

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

[R07-423]

PREAMBLE

1. Sections Affected

Article 8
R17-4-801
R17-4-802

Rulemaking Action

New Article
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 28-366
Implementing statute: A.R.S. § 28-455

3. The effective date of the rules:

February 2, 2008

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3570, September 29, 2006
Notice of Proposed Rulemaking: 13 A.A.R. 2921, August 24, 2007

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

Name: Celeste M. Cook, Administrative Rules Analyst
Address: Administrative Rule Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007
Telephone: (602) 712-7624
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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/MVDRules/rules.asp.

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

The Arizona Department of Transportation, Motor Vehicle Division, proposes to promulgate rules to prescribe identification and criterion requirements for requesting and releasing a Motor Vehicle Record.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a pre-

Notices of Final Rulemaking

vious grant of authority of a political subdivision of this state:

Not applicable

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

There are no costs imposed by this rulemaking other than the resources necessary for promulgating the rule. There is an unquantifiable benefit to persons interested in requesting a motor vehicle record as the rules clarify the requirements and restrictions for requesting a Motor Vehicle Record.

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

An internal review resulted in a request to remove information regarding the permissible and non-permissible requesters and the general and one-time consent to release of personal information, as the verbiage was duplicative of A.R.S. § 28-455. At the request of the Governor's Regulatory Review Council staff, for clarity, "certified record" was defined. In addition, minor grammatical and style corrections were made at the request of agency staff.

11. A summary of the comments made regarding the rules and the agency response to them:

Not applicable

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. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

ARTICLE 8. MOTOR VEHICLE RECORDS

Section

R17-4-801. Definitions

R17-4-802. Motor Vehicle Record Request

ARTICLE 8. MOTOR VEHICLE RECORDS

R17-4-801. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 28-440, the following definitions apply to this Article, unless otherwise specified:

"Certified record" means a copy of a document designated as a true copy by the agency officer entrusted with custody of the original to be used for purposes prescribed under A.R.S. § 28-442.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division.

"Director" means the Arizona Department of Transportation's Motor Vehicle Division Director or the Director's designee.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"Driver license number" means the system-generated, or other distinguishing number, assigned by the Division to a person for a driver license, identification card, or instruction permit record.

"Driver record" means a motor vehicle record more specifically defined to include any data that pertains to a driver license, identification card, instruction permit, or driver related activities.

"Requester" means the person, as defined under A.R.S. § 41-1001, requesting a motor vehicle record.

"Special MVR" means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

"Title and registration record" means a motor vehicle record more specifically defined to include any data that pertains to a vehicle title or registration record.

R17-4-802. Motor Vehicle Record Request

- A.** Identification requirements. The requester of a motor vehicle record shall present valid photo identification at the time a motor vehicle record request is made.
- B.** Charges and exemptions. The requester of a motor vehicle record shall pay the appropriate motor vehicle record copy charge under A.A.C. R17-1-202, unless exempt under A.R.S. § 28-446.
- C.** Motor vehicle record types. Under this Article, the Division may release any of the following motor vehicle record types:
1. Title and Registration record, uncertified;
 2. Title and Registration record, certified;
 3. Driver 39-month record, uncertified;
 4. Driver five-year record, certified;
 5. Driver history record, certified; and
 6. Special MVR, uncertified.
- D.** Permissible use record request. A requester who has a permissible use under A.R.S. § 28-455 shall provide at least one of the items of information listed in this subsection when requesting a motor vehicle record.
1. For a title and registration motor vehicle record:
 - a. Vehicle identification number.
 - b. License plate number, or
 - c. Vehicle owner's full name.
 2. For a driver motor vehicle record:
 - a. The name of the person whose record is requested.
 - b. Driver license number, or
 - c. Customer number.
- E.** Non-permissible use record request. A requester who does not have a permissible use under A.R.S. § 28-455, but who presents either a notarized Consent To Release Motor Vehicle Record - General form #96-0276 or a Consent To Release Motor Vehicle Record - One-Time form #96-0463 from the person whose motor vehicle record is requested shall provide the items of information listed in this subsection when requesting a motor vehicle record. The Consent To Release Motor Vehicle Record forms are available at all Customer Service and Third Party Provider offices and online at <http://mvd.azdot.gov/mvd/FormsandPub/mvd.asp>.
1. For a title and registration motor vehicle record:
 - a. The vehicle identification number and license plate number, and
 - b. The vehicle owner's full name, or
 - c. The vehicle owner's residence address.
 2. For a driver motor vehicle record:
 - a. The name and driver license number or customer number of the person whose record is requested, and
 - b. The person's date of birth, or
 - c. The person's address, or
 - d. The person's Arizona driver license expiration date.
- F.** General consent to release information. The Division shall record a person's general consent to release information on the person's driver and title and registration records.
1. The general consent to release information is valid until revoked, in writing, by the person.
 2. A person may submit the written notice of revocation:
 - a. In person, at a Customer Service office or Authorized Third Party Provider; or
 - b. By mail, at Motor Vehicle Division, 1801 W. Jefferson St., P.O. Box 2100, Phoenix, Arizona 85007-2100.
- G.** Insurance companies requesting a driver or title and registration record. The Division shall not release to an insurer, broker, managing general agent, authorized agent or insurance producer any information in a person's driving record pertaining to a traffic violation that occurred 40 months or more before the date of a request for the release of the information.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

[R07-421]

PREAMBLE

1. Sections Affected

R18-2-326
R18-2-511

Rulemaking Action

Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 49-425

Implementing statutes: A.R.S. §§ 49-426 and 49-455

3. The effective date of the rules:

December 4, 2007

Immediately upon filing with the Secretary of State. ADEQ is requesting an immediate effective date for these rules under A.R.S. § 41-1032. A.R.S. § 41-1032(A)(1) allows for an immediate effective date to preserve the public health or safety. If the APAF becomes insolvent, permitted sources will, in effect, be unregulated, thus putting the health and safety of the public at risk.

The lowest APAF cash balances have historically occurred in November of each calendar year, the month immediately prior to the mailing of invoices for emissions and fixed fees. Recent projections place the fund balances at the end of November 2007 at approximately \$600,000. This sum will only cover approximately 1.5 months of operating expenses, meaning that without bills being sent in the beginning of December 2007, the APAF is projected to have a negative balance in January 2008.

Additionally, if bills under the currently effective version of A.A.C. R18-2-326 were to be sent in December of 2007, projections show that the APAF would run a negative fund balance in September or October of 2008, two or three months before the next annual billing cycle in December of 2008.

As a result of the information presented above, ADEQ has determined that delaying the rulemaking to renegotiate a new fee rule, or allow for additional public comment, would result in negative fund balances in the Air Permit Administrative Fund immediately, or before the next Fiscal Year's billing cycle, thus putting the public's health and safety at risk.

A.R.S. § 41-1032(A)(2) also allows an immediate effective date in order to avoid a violation of federal law or regulations. Section 502(b)(3) of the Clean Air Act directs states to require source owner or operators to pay a fee sufficient to cover all reasonable costs required to develop and administer the Title V Operating Permit Program required by the Act. 40 CFR 70.9(b)(1) requires state permit programs to establish a fee schedule that results in the collection and retention of sufficient revenues to cover permit program costs.

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2099, June 15, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 3143, September 14, 2007

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

Name: Carrie Bojda

Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 771-4210 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)

Fax: (602) 771-2366

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

Summary. ADEQ is amending these rules to change the fees it charges for air quality permits. The fees that will be affected are fees for permit actions, administrative and emission based fees for Title V sources, inspection fees for

non-Title V sources, and fees for general permits. ADEQ is seeking an immediate effective date for these rules to ensure fund solvency.

Background: Arizona Revised Statutes, Title 49, Chapter 3, Article 2, Section 455 (A.R.S. § 49-455) established what is commonly referred to as the Air Permit Administration Fund (APAF). Pursuant to A.R.S. § 49-426(E), the Director of ADEQ was to establish by rule, a system of fees that was consistent with or equivalent to the fees that were prescribed by Section 502 of the Clean Air Act. In addition, the statute requires a system for collecting fees for permitting and inspecting sources which were required to obtain air quality permits pursuant only to state law.

When first established in 1993, revenues from the fee rule were primarily from annual emission-based fees assessed on sources subject to Title V of the Clean Air Act (40 CFR 70). One of the recognized issues related to the initial program was that the vast majority of revenues came from a relatively small number of sources, which financed a significant portion of program costs or activities related to a large number of small permitted sources. In addition, the dependence upon emissions fees made program funding vulnerable to curtailments in source operations.

ADEQ developed an updated workload analysis in 1999 of the costs associated with all components of the air quality programs and initiated a stakeholder process to develop a modified structure for revenues that would provide a more stable revenue stream and redistribute the cost of the permitting programs. Based upon this information, the stakeholder community hired the Kendall Group, Inc. to develop a model that would balance revenue-generating activities such as emissions fees, annual administrative/inspection fees, and hourly billable rates with the expenditures necessary to support the permitting and compliance programs for the Air Quality Division. This model resulted in a new fee rule that went into effect on January 1, 2002.

