~~ higher than 40° C and the average temperature of the biosolids ~~shall be is~~ higher than 45° C;
 6. Raising the pH of the biosolids to 12 or higher by alkali addition and, without the addition of more alkali, ~~shall~~ remain at 12 or higher for ~~2~~ two hours and ~~then~~ at 11.5 or higher for an additional 22 hours;
 7. The percent solids of the biosolids that ~~does do~~ not contain unstabilized solids generated in a primary wastewater treatment process ~~shall be is~~ equal to or greater than 75% based on the moisture content and total solids ~~prior to before~~ mixing with other materials;
 8. The percent solids of the biosolids containing unstabilized solids generated in a primary wastewater treatment process ~~shall be are~~ equal to or greater than 90% based on the moisture content and total solids ~~prior to before~~ mixing with other materials;
 9. Injecting the biosolids below the surface of the land ~~such so~~ that no significant amount of biosolids is present on the land surface ~~4~~ one hour after injection. ~~When~~ If the biosolids meet Class A pathogen reduction, injection shall occur within ~~8~~ eight hours after being discharged from a Class A pathogen treatment process; or
 10. Incorporating the biosolids into the soil within ~~6~~ six hours after application. ~~When~~ If the biosolids meet Class A pathogen reduction, application shall occur within ~~8~~ eight hours after being discharged from a Class A pathogen treatment process.
- B. Biosolids that are sold or given away in a bag or other container, or are applied to a lawn or home garden, shall meet ~~4~~ one of the vector attraction reduction alternatives ~~set out established in~~ subsections (A)(1) through ~~(A)~~(8).
- C. For domestic septage, vector attraction reduction ~~shall be is~~ met by ~~4~~ one of the following ~~3~~ methods:
1. By injecting ~~in accordance with as specified in~~ subsection (A)(9);
 2. By incorporating ~~in accordance with as specified in~~ subsection (A)(10); or
 3. By raising the pH of the biosolids domestic septage to 12 or higher through the addition of alkali and, without the addition of more alkali, holding the pH at 12 or higher for at least 30 minutes.

~~R18-9-910.~~ **R18-9-1011. Transportation**

- A. A transporter of bulk biosolids into and within Arizona shall use leakproof-covered trucks, trailers, rail-cars, or other vehicles ~~which are covered to prevent blowing of materials and that~~ are leakproof.
- B. A transporter of bulk biosolids into and within Arizona shall comply with the requirements ~~found in R18-8-510 or A.A.C. R18-8-612 or R18-13-310.~~
- C. A transporter of biosolids shall ~~periodically~~ clean any ~~trucks, trailers, rail-cars, or other vehicles~~ truck, trailer, rail-car, or other vehicle used to transport biosolids to prevent odors or insect breeding. A transporter shall clean ~~all~~ any tank vessels

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vessel used to transport commercial or industrial septage, or restaurant grease-trap wastes, which ~~are also to be~~ is used to haul domestic septage, before loading the domestic septage to ensure that mixing of wastes does not occur.

- D.** ~~In the event~~ If bulk biosolids are spilled while being transported, the transporter shall ~~undertake the following activities:~~
1. ~~The transporter shall immediately~~ Immediately pick up any spillage, including any visibly discolored soil, unless otherwise determined by the Department on a case-by-case basis;
 2. Within 24 hours ~~of after~~ the spill, ~~the transporter shall~~ notify the Department of the spill; and ~~shall~~ submit written notification ~~of the spill~~ within ~~7 seven~~ days. ~~This~~ The written notification shall include the location of the spill, the reason it occurred, the amount of biosolids spilled, and the steps taken to clean up the spill.

~~R18-9-911.~~ R18-9-1012. Self-monitoring

- A.** Except as provided in subsection (B) ~~of this Section,~~ the frequency of self-monitoring ~~the person who prepares the biosolids shall conduct self-monitoring events at the frequency listed in Table 5 for the pollutants listed in R18-9-1005, the pathogen reduction in R18-9-1006; and the vector attraction reduction requirements in R18-9-1009~~ R18-9-1010. ~~shall be as indicated in Table 5.~~

Table 5. -- Frequency of Self-monitoring-

Amount of biosolids applied (tons/metric tons per 365-day period) {1}	† † †	Frequency-
Greater than zero but less than 319.6/290	† †	Once per year
Equal to or greater than 319.6/290 but less than 1,653/1,500	† †	Once per quarter (4 times per year)
Equal to or greater than 1,653/1,500 but less than 16,530/15,000	† † †	Once per 60 days (6 times per year)
Equal to or greater than 16,530/15,000	† †	Once per month (12 times per year)

~~{1} The amount of biosolids land applied in a calendar year (dry-weight basis).~~

Table 5. -- Frequency of Self-monitoring

<u>Amount of biosolids prepared (tons/metric tons per 365-day period⁽¹⁾)</u>	<u>Frequency</u>
Greater than zero but less than 319.6/290	Once per year
Equal to or greater than 319.6/290 but less than 1,653/1,500	Once per quarter (Four times per year)
Equal to or greater than 1,653/1,500 but less than 16,530/15,000	Once per 60 days (Six times per year)
Equal to or greater than 16,530/15,000	Once per month (12 times per year)

⁽¹⁾ The amount of biosolids prepared in a calendar year (dry-weight basis).

- B.** ~~In the case of biosolids~~ If biosolids that have been ~~are~~ stockpiled or lagooned, the person shall sample the biosolids for pathogen and vector attraction reduction ~~monitoring need only be performed once prior to before~~ land application. ~~Sampling shall be conducted~~ A person shall sample in a manner ~~which that~~ is representative of the entire stockpile or lagoon.
- C.** ~~All~~ A person who prepares biosolids shall submit additional; ~~or~~ more frequent biosolids samples, collected and analyzed during the reporting period, ~~shall be submitted to the Department along with the regularly-scheduled data required by in~~ subsection (A) of this Section.
- D.** ~~As needed,~~ ~~the~~ The Department may order the person who prepares biosolids or the applicator to collect and analyze additional samples to measure pollutants of ~~potential~~ concern other than those ~~set out~~ established in Table 1 of R18-9-1005.
- E.** ~~Samples collected~~ The applicator, person who prepares biosolids, or a person collecting samples for the applicator or preparer for analysis shall ~~be obtained~~ obtain the samples in a manner ~~which that~~ does not compromise the integrity of the sample ~~quality, sample method, or sampling instrument~~ and shall be representative of the quality of the biosolids being ~~land applied~~ applied during the reporting period.

- F. ~~Biosolids~~ A person responsible for sampling the biosolids shall track biosolids samples shall be tracked using chain-of-custody procedures that document the persons a chain-of-custody procedure that documents each person in control of the sample from the time it was collected through the time of analysis.
- G. ~~Biosolids~~ The person who prepares biosolids or the applicator shall ensure that the biosolids samples shall be analyzed in accordance with are analyzed as specified by the analytical methods set out established in 40 CFR 503.8, July 1, 2001 edition, or by the wastewater sample methods and solid, liquid, and hazardous waste sample methods established in A.A.C. R9-14-609, or R9-14-610 R9-14-612 and R9-14-613. Analyses The person who prepares the biosolids or the applicator shall ensure that the biosolids analyses shall be performed are performed at a laboratory operating in compliance with A.R.S. § 36-495 et seq. The information in 40 CFR 503.8 is incorporated by reference, does not include any later amendments or editions of the incorporated matter and is on file with the Department and the Office of the Secretary of State.
- H. Monitoring that can be performed in a continual manner for pathogen and vector attraction reduction treatment operating parameters, such as time and temperature, shall be monitored on a continual basis during treatment. The person who prepares the biosolids or the applicator shall monitor pathogen and vector attraction reduction treatment operating parameters, such as time and temperature, shall be monitored on a continual basis.
- I. ~~Monitoring~~ An applicator shall conduct and record monitoring of each site for the management practices set out established in R18-9-1007 and R18-9-1008 shall be conducted and recorded for each site.
- J. ~~Records of~~ A person shall maintain, as specified in R18-9-1013, and report to the Department as specified in R18-9-1014, all compliance measurements, including the analysis of pollutant concentrations, shall be kept in accordance with R18-9-1012, and shall be reported to the Department in accordance with R18-9-1013.

~~R18-9-1012. R18-9-1013. Recordkeeping~~

- A. A person who prepares biosolids shall collect and retain the following information for at least 5 five years:
1. The date, time, and method used for each sampling activity and the identity of the person ~~or persons~~ collecting the sample;
 2. The date, time, and method used for each sample analysis and the identity of the person ~~or persons~~ conducting the analysis;
 3. The results of all analyses of pollutants regulated under R18-9-1005;
 4. The results of all pathogen density analyses; and applicable descriptions of the methods used for pathogen treatment ~~pursuant to in~~ R18-9-1006;
 5. ~~Descriptions~~ A description of the methods used, if any, and the operating values and ranges observed in any pre-land application, vector attraction reduction activities required ~~by R18-9-1009(A) in~~ R18-9-1010(A); and
 6. The records described in subsections (A)(1)- ~~through (A)(5) of this Section, shall be~~ accompanied by the following certification statement signed by a responsible official of the person who prepares the biosolids:
“I certify, under penalty of law, that the pollutant analyses; and the description of pathogen treatment and vector attraction reduction activities; have been made under my direction and supervision and ~~in accordance with~~ under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”
- B. An applicator of bulk biosolids, except exceptional quality biosolids, shall collect the following information for each land application site, and, except as indicated in subsection (B)(6) ~~of this Section,~~ shall retain this information for at least 5 five years:
1. The location of each site, by either street address or latitude and longitude, ~~of each site;~~
 2. The number of acres or hectares ~~in each site;~~
 3. The date and time the biosolids were applied ~~to each site;~~
 4. The amount of biosolids (in dry metric tons) ~~applied to each site;~~
 5. The biosolids loading rates for domestic septage and other biosolids with less than 10 percent solids (in tons or kilograms of biosolids per acre or hectare) and in gallons per acre and the biosolids loading rates for other biosolids in tons or kilograms of biosolids per acre or hectare;
 6. The cumulative pollutant levels of each regulated pollutant (in tons or kilograms per acre or hectare). ~~These~~ The applicator shall retain these records shall be retained permanently;
 7. The results of all pathogen density analyses; and applicable descriptions of the methods used for pathogen treatment ~~pursuant to in~~ R18-9-1006;
 8. A description of the activities and measures used to ensure compliance with the management practices ~~required by Section in~~ R18-9-1007 and R18-9-1008, including information regarding the amount of nitrogen required for the crop grown on each site;
 9. If vector attraction reduction was not met by the person who prepares the biosolids, a description of the vector attraction reduction activities used by the applicator to ensure compliance with the requirements ~~of R18-9-1009 in~~ R18-9-1010;

10. A description of any applicable site ~~restrictions~~ restriction imposed by ~~R18-9-1008~~ in R18-9-1009, ~~where if~~ biosolids with Class B pathogen reduction have been applied, and documentation that the applicator has notified the land owner and lessee of these restrictions;
 11. The records described in subsections (B)(1)- through (B)(8) of this Section, ~~shall be~~ accompanied by the following certification statement signed by a responsible official of the applicator of the biosolids:
"I certify, under penalty of law, that the information and descriptions ~~contained herein~~, have been made under my direction and supervision and ~~in accordance with~~ under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."
 12. ~~Information~~ The information in subsections (A)(1) through (A)(6) ~~when if~~ the person who prepares the biosolids is not located in this state.
- C. All records required ~~to be retained pursuant to~~ for retention under this Section ~~shall be~~ are subject to periodic inspection and copying by the Department.
- D. ~~In the event of~~ If there is unresolved litigation, including enforcement, concerning the activities documented by the records required by in this Section, the period of record retention shall be extended pending final resolution of the litigation.

~~R18-9-913.~~ R18-9-1014. Reporting

- A. A person who prepares biosolids for application shall provide the applicator written notification of the pollutant concentrations, ~~including total nitrogen (as N on a dry-weight basis) in accordance as necessary for the applicator to comply with R18-9-1003(C).~~
- B. A transporter shall report spills to the Department ~~in accordance with R18-9-1010(C)~~ under R18-9-1011(D).
- C. A bulk applicator of biosolids other than exceptional quality biosolids shall provide the land owner and lessee of land application sites with information on the pollutant concentrations and loading rates of biosolids applied to that site, ~~as well as~~ and any applicable site restrictions ~~under R18-9-1008~~ under R18-9-1009.
- D. A bulk applicator of biosolids other than exceptional quality biosolids shall report to the Department ~~when if~~ 90% or more of any cumulative pollutant loading rate has been used at a site.
- E. On February 19 of each year, ~~persons~~ any person land applying bulk biosolids ~~which that~~ are not exceptional quality biosolids shall, by letter or on a form provided by the Department, report to the Department ~~all of the following applicable information on their activities during for the previous calendar year to the Department:~~
 1. ~~Actual~~ The actual sites used; and
 2. For each site used, the following information:
 - a. ~~Amount~~ The amount of biosolids applied (in tons or kilograms per acre or hectare);
 - b. ~~Application~~ The application loading rates (in ~~a~~ tons or kilograms per acre or hectare, and gallons per acre for domestic septage);
 - c. ~~Pollutant~~ The pollutant concentrations (in milligrams per kilogram of biosolids on a dry weight basis);
 - d. ~~Pathogen~~ The pathogen treatment methodologies used during the year and the results; and
 - e. ~~Vector~~ The vector attraction reduction methodologies used during the year and the results.
- F. On February 19 of each year, a person preparing exceptional quality biosolids shall, by letter or on a form provided by the Department, report to the Department all the following applicable information regarding their activities during the previous calendar year:
 1. ~~Amount~~ The amount of biosolids received;
 2. ~~Amount~~ The amount of exceptional quality biosolids produced (tons or kilograms);
 3. ~~Amount~~ The amount of exceptional quality biosolids distributed;
 4. ~~Pollutant~~ The pollutant concentrations (in milligrams per kilogram of biosolids on a dry-weight basis);
 5. ~~Pathogen~~ The pathogen treatment methodologies used during the year, including the results; and
 6. ~~Vector~~ The vector attraction reduction methodologies used during the year, including the results.
- G. All annual self-monitoring reports shall contain the following certification statement signed by a responsible official:
"I certify, under penalty of law, that the information and descriptions ~~herein~~, have been made under my direction and supervision and ~~in accordance with~~ under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

~~R18-9-914.~~ R18-9-1015. Enforcement Inspection

- A. A person subject to this Article shall allow, during reasonable times, a representative of the Department to enter property subject to this Article, to:
1. Inspect all biosolids pathogen and vector treatment facilities, transportation vehicles, and land application sites to determine compliance with this Article;
 2. Inspect and copy records prepared in accordance with this Article; and

3. Sample biosolids quality.

- ~~B.~~ Any person violating this Article shall take all reasonable steps to minimize any adverse consequences to human health or the environment without the Department ordering such activities.
- ~~C.~~ A person who violates the requirements of this Article is subject to compliance and abatement orders issued by the Department; and injunctive and other appropriate relief sought by the Attorney General.
- ~~D.~~ Any person who violates any requirement of this Article is subject to a civil penalty of not more than \$1,000 per day for each separate violation.
- ~~E.~~ In the event of continuing violations, the maximum civil penalty for any 1 violation shall be capped at \$15,000 per proceeding.
- ~~F.~~ A person who knowingly or negligently violates any requirement of this Article is guilty of a Class 2 misdemeanor and may be imprisoned for up to 4 months per violation.

Appendix A. Procedures to Determine Annual Biosolids Application Rates

~~This appendix contains the procedure used to determine~~ The following procedure determines the annual biosolids application rate (ABAR) ~~which that~~ ensures that the annual pollutant loading rates in Table 3 of R18-9-1005 ~~shall not be~~ are not exceeded.

- ~~A.~~ 1. The relationship between the annual pollutant loading rate (APLR) for a pollutant and the ABAR is shown in the following ~~Equation (1)~~ equation.

APLR = C x ABAR x 0.001 ~~Equation (1)~~

Where:

- APLR = Annual pollutant loading rate in kilograms of biosolids, per hectare, per 365-day period;
- C =Pollutant concentration in milligrams, per kilogram of total solids (dry-weight basis);
- ABAR = Annual biosolids application rate in metric tons, per hectare, per 365-day period (dry-weight basis); and
- 0.001 = A conversion factor.
- metric ton = 1.102 short tons
- hectare = 2.471 acres

- ~~B.~~ 2. The ABAR is calculated using the following procedure:
 - ~~1.~~ a. Analyze a biosolids sample to determine a concentration for each of the pollutants listed in Table 3 of R18-9-1005; ~~and~~
 - ~~2.~~ b. Using each of the pollutant concentrations from ~~Step 1 subsection (2)(a)~~ and the APLRs from Table 3 of R18-9-1005, calculate a separate ABAR for each pollutant using the following ~~Equation (2)~~ equation:

$$ABAR = \frac{APLR}{C \times 0.001} \text{ Equation (2)}$$

- ~~3.~~ c. The ABAR for the biosolids is the lowest value calculated in ~~Step 2~~ under subsection (2)(b) for any pollutant.