Revenues in Fiscal Year 2003, the first year of the revised fee rule, failed to meet projections. Total expenditures for that Fiscal Year were \$5.1 million, while revenues only realized \$3.4 million. Beginning in Fiscal Year 2004 (July 1, 2003 – June 30, 2004), actual revenues were insufficient to achieve on-going Fund solvency. In order to ensure the projected solvency of the Fund, subsidies from other funds (general and federal) were used until more permanent measures could be employed. In Fiscal Year 2005, ADEQ retained the services of the Kendall Group, Inc. to revisit the model used to establish the fee rule, resulting in a revision in November 2004. This revision again caused revenues to more closely match projected expenditures. While the 2004 revisions increased revenues, they did not permanently resolve insolvency issues.

The revision to the rule is consistent with standard, prudent, business practice at both the state and federal level to maintain a reasonable level of working capital or solvency from one business cycle to the next. Using this definition, projections forecast that the APAF would be insolvent in November of 2007, while still reflecting a positive cash balance. Recent projections; however, forecast negative Fund balances beginning in September 2008 (Fiscal Year 2009).

Due to these projections, the model used to develop the fee rule in 2004 was again revisited to determine if it accurately predicted the costs associated with implementing the permitting and compliance programs. Changes were made to the model and resulting spreadsheet based on current conditions, which resulted in the following recommendations:

- Permit processing fees should be increased from \$105.80 per hour to \$133.50 per hour to reflect the true burdened cost of providing permit processing services.
- Annual administrative fees should be raised from an average of \$3,874 to \$6,371 per source.
- The fee per ton of pollution emitted should be raised from \$14.17 to \$38.25.
- Any changes to the permit fee rules should become effective as soon as possible to address the afore mentioned solvency issues.
- Periodic billing of permit processing fees should be implemented.
- Applicants using the Tier 4 method under R18-2-1708(B) for conducting a risk management analysis (RMA) should pay any costs incurred in ADEQ's contracting for, hiring or supervising work of outside consultants.
- The permit processing fee should apply to all new applications for Authorizations to Operate for new equipment.
- Permit applicants should pay the actual costs of public notice, which include publications and mailings.

Along with the above recommendations, a new source category, Air Curtain Destructors, has been added based on a federal rulemaking.

ADEQ held three meetings in August 2007 to inform stakeholders of the seriousness of the problem and to discuss the upcoming proposed rule revisions. As a result, ADEQ is amending R18-2-326 and R18-2-511 to implement the recommendations noted above with an immediate effective date.

Section by Section Explanation of Significant Changes.

R18-2-326. Fees Related to Individual Permits: The amendments in this Section will make several changes to the rule. First, the rule revision will raise the current permit processing fee from \$105.80 to \$133.50 per hour for all permit processing time required for a billable permit action. Second, administrative fees will be raised an average of 30% per source. Third, emission fees will be raised from \$14.17 to \$38.25. Fourth, an owner or operator will be required to

Notices of Final Rulemaking

pay the actual costs of public notice according to R18-2-330. Fifth, periodic billing will be implemented for all fees based on the most recent accounting of ADEQ or contractor time spent processing a permit application. Sixth, Air Curtain Destructors will be added to the list of sources paying Class I Title V administrative fees. The addition of this source category reflects an amendment to the Federal New Source Performance published December 16, 2005, at 70 FR 74869. Seventh, the utilities source categories in R18-2-326(C)(1) have been amended based on public comment. The source category previously named "Utilities - Natural Gas" is now named "Utilities - Fossil Fuel-fired Except Coal" and the source category previously named "Utilities - Fossil Fuel" is now named "Utilities - Coal Fired." Finally, if an applicant for a permit uses the Tier 4 method to conduct a Risk Management Analysis (RMA) under R18-2-1708(B), the applicant will pay all fees incurred for contacting, hiring or supervising the work of outside consultants. This will include other state agencies acting in that capacity. Other minor and technical changes were also made to this Section to improve clarity.

R18-2-511. Fees Related to General Permits: The amendments proposed in this Section parallel those in R18-2-326. First, administrative fees will be raised an average of approximately 40% per source. The reason for the difference in the increase between individual permits in R18-2-326 and general permits in R18-2-511, is that general permit fees were not adjusted by the CPI in fiscal years '06, or '07, while individual permits were increased in both fiscal years. Second, an owner or operator with a general permit will pay the fee of \$500 for all new applications for Authorizations to Operate (ATOs) for new equipment. Third, the owner or operator of a source that is required to have a general permit and has undergone initial startup by January 1st of the billing year will pay the applicable administrative or inspection fee. This proposed change applies to those operating facilities that have already applied for an air quality permit through ADEQ and have begun operation, but have not yet been issued the permit by the Department. Finally, the Class II Non-Title V source category of gas service stations has been deleted. In preparing to renew the general permit for gas service stations, ADEQ determined that the emission factors required to trigger the issuance of the permit were not met. Other minor and technical changes were also made to this Section to improve clarity.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

"Review, Assessment and Recommendations for the Arizona Department of Environmental Quality (ADEQ) Air Permit Administration Fund (Appropriated Fund 2200)," prepared by The Kendall Group, Inc., June 9, 2004.

"Arizona Department of Environmental Quality Revised White Paper for Permit Fee Amendments," prepared by Eric C. Massey, August 10, 2007.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:

A. Rule Identification

This rulemaking amends A.A.C. R18-2-326, "Fees Related to Individual Permits" and A.A.C. R18-2-511, "Fees Related to General Permits."

B. Executive Summary

The goal of this rulemaking is to balance the Air Permit Administration Fund (APAF) revenues with appropriate and necessary Air Quality Division expenditures. The incremental cost to the regulated community is represented by the change in costs for the permit program. Funds include an emissions-based fee, administrative and inspection fees, and an hourly rate fee.

Regulated sources in Arizona are expected to generate approximately \$7.9 million in annual revenues for Title V and Non-Title V permits. Annual revenues required to operate the air quality permits program were estimated at \$7.1 million. The difference between expected revenues and program costs represents an annual surplus to allow the APAF to remain solvent and to allow for variability in any one of its funding sources.

By balancing revenues and expenditures, the regulated community is avoiding the potential impacts of failure of the APAF. Under Title V of the Clean Air Act and federal implementing regulations, EPA would be forced to intervene and ADEQ would no longer be able to staff and operate the permitting program. Finally, the permit fees under this rule fund program operations such as inspections.

The proposed changes would become effective during Fiscal Year 2008. Adequate revenues to operate ADEQ's air permit program will help improve air quality in the state and facilitate timely permit issuance. ADEQ expects that a well-functioning air permit program has potential to preserve a good business climate, increase opportunities for employment, and generate public health benefits.

C. Background

I. History of the Air Permit Administration Fund

Arizona Revised Statutes, Title 49, Chapter 3, Article 2, Section 455 (A.R.S. § 49-455) established what is commonly referred to as the Air Permit Administration Fund (APAF). Pursuant to A.R.S. § 49-426(E), the Director of ADEQ

Notices of Final Rulemaking

was to establish by rule, a system of fees that was consistent with or equivalent to the fees that were prescribed by Section 502 of the Clean Air Act. In addition, the statute requires a system for collecting fees for permitting and inspecting sources which were required to obtain air quality permits pursuant only to state law.

a. Overview of Calendar Years 1993-2001

In 1993, ADEQ adopted a system of rules to implement an air quality permitting program similar to the program established by EPA under Code of Federal Regulations, Title 40, Chapter 70 (40 CFR 70). This program is commonly known as the Title V permitting program due to its origins in Title V of the Federal Clean Air Act. As part of the permitting program, ADEQ also adopted a system of fees similar to that established in 40 CFR 70.9. According to these rules, state programs that were developed to implement the Title V permitting process must require owners or operators of part 70 sources to pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs. EPA then provided guidance to the States on what kind of fee schedule would be presumed to meet the cost recovery requirements by setting a fee of \$25 per ton (as adjusted by the Consumer Price Index – base year 1989) for each actual ton of air pollution emitted.

Starting in 1994, ADEQ began charging fees to Title V sources consistent with EPA’s program. A list of the emissions fees that would have been charged by EPA pursuant to 40 CFR 70.9, and ADEQ’s emissions fees pursuant to A.A.C. R18-2-326 is as follows:

Table 1. EPA and ADEQ Emissions Fees (\$/ton) from 1993 - 2001

Year	EPA Emission Fee (\$/ton)	ADEQ Emission Fee (\$/ton)	ADEQ Fees as a Percent of EPA
1989	\$25.00	--	--
1990	\$26.35	--	--
1991	\$27.46	--	--
1992	\$28.29	--	--
1993	\$29.13	--	--
1994	\$29.88	\$33.00	110%
1995	\$30.73	\$33.85	110%
1996	\$31.63	\$34.82	110%
1997	\$32.36	\$35.78	111%
1998	\$32.86	\$36.76	112%
1999	\$33.59	\$37.38	111%
2000	\$34.72	\$38.06	110%
2001	\$35.71	\$39.24	110%

As recommended in 40 CFR 70.9, ADEQ’s rules set a maximum cap of 4,000 tons of each pollutant on the total actual emissions for which it would assess emissions fees, and limited the pollutants for which fees were assessed to regulated air pollutants excluding Carbon Monoxide. ADEQ’s rules also set a minimum emissions fee of \$2,500 each year for Title V sources with individual permits, and \$1,500 per year for Title V sources with general permits.

In addition to emissions fees, ADEQ supported its air quality permitting program through the assessment of permit processing fees for new permits and permit revisions (\$ per hour), application fees, and annual inspection fees, depending upon the class of permit issued to a facility. A summary of those fees are as follows:

Table 2. Permit Processing Fees

Title V Permits (New and Revisions)	\$53.00 per hour
Non-Title V Permits (New and Revisions)	\$40.00 per hour

Table 3. Permit Application Fees

Class I Permit Application Fees	
Class I Permit Application Fee	\$13,000
Class I - Title V Major Modification	\$10,000
Class II Permit Application Fees	
Class II Permit Application Fee	\$2,000
Class II – Non-title V Permit Processing Fee – Complex Source	\$6,520 (over five years)

Notices of Final Rulemaking

Class II – Non-Title V Permit Processing Fee – Non-Complex Source	\$3,040 (over five years)
Title V Application Fees	
Title V Other Significant Permit Revision	\$1,500
Title V Minor Permit Revision	\$500
Title V Permit Transfer	\$424
Non-Title V Application Fees	
Non-Title V Complex Source Significant Permit Revision	\$2,400
Non-Title V Other Significant Permit Revision	\$700
Non-Title V Minor Permit Revision	\$450
Non-Title V Permit Transfer	\$318
General Permit Application Fees	
General Permit Application	\$540

Table 4. Annual Permit and Inspection Fees

Title V Annual Fee Schedules	
New Source Not Yet Reporting Emissions Annual Fee	\$5,000
Small Source Annual Fee	\$260
Non-Title V Annual Fee Schedules	
Complex Annual Permit Fee	\$1,097
Complex Source Annual Inspection Fee	\$1,560
Complex Source Performance Test Fee	\$635
Non-Complex Annual Permit Fee	\$565
Non-Complex Annual Inspection Fee	\$390
Non-Complex Source Performance Test Fee	\$488
Small Source Annual Fee	\$260

b. Overview of Calendar Years 2002-2004

Starting in 1999, and in response to stakeholder concerns about the fee structure that was implemented from 1993 through 2001, ADEQ developed an updated workload analysis to assess the costs associated with all components of the air quality programs. In 2000 and 2001, ADEQ used a stakeholder process to develop a modified structure for revenues that would provide a more stable revenue stream and distributed the cost of the permitting programs to all of the sources those programs cover. Using ADEQ’s information, the stakeholder community hired the Kendall Group, Inc. to develop a model that would balance revenue-generating activities such as emissions fees, annual administrative or inspection fees, and hourly billable rates with the expenditures necessary to support the permitting and compliance programs for the Air Quality Division. This model resulted in a new fee rule that went into effect on January 1, 2002.

The 2002 fee rule differed from its predecessor rule by de-emphasizing ADEQ’s reliance on emissions fees, and instead, distributing the cost recovery to the other fee mechanisms that existed in the 1993 rule. Emissions fees, which were paid principally by large sources of air pollution (i.e. Title V permit holders), were dramatically reduced, as shown in the following table:

Table 5. EPA and ADEQ Emissions Fees (\$/ton) from 2001-2004

Year	EPA Emission Fee (\$/ton)	ADEQ Emission Fee (\$/ton)	ADEQ Fees as a Percent of EPA
2002	\$36.27	\$11.75	32%
2003	\$37.10	\$11.96	32%
2004	\$38.08	\$12.22	32%

In order to offset this reduction in revenue, a greater emphasis was placed on recovering the costs associated with writing permits (i.e. an increase to the permit processing fee), and administration and inspection (fixed) fees were created or raised for all sources. The permit processing fee hourly rate was made a uniform \$66.00 per hour for all sources (a 24.5% increase for Title V permit holders, and a 65% increase for non-Title V permit holders). A summary of the fixed fees assessed in 2002 through 2004 is as follows:

Notices of Final Rulemaking

Table 6. 2002-2004 Class I – Title V Administrative Fees.

Source Category	2002	2003	2004
Aerospace	\$12,900	\$13,130	\$13,410
Cement Plants	\$39,500	\$40,200	\$41,070
Combustion/Boilers	\$9,600	\$9,770	\$9,980
Compressor Stations	\$7,900	\$8,040	\$8,210
Electronics	\$12,700	\$12,920	\$13,210
Expandable Foam	\$9,100	\$9,260	\$9,460
Foundries	\$12,100	\$12,310	\$12,580
Landfills	\$9,900	\$10,070	\$10,290
Lime Plants	\$37,300	\$37,960	\$38,790
Copper & Nickel Plants	\$9,300	\$9,460	\$9,670
Gold Mines	\$9,300	\$9,460	\$9,670
Mobile Home Manufacturing	\$9,200	\$9,360	\$9,570
Paper Milles	\$12,700	\$12,920	\$13,210
Paper Coaters	\$9,600	\$9,770	\$9,980
Petroleum Products Terminals	\$14,100	\$14,350	\$14,660
Polymeric Fabric Coaters	\$12,700	\$12,920	\$13,210
Reinforced Plastics	\$9,600	\$9,770	\$9,980
Semiconductors Fabrication	\$16,700	\$17,000	\$17,370
Copper Smelters	\$39,500	\$40,200	\$41,070
Utilities - Natural Gas	\$10,200	\$10,380	\$10,610
Utilities - Fossil Fuel Fired	\$20,200	\$20,560	\$21,010
Vitamin/Pharmaceutical	\$9,800	\$9,970	\$10,190
Wood Furniture	\$9,600	\$9,770	\$9,980
Others	\$9,900	\$10,070	\$10,290
Others with CEM	\$12,700	\$12,920	\$13,210

Table 7. 2002-2004 Class II – Title V Administrative Fees

Source Category	2002	2003	2004
Stationary	\$3,000	\$3,050	\$3,120
Portables	\$5,000	\$5,090	\$5,200
Small Source	\$500	\$500	\$500
Small Source General Permit	\$500	\$500	\$500
General Permit Other	\$3,000	\$3,000	\$3,000

Table 8. 2002-2004 Class II – Non-Title V Administrative Fees

Source Category	2002	2003	2004
Stationary Source	\$3,250	\$3,310	\$3,380
Portable Source	\$3,250	\$3,310	\$3,380
Gasoline Service Station	\$500	\$510	\$520
Crematorium General Permit	\$1,000	\$1,000	\$1,000
General Permit Other	\$2,000	\$2,000	\$2,000

Although the new fee rule created new administrative fees to be paid by the largest Title V facilities, these new fees did not wholly replace the revenues that were lost when the emissions fees were reduced from 110% to 32% of EPA's presumptive emissions fee rate. Instead, the additional revenues required to administer ADEQ's air quality permitting program were spread out to the smaller (Class II) and more numerous Title V and non-Title V sources.

Notices of Final Rulemaking

In general, the vast majority of facilities that obtain a non-Title V permit would qualify as non-complex sources of air pollution. Additionally, most non-Title V permits do not require permit holders to conduct performance testing, meaning that prior to 2002, the average non-Title V facility paid a fixed fee of approximately \$955 per year. As a result of the 2002 fee rule; however, the average non-Title V facility's fees jumped 240%, to \$3,250 per year.

Class II Title V facilities also experienced a significant increase in fees in 2002. Prior to the 2002 rule revision, the average Class II Title V facility was responsible for a \$2,500 emission fee (the minimum emission fee). Although they were no longer charged emissions fees under the 2002 rule package, stationary Class II Title V facilities experienced a 20% increase through the establishment of a \$3,000 per year fixed fee. Portable Class II Title V facilities also experienced a 100% increase in fees through the establishment of a \$5,000 per year fixed fee.

c. Overview of Calendar Years 2004-2006

Revenues in Fiscal Year 2003, the first year of the revised fee rule, failed to meet projections. Total expenditures for that Fiscal Year were \$5.1 million, while revenues only realized \$3.4 million. Beginning in Fiscal Year 2004 (July 1, 2003 – June 30, 2004), actual revenues were insufficient to achieve on-going Fund solvency. In order to ensure the projected solvency of the Fund, subsidies from other funds (general and federal) were used until more permanent measures could be employed. In Fiscal Year 2005, ADEQ retained the services of the Kendall Group, Inc. to revisit the model used to establish the fee rule, resulting in a revision in November 2004.

The 2004 revision focused principally on the number of hours that were spent processing air quality permit applications, principally due to errors in the assumptions made based upon the 1998 workload analysis regarding total FTE, and the amount of time each FTE could bill. As a result of the revision, the hourly rate for permit application processing time increased 43%, from \$68.70 per hour in 2004 to \$98.80 per hour in 2005.