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TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 15. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER INFRASTRUCTURE FINANCE AUTHORITY**

PREAMBLE

1. Sections Affected

- R18-15-101
- R18-15-103
- R18-15-104
- R18-15-105
- R18-15-106
- R18-15-108
- R18-15-108
- R18-15-109
- R18-15-110
- R18-15-110
- R18-15-111
- R18-15-111
- R18-15-112

Rulemaking Action

- Amend
- Amend
- Amend
- Amend
- Amend
- Repeal
- Renumber
- Renumber
- Renumber
- Amend
- Renumber
- Amend
- Renumber

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R18-15-112	Amend
R18-15-113	Renumber
R18-15-201	Amend
R18-15-202	Amend
R18-15-203	Amend
R18-15-204	Amend
R18-15-205	Repeal
R18-15-205	Renumber
R18-15-205	Amend
R18-15-206	Renumber
R18-15-206	New Section
R18-15-207	Repeal
R18-15-207	New Section
R18-15-208	Amend
R18-15-301	Amend
R18-15-302	Amend
R18-15-303	Amend
R18-15-304	Amend
R18-15-305	Repeal
R18-15-305	Renumber
R18-15-305	Amend
R18-15-306	Renumber
R18-15-306	New Section
R18-15-307	Repeal
R18-15-307	New Section
R18-15-308	Amend
R18-15-403	Repeal
R18-15-501	Amend
R18-15-502	Amend
R18-15-503	Amend
R18-15-504	Repeal
R18-15-504	Renumber
R18-15-504	Amend
R18-15-505	Renumber
R18-15-505	New Section
R18-15-506	Repeal
R18-15-506	New Section
R18-15-507	Repeal
R18-15-507	New Section
R18-15-508	New Section
R18-15-509	New Section
R18-15-510	New Section
R18-15-511	New Section
R18-15-601	Amend
R18-15-602	Amend
R18-15-603	Amend
R18-15-701	Amend

2. The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 49-1203

Implementing statutes: A.R.S. §§ 49-1223(A)(5), 49-1223(C), 49-1243(A)(6), 49-1245(C), and 49-1268(B)(2)

3. The effective date of the rules:

December 4, 2001

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

Notice of Rulemaking Docket Opening: 7 A.A.C. 1562, April 13, 2001

Notice of Proposed Rulemaking: 7 A.A.C. 3578, August 17, 2001

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

Name: Greg Swartz, Executive Director

Address: Water Infrastructure Finance Authority
202 East Earll Drive, Suite 480
Phoenix, AZ 85012

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Telephone: (602) 230-9770

Fax: (602) 230-1480

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

The rulemaking clarifies the Water Infrastructure Finance Authority's (WIFA's) ability to effectively address the drinking water and wastewater needs of the state. This rule will streamline the process used by WIFA to disburse monies to communities to conceive, develop, plan, and design infrastructure improvements.

7. A reference to any study that the agency relied 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, and 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. Summary of the economic, small business, and consumer impact:

A. Introduction

The Water Infrastructure Finance Authority of Arizona (WIFA) is a public financing agency. It does not regulate any consumer or business. WIFA's purpose is to provide financial and technical assistance. WIFA is a self-supporting agency and pays administrative costs from income or from a maximum of four percent of federal capitalization grants.

B. Potential Impacts on Regulated Industry

WIFA concluded that this rulemaking will impact the following regulated industries:

1. Drinking Water Facility (A.R.S. § 49-1201): a community water system or a non-profit noncommunity water system as defined in the Safe Drinking Water Act (P.L. 93-523; 88 STAT. 1660; P.L. 95-190; 91 STAT. 1393; P.L. 104-182; 110 STAT. 1613) that is located in Arizona, excluding water systems owned by federal agencies.

2. Wastewater Treatment Facility (A.R.S. § 49-1201): a facility as defined in the clean water act, located in this state which is designed to hold, cleanse or purify or to prevent the discharge of untreated or inadequately treated sewage or other polluted waters for purposes of complying with the clean water act.

The impact to these industries is beneficial. WIFA emphasizes that although a cost is associated with obtaining financial and technical assistance, applicants initiate requests for financial and technical assistance to obtain funding to come into compliance or correct a problem. Without the financial and technical assistance available through WIFA, many communities would otherwise find it difficult, if not impossible, to obtain funding to achieve compliance or correct problems associated with water quality standards. Thus, the net impact upon the regulated industries represents a cost-savings benefit. This new rule will also allow for more timely processing of applications for financial or technical assistance, and will streamline the process used by WIFA to determine which systems have the greatest need.

C. Social Impacts

This rulemaking is not expected to have a quantifiable social cost. This is because compliance by the regulated industry is not a requirement for the rule, but a goal as the result of funding "out-of-compliance" facilities. It is not anticipated that the rule amendments will add any deadweight-welfare losses (policy changes that make people worse off), adjustment costs for displaced resources, or other business or market costs. Because WIFA does not anticipate any type of reduction in industry output, deadweight-welfare losses are expected to be zero, that is, because no losses in consumers' and producers' surplus are anticipated. Finally, this rulemaking will not have an impact on state revenues.

D. Anticipated Impacts on Employment, Revenues, and Expenditures

This rulemaking is expected to have either a positive or neutral impact on short and long-term employment, production or revenues.

E. General Impact on Small Businesses and Reduction of Impacts

WIFA directs financial and technical assistance to assist small businesses, in the form of drinking water utilities, and small communities because those entities tend to have the smallest user base and are less likely to be able to upgrade or rehabilitate their infrastructure without outside assistance. Therefore the general impact is a greater availability for financial and technical assistance to improve infrastructure.

F. The probable costs and benefits to the political subdivisions directly affected

The political subdivisions directly affected include drinking water facilities and wastewater facilities. These facilities are impacted in the same manner as small business in that they can now solve infrastructure problems with financial and technical assistance. Other benefits include faster processing time of their applications for assistance, as well as more accurate and equitable distribution of monies to those systems.

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G. The probable cost-benefit to government agencies

The Arizona Corporation Commission (ACC) is minimally affected by these rules because the private drinking water facilities must request a rate increase from the ACC to ensure payment of the loan. Additionally, most loans for financial and technical assistance are anticipated to be of a small enough size that rate increases to cover the loans will not be necessary. The Arizona Department of Environmental Quality (ADEQ) is impacted favorably as systems provided with assistance by WIFA can mitigate outstanding compliance issues with ADEQ.

H. Data limitations and methods employed to attempt to obtain data if adequate data were not available

WIFA will continue to utilize ADEQ databases of eligible drinking water and wastewater systems in the state as a source of data to solicit applications for financial and technical assistance. Additionally, through annual public meetings and workshops throughout the state, eligible systems are aware of WIFA's financial and technical assistance. Based on WIFA's experience and ongoing interaction with water and wastewater systems throughout the state, including stakeholder meetings, WIFA believes it understands the infrastructure needs of small systems and communities and has reflected these needs within this proposed rulemaking.

I. The probable benefits outweigh the probable costs

This rulemaking is atypical for a government agency, because most government agencies are in the business of education, compliance, and enforcement. WIFA's goal is to provide financial and technical assistance, which in some instances may trigger an increase in user rates for the consumer. However, it is believed that the rate will be lower than could have been achieved by any other alternative method. In the end, the community benefits from (sometimes significantly) improved drinking or wastewater systems.

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

Minor technical, grammatical, and formatting changes were made throughout the rulemaking, which made the text more clear, concise, and understandable. Several provisions were removed which were vague, unclear, or confusing; these include the former R18-15-506(D) and R18-15-510(D). Subsection (D) of these rules stated that the Authority might provide technical assistance grants to eligible applicants; eliminating this permissive statement does not result in a substantive change.

11. A summary of comments and agency responses:

WIFA did not receive any written or verbal comments on the rule action after publication of the Notice of Proposed Rulemaking.

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 15. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA**

ARTICLE 1. MANAGEMENT

Section

R18-15-101. Definitions

R18-15-103. Legal Capability

R18-15-104. Financial Capability

R18-15-105. Technical Capability

R18-15-106. Managerial and Institutional Capability

~~R18-15-108. Readiness to Proceed~~

~~R18-15-109. R18-15-108. Interest Rate Determinations~~

~~R18-15-110. R18-15-109. Bid Document Review~~

~~R18-15-111. R18-15-110. Disbursements and Repayments~~

~~R18-15-112. R18-15-111. Administration~~

~~R18-15-113. R18-15-112. Disputes~~

R18-15-113. Renumbered

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ARTICLE 2. CLEAN WATER REVOLVING FUND

Section

- R18-15-201. Types of Financial Assistance Available
- R18-15-202. Eligibility Requirements for Financial Assistance
- R18-15-203. Clean Water Revolving Fund Intended Use Plan
- R18-15-204. Clean Water Revolving Fund Priority List
- ~~R18-15-205. Clean Water Revolving Fund Priority Classes~~
- ~~R18-15-206. R18-15-205. Ranking Criteria for the Clean Water Revolving Fund Priority List Ranking Criteria~~
- ~~R18-15-206. Fundable Range for Clean Water Revolving Fund Design Financial Assistance~~
- ~~R18-15-207. Project Construction Fundable Range for Clean Water Revolving Fund Construction Financial Assistance~~
- R18-15-208. Clean Water Revolving Fund Requirements

ARTICLE 3. DRINKING WATER REVOLVING FUND

Section

- R18-15-301. Types of Financial Assistance Available
- R18-15-302. Eligibility Requirements for Financial Assistance
- R18-15-303. Drinking Water Revolving Fund Intended Use Plan
- R18-15-304. Drinking Water Revolving Fund Priority List
- ~~R18-15-305. Drinking Water Revolving Fund Priority Classes~~
- ~~R18-15-306. R18-15-305. Ranking Criteria for the Drinking Water Revolving Fund Priority List Ranking Criteria~~
- ~~R18-15-306. Fundable Range for Drinking Water Revolving Fund Design Financial Assistance~~
- ~~R18-15-307. Project Construction Fundable Range for Drinking Water Revolving Fund Construction Financial Assistance~~
- R18-15-308. Drinking Water Revolving Fund Requirements

ARTICLE 4. OTHER FINANCIAL ASSISTANCE

Section

- R18-15-403. ~~Project Construction~~ Repealed

ARTICLE 5. TECHNICAL ASSISTANCE

Section

- R18-15-501. Technical Assistance Intended Use Plan
- R18-15-502. Eligibility Requirements for Project Technical Assistance
- R18-15-503. Types of Project Technical Assistance Available
- ~~R18-15-504. Maximum Amount of Project Technical Assistance~~
- ~~R18-15-505. R18-15-504. Clean Water Project Technical Assistance Priority List~~
- ~~R18-15-505. Ranking Criteria for Clean Water Project Technical Assistance Priority List~~
- ~~R18-15-506. Project Technical Assistance Priority Classes Fundable Range for Clean Water Project Technical Assistance Grants~~
- ~~R18-15-507. Project Technical Assistance Priority Scoring Criteria Fundable Range for Clean Water Project Technical Assistance Loans~~
- ~~R18-15-508. Drinking Water Project Technical Assistance Priority List~~
- ~~R18-15-509. Ranking Criteria for Drinking Water Project Technical Assistance Priority List~~
- ~~R18-15-510. Fundable Range for Drinking Water Project Technical Assistance Grants~~
- ~~R18-15-511. Fundable Range for Drinking Water Project Technical Assistance Loans~~

ARTICLE 6. HARDSHIP GRANT FUND

Section

- R18-15-601. Types of Assistance Available
- R18-15-602. Eligibility Requirements for Hardship Grant Financial Assistance
- R18-15-603. Hardship Grant Financial Assistance Awards

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

Section

- R18-15-701. Interest Rate Setting and Forgivable Principal

ARTICLE 1. MANAGEMENT

R18-15-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and 49-1201, the terms of this ~~Article~~ Chapter, unless otherwise specified, have the following meanings:

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1. ~~“Acutely toxic” means the ability of a substance to cause poisonous effects resulting in severe biological harm or death after a single exposure or dose.~~
2. “Applicant” means a governmental unit, a non-point source project sponsor, or a drinking water facility that is seeking financial assistance from the Authority pursuant to under the provisions of this Chapter.
3. “Application” means a request for financial assistance submitted to the Board, by an applicant.
4. “Approval to Construct” means the written approval issued by the Department or the Department’s designee to an applicant or recipient indicating that project construction may begin.
5. “Authority” means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § ~~49-374~~ 49-1201.
6. “Board” means the board of directors of the ~~authority~~ Authority pursuant to A.R.S. § ~~49-374~~ 49-1201.
7. “Certified Water Quality Management Plan” means a plan prepared by the designated Water Quality Management Planning Agency, pursuant to § 208 of the Clean Water Act, 33 U.S.C. § 1288 ~~and certified by the Governor.~~
8. “Clean Water Revolving Fund” means the fund established by A.R.S. § ~~49-374~~ 49-1221.
9. ~~“Collector” means a network of pipes or sewers used to collect and transport wastewater to a treatment plant or disposal system.~~
10. “Construction” means, for a project, any placement, assembly, or installation of a building, structure, equipment, treatment process, collection lines, distribution lines, pumps, or related drinking water or water pollution control activity.
11. ~~“Dedicated Revenue Source of for Repayment” means the source of revenue authorized by the voters, petitioners, or the Arizona Corporation Commission to be used pledged by a borrower to repay the financial assistance.~~
12. “Department” means the Arizona Department of Environmental Quality.
13. ~~“Design life” means the period during which a treatment works or drinking water facility is planned and designed to be operated.~~
14. “Designated Water Quality Management Planning Agency” means a single representative organization designated by the Governor pursuant to § 208 of the Clean Water Act, 33 U.S.C. § 1288, to develop a Certified Water Quality Management Plan for the area.
15. “Disbursement” means the transfer of cash from the fund to a recipient.
16. “Drinking Water Facility” means a community water system as defined in ~~A.A.C. R18-4-101~~, or a nonprofit non-community water system as defined in ~~A.A.C. R18-4-101~~.
17. “Drinking Water Revolving Fund” means the fund established by A.R.S. § ~~49-374.01~~ 49-1241.
18. “EPA” means the United States Environmental Protection Agency and its successor.
19. “Equivalency Project” means a wastewater treatment facility under § 212 of the Clean Water Act, 33 U.S.C. § 1292, constructed in whole or in part before October 1, 1994, with funds equaling the amount of the federal capitalization grant.
20. “Executive Director” means the executive director of the Water Infrastructure Finance Authority of Arizona.
21. “Federal capitalization grant” means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.
22. “Financial assistance” means the use of monies for any of the purposes identified in R18-15-201, R18-15-301, and R18-15-401.
23. “Financial assistance agreement” means any agreement, including a financial assistance loan repayment agreement, technical assistance loan repayment agreement, or grant agreement that defines the terms for financial assistance given pursuant to this Article.
24. “First Use Project” means a project identified by EPA and the state as part of the National Municipal Policy List for the state.
25. “Governmental unit” means a political subdivision or Indian tribe that may receive financial assistance from the Authority pursuant to A.R.S. § ~~49-373~~ 49-1203.
26. “Infiltration” means water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes.
27. “Intended Use Plan” means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving Fund capitalization grants pursuant to R18-15-203 and R18-15-303.
28. ~~“Interceptor” means a sewer which is designed for 1 or more of the following purposes:~~
 - a. ~~To intercept wastewater from a final point in a collector and convey such wastes directly to a treatment facility or another interceptor.~~
 - b. ~~To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector or interceptor for conveyance to a treatment plant.~~
 - c. ~~To transport wastewater from 1 or more municipal collectors to another municipality or to a regional plant for treatment.~~
 - d. ~~To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.~~

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- “Master Priority List” means the Master Priority List for Capacity Development developed by the Arizona Department of Environmental Quality under 18 A.A.C. 8., which ranks public water systems according to their need for technical assistance.
29. “~~MBE, WBE, SBRA Reporting report~~” means ~~a report that identifies and documents identifying and documenting~~ each ~~minority business enterprise, women-owned business enterprise, and small business or business enterprise owned by a woman or minority~~ in a rural area that participates in a contract funded in whole or in part by ~~WIFA the Authority~~.
30. “Nonpoint Source Management Program” means Arizona’s Nonpoint Source Management Program, approved by EPA under § 319 of the Clean Water Act, 33 U.S.C. § 1329, for controlling pollution from nonpoint sources.
31. “Operational technical assistance” means the use of monies for a specific water or wastewater system to assist that system to improve its operations.
32. “Policy technical assistance” means the use of monies by or on behalf of the Authority to conduct research, conduct studies, conduct surveys, develop guidance, and perform related activities that benefit more than ~~4~~ one water or wastewater system.
33. “Preconstruction” means any activity that occurs on the project before any physical activity onsite such as the erection, acquisition, alteration, remodeling, improvement, or extension of treatment works, collection lines, distribution lines, or pumps.
34. “~~Priority List~~” means ~~the ranking of projects developed by the Board pursuant to R18-15-204 and R18-15-304 document developed by the Board that ranks projects pursuant to R18-15-204, R18-15-304, R18-15-504 and R18-15-508.~~
35. “Project” means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility, or the Nonpoint Source Management Program ~~which that~~ can be bid separately and for which financial assistance is being requested or provided.
36. “~~Project completion~~” means ~~the date, as determined by the Authority, after consultation with the Department and the applicant or recipient, that operation of the project is initiated or is capable of being initiated, whichever occurs 1st.~~
37. “Project technical assistance” means the use of monies for a specific water or wastewater system to assist that system achieve technical, managerial, or financial capability and to facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water or wastewater system.
38. “Recipient” means an applicant who has entered into a financial assistance agreement with the Authority.
39. “Replacement” means obtaining and installing equipment or accessories ~~which that~~ are necessary during the design and operation of the drinking water and wastewater infrastructure to maintain the capacity and performance for which such infrastructure were designed and constructed.
40. “Regulatory authority” means the Department, EPA, the Department of Health Services, a county, city, or other local health department, a county environmental agency, or a sanitary district.
41. “Service area” means the area within a municipality’s boundaries, or the boundaries of a municipal, sanitary, irrigation, or county improvement district (for wastewater treatment or drinking water facilities), or is the area served by either a public service corporation (as defined in Article XV, Section 2 of the Arizona Constitution) or a homeowners association.
42. “State match” means the monies that may be used to meet the requirements of § 602(b)(2) of the Clean Water Act, 33 U.S.C. § 1382 and § 1452(e) of the Safe Drinking Water Act, 42 U.S.C. § 300j-12.
43. “Technical Assistance Intended Use Plan” means the document prepared by the Authority identifying the intended sources and uses of funding for technical assistance.
44. “Treatment works” means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement § 201 of the Clean Water Act, 33 U.S.C. § 1281, or necessary to recycle or reuse water over the design life of the works.
45. “User charge” means a charge levied on users of drinking water and wastewater infrastructure.