Modest increases of 8.4% were also made to the emissions and fixed fees in order to ensure that projected revenues from the fee rule exactly matched expenditure authority. Emissions fees; however, remained drastically lower than the presumptive EPA rates for that year, as evidenced below:

Table 9. EPA and ADEQ Emissions Fees (\$/ton) from 2005 - 2006

Year	EPA Emission Fee (\$/ton)	ADEQ Emission Fee (\$/ton)	ADEQ Fees as a Percent of EPA
2005	\$39.38	\$13.24	34%
2006	\$40.65	\$13.62	34%

While the 2004 revisions immediately stopped the significant deficiencies in revenues, they did not permanently resolve insolvency issues. The probable cause for this is the migration of sources from individual permits which are more expensive, to general permits which have less cost. In 2002, ADEQ administered only 382 general permits. In 2007; however, the total number of sources holding a general permit grew to 571. Due to the large number of sources that hold Class II Title V and Non-Title V permits (i.e. 729 of 788 total permitted sources in 2007), the APAF was determined to be very sensitive to the shift of sources moving from individual to general permits.

Recent projections for the APAF forecast fund insolvency in November of 2008 (Fiscal Year 2009). ADEQ's internal Office of Strategic Planning and Budgets states that a fund demonstrates insolvency when an ending monthly balance that has less than three months of operational monies. Using this definition, projections forecast that the APAF would be insolvent in November of 2007, while still reflecting a positive cash balance.

Historically, projections forecasting insolvency were considered to be a result of the failure to realize projected revenues. Past fee rule corrections focused on ensuring that revenues exactly matched the expenditures necessary to maintain the existing level of service. A review of expenditures necessary to ensure the continued successful implementation of the air quality permitting and compliance programs for the long term has revealed that additional expenditures are also necessary.

Historical expenditures have amounted to approximately \$5,100,000 per year. Although the existing fee rule accounts for inflation on the revenue side, it has not been able to accommodate state-wide salary raises approved by the Legislature. In addition, this current expenditure amount does not allow the program to grow to accommodate new complex sources of air pollution, or new legislative and EPA mandates. The objective of the 2007 modification is to assuring long-term solvency of the APAF, as well as to restore a moderate amount of Fund balance.

In an attempt to restore stability in the fund, ADEQ analyzed each of the potential revenue streams to determine how much change has occurred since 2001. As described above, fixed fees were determined to be vulnerable to the shift in sources that applied for general permits. Permitting fees were determined to be too cyclical and dependent upon economic growth. Billable emissions, on the other hand, proved to have the least amount of change year to year.

In 2002, 2004 and 2005, the total amount of actual air pollution reported by Class I Title V permit holders was as follows (note: 2003 was omitted due to incomplete information):

Notices of Final Rulemaking

Table 10. Total Reported Emissions

Year	Total Reported Emissions of Air Pollution (Tons)
2002	183,278
2004	184,692
2005	165,455

During those same years; however, ADEQ billed Class I Title V permit holders for the following amount of actual air pollution emissions:

Table 11. Total Billed Emissions

Year	Total Billed Emissions of Air Pollution (Tons)
2002	61,848
2004	61,478
2005	61,599

As a result of this analysis, ADEQ determined that while it is true that emissions of air pollution are subject to change each year as new facilities with better air pollution control devices come on-line, and more polluting facilities are shut down, the total amount of billable emissions has remained relatively constant since 2002. Upon further examination, ADEQ determined the cause of this stability to be related to the 4,000 ton per year cap associated with billable emissions.

Based upon this information, the need to ensure financial stability, and the determination that Class II Title V and Non-Title V facilities bore large increases in previous rulemakings, ADEQ determined that the majority of the 2007 fee rule increases should come from emissions fees. Despite the significant increase in emissions fees, the new emission fee rate remains less than the EPA's presumptive emissions fee of \$42.03 per ton, as evidenced below:

Table 12. EPA and ADEQ Emissions Fees (\$/ton) in 2007

Year	EPA Emission Fee (\$/ton)	ADEQ Emission Fee (\$/ton)	ADEQ Fees as a Percent of EPA
2007	\$42.03	\$38.25	91%

Analysis of the direct impact on Class I Title V sources also reveal that the 2007 fee rule revisions will continue to result in less fees paid in 2007 than would have been required had the 2002 and 2004 fee rulemakings never taken place. In 2007, the Utilities – Coal Fired source category had the most billable emissions per facility, but no facility emitted more than 9,000 tons of billable emissions.

Table 13. ADEQ Emissions Fees (\$/ton) if no 2002/2004 Revisions

Year	2001 Fee Rule ADEQ Emission Fee (\$/ton)	2007 ADEQ Emission Fee (\$/ton)	2007 Fees as a Percent of 2001 Fees
2007	\$46.20	\$38.25	83%

Table 14. Example of Emissions Fee Impact – A Utilities - Coal Fired Facility in 2007 with 9,000 tons of billable emissions

Fee Rule	Administrative Fee	Emissions Fee	Total Fees	Difference From 2001 Rule
2001 Rule	\$0.00	\$415,800	\$415,800	--
2007 Rule	\$32,570	\$344,250	\$376,820	-\$38,980

II. Business Model and Effects of the Fee Rule

a. Overview of the Billing for the Air Quality Permitting Process

According to A.A.C. R18-2-326, ADEQ is to charge an hourly processing fee (adjusted by the CPI each year) for each hour spent processing air quality permit applications. Each hour spent processing a permit application is tracked by the permit engineer assigned to process the application, and is ultimately recovered by the Agency. In previous years, permit processing fees were ultimately recovered at the time that a permit was issued. In Fiscal Year 2007; however, ADEQ instituted a quarterly billing system in order to increase communication between ADEQ and the applicant as to the on-going costs associated with processing the application, as well as to increase the predictability

Notices of Final Rulemaking

and recovery of such revenues. While the regulated community has responded favorably to this practice, ADEQ is seeking explicit authority to require the payment of quarterly bills.

b. Overview of the Billing of Fixed Fees

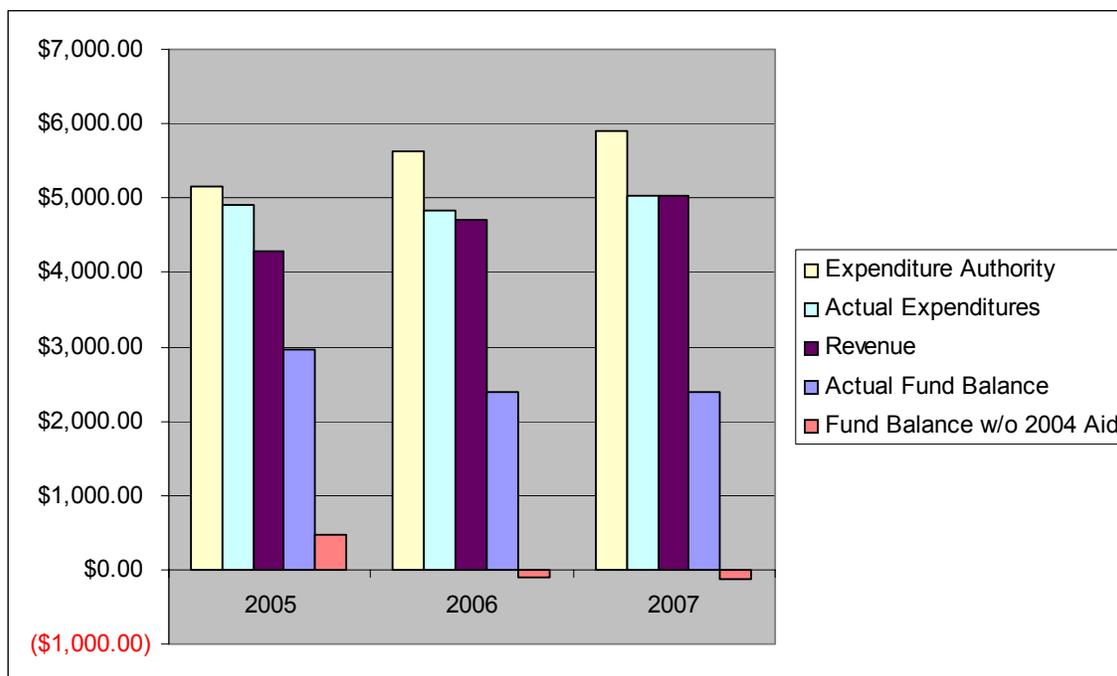
Fixed fees are billed to all permit holders in the last month of the year. According to the currently applicable version of A.A.C. R18-2-326, fixed fees are due to be paid to ADEQ by February 1 of each calendar year, or 60 days after the invoice for the fee is mailed out, whichever is later. Generally ADEQ issues invoices based on emissions and administrative/inspection fees on December 1 of each calendar year. According to ADEQ's fee rule model, approximately 81% of ADEQ's revenue is tied to this annual billing cycle. Depending upon the business cycles of the permitted source, ADEQ begins to receive payment for fixed fees in December, with the greatest number of payments being received in January.

III. Status of the Air Permit Administration Fund

a. Overview of Expenditure Authority and Revenues

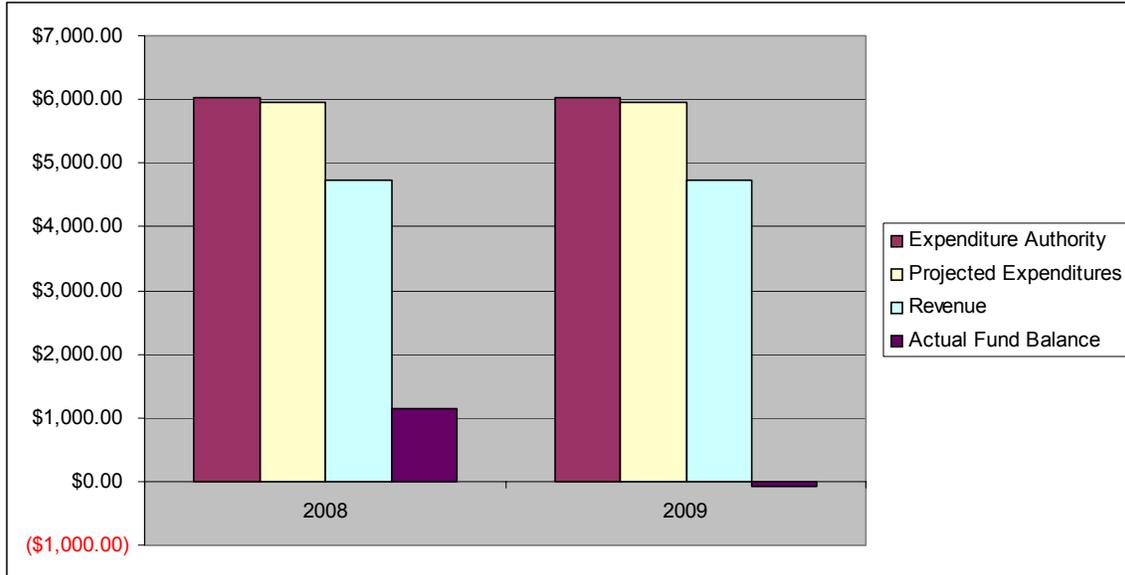
When presenting its financial situation to stakeholders in August of 2007, ADEQ prepared a series of slides regarding historical and projected financial information. As can be seen in the following figure, ADEQ's authority to spend monies in the APAF has increased from approximately \$5,100,000 in Fiscal Year 2005, to approximately \$5,800,000 in Fiscal Year 2007. During that same time period; however, ADEQ's actual expenditures have been limited to between approximately \$4,750,000 and \$5,000,000. The reason for this limitation was due to the lack of revenue generated by the fee rule during those same fiscal years. In an attempt to be financially responsible, ADEQ offset expenditures through vacancy savings, delaying otherwise necessary expenses, and using a one-time fund transfer from the Federal grant in 2004.

Figure 1: Historical APAF Financial Information in Thousands of Dollars



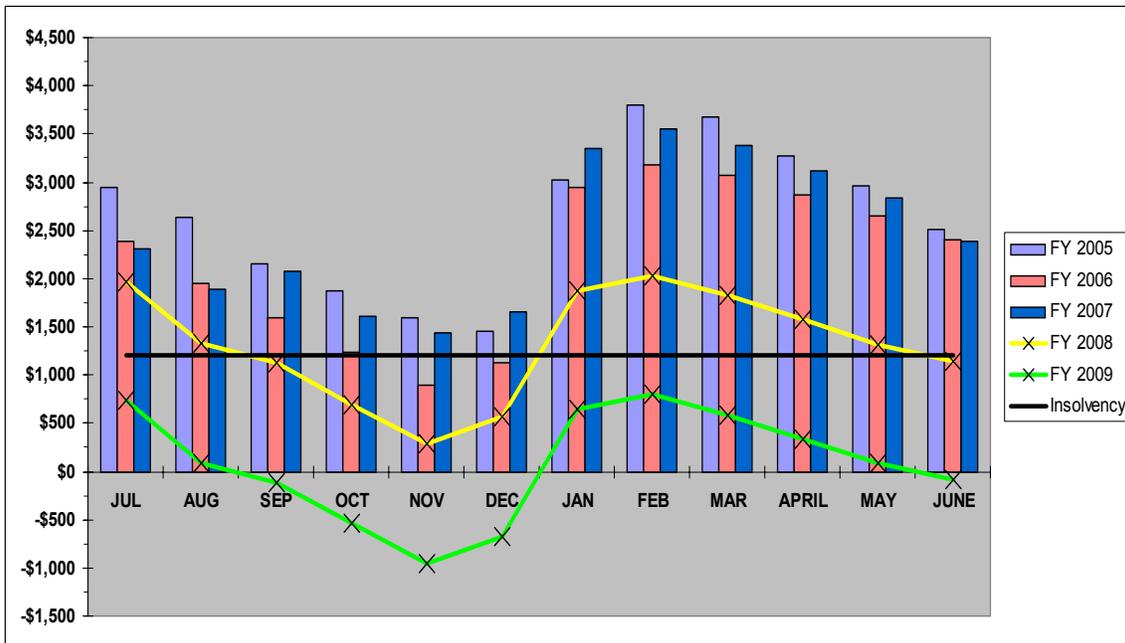
While ADEQ has implemented such cost saving measures, it has determined that it must spend up to its expenditure authority in order to meet EPA's requirements under Title V, as well as to ensure the continued success of the overall program's mission of enhancing and protecting Arizona's air quality. Continued vacancies threaten ADEQ's ability to adequately respond to public complaints, and meet its on-going performance measures relating to issuing inspection reports and escalating enforcement actions in a timely fashion. Given this need to fill vacancies, and its inability to further delay necessary expenditures, ADEQ's projections show projected expenditures at its expenditure authority for Fiscal Years 2008 and 2009 as follows:

Figure 2: Projected APAF Financial Information in Thousands of Dollars



As demonstrated in Figure 2, the APAF fund balance at the end of Fiscal Year 2008 would be approximately \$1,200,000, and negative at the end of Fiscal Year 2009. As described in Section II.B of this document; however, ADEQ’s cash flow cycle is such that approximately 81% of its income comes in the middle of the fiscal year and the resulting fund balance is then bought down through the end of the fiscal year. A more detailed analysis of the monthly cash flow is as follows:

Figure 3: Historical and Projected Monthly APAF Fund Balances in Thousands of Dollars



As can be seen in Figure 3, the lowest APAF cash balances have historically occurred in November of each calendar year, the month immediately prior to the mailing of invoices for emissions and fixed fees. As noted in the “yellow” line representing Fiscal Year 2008, at the time of these projections, the APAF fund balance was projected to be less than \$500,000 in the end of November 2007. More recent projections place the fund balance at the end of November 2007 at approximately \$600,000. This sum; however, will only cover approximately 1.5 months of operating expenses, meaning that without bills being sent in the beginning of December 2007, the APAF is projected to have a negative balance in January 2008.

Notices of Final Rulemaking

Additionally, if bills under the currently effective version of A.A.C. R18-2-326 were to be sent in December of 2007, projections show that the APAF would run a negative fund balance in September or October of 2008, two to three months before the next annual billing cycle in December of 2008.

As a result of the information presented above, ADEQ has determined that delaying the rulemaking to renegotiate a new fee rule, or allow for additional public comment, would result in negative fund balances in the Air Permit Administration Fund immediately, or before the next Fiscal Year's billing cycle.

D. Entities Directly Affected

ADEQ anticipates that this rulemaking will impact approximately 740 currently permitted sources, as well as additional future sources. The current inventory includes sources holding Class I, Title V, Class II, Title V and Class II Non-Title V permits. Other entities impacted include ADEQ, consumers, and general public. Counties with their own permitting programs (Maricopa, Pinal, and Pima counties) may experience indirect impacts. A.R.S. § 49-112(B) requires county fees to be approximately equal to those of ADEQ. ADEQ has no information that the counties are experiencing revenue shortfalls.

E. Potential Costs and Benefits

ADEQ expects an increase in revenues from these rule changes that will be sufficient to efficiently and effectively operate its air permit administration program and ensure that the APAF will remain solvent.

Regulatory Agencies

To properly implement ADEQ's air quality permitting and compliance programs, seven additional FTEs will be required. The regulatory burden of monitoring, recordkeeping, reporting, and testing have grown but staff levels have remained constant.

An additional five FTEs are needed in order to ensure continued compliance with the monitoring strategy agreed upon with EPA which includes: performance measures, including complaint response, and to ensure effective ADEQ presence at the increasing number of stack tests required by air quality permits. These five FTEs will allow for adequate oversight of performance testing, stationary source inspections, and complaint response in areas of the state where ADEQ does not have field offices.¹

Additionally, most new sources of air pollution that enter the state require an ambient air quality dispersion modeling analysis in order to demonstrate that the new emissions of air pollution will not result in significant risk to public health. As a result, an additional FTE is needed to review the air dispersion modeling analyses submitted with air quality permit applications.