R18-15-103. Legal Capability

- A. The applicant shall demonstrate that it is legally authorized to enter into long-term indebtedness and legally authorized to pledge the dedicated revenue source for repayment required by R18-15-104.
- B. If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:
1. One copy of the sample election ballot and election pamphlet at least 45 days prior to the election.
 2. One copy of the governing body resolution calling for the election at least 45 days prior to the election.
 3. One copy of the election results following the election.
 4. An attorney’s opinion on the current legal status of the applicant and the applicant’s ability to legally enter into the financial assistance agreement.
- C. If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide all of the following:
1. One copy of all final documentation, notices, petitions, and related information at the conclusion of each step in the special taxing district creation process.

2. An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
- D. If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide all of the following:
 1. Evidence that the financial assistance from the Authority to the applicant has been authorized by the Arizona Corporation Commission.
 2. An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
- E. All other applicants who are not included in subsections (B), (C), and (D), shall demonstrate that a majority of the beneficiaries consent to the terms and conditions of the financial assistance. The ~~Board Authority~~ will shall assist each applicant to devise a process by which this consent is documented.
- F. Based on the Board's determination of the applicant's legal capability, the ~~Board Authority~~ may recommend modifications to the proposed project or the ~~Board Authority~~ may recommend modifications to the applicant's legal structure and organization.

R18-15-104. Financial Capability

- A. The applicant shall identify a dedicated revenue source for repayment of the financial assistance. When determining an applicant's financial capability, the Board shall consider all the following:
 1. The amount of money collected through the dedicated revenue source for each of the previous ~~5~~ five fiscal years.
 2. An estimate of the amount of money that will be collected through the dedicated revenue source for the current fiscal year.
 3. A projection of the amount of money that will be collected through the dedicated revenue source for each of the next ~~5~~ five fiscal years.
- B. The applicant shall provide an estimate of the project costs, including applicable planning, design, and construction costs, as well as estimated annual operation, maintenance, and replacement costs.
- C. The applicant shall provide an estimated schedule of required disbursements of the financial assistance.
- D. The applicant shall provide the following information:
 1. One copy of each financial statement, audit, or comprehensive financial statement from the previous ~~5~~ five fiscal years.
 2. One copy of each budget, business plan, management plan, or financial plan from the previous ~~3~~ three fiscal years and the current fiscal year.
 3. One copy of the proposed budget, business plan, management plan, or financial plan for the next fiscal year.
 4. A summary of current fees for drinking or wastewater services including, as applicable, any resolutions passed by the governing body of a political subdivision.
 5. The most recent version of the applicant's capital improvement plan or other plan explaining proposed infrastructure investments.
 6. Copies of documentation relating to outstanding indebtedness including official statements, financial assistance agreements, and amortization schedules.
 7. The number of connections to be served by the proposed project.
- E. Based on the Board's determination of the applicant's financial capability and the Board's review of the estimated costs of the project, the ~~Board Authority~~ may recommend modifications to the proposed project or the ~~Board Authority~~ may recommend modifications to the dedicated revenue source.

R18-15-105. Technical Capability

- A. The Board shall review each applicant's technical capability to construct, operate, and maintain the proposed project.
- B. The applicant shall provide the following information:
 1. One copy of each feasibility study, engineering report, design memorandum, set of plans and specifications, and other technical documentation related to the proposed project.
 2. Copies of resumes, biographies or related information of the certified operators, system employees, or contractors employed by the applicant to operate and maintain the existing facilities and the proposed project.
 3. A description of the service territory including maps.
 4. A description of the existing physical facilities.
- C. The Board may consider the applicant's compliance history, as applicable, to the Clean Water Act, 33 U.S.C. §§ 1251 to 1387, Safe Drinking Water Act, 42 U.S.C. § 300f to 300j-25, related Arizona statutes, and related rules, regulations, and policies.
- D. Based on the Board's determination of the applicant's technical capability and the Board's review of the proposed project, the ~~Board Authority~~ may recommend modifications to the proposed project.

R18-15-106. Managerial and Institutional Capability

- A. The Board shall review each applicant's capability to manage the proposed project.
- B. The applicant shall provide the following information:

1. As applicable, copies of resumes, biographies, years of experience, term of office, and related information of the owners, managers, chief elected officials, and governing body members of the applicant.
 2. A list of professional and outside services retained by the applicant and the proposed project.
- C. The Board may consider the following:
1. As applicable, compliance history of the applicant relative to the Clean Water Act, 33 U.S.C. §§ 1251 to 1387, Safe Drinking Water Act, 42 U.S.C. § 300f to 300j-25, related Arizona statutes, and related rules, regulations, and policies.
 2. The scope and size of the proposed project and the applicant's ability to manage the project once completed.
- D. Based on the Board's determination of the applicant's managerial capability and the Board's review of the proposed project, the Board Authority may recommend modifications to the proposed project.

R18-15-108. Readiness to Proceed

- ~~A. The Board shall review each applicant's readiness to proceed with the proposed project.~~
- ~~B. The Board shall use all of the following readiness criteria to classify projects (the higher the number, the higher the level of readiness):~~
- ~~1. Level 1—The applicant has received authorization to enter into long-term indebtedness.~~
 - ~~2. Level 2—~~
 - ~~a. The Board has determined all of the following:~~
 - ~~i. Legal capability pursuant to R18-15-103.~~
 - ~~ii. Financial capability pursuant to R18-15-104.~~
 - ~~iii. Technical capability pursuant to R18-15-105.~~
 - ~~iv. Managerial and institutional capability pursuant to R18-15-106.~~
 - ~~b. The applicant has completed the requirement for Level 1.~~
 - ~~3. Level 3—~~
 - ~~a. The plans and specifications have been reviewed and approved by the Department or the Department's designee.~~
 - ~~b. The applicant has completed the requirements for Levels 1 and 2.~~
 - ~~4. Level 4—~~
 - ~~a. The applicant is in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities.~~
 - ~~b. The applicant has completed the requirements for Levels 1, 2, and 3.~~
 - ~~5. Level 5—~~
 - ~~a. The applicant has obtained all applicable permits and approvals required by federal, state, and local authorities.~~
 - ~~b. The applicant has completed the requirements for Levels 1, 2, 3, and 4.~~
 - ~~6. Level 6—~~
 - ~~a. The applicant has received and accepted bids for the project or, with prior approval from the Board, the applicant has commenced construction.~~
 - ~~b. The applicant has completed the requirements for Levels 1, 2, 3, 4, and 5.~~
- ~~C. As applicable, until the environmental review process described in R18-15-107 is completed, the Board shall limit payments of financial assistance to preconstruction activity.~~
- ~~D. Until all applicable permits and approvals required by federal, state, and local authorities are obtained, the Board shall limit payments of financial assistance to preconstruction activity.~~
- ~~E. The Board shall bypass a project within a fiscal year and offer funding to the next highest ranking project on the project priority list if either 1 of the following occurs:~~
- ~~1. The Board determines that substantial progress has not been made on a project toward being ready to proceed within 8 months of notification from WIFA that the project is within the fundable range of projects for that fiscal year, or~~
 - ~~2. The Board determines that the project will not be ready to proceed within the current fiscal year.~~

R18-15-109. R18-15-108. Interest Rate Determinations

- A. In establishing interest rates for financial assistance made under this Chapter, the Authority:
1. Shall consider the interest rate on bonds issued by the Authority, prevailing market rates, the recommendations of financial advisors, equity growth, and asset growth;
 2. Shall not establish a rate which exceeds prevailing market rates for similar types of financial assistance;
 3. Shall not establish a rate that is less than is needed to retire the Authority's bonds.
- B. The Authority shall establish interest rates on a loan by loan basis. Such determinations shall be adopted and amended as required by the Board at public meetings of the Board.

R18-15-110. R18-15-109. Bid Document Review

To ensure compliance with all Arizona statutes and federal requirements for funding the project, the applicant shall submit bid documents for review and comment by the Authority prior to the release of the documents to prospective bidders or contractors.

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~~R18-15-111~~, R18-15-110, Disbursements and Repayments

- A. The Authority shall honor disbursement requests if the disbursements are consistent with the financial assistance agreement and ~~within 10% of the project dollar~~ the disbursement schedule agreed to by both parties at the beginning of the contract, or the amended schedule based upon prior ~~Board~~ Authority approval.
- B. The Authority shall charge a late fee for any loan repayment 30 days past the due date and every 30 days thereafter. The ~~authority~~ Authority shall refer any loan repayment over 90 days past due to the Office of the Attorney General for appropriate action pursuant to A.R.S. § 49-375(J).
- C. The recipient shall maintain a project account in accordance with generally accepted government accounting standards. After reasonable notice by the ~~Board~~ Authority, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Article and the financial assistance agreement.
- D. Each disbursement request shall be on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a MBE, WBE, SBRA report. All disbursement forms shall be completely filled out before the disbursement can be processed by the Authority.
- E. Each disbursement request shall include copies of invoices, canceled checks, or other documents that show proof of payment.
- F. ~~The Authority shall not process the last substantial reimbursement request for construction funds reimbursement for payment until all required facility permits are in place. The last substantial reimbursement request is defined as follows:~~
 - 1. ~~Ten percent of the contract amount on a contract less than \$1,000,000;~~
 - 2. ~~Five percent of the contract amount on a contract greater than or equal to \$1,000,000 and less than \$5,000,000;~~
 - 3. ~~Two percent of the contract amount on a contract greater than or equal to \$5,000,000.~~

~~R18-15-112~~, R18-15-111, Administration

- A. The ~~Board~~ Authority may use up to 4% of federal capitalization grant awards to pay the reasonable costs of administering the Clean Water Revolving Fund and the Drinking Water Revolving Fund.
- B. The ~~Board~~ Authority may also require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.

~~R18-15-113~~, R18-15-112, Disputes

- A. Any party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken pursuant to this Chapter may file a formal letter of dispute with the Executive Director. Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.
- B. Any party filing a dispute ~~pursuant to~~ under subsection (A) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal with the Board, provided such letter is received by the Executive Director not more than 15 days after the receipt by the party of the preliminary decision.
- C. The Board shall issue a final decision on issues appealed ~~to it pursuant to~~ under subsection (B) not more than 60 days after receipt of the appeal.

R18-15-113, Renumbered

ARTICLE 2. CLEAN WATER REVOLVING FUND

R18-15-201. Types of Financial Assistance Available

- A. The Authority may use the Clean Water Revolving Fund for any of the following purposes:
 - 1. Financial assistance, which includes any ~~+~~ of the following:
 - a. ~~Loans~~ Financial assistance loan repayment agreements consistent with § 603(d)(1) of the Clean Water Act, 33 U.S.C. § 1383;
 - b. The purchase or refinance of local debt obligations ~~which~~ that were incurred after March 7, 1985, if building began after that date;
 - c. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
 - d. Security as a source of repayment of principal and interest on bonds issued by the Authority provided that the net proceeds of the bonds are deposited in the fund;
 - e. Guarantees of debt obligations by governmental units, which are issued to finance eligible projects.
 - 2. Technical assistance loan repayment agreements.
 - ~~2-3.~~ Investments to earn interest to be deposited into the fund.
 - ~~3-4.~~ Payments of costs to administer the fund.
 - ~~4-5.~~ Additional ~~Other uses as additional~~ funds are made available.
- B. The ~~Board~~ Authority shall describe projects and proposed financial assistance in the Clean Water Revolving Fund Intended Use Plan, developed ~~pursuant to~~ under R18-15-203.

R18-15-202. Eligibility Requirements for Financial Assistance

- A. To be eligible to receive financial assistance an applicant shall propose a project to: design, construct, acquire, improve or refinance a publicly owned wastewater treatment facility or projects ~~listed on the Nonpoint Source Management Plan~~ eligible for the Department's Water Quality Improvement Grant Program.
- B. A project eligible under subsection (A) shall also meet all of the following applicable requirements ~~prior to~~ before receiving financial assistance:
 - 1. The project shall appear on the Clean Water Revolving Fund Priority List developed ~~pursuant to~~ under R18-15-204.
 - 2. The applicant shall demonstrate legal capability ~~pursuant to~~ under R18-15-103.
 - 3. The applicant shall demonstrate financial capability ~~pursuant to~~ under R18-15-104.
 - 4. The applicant shall demonstrate technical capability ~~pursuant to~~ under R18-15-105.
 - 5. The applicant shall demonstrate managerial and institutional capability ~~pursuant to~~ under R18-15-106.
 - 6. The applicant shall demonstrate completion of the environmental review process ~~pursuant to~~ under R18-15-107.
 - 7. ~~The applicant shall demonstrate readiness to proceed pursuant to R18-15-108.~~
 - 8. ~~7.~~ The applicant shall obtain or be in the process of obtaining all permits and approvals required by federal, state, and local authorities.
 - 9. ~~8.~~ The applicant shall ensure that the project is consistent with the Certified Water Quality Management Plan.
 - 10. ~~9.~~ For nonpoint source projects, the applicant shall ensure that the project is consistent with § 319 and Title VI of the Clean Water Act, 33 U.S.C. §§ 1329, 1381 to 1387.
- C. ~~The Board Authority, through its Board,~~ shall provide financial assistance to eligible governmental units for proposed projects in priority order according to the ~~priority list~~ Clean Water Revolving Fund Priority List developed pursuant to R18-15-204. If the Board determines that an applicant will not be able to proceed with a project in a manner consistent with the Clean Water Revolving Fund Intended Use Plan, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next project on the Clean Water Revolving Fund Priority List in rank order that is ready to accept financial assistance.

R18-15-203. Clean Water Revolving Fund Intended Use Plan

The ~~Board Authority~~ shall publish an Intended Use Plan for each ~~year~~ funding cycle in which it anticipates that it will provide financial assistance for eligible projects. At a minimum the Intended Use Plan shall include a Priority List, a Fundable Range for Design Financial Assistance, and a Fundable Range for Construction Financial Assistance and shall identify the projects by eligible applicant, project name, type of project, type of financial assistance, amount of financial assistance, and estimated interest rates to be charged. The Intended Use Plan shall also identify ~~the first~~ first use and equivalency projects. The Intended Use Plan shall be prepared after providing for public comment and review. ~~When~~ If an Intended Use Plan is to be submitted as ~~one~~ one of the documents required to obtain a grant under Title VI of the Clean Water Act, 33 U.S.C. §§ 1381 to 1387, the Intended Use Plan shall include any additional information required by federal law.

R18-15-204. Clean Water Revolving Fund Priority List

- A. ~~Each year the~~ The Board shall adopt the a Clean Water Revolving Fund Priority List for the ~~next 12-month period~~ funding cycle described in the Intended Use Plan. The Board shall not adopt a new list for years where funds are not adequate to assist any projects.
- B. ~~When~~ If the Clean Water Revolving Fund Priority List is required pursuant to subsection (A), the Board Authority shall rank the projects by ~~priority class (alphabetized with A as the highest priority class);~~ priority points; and the year the applicant requests project assistance.
- C. An applicant, desiring placement on the Clean Water Revolving Fund Priority List, shall make its request for placement of ~~one~~ one or more proposed projects on or before a date specified by the Board Authority. ~~When~~ If requesting placement on the Clean Water Revolving Fund Priority List, an applicant shall submit information within an application format specified by the Board Authority.
- D. The Board Authority shall prepare a draft Clean Water Revolving Fund Priority List. In developing a draft Clean Water Revolving Fund Priority List, the Board Authority shall consider all requests submitted under subsection ~~(B)~~ (B), all requests made by regulatory authorities, all plans prepared pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 to 1387, and the most recently adopted Clean Water Revolving Fund Priority List.
- E. The Board Authority shall hold a public meeting to receive comments on the draft Clean Water Revolving Fund Priority List. The Board Authority shall publish a notice of the public meeting in newspapers statewide at least ~~21~~ 14 days ~~prior to~~ before the meeting date and make copies of the draft Clean Water Revolving Fund Priority List available to the public at least ~~14~~ 7 days ~~prior to~~ before the meeting date.
- F. The Board Authority shall consider all comments submitted in writing ~~prior to~~ before the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but ~~prior to~~ before the close of the written comment period. The Board Authority shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. ~~The Board shall summarize all of~~ After the Authority summarizes the comments received, prepare responses, and prepares responses, the Board shall adopt the final Clean Water Revolving Fund Priority List ~~to be used to administer the Clean Water Revolving Fund during the following fiscal year.~~

- G.** The Board shall make additions ~~or modifications~~ to the final Clean Water Revolving Fund Priority List when ~~if~~ 1 or more both of the following conditions are met:
- ~~1. The project meets the criteria for Priority Class A specified in R18-15-205(B). The project scores a minimum of 40 points under R18-15-207(C)(2).~~
 - ~~2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match.~~
 - ~~3.~~ 2. The additions ~~or modifications~~ are made by the Board at a public meeting.
 - ~~4. Additional funds are made available.~~
- H.** After an opportunity for public comment at a public meeting, the Board may make modifications to the Clean Water Revolving Fund Priority List, based on changes in circumstances under R18-15-207(C)(2).
- H.I.** After an opportunity for public comment at a public meeting, the Board may remove a project from the Clean Water Revolving Fund Priority List under any 1 or more of the following circumstances:
- ~~1. The project has received all financial assistance from the fund requested by the applicant.~~
 - ~~2. The project has been financed with long-term indebtedness from another source.~~
 - ~~3. The project is no longer an eligible project.~~
 - ~~4. The applicant requests removal, or~~
 - ~~5. The applicant is no longer an eligible applicant.~~
- I.** ~~The Board shall retain a project on the Priority List in its assigned priority ranking if it is bypassed pursuant to R18-15-202(C).~~

R18-15-205. Clean Water Revolving Fund Priority Classes

- A.** ~~The Board shall evaluate each project on the Priority List and place it into a priority class. The Board may place major portions of a project into different priority classes. The Board shall consider separation of a project into different priority classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may re-evaluate project priority classes under R18-15-204(G) when supported by information such as facility plans, feasibility studies, enforcement actions, and environmental reviews conducted under R18-15-107. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project is ineligible for financial assistance.~~
- B.** ~~Class A—The Board may designate a project as Priority Class A if both the following conditions exist:~~
- ~~1. The goal of the project is to eliminate either of the following:~~
 - ~~a. An environmental nuisance as defined in A.R.S. § 49-141.~~
 - ~~b. A public health hazard declared by a regulatory authority.~~
 - ~~2. Corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:~~
 - ~~a. An administrative order issued by a regulatory authority.~~
 - ~~b. A court order or decision.~~
 - ~~c. A voluntary compliance agreement with a regulatory authority.~~
 - ~~d. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.~~
 - ~~e. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.~~
- C.** ~~Class A: Continuing Construction Projects—In addition to R18-15-205(B), the Board may designate a project as Priority Class A if the project received funding in a prior fiscal year, the Board entered into a multi-fiscal year funding commitment with the applicant, and the project received at least 20 points under R18-15-206(H).~~
- D.** ~~Class B—The Board may designate a project as Priority Class B if the goal of the project is to eliminate a violation of water quality standards documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:~~
- ~~1. An administrative order issued by a regulatory authority.~~
 - ~~2. A court order or decision.~~
 - ~~3. A voluntary compliance agreement with a regulatory authority.~~
 - ~~4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.~~
 - ~~5. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.~~
- E.** ~~Class C—The Board may designate a project as Priority Class C if the goal of the project is to correct water quality which violates applicable permit requirements. The Board shall ensure that the violations are documented by required or special monitoring reports which confirm that the discharge limits for a parameter were exceeded either 3 consecutive months during the past year or any 4 months during the past year.~~
- F.** ~~Class D—The Board may designate a project as Priority Class D if any 1 of the following conditions exists:~~
- ~~1. The project will provide capacity required to serve existing needs.~~
 - ~~2. The project is designed for wastewater reuse, to conserve water, or to recharge wastewater.~~
 - ~~3. The project is necessary to remedy interceptors which are overloaded.~~

- G.** Class E—The Board may designate a project which does not receive a designation pursuant to subsections (B) through (F) as Priority Class E, if the project is for future growth only or if the project has been financed from another source of long-term indebtedness.

R18-15-206, R18-15-205, Clean Water Revolving Fund Priority List Ranking Criteria for the Clean Water Revolving Fund Priority List

- A.** The Board shall rank projects within priority classes using priority values obtained from the following formula:

$PV = VF + TD + CL + CW + CI + LFC + PYF + CR$ where:

PV = Priority Value

VF = Violation Factor

TD = Treatment and Disposal

CL = Collection Lines

CW = Classification of Waters

CI = Conservation Index

LFC = Local Fiscal Capacity

PYF = Prior Year Funding

CR = Consolidation and Regionalization

- B.** Violation Factor (VF)—Whenever the Board determines that a project seeks to correct a violation of a water quality standard or a violation of a condition contained in a valid water quality permit issued by a regulatory authority, the Board shall award VF points. The Board shall use information from documents obtained under R18-15-205(B) and R18-15-205(D) to assign VF points. VF points are awarded as follows up to a maximum of 100 points:
1. 40 points for nitrates, disease organisms or indicators, or conditions which create a threat to an endangered species.
 2. 30 points for pathogens, heavy metals, and volatile organic compounds (VOC's).
 3. 20 points for biochemical oxygen demand (BOD), suspended solids, or phosphates.
 4. 10 points for pH, turbidity, or temperature.
- C.** Treatment and Disposal (TD)—If an applicant is seeking financial assistance to construct, upgrade, or rehabilitate a treatment or disposal process, the Board shall award TD points up to a maximum of 30 points with only 1 set of points awarded as follows:
1. 30 points to provide additional treatment capacity to meet existing need.
 2. 30 points to construct new treatment capacity for an unsewered area.
 3. 25 points to provide additional disposal capacity.
 4. 20 points to upgrade treatment facilities to more stringent standards.
 5. 15 points to remedy existing design inadequacies.
 6. 10 points for projects which will resolve existing operation and maintenance violations.
 7. 5 points for projects which will expand treatment capacity to accommodate future growth.
- D.** Collection Lines (CL)—If an applicant is seeking financial assistance for a collection line project, the Board shall award CL points up to a maximum of 30 points with only 1 set of points awarded as follows:
1. 30 points to extend service to an existing unsewered area where a documented water quality standard violation exists.
 2. 25 points to repair, rehabilitate or replace existing collection lines.
 3. 20 points to extend service to an existing unsewered area.
 4. 15 points to replace collection lines to accommodate existing growth.
 5. 5 points to install new collection lines to accommodate future growth.
- E.** Classification of Waters (CW)—The Board shall award points for either surface water or groundwater categories but not both. The most stringent protected use within each category shall be the sole determiner of the CW points. CW points are awarded as follows up to a maximum of 30 points:
1. For surface water, CW points shall be awarded for discharges into a water body assigned 1 of the following protected use classifications under A.A.C. R18-11-101:
 - a. 30 points for “full body contact” or “domestic water source.” For purposes of this subsection, a project that is not within either of those classifications may receive 30 points if the discharge is into a water body classified as a “unique water” defined in A.A.C. R18-11-101.
 - b. 20 points for “aquatic and wildlife (cold water fishery)”.
 - c. 15 points for “aquatic and wildlife” that is not a cold water fishery.
 - d. 10 points for “incidental human contact”.
 2. For groundwater, CW points shall equal 30 points for discharges into an aquifer.
- F.** Conservation Index (CI)—The Board shall award Conservation Index points up to a maximum of 45 points as follows:
1. 30 points if the project will reclaim, reuse, or recharge at least 51% of treated wastewater consistent with state law.
 2. 15 points if the project will productively recycle wastewater constituents.
 3. 0 points if the project will not reclaim, reuse, or recharge wastewater.
- G.** Local Fiscal Capacity (LFC)—The Board shall award LFC points up to a maximum of 100 points as follows:

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1. ~~Median Household Income (MHI) — The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:~~
 - a. ~~40 points if the area's MHI is less than 25% of the State's MHI.~~
 - b. ~~30 points if the area's MHI is between 25% and 50% of the State's MHI.~~
 - c. ~~20 points if the area's MHI is between 51% and 75% of the State's MHI.~~
 - d. ~~10 points if the area's MHI is between 76% and 100% of the State's MHI.~~
 - e. ~~0 points if the area's MHI is more than 100% of the State's MHI.~~
 2. ~~User Fees — The Board shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:~~
 - a. ~~20 points if the rates are more than 2% of the area's MHI.~~
 - b. ~~10 points if the rates are between 1% and 2% of the area's MHI.~~
 - c. ~~0 points if the rates area is less than 1% of the area's MHI.~~
 3. ~~Investment — The Board shall divide existing indebtedness, existing investments, and proposed indebtedness by the service area's MHI (Investment/Area MHI) to award points as follows:~~
 - a. ~~20 points if the existing and proposed investment is more than 1% of the area's MHI.~~
 - b. ~~10 points if the existing and proposed investment is between .5% and 1% of the area's MHI.~~
 - c. ~~0 points if the existing and proposed investment is less than .5% of the area's MHI.~~
 4. ~~Cost Effectiveness (CE) — The Board shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award points as follows:~~
 - a. ~~20 points if CE is less than \$2,500 per benefitting connection.~~
 - b. ~~10 points if CE is between \$2,500 and \$5,000 per benefitting connection.~~
 - c. ~~0 points if CE is more than \$5,000 per benefitting connection.~~
- H.** ~~Prior Year Funding (PYF) — The Board shall award PYF points up to a maximum of 30 points with only 1 set of points awarded as follows:~~
1. ~~30 points if the applicant requests additional financial assistance for a multi-year construction project which received financial assistance from the Authority in a previous fiscal year.~~
 2. ~~20 points if the applicant requests additional financial assistance to offset actual costs or justified overruns.~~
 3. ~~10 points if the applicant requests financial assistance to construct a project which received planning and design financial assistance from the Authority in a previous fiscal year.~~
 4. ~~0 points if the applicant requests financial assistance to offset cost overruns.~~
- I.** ~~Consolidation & Regionalization (CR) — The Board shall award CR points up to a maximum of 50 points as follows:~~
1. ~~20 points if the applicant is consolidating the physical facilities of existing multiple facilities.~~
 2. ~~20 points if the applicant is extending service to existing areas currently served by another facility.~~
 3. ~~5 points if the applicant is consolidating the operations of existing multiple facilities.~~
 4. ~~5 points if the applicant is consolidating the ownership of existing multiple facilities.~~
- J.** ~~The Board may use the most recent United States census data to determine the applicant's and the state's median household income. If the Board or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than 1 income area, the Board may use an average of income areas to define the service area's median household income.~~
- K.** ~~After scoring within each class, the Board shall rank tied scores by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefitting connection.~~
- A.** The Authority, through its Board, shall rank projects using priority values obtained from the following formula:
- PV = EC + PB + LFC, where:
- PV = Priority Value
- EC = Existing Conditions
- PB = Project Benefits
- LFC = Local Fiscal Capacity
1. Existing Conditions (EC) -- The Authority shall award EC points up to a maximum of 200 points using the following formula:

EC = CC + PYF, where:

CC = Current Conditions

PYF = Prior Year Funding

 - a. Current Conditions (CC) -- The Authority shall award CC points up to a maximum of 100 points using only one of the following categories:
 - i. Surface Water Pollution (Sewerage Facilities):
 - (1) 100 points if the project corrects a sewer overflow.
 - (2) 80 points if the project corrects a wastewater treatment facility non-compliance.
 - (3) 60 points if the project corrects excessive inflow and infiltration.

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3. Local Fiscal Capacity (LFC) -- The Authority shall award LFC points up to a maximum of 100 points using the following formula:

LFC = MHI + UF + I + CE, where:

MHI = Median Household Income

UF = User Fees

I = Indebtedness

CE = Cost Effectiveness

- a. Median Household Income (MHI) -- The Authority shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:

- i. 40 points if the area's MHI is less than 40% of the State's MHI.
- ii. 30 points if the area's MHI is greater than or equal to 40% but less than 60% of the State's MHI.
- iii. 20 points if the area's MHI is greater than or equal to 60% but less than 80% of the State's MHI.
- iv. 10 points if the area's MHI is greater than or equal to 80% but less than 100% of the State's MHI.
- v. 0 points if the area's MHI is greater than or equal to 100% of the State's MHI.

- b. User Fees (UF) - The Authority shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:

- i. 20 points if the rates are more than 1.5% of the area's MHI.
- ii. 10 points if the rates are from 1% to 1.5% of the area's MHI.
- iii. 0 points if the rates are less than 1% of the area's MHI.

- c. Indebtedness (I) - The Authority shall divide existing indebtedness and proposed indebtedness by the number of users (Indebtedness/Number of Users) and divide the result by the service area's MHI to award points as follows:

- i. 20 points if the existing and proposed indebtedness is more than 1% of the area's MHI.
- ii. 10 points if the existing and proposed indebtedness is from .5% to 1% of the area's MHI.
- iii. 0 points if the existing and proposed indebtedness is less than .5% of the area's MHI.

- d. Cost Effectiveness (CE) -- The Authority shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award points as follows:

- i. 20 points if CE is less than \$2,500 per benefitting connection.
- ii. 10 points if CE is from \$2,500 to \$5,000 per benefitting connection.
- iii. 0 points if CE is more than \$5,000 per benefitting connection.

- e. The Authority may use the most recent United States census data to determine the applicant's and the state's median household income. If the Authority or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than one income area, the Authority shall use an average of income areas to define the service area's median household income.

- B.** The Authority shall rank tied scores by placing the project with the lowest cost effectiveness ratio above all other tied projects.

R18-15-206. Fundable Range for Clean Water Revolving Fund Design Financial Assistance

- A.** The Board shall adopt a Fundable Range for Design Financial Assistance based on projects ranked on the Priority List. The Board shall not adopt a new Fundable Range for Design Financial Assistance for funding cycles in which funds are not adequate to assist any projects.

- B.** The Authority shall prepare a draft and a final Fundable Range for Design Financial Assistance at the same time and in the same manner as the Priority List in accordance with R18-15-204 (D) through (F).

- C.** The Board shall rank projects within the Fundable Range for Design Financial Assistance based on priority values obtained from the Priority List, the year the applicant requires funding, and the receipt of a complete Design Finance Application.

- D.** The Board shall make additions to the Fundable Range for Design Financial Assistance if each of the following conditions are met:

1. The project is on the Priority List.
2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects, and
3. The additions are made by the Board at a public meeting.

- E.** After an opportunity for public comment at a public meeting, the Board shall remove a project from the Fundable Range for Design Financial Assistance under one or more of the following circumstances:

1. The project has been removed from the Priority List.
2. The project has received all design financial assistance from the fund requested by the applicant, or
3. The applicant fails to proceed with the project.

R18-15-207. ~~Project Construction~~ Fundable Range for Clean Water Revolving Fund Construction Financial Assistance

- A.** WIFA shall withhold all construction funding until the Department issues an approval to construct for the applicant.