Along with modeling, many sources are required by their permits to operate ambient air monitoring systems. As a result, an additional FTE is needed to assist in the operation of new ambient air monitors and quality assure and check the data being submitted by permitted facilities that are operating such equipment pursuant to a permit condition.

Other agencies are not expected to be directly impacted. ADEQ considers any impacts to sources in counties with their own pollution control programs to be indirect. ADEQ has no information that the counties are experiencing revenue shortfalls.

Regulated Community

Entities impacted include Class I Title V sources (e.g., Portland cement plants, combustion boilers, compressor stations, lime plants, mines, paper plants, smelters, utilities, and others); Class II Title V sources (synthetic minor sources, other stationary sources, portable sources, and small sources); Class II Non-Title V sources (smaller synthetic minor sources, stationary sources, portable sources, and others).

The revised fee schedule is as follows: hourly rate increased from \$105.80 to \$133.50; emission-based fees increased from \$14.17 to \$38.25; and average administrative fees increased approximately 30% for sources with individual permits and approximately 40% for sources with general permits. The emission-based fees and administrative or inspection fees would be increased over the 2006 fees, as adjusted by the Consumer Price Index consistent with R18-2-326. The administrative or inspection fees for general permits are not adjusted by the Consumer Price Index annually consistent with R18-2-511. This accounts for the 40% increase in fees for general permits. For additional information about permit fee adjustments, 2004 fee rule, and the proposed fee schedule, refer to Addendum A.

To revise the hourly rate, ADEQ reassessed the number of billable hours per employee, by adjusting non-program and program time, as well as the cost of management, technical and clerical personnel needed to supervise and support these employees.

Air Quality permit engineers are required to bill applicants for every hour spent processing an air quality permit application, producing an air quality permit, and developing the supporting documentation. The engineer's time has been broken down into two major categories, program time and non-program time.

1. Non-Program Time

Notices of Final Rulemaking

Non-program time is the category that includes such items as employee benefits (annual and sick leave, holidays), lost time due to employee turnover, and time spent doing work-related activities that are not otherwise billable. As compared to the 2004 estimates, the following changes are needed:

- Increase average employee annual leave usage rate from 96 to 120 hours per year:

Average length of service for permit engineers is greater than three years, meaning the average engineer generates annual leave at a rate of 4.62 hours per pay period;

All annual leave is assumed to be paid out annually - unspent accrued annual leave will be paid out to the employee at the time of separation.

- Increase average employee sick leave usage rate from 64 to 96 hours per year:
 - Business Continuity Planning preparing for pandemic flu;
 - Increased use of sick time already observed;
 - Increased use of sick time for caring for ill family members also observed.
- Increase lost time due to turnover from 106 to 208 hours per year.
 - Turnover is generally less than past rates, but the length of time necessary to fill vacant positions has increased. On the average, at least 1.5 FTEs that generate billable hours have been vacant over the course of a year (i.e. 10% vacancy). A 10% vacancy results in a loss of 208 hours per year per position.

2. Program Time

Program time is the category that includes activities that are directly related to the program, but may or may not be billable due to the fee rules in place. After reviewing the 2004 estimates, the following changes are included:

- Increase General Permit Development time from 50 to 60 hours per year per FTE
 - Renewed general permits observed to take approximately 500 hours of development time. With nine active and contemplated general permits over 15 permit engineering positions, and five-year permit terms (9*500)/(15*5) = 60 hours per year.

3. Updated Burdened Rate Calculation (Per FTE)

The term “burdened rate” is used to describe an hourly fee that accounts not only for the costs of providing a service, but also for other costs associated with providing that service. The burdened rate in ADEQ’s air quality fee rule includes such costs as other operating expenses (i.e., supplies, office space, computer, etc.), indirect costs (i.e., administrative support, payroll, technology support, etc.), and the costs of oversight (i.e., time spent by the supervisor, manager, and Division Director).

The private market rate would typically range from \$130 to \$200 per hour.

ADEQ does not expect to negatively impact employment by increasing either structural or frictional unemployment, on either a long or short term basis.² Further, ADEQ does not expect this rulemaking to impact industrial production or growth, and no source is expected to reduce or halt its output as a result of the increased fees. Finally, ADEQ anticipates no adverse impact to source revenues or payrolls.

Consumers and Public

ADEQ expects a minimal impact to consumers and the general public. Although some sources may absorb the higher cost of doing business, others may pass on the higher costs to consumers, depending on market conditions and elasticities of buyers and sellers. Adjusting revenue streams for the Air Quality Division will facilitate timely issuance of air pollution control permits to further improve air quality and achieve national public health standards with appropriate permit conditions. Finally, maintaining adequate staffing levels for inspections, compliance, and enforcement increases incentives for compliance, actual compliance levels, and timely response to complaints. All of these reduce emissions from regulated sources, which in turn prevent adverse health effects that cost the public in medical care and lost productivity.

F. Potential Impacts to Small Businesses

State law requires agencies to reduce the impact of a rule on small businesses when legal and feasible. ADEQ considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B) for reducing the impact of this rule on small businesses: (1) exempt them from any or all rule requirements, (2) establish performance standards that would replace any design or operational standards, or (3) institute reduced compliance or reporting requirements, such as establishing less stringent requirements, consolidating or simplifying them or setting less stringent schedules or deadlines.

Considering the methods described above, one alternative that reduces costs for small businesses is for eligible sources to apply for a General Permit under R18-2-511. General Permits may reduce costs because sources would not be required to pay an hourly permit processing fee. Other methods implementing the statutory objectives of this rule-making that might reduce the impact on small businesses or be less costly or intrusive would not be feasible.

Notices of Final Rulemaking

ADEQ will continue to provide assistance to small businesses and other sources that request such assistance through the Small Business Assistance Program.

G. Endnotes

- ¹ The additional FTEs include one each for the Northern and Southern Regional Offices; three for Central Regional Office.
- ² Structural unemployment results from changes in the economy that cause the loss of jobs and create others for which the unemployed are unqualified, whereas frictional unemployment is caused from changing market conditions where the unemployed represent “qualified” persons with transferable skills. The latter can be caused by imperfect or incomplete information that prevents employees from leaving one job and finding another quickly.

Addendum A

Under R18-2-326, ADEQ must adjust permit fees every November 1 by using the Consumer Price Index (CPI) average for that year. The CPI for any year is the average CPI for all urban consumers (CPI-U), not seasonally adjusted. CPI values are published monthly by the Bureau of Labor Statistics, U.S. Department of Labor.

Each year, the fee will be adjusted by multiplying by the CPI-U for the most recent year and dividing by the CPI for the base year.

The hourly rate is for permit processing time required for a billable permit action under R18-2-326(B). The fee pertains to owners or operators of a Class I Title V source, Class II Title V source, or Class II Non-Title V source. The 2004 rate was \$98.80. The hourly rates, adjusted under R18-2-326(H), for November 1, 2005 and 2006 are: \$101.90 ($\$98.80 \times 192.8 / 187.0$) and \$105.80 ($\$98.80 \times 200.3 / 187.0$). The current proposed rate is \$133.50 per hour.

The emission-based fees, adjusted under R18-2-326(C)(2)(d), for November 1, 2005 and 2006 are: \$13.65 ($\$13.24 \times 192.8 / 187.0$), and \$14.17 ($\$13.24 \times 200.3 / 187.0$). The current proposed fee is \$38.25. This fee only applies to emissions up to 4,000 tons per year per regulated pollutant (except for carbon monoxide for which no fee is assessed).

The following tables show how the fees changed based on these adjustments and the proposed new rates. The last table pertains to General Permits.

Class I Title V Source Category [R18-2-326(C)]	Administrative Fee 2004	2005	2006	2007 Proposed
Aerospace	\$14,540	\$14,990	\$15,570	\$20,800
Air Curtain Destructors	-	-	-	\$750
Cement Plants	\$44,520	\$45,900	\$47,690	\$63,690
Combustion/Boilers	\$10,820	\$11,160	\$11,590	\$15,480
Compressor Stations	\$8,900	\$9,180	\$9,530	\$12,730
Electronics	\$14,320	\$14,760	\$15,340	\$20,490
Expandable Foam	\$10,260	\$10,580	\$10,990	\$14,680
Foundries	\$13,640	\$14,060	\$14,610	\$19,520
Landfills	\$11,150	\$11,500	\$11,940	\$15,960
Lime Plants	\$41,700	\$42,990	\$44,670	\$60,160
Mines	\$10,480	\$10,800	\$11,230	\$15,000
Mobile Home Mfg	\$10,370	\$10,690	\$11,110	\$14,830
Others	\$11,150	\$11,500	\$11,940	\$20,490
Others w/ CEM	\$14,320	\$14,760	\$15,340	\$20,490
Paper Mills	\$14,310	\$14,750	\$15,330	\$20,480
Paper Coaters	\$10,820	\$11,160	\$11,590	\$15,480
Petrol Prod Term Fac	\$15,890	\$16,380	\$17,020	\$22,730
Polymeric Fabric Coaters	\$14,310	\$14,750	\$15,330	\$20,480
Reinforced Plastics	\$10,820	\$11,160	\$11,590	\$15,480
Semiconductor Fab	\$18,830	\$19,410	\$20,170	\$26,930
Copper Smelters	\$44,520	\$45,900	\$47,690	\$63,690
Utilities - Fossil Fuel Fired Except Coal	\$11,490	\$11,850	\$12,310	\$16,440

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Utilities - Coal Fired	\$22,760	\$23,470	\$24,380	\$32,570
Vit/Pharm Mfg	\$11,050	\$11,390	\$11,840	\$15,800
Wood Furniture	\$10,820	\$11,160	\$11,590	\$15,480

Fees adjusted to the nearest \$10.00 pursuant to R18-2-326(C).