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- ~~**B.** Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:~~
- ~~1. All easements and rights-of-way have been obtained.~~
 - ~~2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. Title 41, Chapter 23.~~
 - ~~3. All required approvals and permits have been obtained from the following entities:-~~
 - ~~a. The Department including the requirements contained in 18 A.A.C. 9.~~
 - ~~b. Applicable federal, state, and local authorities as related to:~~
 - ~~i. Leases.~~
 - ~~ii. Zoning permits.~~
 - ~~iii. Building permits.~~
 - ~~iv. Flood plain approvals.~~
 - ~~v. Air quality permits.~~
 - ~~vi. Solid waste approvals.~~
- ~~**C.** During construction of wastewater treatment facilities, the recipient shall do all the following:~~
- ~~1. Conduct work in compliance with the requirements of 18 A.A.C. 9.~~
 - ~~2. Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.~~
- ~~**D.** Upon project completion, all of the following requirements shall be satisfied:~~
- ~~1. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 9.~~
 - ~~2. The recipient shall accept the project in writing.~~
 - ~~3. Any required operation and maintenance manual shall be completed.~~
 - ~~4. As-built plans and specifications shall be submitted to the Authority and the recipient.~~
- ~~**E.** Within 1 year after project completion, the recipient shall certify that the wastewater treatment facility meets design specifications and all effluent limitations. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the wastewater treatment facility does not meet design standards or effluent limits and what will be done to correct the deficiency, together with a schedule for the corrective actions.~~
- A.** The Board shall adopt a Fundable Range for Construction Financial Assistance based on projects ranked on the Priority List. The Board shall not adopt a new Fundable Range for Construction Financial Assistance for funding cycles in which funds are not adequate to assist any projects.
- B.** The Authority shall prepare a draft and a final Fundable Range for Construction Financial Assistance at the same time and in the same manner as the Priority List in accordance with R18-15-204(D) through (F).
- C.** The Authority shall rank projects within the Fundable Range for Construction Financial Assistance based on priority values obtained from the following formula:
PV = MPLP + RP, where:
PV = Priority Value
MPLP = Master Priority List Points
RP = Readiness to Proceed
1. The Authority shall award Master Priority List Points in accordance with R18-15-205.
 2. Readiness to Proceed (RP) -- The Authority shall award RP points up to a maximum of 100 points as follows:
 - a. 40 points if the applicant has obtained debt authorization.
 - b. 30 points if the applicant has solicited the project for bidding.
 - c. 20 points if the applicant has the necessary plan and specification approvals.
 - d. 10 points if the applicant has completed the project design.
- D.** The Board shall make additions to the Fundable Range for Construction Financial Assistance if each of the following conditions are met:
1. The project is on the Priority List.
 2. The project scores a minimum of 40 RP points under (C)(2).
 3. Funds are available to cover the cost of the project and to honor funding commitments made to other projects, and
 4. The additions are made by the Board at a public meeting.
- E.** After an opportunity for public comment at a public meeting, the Board shall remove a project from the Fundable Range for Construction Financial Assistance under one or more of the following circumstances:
1. The project has been removed from the Priority List.
 2. The project has received all construction financial assistance from the fund requested by the applicant, or
 3. The applicant fails to proceed with the project.

R18-15-208. Clean Water Revolving Fund Requirements

- A.** The ~~Board~~ Authority shall identify Clean Water Revolving Fund requirements applicable to each project pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 to 1387.
- B.** If applicable, the applicant shall design a user charge system to produce adequate revenues for operation and maintenance, including replacement. The user charge system shall provide that a user discharging pollutants that cause an increase in

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the cost of managing the effluent or sludge from the treatment works shall pay proportionately for the increased cost. An applicant's user charge system, based on actual or estimated use of wastewater treatment services, shall provide that each user or user class pays its proportionate share of operation and maintenance, including replacement costs of treatment works within the applicant's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.

- C. After a project is completed, the governmental unit shall use revenue from the project, including the sale of sludges, gases, liquids, crops, or revenue from leases, to offset the costs of operation and maintenance.
- D. The applicant shall certify that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kick-backs, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning or design work on a wastewater treatment facility project.
- E. First use and equivalency projects shall comply with the provisions of the Civil Rights Act of 1964, Pub.L. 88-352, 42 U.S.C. § 2000(a) to 2000h-6, and all other applicable federal laws.

ARTICLE 3. DRINKING WATER REVOLVING FUND

R18-15-301. Types of Financial Assistance Available

- A. The Authority may use the Drinking Water Revolving Fund for any of the following purposes:
 - 1. Financial assistance, which includes any 4 of the following:
 - a. ~~Loans~~ Financial assistance loan repayment agreements consistent with § 1452 (a)(2)(f) of the Safe Drinking Water Act, 42 U.S.C. § 300j-12.
 - b. The purchase or refinancing of local debt obligations of political subdivisions ~~which~~ that were incurred after July 1, 1993, if building began after that date.
 - c. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates.
 - d. Security as a source of repayment of principal and interest on bonds issued by the Authority, provided that the net proceeds of the bonds are deposited in the fund.
 - e. Guarantees of debt obligations by governmental units, which are issued to finance eligible projects.
 - 2. Technical assistance loan repayment agreements.
 - ~~2.3.~~ Investments to earn interest to be deposited into the fund.
 - ~~3.4.~~ Payments of costs to administer the fund.
 - ~~4.5.~~ Other uses authorized by the Safe Drinking Water Act, 42 U.S.C. § 300f to 300j-25.
- B. The ~~Board~~ Authority shall describe projects and proposed financial assistance in the Drinking Water Revolving Fund Intended Use Plan, developed pursuant to R18-15-303.
- C. Pursuant to the Safe Drinking Water Act, 42 U.S.C. § 300f to 300j-25, 15% of available Drinking Water Revolving Fund financial assistance shall be available solely for drinking water facilities serving fewer than 10,000 persons consistent with the requirements for financial assistance within Article 3. On an annual basis, if there are insufficient requests for Drinking Water Revolving Fund financial assistance from drinking water facilities serving fewer than 10,000 persons, the ~~Board~~ Authority, through its Board, may direct the remainder of the 15% to all other drinking water facilities requesting financial assistance consistent with the requirements within Article 3.

R18-15-302. Eligibility Requirements for Financial Assistance

- A. To be eligible to receive financial assistance an applicant shall be a drinking water facility as defined by A.R.S. § ~~49-374~~ 49-1201. An applicant shall propose a project to: plan, design, construct, acquire, or improve a drinking water facility, or refinance an eligible drinking water facility.
- B. A project eligible under subsection (A) shall also meet all of the following requirements ~~prior to~~ before receiving financial assistance:
 - 1. The project shall appear on the Drinking Water Revolving Fund Priority List developed ~~pursuant to~~ under R18-15-304.
 - 2. The applicant shall demonstrate legal capability ~~pursuant to~~ under R18-15-103.
 - 3. The applicant shall demonstrate financial capability ~~pursuant to~~ under R18-15-104.
 - 4. The applicant shall demonstrate technical capability ~~pursuant to~~ under R18-15-105.
 - 5. The applicant shall demonstrate managerial and institutional capability ~~pursuant to~~ under R18-15-106.
 - 6. The applicant shall demonstrate completion of the environmental review process ~~pursuant to~~ under R18-15-107.
 - ~~7. The applicant shall demonstrate readiness to proceed pursuant to R18-15-108.~~
 - ~~8.7.~~ The applicant shall obtain or be in the process of obtaining all permits and approvals required by federal, state, and local authorities.
- C. The ~~Board~~ Authority, through its Board, shall provide financial assistance to eligible applicants for proposed projects in priority order according to the priority list developed ~~pursuant to~~ under R18-15-304. If the Board determines that an applicant will not be able to proceed with a project in a manner consistent with the Drinking Water Revolving Fund Intended Use Plan, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has

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been bypassed. The Board shall replace the bypassed project with the next project on the Drinking Water Revolving Fund Priority List in rank order that is ready to accept financial assistance.

R18-15-303. Drinking Water Revolving Fund Intended Use Plan

The ~~Board~~ Authority shall publish an Intended Use Plan for each ~~year~~ funding cycle in which it anticipates that it will provide financial assistance for eligible projects. At a minimum, the Intended Use Plan shall include a Priority List, a Fundable Range for Design Financial Assistance, and a Fundable Range for Construction Financial Assistance and shall identify the projects by eligible applicant, project name, type of project, type of financial assistance, amount of financial assistance, population served by the project, and estimated interest rates to be charged. The Intended Use Plan shall be prepared after providing for public comment and review. ~~When~~ If an Intended Use Plan is to be submitted as ~~one~~ one of the documents required to obtain a grant under the Safe Drinking Water Act, 42 U.S.C. § 300f to 300j-25, the Intended Use Plan shall include any additional information required by federal law.

R18-15-304. Drinking Water Revolving Fund Priority List

- A. ~~Each year the~~ The Board shall adopt ~~the~~ a Drinking Water Revolving Fund Priority List for the ~~next 12-month period~~ funding cycle described in the Intended Use Plan. The Board shall not adopt a new list for years where funds are not adequate to assist any projects.
- B. ~~When~~ If the Drinking Water Revolving Fund Priority List is required pursuant to subsection (A), the ~~Board~~ Authority shall rank the projects by priority class (alphabetized with A as the highest priority class), priority points, and the year the applicant requests project assistance.
- C. An applicant, desiring placement on the Drinking Water Revolving Fund Priority List, shall make its request for placement of ~~one~~ one or more proposed projects on or before a date specified by the ~~Board~~ Authority. ~~When~~ If requesting placement on the Drinking Water Revolving Fund Priority List, an applicant shall submit information within an application format specified by the ~~Board~~ Authority.
- D. The ~~Board~~ Authority shall prepare a draft Drinking Water Revolving Fund Priority List. In developing a draft Priority List, the ~~Board~~ Authority shall consider all requests submitted under subsection ~~(B)~~, all requests made by regulatory authorities, all plans prepared ~~pursuant to~~ under the Safe Drinking Water Act, 42 U.S.C. § 300f to 300j-25, and the most recently adopted Drinking Water Revolving Fund Priority List.
- E. The ~~Board~~ Authority shall hold a public meeting to receive comments on the draft Priority List. The ~~Board~~ Authority shall publish a notice of the public meeting in newspapers statewide at least ~~21~~ 14 days ~~prior to~~ before the meeting date and make copies of the draft Drinking Water Revolving Fund Priority List available to the public at least ~~14~~ 7 days ~~prior to~~ before the meeting date.
- F. The ~~Board~~ Authority shall consider all comments submitted in writing ~~prior to~~ before the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but ~~prior to~~ before the close of the written comment period. The ~~Board~~ Authority shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. ~~The Board shall summarize all of~~ After the Authority summarizes the comments received, prepare responses, and prepares responses, the Board shall adopt the final Drinking Water Revolving Fund Priority List ~~to be used to administer the Drinking Water Revolving Fund during the following fiscal year.~~
- G. The Board shall make additions ~~or modifications~~ to the final Drinking Water Revolving Fund Priority List ~~when if~~ if ~~one or more~~ both of the following conditions are met:
1. ~~The project meets the criteria for Priority Class A specified in R18-15-305(B) and funds are available to cover the cost of the project and to honor funding commitments made to other projects. The project scores a minimum of 40 points under R18-15-307(C)(2), and~~
 2. ~~The additions or modifications are made by the Board at a public meeting.~~
 3. ~~Additional funds are made available.~~
- H. After an opportunity for public comment at a public meeting, the Board may make modifications to the Drinking Water Revolving Fund Priority List, based on changes in circumstances under R18-15-307(C)(2).
- ~~H.I.~~ After an opportunity for public comment at a public meeting, the Board may remove a project from the Drinking Water Revolving Fund Priority List under any ~~one or more~~ one or more of the following circumstances:
1. ~~The project has received all financial assistance from the fund requested by the applicant.~~
 2. ~~The project has been financed with long-term indebtedness from another source.~~
 3. ~~The project is no longer an eligible project.~~
 4. ~~The applicant requests removal, or~~
 5. ~~The applicant is no longer an eligible applicant.~~
- I. ~~The Board shall retain a project on the Priority List, and work with each system in its assigned priority ranking if it is bypassed pursuant to R18-15-302(C).~~

~~R18-15-305. Drinking Water Revolving Fund Priority Classes~~

- ~~A.~~ The Board shall evaluate each project on the Priority List and place it into a priority class. The Board may place major portions of a project into different priority classes. The Board shall consider separation of a project into different priority

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classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may re-evaluate project priority classes under R18-15-304(G) if supported by information such as facility plans, feasibility studies, enforcement actions, and environmental reviews conducted under R18-15-107. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project is ineligible for financial assistance.

- B.** Class A—The Board may designate a project as Priority Class A if continuous or intermittent violations of the national primary drinking water standards exist involving acutely toxic contaminants. The violations shall be documented by official reports, data, or findings of a regulatory authority. Corrective action or mitigation measures shall be initiated and evidenced by 1 or more of the following:
 - 1. An administrative order issued by a regulatory authority.
 - 2. A court order or decision.
 - 3. A voluntary compliance agreement with a regulatory authority.
 - 4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 - 5. A voluntary corrective action plan with a regulatory agency implemented by the applicant and evidenced by restrictions or moratoriums.
- C.** Class A: Continuing Construction Projects—In addition to R18-15-305(B), the Board may designate a project as Priority Class A if the project received funding in a prior fiscal year; the Board entered into a multi fiscal year funding commitment with the applicant; the Board designated the project as Priority Class A, Priority Class B, or Priority Class C in a prior fiscal year; and the project received at least 20 points under R18-15-306(H).
- D.** Class B—The Board may designate a project as Priority Class B if a violation of the national primary drinking water standards involves non-acutely toxic contaminants documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:
 - 1. An administrative order issued by a regulatory authority.
 - 2. A court order or decision.
 - 3. A voluntary compliance agreement with a regulatory authority.
 - 4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 - 5. A voluntary corrective action plan with a regulatory authority implemented by the applicant and evidenced by restrictions or moratoriums.
- E.** Class C—The Board may designate a project as Priority Class C if the goal of the project is to upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe Drinking Water Act Amendments for all drinking water facilities that have violations in the water system physical plant as documented by an ADEQ field engineer.
- F.** Class D—The Board may designate a project as Priority Class D if the goal of the project is to upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe Drinking Water Act Amendments for all drinking water facilities that require rehabilitation or upgrades that are not a result of violations.
- G.** Class E—The Board may designate a project as Priority Class E if the goal of the project is to consolidate or regionalize service of previously separate drinking water facilities.
- H.** Class F—The Board may designate a project which does not receive a designation of Class A through Class E, as Priority Class F.

R18-15-306. R18-15-305. Ranking Criteria for the Drinking Water Revolving Fund Priority List Ranking Criteria

- A.** The Board shall rank projects within priority classes using priority values obtained from the following formula:
 $PV = HC + ARD + TUE + DS + SF + LFC + PYF + CR$ where:
PV = Priority Value
HC = Health Criteria
ARD = Acquiring, Rehabilitating, or Developing Sources
TUE = Treatment Upgrade or Treatment Expansion
DS = Distribution System
SF = Storage Facility
LFC = Local Fiscal Capacity
PYF = Prior Year Funding
CR = Consolidation and Regionalization
- B.** Health Criteria (HC)—Whenever the Board determines that a project seeks to correct a violation of the national primary drinking water standards, the Board shall award HC points. The Board shall use information from documents obtained under R18-15-305(B) and R18-15-305(D) to assign HC points. The Board shall award HC points up to a maximum of 100 points with only 1 set of points awarded as follows:

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1. One hundred points for continuous violations of the national primary drinking water standards involving acutely toxic contaminants.
 2. Eighty points for intermittent violations of the national primary drinking water standards involving acutely toxic contaminants.
 3. Sixty points for continuous violations of the national primary drinking water standards involving non-acutely toxic contaminants.
 4. Forty points for intermittent violations of the national primary drinking water standards involving non-acutely toxic contaminants.
- C.** ~~Acquiring, Rehabilitating, or Developing Sources of a drinking water facility (ARD) — The Board shall award ARD points up to a maximum of 50 points as follows:~~
1. ~~Ten points to secure at least 51% of new eligible source capacity with a renewable source or 10 points to secure at least 51% of new eligible source capacity with a non-renewable source.~~
 2. ~~Acquire, rehabilitate, or develop a water source to serve the following for a maximum of 30 points as follows:~~
 - a. ~~Thirty points for an existing service area because the current source is contaminated or depleted.~~
 - b. ~~Fifteen points for an expanded service area because the new area has contaminated or insufficient water.~~
 - c. ~~Zero points for growth.~~
- D.** ~~Treatment Upgrade (either surface water or ground water but not both) or Treatment Expansion (excluding Upgrade and Expand) (TUE) — The Board shall award TUE points up to a maximum of 30 points for either surface or ground water by 1 of the following methods for a total of 30 points:~~
1. ~~Upgrade surface water by 1 of the following methods:~~
 - a. ~~Thirty points for treatment of micro organisms.~~
 - b. ~~Twenty points for treatment of chemical constituents that would be harmful if people are exposed to them.~~
 - c. ~~Ten points for treatment of chemical constituents that are not harmful if people are exposed to them.~~
 2. ~~Upgrade ground water by 1 of the following methods:~~
 - a. ~~Thirty points for treatment with chlorination.~~
 - b. ~~Twenty points for treatment of chemical constituents that would be harmful if people are exposed to them.~~
 - c. ~~Ten points for treatment of chemical constituents that are not harmful if people are exposed to them.~~
- E.** ~~Distribution System (DS) — The Board shall award DS points up to a maximum of 30 points as follows:~~
1. ~~Thirty points maximum for rehabilitation, replacement, or repair of existing lines with inadequate line size or inadequate pressure as follows:~~
 - a. ~~Thirty points for an existing service area.~~
 - b. ~~Twenty five points for an expanded service area where the new area has poor quality water.~~
 - c. ~~Zero points for growth.~~
 2. ~~Thirty points maximum for the rehabilitation, replacement, or repair of existing lines as follows:~~
 - a. ~~Thirty points for leaks.~~
 - b. ~~Twenty five points for wrong materials or inadequate design.~~
 - c. ~~Twenty points for insufficient depth of lines.~~
 3. ~~Twenty five points maximum for the installation of new lines as follows:~~
 - a. ~~Twenty five points to install new lines to loop an existing service area.~~
 - b. ~~Twenty five points to install new lines for an existing service area.~~
 - c. ~~Twenty points to install new lines for an expanded service area because the new area has poor quality or no water.~~
 - d. ~~Zero points to install new lines for growth.~~
 4. ~~Thirty points maximum to rehabilitate, replace, or repair a hydropneumatic tank as follows:~~
 - a. ~~Thirty points for a hydropneumatic tank that serves an existing service area.~~
 - b. ~~Twenty points for a hydropneumatic tank that serves an expanded service area.~~
- F.** ~~Storage Facility (SF) — The Board shall award SF points up to a maximum of 30 points as follows:~~
1. ~~Thirty points for no storage.~~
 2. ~~Twenty five points maximum to rehabilitate storage or inadequate storage or inadequate pressure as follows:~~
 - a. ~~Twenty five points for inadequate design of the storage facility.~~
 - b. ~~Twenty points for an existing service area.~~
 - c. ~~Fifteen points for an expanded service area because the new area has poor quality water.~~
 - d. ~~Zero points for growth.~~
 3. ~~Twenty five points maximum for expanded storage as follows:~~
 - a. ~~Twenty five points for an existing service area.~~
 - b. ~~Twenty points for an expanded service area because the new area has poor quality water.~~
 - c. ~~Zero points for growth.~~
- G.** ~~Local Fiscal Capacity (LFC) — The Board shall award LFC points up to a maximum of 100 points as follows:~~

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1. **Median Household Income (MHI)** — The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
 - a. Forty points if the area's MHI is less than 25% of the State's MHI.
 - b. Thirty points if the area's MHI is between 25% and 50% of the State's MHI.
 - c. Twenty points if the area's MHI is between 51% and 75% of the State's MHI.
 - d. Ten points if the area's MHI is between 76% and 100% of the State's MHI.
 - e. Zero points if the area's MHI is more than 100% of the State's MHI.
 2. **User Fees** — The Board shall divide the applicant's proposed user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
 - a. Twenty points if the rates are more than 2% of the area's MHI.
 - b. Ten points if the rates are between 1% and 2% of the area's MHI.
 - c. Zero points if the rates are less than 1% of the area's MHI.
 3. **Investment** — The Board shall divide existing indebtedness, existing investments, and proposed indebtedness by service area's MHI (Investment/Area MHI) to award points as follows:
 - a. Twenty points if the existing and proposed investment is more than 1% of the area's MHI.
 - b. Ten points if the existing and proposed investment is between .5% and 1% of the area's MHI.
 - c. Zero points if the existing and proposed investment is less than .5% of the area's MHI.
 4. **Cost Effectiveness (CE)** — The Board shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award points as follows:
 - a. Twenty points if CE is less than \$2,500 per benefitting connection.
 - b. Ten points if CE is between \$2,500 and \$5,000 per benefitting connection.
 - c. Zero points if CE is more than \$5,000 per benefitting connection.
- H. Prior Year Funding (PYF)** — The Board shall award PYF points up to a maximum of 30 points with only 1 set of points awarded as follows:
1. Thirty points if the applicant requests additional financial assistance for a multi-year construction project which received financial assistance from the Authority in a previous fiscal year.
 2. Twenty points if the applicant requests additional financial assistance to offset actual costs or justified overruns.
 3. Ten points if the applicant requests financial assistance to construct a project which received planning and design financial assistance from the Authority in a previous fiscal year.
 4. Minus 10 points if the applicant requests financial assistance to offset cost overruns.
- I. Consolidation & Regionalization (CR)** — The Board shall award CR points up to a maximum of 50 points as follows:
1. Twenty points if the applicant is consolidating the physical facilities of existing multiple facilities.
 2. Twenty points if the applicant is extending service to existing areas currently served by another facility.
 3. Five points if the applicant is consolidating the operations of existing multiple facilities.
 4. Five points if the applicant is consolidating the ownership of existing multiple facilities.
- J.** The Board may use the most recent United States census data to determine the applicant's and the state's median household income. If the Board or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than 1 income area, the Board may use an average of income areas to define the service area's median household income.
- K.** After scoring within each class, the Board shall rank tied scores by placing the lowest cost effectiveness ratio project above all other tied projects in the class. The cost effectiveness ratio means the project dollars per benefitting connection.
- A.** The Authority, through its Board, shall rank projects using priority values obtained from the following formula:
PV = EC + PB + LFC, where:
PV = Priority Value
EC = Existing Conditions
PB = Project Benefits
LFC = Local Fiscal Capacity
1. Existing Conditions (EC) – The Authority shall award EC points up to a maximum of 200 points, using the following formula:
EC = CC + PYF, where:
CC = Current Conditions
PYF = Prior Year Funding
 - a. Current Conditions (CC) – The Authority shall award CC points up to a maximum of 100 points as follows:
 - i. 100 points if the applicant's system is at or above the 80th percentile of the community water systems on the Department's Master Priority List.
 - ii. 80 points if the applicant's system is at or above the 60th percentile but less than the 80th percentile of the community water systems on the Department's Master Priority List.
 - iii. 60 points if the applicant's system is at or above the 40th percentile but less than the 60th percentile of the

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- community water systems on the Department's Master Priority List.
 - iv. 40 points if the applicant's system is at or above the 20th percentile but less than the 40th percentile of the community water systems on the Department's Master Priority List.
 - v. 20 points if the applicant's system is less than the 20th percentile of the community water systems on the Department's Master Priority List.
 - vi. 0 points if the applicant's system is not listed on the Department's Master Priority List.
 - b. Prior Year Funding (PYF) -- The Authority shall award PYF points up to a maximum of 100 points with only 1 set of points awarded as follows:
 - i. 100 points if the applicant requests additional financial assistance for a multi-year construction project that received financial assistance from the Authority in a previous funding cycle.
 - ii. 80 points if the applicant requests financial assistance to construct a project that received pre-design or design financial or technical assistance from the Authority in a previous funding cycle.
 - iii. 40 points if the applicant requests additional financial assistance to offset actual costs or justified overruns.
- 2. Project Benefits (PB) -- The Authority shall award PB points up to a maximum of 200 points, using the following formula:

PB = WSI + CR, where:
WSI = Water System Improvement
CR = Consolidation & Regionalization

 - a. Water System Improvement (WSI) -- The Authority shall award WSI points up to a maximum of 150 points from the following categories:
 - i. A maximum of 100 points if the applicant's proposed project addresses deficiencies identified by the Department on the Department's Master Priority List.
 - ii. 25 points if the applicant submitted a complete Capacity Development Plan to the Department.
 - iii. 25 points if the proposed project includes installing meters to monitor water use.
 - b. Consolidation & Regionalization (CR) -- The Authority shall award CR points up to a maximum of 50 points as follows:
 - i. 20 points if the applicant is consolidating the physical facilities of existing multiple facilities.
 - ii. 20 points if the applicant is extending service to existing areas currently served by another facility.
 - iii. 5 points if the applicant is consolidating the operations of existing multiple facilities.
 - iv. 5 points if the applicant is consolidating the ownership of existing multiple facilities.
- 3. Local Fiscal Capacity (LFC) -- The Authority shall award LFC points up to a maximum of 100 points, using the following formula:

LFC = MHI + UF + I + CE, where:
MHI = Median Household Income
UF = User Fees
I = Indebtedness
CE = Cost Effectiveness

 - a. Median Household Income (MHI) -- The Authority shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
 - i. 40 points if the area's MHI is less than 40% of the State's MHI.
 - ii. 30 points if the area's MHI is greater than or equal to 40% but less than 60% of the State's MHI.
 - iii. 20 points if the area's MHI is greater than or equal to 60% but less than 80% of the State's MHI.
 - iv. 10 points if the area's MHI is greater than or equal to 80% but less than 100% of the State's MHI.
 - v. 0 points if the area's MHI is greater than or equal to 100% of the State's MHI.
 - b. User Fees (UF) -- The Authority shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
 - i. 20 points if the rates are more than 1.5% of the area's MHI.
 - ii. 10 points if the rates are from 1% to 1.5% of the area's MHI.
 - iii. 0 points if the rates are less than 1% of the area's MHI.
 - c. Indebtedness (I) -- The Authority shall divide existing indebtedness and proposed indebtedness by the number of users (Indebtedness/Number of Users) and divide the result by the service area's MHI to award points as follows:
 - i. 20 points if the existing and proposed indebtedness is more than 1% of the area's MHI.
 - ii. 10 points if the existing and proposed indebtedness is from .5% to 1% of the area's MHI.
 - iii. 0 points if the existing and proposed indebtedness is less than .5% of the area's MHI.
 - d. Cost Effectiveness (CE) -- The Authority shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award points as follows:
 - i. 20 points if CE is less than \$2,500 per benefitting connection.
 - ii. 10 points if CE is from \$2,500 to \$5,000 per benefitting connection.
 - iii. 0 points if CE is more than \$5,000 per benefitting connection.

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- e. The Authority may use the most recent United States census data to determine the applicant's and the state's median household income. If the Authority or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than one income area, the Authority shall use an average of the income areas to define the service area's median household income.
- B.** The Authority shall rank tied scores by placing the project with the lowest cost effectiveness ratio above all other tied projects.

R18-15-306. Fundable Range for Drinking Water Revolving Fund Design Financial Assistance

- A.** The Board shall adopt a Fundable Range for Design Financial Assistance based on projects ranked on the Priority List. The Board shall not adopt a new Fundable Range for Design Financial Assistance for funding cycles in which funds are not adequate to assist any projects.
- B.** The Authority shall prepare a draft and a final Fundable Range for Design Financial Assistance at the same time and in the same manner as the Priority List in accordance with R18-15-304(D) through (F).
- C.** The Board shall rank projects within the Fundable Range for Design Financial Assistance based on priority values obtained from the Priority List, the year the applicant requires funding, and the receipt of a complete Design Finance Application.
- D.** The Board shall make additions to the Fundable Range for Design Financial Assistance if each of the following conditions are met:
 - 1. The project is on the Priority List.
 - 2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects, and
 - 3. The additions are made by the Board at a public meeting.
- E.** After an opportunity for public comment at a public meeting, the Board shall remove a project from the Fundable Range for Design Financial Assistance under one or more of the following circumstances:
 - 1. The project has been removed from the Priority List.
 - 2. The project has received all design financial assistance from the fund requested by the applicant.
 - 3. The applicant fails to proceed with the project.

R18-15-307. ~~Project Construction~~ Fundable Range for Drinking Water Revolving Fund Construction Financial Assistance

- A.** ~~WIFA shall withhold all construction funding until the Department issues an approval to construct for the applicant.~~
- B.** ~~Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:-~~
 - 1. ~~All easements and rights of way have been obtained.~~
 - 2. ~~All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. Title 41, Chapter 23.~~
 - 3. ~~All required approvals and permits have been obtained from the following entities:-~~
 - a. ~~The Department including the requirements contained in 18 A.A.C. 4.~~
 - b. ~~Applicable federal, state, and local authorities as related to:~~
 - i. ~~Leases.~~
 - ii. ~~Zoning permits.~~
 - iii. ~~Building permits.~~
 - iv. ~~Flood plain approvals.~~
 - v. ~~Air quality permits.~~
 - vi. ~~Solid waste approvals.~~
- C.** ~~During construction of drinking water facilities, the recipient shall do all of the following:~~
 - 1. ~~Conduct work in compliance with the requirements of 18 A.A.C. 4.~~
 - 2. ~~Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.~~
- D.** ~~Upon project completion, all of the following requirements shall be satisfied:~~
 - 1. ~~The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 4.~~
 - 2. ~~The recipient shall accept the project in writing.~~
 - 3. ~~Any required operation and maintenance manual shall be completed.~~
 - 4. ~~As-built plans and specifications shall be submitted to the Authority and the recipient.~~
- E.** ~~Within 1 year after project completion, the recipient shall certify that the project meets design specifications. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the project does not meet design standards and what will be done to correct the deficiency, together with a schedule for the corrective actions.~~
- A.** The Board shall adopt a Fundable Range for Construction Financial Assistance based on projects ranked on the Priority List. The Board shall not adopt a new Fundable Range for Construction Financial Assistance for funding cycles in which funds are not adequate to assist any projects.

- B.** The Authority shall prepare a draft and a final Fundable Range for Construction Financial Assistance at the same time and in the same manner as the Priority List in accordance with R18-15-304(D) through (F).
- C.** The Authority shall rank projects within the Fundable Range for Construction Financial Assistance based on priority values obtained from the following formula:
PV = MPLP + RP, where:
PV = Priority Value
MPLP = Master Priority List Points
RP = Readiness to Proceed
1. The Authority shall award Priority List Points in accordance with R18-15-305.
 2. Readiness to Proceed (RP) -- The Authority shall award RP points up to a maximum of 100 points as follows:
 - a. 40 points if the applicant has obtained debt authorization.
 - b. 30 points if the applicant has solicited the project for bidding.
 - c. 20 points if the applicant has the necessary plan and specification approvals.
 - d. 10 points if the applicant has completed the project design.
- D.** The Board shall make additions to the Fundable Range for Design Financial Assistance if each of the following conditions are met:
1. The project is on the Priority List,
 2. The project scores a minimum of 40 RP points under to R18-15-307(C)(2),
 3. Funds are available to cover the cost of the project and to honor funding commitments made to other projects, and
 4. The additions are made by the Board at a public meeting.
- E.** After an opportunity for public comment at a public meeting, the Board shall remove a project from the Fundable Range for Construction Financial Assistance under one or more of the following circumstances:
1. The project has been removed from the Priority List,
 2. The project has received all construction financial assistance from the fund requested by the applicant, or
 3. The applicant fails to proceed with the project.

R18-15-308. Drinking Water Revolving Fund Requirements

- A.** ~~The Board~~ Authority shall identify Drinking Water Revolving Fund requirements applicable to each project ~~pursuant to under~~ the Safe Drinking Water Act, 42 U.S.C. § 300f to 300j-25.
- B.** If applicable, the applicant shall design a user charge system to produce adequate revenues for operation and maintenance, including replacement. An applicant's user charge system, based on actual or estimated use of the drinking water facilities, shall provide that each user or user class pays its proportionate share of operation and maintenance, including replacement costs of facilities within the applicant's service area, based on the user's proportionate use of the facilities.
- C.** The applicant shall certify that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kick-backs, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning or design work on a project.