CLASS II Title V Source Category [R18-2-326(D)]	Administrative Fee 2004	2005	2006	2007 Proposed
Synthetic minor sources	*	*	*	*
Stationary	\$5,640		\$5,810	\$8,070
Portables	\$5,640	\$5,810	\$6,040	\$8,070
Small Source	\$560	\$580	\$600	\$750

Fees adjusted to the nearest \$10.00 pursuant to R18-2-326(D).

*See the Class I Title V table. The administrative fees are as follows: for a synthetic minor, except a portable source, it is the same as the fee from Class I title V for that category; for a stationary and a portable source, it is \$5,640; for a small source, it is \$560.

Class II Non-Title V Source Category [R18-2-326(E)]	Inspection Fee 2004	2005	2006	2007 Proposed
Stationary	\$3,660	\$3,770	\$3,920	\$5,230
Portables	\$3,660	\$3,770	\$3,920	\$5,230
Gasoline Stations	\$560	\$580	\$600	\$750

Fees adjusted to the nearest \$10.00 pursuant to R18-2-326(E).

General Permits Administrative Fee [R18-2-511(B)]	2004	2005	2006	2007 Proposed
Class I Title V	*	*	*	*
Class II Title V Small	\$540	\$540	\$540	\$750
Other Class II Title V	\$3,250	\$3,250	\$3,250	\$4,520
General Permits Inspection Fee [R18-2-511(B)]				
Class II Non-Title V Gasoline Stations	\$540	\$540	\$540	-
Class II Non-Title V Crematories	\$1,080	\$1,080	\$1,080	\$1,500
Other Class II Non-Title V	\$2,170	\$2,170	\$2,170	\$3,020

* Administrative fee for category from R18-2-326(C)

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

Change 1: For the purposes of the original fee rule model and Notice of Proposed Rulemaking, ADEQ determined the costs associated with permit administration for a petroleum refinery by contacting other regulatory agencies and discussing the existing workload for those agencies and by reviewing the air quality permit to determine appropriate staffing levels. After further consideration, and based upon comments received, ADEQ has removed the language addressing the petroleum refineries, and has adjusted the model accordingly. The removal of the refinery language from the rule text and model had the effect of decreasing all administrative and inspection fees for all source categories. These changes are reflected in the Economic Impact Statement, as well as the rule text.

Notices of Final Rulemaking

Change 2: Commentator states that ADEQ must correctly classify facilities under the fee rule. Commentator further states that classifying two oil-fired utilities as the same as coal fired utilities is unfair, as neither facility operates enough during a 12-month window to trigger any source testing requirements. Commentator asserts that oil-fired utilities are clearly more similar to gas fired plants than to coal fired plants, and recommends that ADEQ change the source categories as follows: (1) Utilities – Coal; and (2) Utilities – Natural Gas and Oil. ADEQ agrees with this comment and has amended the fee table at R18-2-326(C)(1) to re-categorize the utility sector as follows:

Class I Title V Source Category	Administrative Fee
Aerospace	\$ 14,450 <u>\$20,800</u>
<u>Air Curtain Destructors</u>	<u>\$750</u>
Cement Plants	\$ 44,520 <u>\$63,690</u>
Combustion/Boilers	\$ 10,820 <u>\$15,480</u>
Compressor Stations	\$ 8900 <u>\$12,730</u>
Electronics	\$ 14,320 <u>\$20,490</u>
Expandable Foam	\$ 10,260 <u>\$14,680</u>
Foundries	\$ 13,640 <u>\$19,520</u>
Landfills	\$ 11,150 <u>\$15,960</u>
Lime Plants	\$ 41,700 <u>\$60,160</u>
Copper & Nickel Mines	\$ 10,480 <u>\$15,000</u>
Gold Mines	\$ 10,480 <u>\$15,000</u>
Mobile Home Manufacturing	\$ 10,370 <u>\$14,830</u>
Paper Mills	\$ 14,310 <u>\$20,480</u>
Paper Coaters	\$ 10,820 <u>\$15,480</u>
Petroleum Products Terminal Facilities	\$ 15,890 <u>\$22,730</u>
Polymeric Fabric Coaters	\$ 14,310 <u>\$20,480</u>
Reinforced Plastics	\$ 10,820 <u>\$15,480</u>
Semiconductor Fabrication	\$ 18,830 <u>\$26,930</u>
Copper Smelters	\$ 44,520 <u>\$63,690</u>
Utilities - Natural Gas <u>Fossil Fuel Fired Except Coal</u>	\$ 11,490 <u>\$16,440</u>
Utilities - Fossil Fuel Except Natural Gas <u>Coal Fired</u>	\$ 22,760 <u>\$32,570</u>
Vitamin/Pharmaceutical Manufacturing	\$ 11,050 <u>\$15,800</u>
Wood Furniture	\$ 10,820 <u>\$15,480</u>
Others	\$ 11,150 <u>\$20,490</u>
Others with Continuous Emissions Monitoring	\$ 14,320 <u>\$20,490</u>

11. A summary of the comments made regarding the rule and the agency response to them:

Comment 1: Some commentators that reviewed the fee rule model asked for an explanation of the difference between the forecast expenditure data versus the base expenditure data for Fiscal Years 2008 and 2009.

Response 1: The principal difference between the data ADEQ provided to the commentators is that the baseline expenditures for Fiscal Years 2008 and 2009 represent expenditures that assume no changes to the fee rule or ADEQ's expenditure authority, whereas the forecasted expenditure data for 2008 and 2009 represent expenditures that account for the 2007 changes to the rule and ADEQ's spending authority (i.e. support for the budget initiatives identified in the stakeholder meetings).

Comment 2: Some commentators requested an explanation for the difference between the fund break out for Fiscal Years 2004 and 2006 and the calculations for the same years.

Response 2: Starting in Fiscal Year 2005, ADEQ began tracking its APAF expenditures under three categories, Title V, Non-Title V and Program Administration. Fiscal Year 2006 was the first year that the tracking was considered reliable due to the time necessary to educate staff in the correct use of the categories.

Additionally, in Fiscal Year 2004, ADEQ determined that it was necessary for a period of time to transfer the expenditures associated with the administration of the non-Title V permitting program from the APAF onto the Federal Clean Air Act Section 105 grant. This was a one-time change that was implemented in order to avoid insolvency in the APAF while the fee rule was being modified in 2004. The transfer of these expenditures resulted in approximately \$1.3 to \$1.6 million in avoided costs on the APAF. In Fiscal Years 2005 and 2006, revenue increases due to the imple-

mentation of the 2004 fee rule change were realized. The increased revenue; however, did not cover necessary expenditures, resulting in the continued imbalance between revenues and expenditures.

Comment 3: Some commentators asked whether the general permit application fees were accounted for in the fee rule model.

Response 3: The fee rule model did not account for general permit application fees. According to source counts conducted in 2007, ADEQ has determined that approximately 571 sources hold general permits issued by ADEQ. Each general permit is issued for a period of five years, and under the existing fee rule, applicants for coverage under general permits pay a one-time \$500 application fee. By assuming that an average of 114 permittees obtain Authorizations to Operate (ATOs) under general permits each year, ADEQ will receive approximately \$57,000 each year that is unaccounted for in the fee rule model. This \$57,000 represents approximately 1% of the total average revenue collected each year under the 2004 fee rule. Because of the small percentage of revenue associated with the issuance of ATOs under general permits, and the unpredictability of when an application will be received, ADEQ chose not to include this revenue stream in its fee rule model.

Comment 4: Some commentators asked for additional information about how ADEQ arrived at the costs for the engineering positions in the fee rule model.

Response 4: ADEQ arrived at the costs for engineering positions by reviewing the salaries paid to the 14 permit engineers responsible for tracking and billing time to process air quality permit applications. At the time that the study was conducted, the average salary of the 14 permit engineer positions was \$49,200 per year.

Comment 5: Some commentators asked for verification that ADEQ used a 1998 workload analysis to calculate the factors that are used to set the annual administration and inspection fees.