ARTICLE 4. OTHER FINANCIAL ASSISTANCE

R18-15-403. ~~Project Construction Repealed~~

- ~~**A.** Construction of a project shall conform to all of the requirements found in this Section.~~
- ~~**B.** If applicable, WIFA shall withhold all construction funding until the Department issues an approval to construct for the applicant.~~
- ~~**C.** Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:~~
- ~~1. All easements and rights of way have been obtained.~~
 - ~~2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. Title 41, Chapter 23.~~
 - ~~3. All required approvals and permits have been obtained from the following entities:-~~
 - ~~a. The Department including the requirements contained in 18 A.A.C. 4 or 18 A.A.C. 9, as applicable.~~
 - ~~b. Applicable federal, state, and local authorities as related to:~~
 - ~~i. Leases.~~
 - ~~ii. Zoning permits.~~
 - ~~iii. Building permits.~~
 - ~~iv. Flood plain approvals.~~
 - ~~v. Air quality permits.~~
 - ~~vi. Solid waste approvals.~~
- ~~**D.** During construction of the project, the recipient shall do all the following:~~
- ~~1. Conduct work in compliance with the requirements of 18 A.A.C. 4 or 18 A.A.C. 9, as applicable.~~
 - ~~2. Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.~~
- ~~**E.** Upon project completion, all of the following requirements shall be satisfied:~~

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1. ~~The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 4 or 18 A.A.C. 9, as applicable.~~
 2. ~~The recipient shall accept the project in writing.~~
 3. ~~Any required operation and maintenance manual shall be completed.~~
 4. ~~As-built plans and specifications shall be submitted to the Authority and the recipient.~~
- F.** ~~Within 1 year after project completion, the recipient shall certify that the project meets design specifications. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the project does not meet design standards and what will be done to correct the deficiency, together with a schedule for the corrective actions.~~

ARTICLE 5. TECHNICAL ASSISTANCE

R18-15-501. Technical Assistance Intended Use Plan

- A.** ~~The Board Authority shall publish a Technical Assistance Intended Use Plan for each year funding cycle in which it anticipates that it will fund technical assistance. At a minimum, the Technical Assistance Intended Use Plan shall include:~~
1. ~~a descriptions Descriptions of the types of technical assistance the Board Authority expects to fund including operational, policy, and project technical assistance;~~
 2. ~~the sources Sources and uses of funds for technical assistance;~~
 3. ~~a Drinking A Priority List for Clean Water Project Technical Assistance; Priority List; and a Wastewater Project Technical Assistance Priority List.~~
 4. ~~A Fundable Range for Clean Water Project Technical Assistance Grants;~~
 5. ~~A Fundable Range for Clean Water Project Technical Assistance Loans;~~
 6. ~~A Priority List for Drinking Water Project Technical Assistance;~~
 7. ~~A Fundable Range for Drinking Water Project Technical Assistance Grants; and~~
 8. ~~A Fundable Range for Drinking Water Project Technical Assistance Loans.~~
- B.** ~~The Board Authority shall adopt the Technical Assistance Intended Use Plan after providing for public comment and review.~~

R18-15-502. Eligibility Requirements for Project Technical Assistance

- A.** To be eligible to receive project technical assistance, an applicant shall own or operate a drinking water or wastewater system eligible for financial assistance under A.R.S. §§ 49-1223(A)(1) or 49-1243(A)(1).
- B.** A project eligible under subsection (A) shall also meet ~~at~~ both of the following requirements:
1. ~~The system serves fewer than 10,001 people.~~
 2. ~~Proposed project technical assistance will assist the system to achieve technical capability pursuant to R18-15-105, managerial and institutional capability pursuant to R18-15-106, or financial capability pursuant to R18-15-104; and~~
 3. ~~Proposed project technical assistance will facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water or wastewater system.~~
- C.** ~~The Board Authority shall provide project technical assistance to eligible applicants in priority order according to the priority list lists developed pursuant to R18-15-504 this Article.~~

R18-15-503. Types of Project Technical Assistance Available

The ~~Board Authority~~ may award project technical assistance in any one or a combination of the following forms:

1. Project technical assistance grants to local units of government. If consultants are required to complete the project technical assistance, the grant agreement shall specify that the local unit of government is required to select and pay consultants in accordance with applicable procurement requirements.
2. Consultants selected and paid by the Authority to provide project technical assistance on behalf of the recipient of the project technical assistance award.
3. Project technical assistance loans subject to terms and conditions approved by the Board.

~~R18-15-504. Maximum Amount of Project Technical Assistance~~

~~The Board shall award no more than 25% of the total annual funding allocated by the Board to project technical assistance within the Technical Assistance Intended Use Plan to a single project in the form of project technical assistance described in R18-15-503(A) or R18-15-503(B). The Board may increase this maximum for an individual project if the Board determines at a public meeting that the proposed project requires additional assistance beyond the maximum, is justified by the applicant, and is in the public's interest.~~

~~R18-15-505. R18-15-504. Clean Water Project Technical Assistance Priority Lists List~~

- A.** ~~Each year the The Board shall adopt the Drinking Clean Water Project Technical Assistance Priority List and the Wastewater Project Technical Assistance Priority List for the annual funding cycle described in the Technical Assistance Intended Use Plan. The Board shall not adopt lists a list for a year funding cycle in which funds are not adequate to assist any projects.~~

- B. ~~When If~~ the ~~project technical assistance priority lists~~ are Clean Water Project Technical Assistance Priority List is required pursuant to subsection (A), the Board Authority shall rank the projects by ~~priority class (alphabetized with A as the highest priority class);~~ priority points; and the year the applicant ~~requested~~ requests project technical assistance.
- C. An applicant seeking placement on ~~either project technical assistance priority list~~ the Clean Water Project Technical Assistance Priority List shall make a request for placement of ~~1~~ one or more proposed projects on or before a date specified by the Board Authority. ~~When If~~ requesting placement on ~~either project technical assistance priority list~~ the Clean Water Project Technical Assistance Priority List, an applicant shall submit an application specified by the Board Authority.
- D. The Board Authority shall prepare a draft ~~project technical assistance priority lists~~ Clean Water Project Technical Assistance Priority List and shall hold at least one public meeting to receive comments on the ~~lists~~ list and make copies of the draft ~~project technical assistance priority lists~~ list available to the public at least ~~7~~ seven days before the meeting date.
- E. The Board Authority shall consider all comments given orally at the public meeting or submitted in writing before the close of the written comment period. The Board Authority shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. ~~The Board shall summarize all of~~ After the Authority summarizes the comments received, prepare responses, and prepares responses, the Board and shall adopt the ~~project technical assistance priority lists~~ final Clean Water Project Technical Assistance Priority List.
- F. Throughout the funding cycle, the Board ~~may~~ shall make additions ~~or modifications~~ after the adoption of the final ~~project technical assistance priority lists~~ Clean Water Project Technical Assistance Priority List ~~when if~~ 1 or more of each of the following conditions are met:
- ~~Funds become available to cover the cost of the project and to honor funding commitments made to other projects.~~ The project scores a minimum of 50 points under R18-15-505(A)(1).
 - The additions ~~or modifications~~ are made at a public meeting of the Board.
- ~~G.~~ After an opportunity for public comment at a public meeting, the Board may make modifications to the Clean Water Project Technical Assistance Priority List based on changes to existing conditions pursuant to R18-15-505(A)(1).
- ~~G.H.~~ After an opportunity for public comment at a public meeting of the Board, the Board may remove a project from the ~~project technical assistance priority lists~~ Clean Water Project Technical Assistance Priority List ~~under any 1~~ one or more of the following circumstances:
- The applicant has completed the technical assistance project.
 - The project is no longer an eligible project.
 - The applicant requests removal ~~or~~ or
 - The applicant is no longer an eligible applicant.
- ~~H.I.~~ The Board Authority shall provide clean water project technical assistance to eligible applicants for proposed projects in priority order according to the ~~project technical assistance priority lists~~ Clean Water Project Technical Assistance Priority List developed pursuant to this Section. If the Board Authority determines that an applicant will not be able to proceed with a project, the Board shall bypass that project. The Board Authority shall provide written notice to the applicant that the project has been bypassed. The Board Authority shall replace the bypassed project with the next project on the ~~project technical assistance priority lists~~ Clean Water Project Technical Assistance Priority List in rank order that is ready to accept technical assistance.

R18-15-505. Priority List Ranking Criteria for Clean Water Project Technical Assistance

- A.** The Authority, through its Board, shall rank projects using priority values obtained from the following formula:

PV = EC + PB + LFC, where:

PV = Priority Value

EC = Existing Conditions

PB = Project Benefits

LFC = Local Fiscal Capacity

- 1.** Existing Conditions (EC) -- The Authority shall award EC points up to a maximum of 200 points using the following formula:

EC = CC + PYF, where:

CC = Current Conditions

PYF = Prior Year Funding

- a.** Current Conditions (CC) -- The Authority shall award CC points up to a maximum of 100 points using only one of the following categories:

- i.** Surface Water Pollution (Sewerage Facilities):

(1) 100 points if the project corrects a sewer overflow.

(2) 80 points if the project corrects a wastewater treatment facility non-compliance.

(3) 60 points if the project corrects excessive inflow and infiltration.

(4) 40 points if the project repairs a lift or pump station.

- ii.** Untreated or Uncontrolled Runoff (shown to be polluting either surface or ground water):

(1) 100 points if the project constructs or repairs a stormwater treatment or management facility.

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- vi. 0 points if the project will not generate reclaimed water for direct reuse.
 - c. Consolidation & Regionalization (CR) -- The Authority shall award CR points up to a maximum of 50 points as follows:
 - i. 20 points if the applicant is consolidating the physical facilities of existing multiple facilities.
 - ii. 20 points if the applicant is extending service to existing areas currently served by another facility.
 - iii. 5 points if the applicant is consolidating the operations of existing multiple facilities.
 - iv. 5 points if the applicant is consolidating the ownership of existing multiple facilities.
 - 4. Local Fiscal Capacity (LFC) -- The Authority shall award LFC points up to a maximum of 100 points using the following formula:

LFC = MHI + UF + I. where:
LFC = Local Fiscal Capacity
MHI = Median Household Income
UF = User Fees
I = Indebtedness

 - a. Median Household Income (MHI) -- The Authority shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
 - i. 40 points if the area's MHI is less than 40% of the State's MHI.
 - ii. 30 points if the area's MHI is greater than or equal to 40% but less than 60% of the State's MHI.
 - iii. 20 points if the area's MHI is greater than or equal to 60% but less than 80% of the State's MHI.
 - iv. 10 points if the area's MHI is greater than or equal to 80% but less than 100% of the State's MHI.
 - v. 0 points if the area's MHI is greater than or equal to 100% of the State's MHI.
 - b. User Fees (UF) -- The Authority shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
 - i. 30 points if the rates are more than 1.5% of the area's MHI.
 - ii. 15 points if the rates are from 1% to 1.5% of the area's MHI.
 - iii. 0 points if the rates are less than 1% of the area's MHI.
 - c. Indebtedness (I) -- The Authority shall divide existing indebtedness and proposed indebtedness by the number of users (Indebtedness/Number of Users) and divide the result by the service area's MHI to award points as follows:
 - i. 30 points if the existing and proposed indebtedness is more than 1% of the area's MHI.
 - ii. 15 points if the existing and proposed indebtedness is from .5% to 1% of the area's MHI.
 - iii. 0 points if the existing and proposed indebtedness is less than .5% of the area's MHI.
 - d. The Authority may use the most recent United States census data to determine the applicant's and the state's median household income. If the Authority or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than one income area, the Authority shall use an average of income areas to define the service area's median household income.
- B.** The Authority shall rank tied scores by placing the project with the highest Local Fiscal Capacity points pursuant to R18-15-505(A)(4) above all other tied projects.

R18-5-506. Project Technical Assistance Priority Classes Fundable Range for Clean Water Project Technical Assistance Grants

- A.** The Board shall evaluate each application submitted and place it into a priority class.
- B.** Class A -- The Board shall designate a project as Priority Class A if both the following conditions exist:
- 1. The goal of the project is to eliminate either of the following:
 - a. An environmental nuisance as defined in A.R.S. § 49-141.
 - b. A public health hazard declared by a regulatory authority.
 - 2. Corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:
 - a. An administrative order issued by a regulatory authority.
 - b. A court order or decision.
 - c. A voluntary compliance agreement with a regulatory authority.
 - d. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 - e. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.
- C.** Class B -- The Board shall designate a project as Priority Class B if 1 or more of the following conditions exists:
- 1. The applicant has been issued an administrative order by a regulatory authority.
 - 2. The applicant is subject to a court order or decision.
 - 3. The applicant has entered into a voluntary compliance agreement with a regulatory authority.
 - 4. The applicant has entered into a corrective action plan established by a regulatory authority, which may include restrictions on construction, connections, or development.

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- D.** ~~Class C~~ — ~~The Board shall designate a technical assistance project as Priority Class C if the goal of the project is to upgrade or rehabilitate existing capability or existing facility design.~~
- A.** The Board shall adopt a Fundable Range for Clean Water Project Technical Assistance Grants based on projects ranked on the Priority List. The Board shall not adopt a new Fundable Range for funding cycles in which funds are not adequate to assist any projects.
- B.** The Authority shall prepare a draft and a final Fundable Range at the same time and in the same manner as the Priority List for Clean Water Project Technical Assistance in accordance with R18-15-504(D) and (E).
- C.** The Board shall rank projects within the Fundable Range based on priority values obtained from the Priority List for Clean Water Project Technical Assistance and the year the applicant requires funding. The Fundable Range addressed by this Section is limited to systems serving fewer than 10,001 people.
- D.** As a guide to award project technical assistance grants or consultant contributions, the Board may require applicants to contribute to fund total project costs as follows, based on ability to contribute:
1. 25% contribution towards total project costs if the project received 70 or more points for Local Fiscal Capacity pursuant to R18-15-505(A)(4).
 2. 50% contribution towards total project costs if the project received fewer than 70 but at least 50 points for Local Fiscal Capacity pursuant to R18-15-505(A)(4).
 3. 75% contribution towards total project costs if the project received fewer 50 but at least 30 points for Local Fiscal Capacity pursuant to R18-15-505(A)(4).
 4. If the applicant receives fewer than 30 points for Local Fiscal Capacity pursuant to R18-15-505(A)(4), the applicant may still be eligible for a project technical assistance loan under R18-15-507.
 5. An applicant's contribution can include cash contributions, in-kind contributions, and contributions financed by loans or debt from any source including a loan from the Authority. The Board may waive or modify the applicant's contribution for total project costs if the Board determines, at a public meeting, that the applicant is unable to fund the contribution in accordance with this subsection.
- E.** The Board shall make additions to the Fundable Range if each of the following conditions are met:
1. The project is on the Priority List for Clean Water Project Technical Assistance.
 2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects, and
 3. The additions are made by the Board at a public meeting.
- F.** After an opportunity for public comment at a public meeting, the Board shall remove a project from the Fundable Range under one or more of the following circumstances:
1. The project has been removed from the Priority List for Clean Water Project Technical Assistance.
 2. The project has received all technical assistance requested by the applicant, or
 3. The applicant fails to proceed with the project.

R18-15-507. ~~Project Technical Assistance Priority Scoring Criteria~~ Fundable Range for Clean Water Project Technical Assistance Loans

- A.** ~~The Board shall rank projects within priority classes using priority values obtained from the following formula: $PV = PF + LFC + CF$ where:~~
PV = Priority Value
PF = Population Factor
LFC = Local Fiscal Capacity
CF = Contribution Factor
- B.** ~~Population Factor (PF) — The Board shall award PF points up to a maximum of 60 points as follows:~~
1. ~~Sixty points if the system serves 2,500 or fewer people.~~
 2. ~~Forty five points if the system serves 2,501 to 5,000 people.~~
 3. ~~Thirty points if the system serves 5,001 to 7,500 people.~~
 4. ~~Fifteen points if the system serves 7,501 to 10,000 people.~~
 5. ~~Zero points if the system serves more than 10,000 people.~~
- C.** ~~Local Fiscal Capacity (LFC) — The Board shall award LFC points up to a maximum of 80 points as follows:~~
1. ~~Median Household Income (MHI) — The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:~~
 - a. ~~Forty points if the area's MHI is less than 25% of the state's MHI.~~
 - b. ~~Thirty points if the area's MHI is at least 25% but less than 50% of the state's MHI.~~
 - c. ~~Twenty points if the area's MHI is at least 50% but less than 75% of the state's MHI.~~
 - d. ~~Ten points if the area's MHI is at least 75% but less than 100% of the state's MHI.~~
 - e. ~~Zero points if the area's MHI is 100% or more of the state's MHI.~~
 2. ~~User Fees — The Board shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (present user fees, rates, and charges/area MHI) to award points as follows:~~
 - a. ~~Twenty points if the rates are more than 2% of the area's MHI.~~
 - b. ~~Ten points if the rates are 1% to 2% of the area's MHI.~~

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- e. Zero points if the rates are less than 1% of the area's MHH.
- 3. ~~Investment—The Board shall divide existing indebtedness and existing investments by the service area's MHH (investment/area MHH) to award points as follows:~~
 - a. ~~Twenty points if the existing investment is more than 1% of the area's MHH.~~
 - b. ~~Ten points if the existing investment is .5% to 1% of the area's MHH.~~
 - e. ~~Zero points if the existing investment is less than .5% of the area's MHH.~~
- D.** ~~Contribution Factor (CF)—The Board shall award CF points up to a maximum of 60 points as follows:~~
 - 1. ~~Sixty points if the applicant contributes 50% or more of the project costs.~~
 - 2. ~~Forty-five points if the applicant contributes at least 37.5% but less than 50% of the project costs.~~
 - 3. ~~Thirty points if the applicant contributes at least 25% but less than 37.5% of the project costs.~~
 - 4. ~~Fifteen points if the applicant contributes at least 12.5% but less than 25% of the project costs.~~
 - 5. ~~Zero points if the applicant contributes less than 12.5% of the project costs.~~
 - 6. ~~An applicant's contribution can include cash contributions, in kind contributions, and contributions financed by loans or debt from any source including a loan from the Authority.~~
- E.** ~~The Board shall use the most recent federal or state data to determine the applicant's service population and median household income and the state's median household income. If the Board or the applicant determines that these data are insufficient, the applicant shall use a reliable and impartial entity to conduct a population or income survey of the applicant's service area.~~
- F.** ~~After scoring within each class, the Board shall rank tied scores by placing the applicant serving the smallest population above all other tied applications in the class.~~
- A.** The Board shall adopt a Fundable Range for Clean Water Project Technical Assistance Loans based on projects ranked on the Priority List. The Board shall not adopt a new Fundable Range for funding cycles in which funds are not adequate to assist any projects.
- B.** The Authority shall prepare a draft and a final Fundable Range at the same time and in the same manner as the Priority List for Clean Water Project Technical Assistance in accordance with R18-15-504(D) and (E).
- C.** The Authority shall rank projects within the Fundable Range based on priority values obtained from the Priority List for Clean Water Project Technical Assistance and the year the applicant requires funding.
- D.** The Authority shall only provide project technical assistance loans to applicants eligible under this Section.
- E.** The Board shall make additions to the Fundable Range if each of the following conditions are met:
 - 1. The project is on the Priority List for Clean Water Project Technical Assistance.
 - 2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects, and
 - 3. The additions are made by the Board at a public meeting.
- F.** After an opportunity for public comment at a public meeting, the Board shall remove a project from the Fundable Range under one or more of the following circumstances:
 - 1. The project has been removed from the Priority List for Clean Water Project Technical Assistance.
 - 2. The project has received all technical assistance requested by the applicant, or
 - 3. The applicant fails to proceed with the project.

R18-15-508. Drinking Water Project Technical Assistance Priority List

- A.** The Board shall adopt a Drinking Water Project Technical Assistance Priority List for the funding cycle described in the Technical Assistance Intended Use Plan. The Board shall not adopt a list for a funding cycle in which funds are not adequate to assist any projects.
- B.** If a Drinking Water Project Technical Assistance Priority List is required under subsection (A), the Authority shall rank the projects by priority points and the year the applicant requests project technical assistance.
- C.** An applicant seeking placement on the Drinking Water Project Technical Assistance Priority List shall make a request for placement of one or more proposed projects on or before a date specified by the Authority. If requesting placement on the Drinking Water Project Technical Assistance Priority List, an applicant shall submit an application specified by the Board.
- D.** The Authority shall prepare a draft Drinking Water Project Technical Assistance Priority List and shall hold at least one public meeting to receive comments on the list and make copies of the draft list available to the public at least seven days before the meeting date.
- E.** The Authority shall consider all comments given orally at the public meeting or submitted in writing before the close of the written comment period. The Authority shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. After the Authority summarizes the comments received and prepares responses, the Board shall adopt the final Drinking Water Project Technical Assistance Priority List.
- F.** Throughout the funding cycle, the Board shall make additions after the adoption of the final Drinking Water Project Technical Assistance Priority List if both of the following conditions are met:
 - 1. The project scores a minimum of 50 points pursuant to R18-15-509(A)(1), and
 - 2. The additions are made at a public meeting of the Board.

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- G.** After an opportunity for public comment at a public meeting, the Board may make modifications to the Drinking Water Project Technical Assistance Priority List based on changes to the existing conditions under R18-15-509(A)(1).
- H.** After an opportunity for public comment at a public meeting of the Board, the Board shall remove a project from the Drinking Water Project Technical Assistance Priority List under one or more of the following circumstances:
1. The applicant has completed the technical assistance project.
 2. The project is no longer an eligible project.
 3. The applicant requests removal, or
 4. The applicant is no longer an eligible applicant.
- I.** The Authority shall provide project technical assistance to eligible applicants for proposed projects in priority order according to the Drinking Water Project Technical Assistance Priority List developed under this Section. If the Authority determines that an applicant will not be able to proceed with a project, the Board shall bypass that project. The Authority shall provide written notice to the applicant that the project has been bypassed. The Authority shall replace the bypassed project with the next project on the Drinking Water Project Technical Assistance Priority List in rank order that is ready to accept technical assistance.

R18-15-509. Priority List Ranking Criteria for Drinking Water Project Technical Assistance

- A.** The Authority, through its Board, shall rank projects using priority values obtained from the following formula:

PV = EC + PB + LFC, where:

PV = Priority Value

EC = Existing Conditions

PB = Project Benefits

LFC = Local Fiscal Capacity

1. Existing Conditions (EC) -- The Authority shall award EC points up to a maximum of 200 points using the following formula:

EC = CC + PYF, where:

CC = Current Conditions

PYF = Prior Year Funding

- a. Current Conditions (CC) -- The Authority shall award CC points up to a maximum of 100 points as follows:
- i. 100 points if the applicant's system is at or above the 80th percentile of the community water systems on the Department's Master Priority List.
 - ii. 80 points if the applicant's system is at or above the 60th percentile but less than the 80th percentile of the community water systems on the Department's Master Priority List.
 - iii. 60 points if the applicant's system is at or above the 40th percentile but less than the 60th percentile of the community water systems on the Department's Master Priority List.
 - iv. 40 points if the applicant's system is at or above the 20th percentile but less than the 40th percentile of the community water systems on the Department's Master Priority List.
 - v. 20 points if the applicant's system is less than the 20th percentile of the community water systems on the Department's Master Priority List.
 - vi. 0 points if the applicant's system is not listed on the Department's Master Priority List.
- b. Prior Year Funding (PYF) -- The Authority shall award PYF points up to a maximum of 100 points with only 1 set of points awarded as follows:
- i. 100 points if the applicant requests project technical assistance to design a project that received pre-design project technical assistance from the Authority in a previous funding cycle.
 - ii. 50 points if the applicant requests additional technical assistance to offset actual costs or justified overruns.
2. Project Benefits (PB) -- The Authority shall award PB points up to a maximum of 200 as follows:
- a. For requests for pre-design project technical assistance, the Authority shall award points as follows:
- i. 200 points if the project receives a combined score of 160 to 200 points for Current Conditions under R18-15-509(A)(1) and Local Fiscal Capacity under R18-15-509(A)(3).
 - ii. 150 points if the project receives a combined score of 120 to 159 points for Current Conditions under R18-15-509(A)(1) and Local Fiscal Capacity under R18-15-509(A)(3).
 - iii. 100 points if the project receives a combined score of 80 to 119 points for Current Conditions under R18-15-509(A)(1) and Local Fiscal Capacity under R18-15-509(A)(3).
 - iv. 50 points if the project receives a combined score of 40 to 79 points for Current Conditions under R18-15-509(A)(1) and Local Fiscal Capacity under R18-15-509(A)(3).
 - v. 0 points if the project receives a combined score of fewer than 40 points for Current Conditions under R18-15-509(A)(1) and Local Fiscal Capacity under R18-15-509(A)(3).
- b. For requests for design project technical assistance, the Authority shall award points as follows:
- PB = WSI + CR, where:
- WSI = Water System Improvement
- CR = Consolidation & Regionalization

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- i. Water System Improvement (WSI) -- The Authority shall award WSI points up to a maximum of 150 points from the following categories:
 - (1) A maximum of 100 points if the applicant's proposed project address deficiencies identified by the Department on the Department's Master Priority List.
 - (2) 25 points if the applicant submitted a complete Capacity Development Plan to the Department.
 - (3) 25 points if the proposed project includes installation of meters.
 - ii. Consolidation & Regionalization (CR) -- The Authority shall award CR points up to a maximum of 50 points as follows:
 - (1) 20 points if the applicant is consolidating the physical facilities of existing multiple facilities.
 - (2) 20 points if the applicant is extending service to existing areas currently served by another facility.
 - (3) 5 points if the applicant is consolidating the operations of existing multiple facilities.
 - (4) 5 points if the applicant is consolidating the ownership of existing multiple facilities.
3. Local Fiscal Capacity (LFC) -- The Authority shall award LFC points up to a maximum of 100 points using the following formula:
- LFC = MHI + UF + I, where:
LFC = Local Fiscal Capacity
MHI = Median Household Income
UF = User Fees
I = Indebtedness
- a. Median Household Income (MHI) - The Authority shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
 - i. 40 points if the area's MHI is less than 40% of the State's MHI.
 - ii. 30 points if the area's MHI is greater than or equal to 40% but less than 60% of the State's MHI.
 - iii. 20 points if the area's MHI is greater than or equal to 60% but less than 80% of the State's MHI.
 - iv. 10 points if the area's MHI is greater than or equal to 80% but less than 100% of the State's MHI.
 - v. 0 points if the area's MHI is greater than or equal to 100% of the State's MHI.
 - b. User Fees (UF) -- The Authority shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
 - i. 30 points if the rates are more than 1.5% of the area's MHI.
 - ii. 15 points if the rates are from 1% to 1.5% of the area's MHI.
 - iii. 0 points if the rates are less than 1% of the area's MHI.
 - c. Indebtedness (I) -- The Authority shall divide existing indebtedness and proposed indebtedness by the number of users (Indebtedness/Number of Users) and divide the result by the service area's MHI to award points as follows:
 - i. 30 points if the existing and proposed indebtedness is more than 1% of the area's MHI.
 - ii. 15 points if the existing and proposed indebtedness is from .5% to 1% of the area's MHI.
 - iii. 0 points if the existing and proposed indebtedness is less than .5% of the area's MHI.
 - d. The Authority may use the most recent United States census data to determine the applicant's and the state's median household income. If the Authority or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than one income area, the Authority shall use an average of income areas to define the service area's median household income.
- B.** The Authority shall rank tied scores by placing the project with the highest Local Fiscal Capacity points under R18-15-509(A)(3) above all other tied projects.

R18-15-510. Fundable Range for Drinking Water Project Technical Assistance Grants

- A.** The Board shall adopt a Fundable Range for Drinking Water Project Technical Assistance Grants based on projects ranked on the Priority List. The Board shall not adopt a new Fundable Range for funding cycles in which funds are not adequate to assist any projects.
- B.** The Authority shall prepare a draft and a final Fundable Range at the same time and in the same manner as the Drinking Water Project Technical Assistance Priority List in accordance with R18-15-508(D) and (E).
- C.** The Authority shall rank projects within the Fundable Range based on priority values obtained from the Drinking Water Project Technical Assistance Priority List and the year the applicant requires funding. The Fundable Range addressed by the section shall be limited to systems fewer than 10,001 people.
- D.** As a guide to award project technical assistance grants or consultant contributions, the Board may require applicants to contribute to fund total project costs as follows, based on ability to contribute:
 - 1. 25% contribution towards total project costs if the project received 70 or more points for Local Fiscal Capacity under R18-15-509(A)(3).
 - 2. 50% contribution towards total project costs if the project received fewer than 70 but at least 50 points for Local Fiscal Capacity under R18-15-509(A)(3).

3. 75% contribution towards total project costs if the project received fewer than 50 but at least 30 points for Local Fiscal Capacity under R18-15-509(A)(3).
 4. If the applicant receives fewer than 30 points for Local Fiscal Capacity pursuant to R18-15-509(A)(3), the applicant may still be eligible for a project technical assistance loan under R18-15-511.
 5. An applicant's contribution can include cash contributions, in-kind contributions, and contributions financed by loans or debt from any source including a loan from the Authority. The Board may waive or modify the applicant's contribution for total project costs if the Board determines, at a public meeting, that the applicant is unable to fund the contribution in accordance with this subsection.
- E.** The Board shall make additions to the Fundable Range if each of the following conditions are met:
1. The project is on the Drinking Water Project Technical Assistance Priority List.
 2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects, and
 3. The additions are made by the Board at a public meeting.
- F.** After an opportunity for public comment at a public meeting, the Board shall remove a project from the Fundable Range under one or more of the following circumstances:
1. The project has been removed from the Drinking Water Project Technical Assistance Priority List.
 2. The project has received all technical assistance requested by the applicant, or
 3. The applicant fails to proceed with the project.

R18-15-511. Fundable Range for Drinking Water Project Technical Assistance Loans

- A.** The Board shall adopt a Fundable Range for Drinking Water Project Technical Assistance Loans based on projects ranked on the Priority List. The Board shall not adopt a new Fundable Range for funding cycles in which funds are not adequate to assist any projects.
- B.** The Authority shall prepare a draft and a final Fundable Range at the same time and in the same manner as the Drinking Water Project Technical Assistance Priority List in accordance with R18-15-508(D) and (E).
- C.** The Authority shall rank projects within the Fundable Range based on priority values obtained from the Drinking Water Project Technical Assistance Priority List and the year the applicant requires funding.
- D.** The Authority shall provide only project technical assistance loans to applicants eligible under this section.
- E.** The Board shall make additions to the Fundable Range if each of the following conditions are met:
1. The project is on the Drinking Water Project Technical Assistance Priority List.
 2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects, and
 3. The additions are made by the Board at a public meeting.
- F.** After an opportunity for public comment at a public meeting, the Board shall remove a project from the Fundable Range under one or more of the following circumstances:
1. The project has been removed from the Drinking Water Project Technical Assistance Priority List.
 2. The project has received all technical assistance requested by the applicant, or
 3. The applicant fails to proceed with the project.

ARTICLE 6. HARDSHIP GRANT FUND

R18-15-601. Types of Assistance Available

- A.** The Authority may provide hardship grants for any of the following purposes:
1. In accordance with A.R.S. § 49-1267(D)(1), financial assistance in the form of grants to political subdivisions and Indian tribes to design, plan, acquire, construct, or improve wastewater collection and treatment facilities.
 2. In accordance with A.R.S. § 49-1267(D)(2), technical assistance related to the operation and maintenance of wastewater systems.
- B.** The ~~Board~~ Authority shall describe projects and proposed assistance in the Clean Water Revolving Fund Intended Use Plan; developed pursuant to ~~under~~ R18-15-203 or in the Technical Assistance Intended Use Plan developed under R18-15-501.

R18-15-602. Eligibility Requirements for Hardship Grant Financial Assistance

- A.** To be eligible to receive financial assistance an applicant shall propose a project to design, plan, acquire, construct, or improve wastewater collection and treatment facilities owned by political subdivisions or Indian tribes.
- B.** An applicant eligible under subsection (A) shall also meet all of the following requirements before receiving financial assistance:
1. The applicant has applied for financial assistance in accordance with R18-15-102(A), (B), and (E).
 2. The project is on the Clean Water Revolving Fund Priority List developed pursuant to ~~R18-15-204, R18-15-205, and R18-15-206~~ under Article 2 of this Chapter or the project is on the Clean Water Project Technical Assistance Priority List developed under Article 5 of this Chapter.
 3. The applicant is a community in a rural area.
 4. The applicant is a community of more than a single household but no more than 3,000 persons as measured by the most recent United States decennial census.

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5. The applicant is a community that lacks centralized wastewater treatment or collection systems or needs improvements to wastewater treatment systems.
6. On the date the applicant applies for assistance, the per capita annual income of the community's residents does not exceed 80% of national per capita income.
7. On the date the applicant applies for assistance, the community's local unemployment rate exceeds by one percentage point or more the most recently reported average yearly national unemployment rate.

R18-15-603. Hardship Grant Financial Assistance Awards

- A. The Board shall award financial or technical assistance to eligible applicants for proposed projects in priority order according to the priority ~~list~~ lists developed ~~pursuant to R18-15-204, R18-15-205, and R18-15-206~~ under Articles 2 and 5 of this Chapter. If the ~~Board Authority~~ Board Authority determines that an eligible applicant will not be able to proceed with a project, the Board shall bypass that project. The ~~Board Authority~~ Board Authority shall provide written notice to the applicant that the project has been bypassed. The ~~Board Authority~~ Board Authority shall replace the bypassed project with the next eligible applicant and eligible project ~~on the Clean Water Revolving Fund Priority List in rank order~~ pursuant to priority lists developed under Articles 2 and 5 of this Chapter.
- B. The Board shall award financial or technical assistance to eligible applicants based on ~~the priority class assigned to an applicant's project under R18-15-205~~, the Local Fiscal Capacity points assigned to an applicant under ~~R18-15-206(G), R18-15-205(A)(3) or R18-15-505(A)(4)~~ and an applicant's ability to generate sufficient revenues to pay debt service.

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

R18-15-701. Interest Rate Setting and Forgivable Principal

- A. The Authority shall prescribe the rate of interest, including interest rates as low as 0% on Authority loans, bond purchase agreements, and linked deposit guarantees based on ~~the priority class assigned to an applicant's project under R18-15-205 or R18-15-305~~, the Local Fiscal Capacity points assigned to an applicant under ~~R18-15-206(G) or R18-15-306(G)~~ R18-15-205(A)(3) or R18-15-305(A)(3), and an applicant's ability to generate sufficient revenues to pay debt service.
- B. The Authority may forgive principal on Authority loans, bond purchase agreements, and linked deposit guarantees made to local units of government to plan, acquire, construct, or improve drinking water facilities.
- C. In accordance with subsection (B) of this Section, the Authority may forgive principal based on ~~the priority class assigned to an applicant's project under R18-15-305~~, the Local Fiscal Capacity points assigned to an applicant under ~~R18-15-306(G)~~ R18-15-305(A)(3), and an applicant's ability to generate sufficient revenues to pay debt service.