Response 5: ADEQ confirms that it did base its fee rule model and subsequent analysis on a workload analysis that was completed in 1998. The fee rule model that was used in this 2007 rulemaking is the same fee rule model that was developed and submitted to ADEQ by stakeholders, in the 2000 rulemaking. ADEQ made modifications to this same fee rule model in 2004, and again modified the same fee rule model in 2007.

Comment 6: Some commentators asked whether ADEQ's workload actually diminished as a result of the issuance of a general permit.

Response 6: ADEQ issues general permits for a facility class that contains 10 or more facilities that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting or recordkeeping. When determining what types of facilities can be classified as "similar in nature" ADEQ considers the size of the facility, the operational process, and the operating conditions under which the facility operates. To date, ADEQ maintains eight separate general permits, including general permits for (i) sand and gravel operations, (ii) hot mix asphalt facilities, (iii) concrete batch plants, (iv) soil vapor extraction units, (v) generators, (vi) crematoriums, (vii) dry cleaners, and (viii) boilers. ADEQ anticipates creating additional general permits in the future.

At the time that a general permit is developed, ADEQ writes the permit in such a manner that the majority of the sources in a facility class can take advantage of the permit. This approach creates efficiencies for both the regulated community and ADEQ. General permits tend to reduce the number of similar individual permits written by ADEQ, and create a level playing field throughout the facility class as the same regulations are likely to apply to each facility. The similarity in regulations may also impact the amount of time necessary to inspect facilities holding general permits.

ADEQ's first general permit was issued more than 10 years ago. Since that time, ADEQ's permit writers have found ways to increase the number of sources covered under each general permit by providing different operating and compliance scenarios (flexibility) in the conditions of some of the general permits. Due to this increase in flexibility in some general permits, ADEQ's workload associated with issuing and administering specific general permits has not necessarily decreased when compared to an individual permit. In order to track the actual hours spent administering each general permit, as well as all individual permits, ADEQ will require appropriate staff associated with permit administration to track the billable time and associate those hours with the assigned workload.

Comment 7: Some commentators asked for additional explanation of how the fees for a petroleum refinery were calculated, and whether those fees were sufficient to offset the costs of such facilities.

Response 7: For the purposes of the original fee rule model discussed with the stakeholders, ADEQ determined the costs associated with permit administration for a petroleum refinery by contacting other regulatory agencies and discussing the existing workload for those agencies, and by reviewing the air quality permit to determine appropriate staffing levels. After further consideration, and based upon comments received, ADEQ has removed the refinery provisions from the rule.

Comment 8: Some commentators requested an explanation as to why the fixed fees for all facilities seemed to be increasing by 50%, rather than the 40% increase reported in ADEQ's supporting documentation.

Response 8: ADEQ's final rule has the effect of raising fixed (inspection and administration) fees by 40% over the fees charged in 2006. If one compares ADEQ's fees to those fees adopted in the previous rulemaking in 2004, the

total increase in fees is approximately 50%. The reason for the discrepancy is that ADEQ is required by rule to adjust fees by the Consumer Price Index (CPI) each year. Since the adoption of the 2004 fee rule, all fees under *Arizona Administrative Code* R18-2-326 have already increased by approximately 10%, and therefore the final rule has an effect of increasing fees by only 40%, as reported in ADEQ's original documentation.

Comment 9: Some commentators asked whether or not the emissions fee calculations in the fee rule model were based upon the emissions that would be billed in 2007 (i.e. 2005 actual emissions inventory).

Response 9: The emissions estimates included in ADEQ's fee rule model are those from the most recent emissions inventory reports, reflecting actual emissions in calendar year 2005.

Comment 10: Some commentators noted that ADEQ was granted new air quality compliance personnel in the 2007 legislative session. Those same commentators asked whether ADEQ was seeking an additional five air quality compliance personnel positions, or if ADEQ was asking for only three additional air quality compliance personnel positions.

Response 10: Through this rulemaking package, ADEQ is raising fees to cover the costs of five additional air quality compliance personnel positions. These five positions do not include the new air quality compliance personnel granted in the 2007 legislative session. Instead, the three positions granted in the 2007 legislative session were charged to the Air Quality Fund established under Arizona Revised Statutes § 49-551.

Comment 11: Some commentators asked whether or not it was possible to re-categorize the hours associated with developing general permits, issuing new ATOs, and revising existing ATOs from "non-billable program time" to "billable program time."

Response 11: This comment merits further investigation, and ADEQ commits to conducting this study as part of the institution of timekeeping for appropriate air quality compliance personnel. Until additional data from ADEQ's internal timekeeping are available, it is not possible to make the suggested change.

Comment 12: Some commentators suggested that using a different metric, such as engineering positions, would be more appropriate than using Title V Compressor Stations as the base "fee" for the purposes of setting administration and inspection fees.

Response 12: This comment merits further investigation, and ADEQ commits to conducting this study as part of the institution of timekeeping for appropriate air quality compliance personnel. The best information ADEQ had available at the time this comment was made; however, was the 1998 workload analysis document and the fee rule model that was constructed using that data. Changing from the use of the Title V Compressor Stations as the base fee, as requested by commentators, would result in a substantial change to the rule package. Further, the requested change would also result in the need to re-evaluate administrative fees through a stakeholder process. As described in Sections 3 and 9 above, a delay in the effectiveness date of the proposed rule package would result in the insolvency of the Air Permit Administration Fund. As such, ADEQ will continue to consider this comment as the potential basis for any future rulemaking to be based upon the information resulting from the timekeeping study described in the response to Comment 6, should it be determined that changes are warranted.

Comment 13: Some commentators asked whether or not ADEQ was in compliance with the statutes that limit ADEQ's spending for cost recovery and setting fees under the Air Permit Administration Fund.

Response 13: ADEQ understands this comment to refer to A.R.S. § 49-455(C) and (D) which state:

C. "No more than five per cent of the monies in the fund may be used for the collection of monies, unless otherwise provided under title V of the clean air act."

D. "No more than five per cent of the monies in the fund may be used for general administration of the fund unless otherwise provided under title V of the clean air act."

Five percent of revenues realized between Fiscal Years 2003 through 2007 ranges from approximately \$175,000 to \$250,000 per year. ADEQ confirms that it has not spent more than \$175,000 to \$250,000 each year for the purposes of collecting monies, or for the general administration of the monies in the fund.

Comment 14: Some commentators suggested that by adjusting the administration and inspection fees, and the permitting costs associated with developing air quality general permits, it would be possible to reduce the emissions fees and administration fees associated with Class I – Title V facilities. The commentators went on to state that this would bring a more equitable balance to the costs among permit holders, and ensure that general permits are not being provided at an artificially reduced cost to general permit holders.

Response 14: ADEQ acknowledges that there are different approaches for generating the revenue needed to offset the expenditures associated with administering the entire air permitting program. The increased emissions fees (i.e. \$38.25 per ton of pollution emitted), are approximately 91% of the fee charged to similar sources by the U.S. EPA and other states pursuant to 40 CFR 70.9 (i.e. approximately \$41.93 per ton of pollution emitted). This increased fee also remains significantly less than the emissions fee charged by ADEQ in 2001 (i.e. \$39.24 per ton in 2001 dollars, or \$46.20 per ton in 2007 dollars), the year prior to the implementation of the first fee rule model.

The fixed (administrative and inspection) fees are principally used to offset the rest of the non-billable hours associated with administration of the air permitting program. These costs are spread over all permitted sources. There is merit to the commentators' suggestion that these costs be reviewed for the purposes of equity. The best information available for this balancing; however, is from a 1998 workload analysis, which is the basis for the fee rule model that was used by ADEQ. Until additional data from the timekeeping study are available, it is not possible to adjust these fees in an equitable way. In addition, without further data, ADEQ cannot effectively determine the potential impacts this comment would have on small business.

Comment 15: Some commentators suggested that it was necessary to spend additional time reviewing the amount of money collected from air quality permit processing to determine whether or not the per hour billable rate was recouping the actual costs of processing air quality permits.

Response 15: The amount of money collected from the air quality permitting process is currently based upon a burdened rate that was established through the first revised fee rule in 2002, a revised analysis and fee rule in 2004, and additional changes that are discussed in more detail in Section 10.E above. ADEQ has determined; however, that this comment merits further investigation, and ADEQ commits to conducting this study as part of the institution of time-keeping for appropriate air quality compliance personnel. Until additional data from that study are available, it is not possible to judge whether the requested change is possible or warranted. In addition, without further data, ADEQ cannot effectively determine the potential impacts this comment would have on small business.

Comment 16: Some commentators suggested that ADEQ rebalance its fee rule model so that the percentage of revenue realized from emissions fees and fixed (administration and inspection) fees was the same as what was agreed to in 1998 (i.e. 22% of revenue resulting from emissions fees, 78% of revenue resulting from administrative fees).

Response 16: ADEQ does not agree that the 2002 fee rule revision instituted a cap on revenue resulting from any one fund source. Instead, ADEQ understood the agreement amongst all of the stakeholders to be the establishment of and reliance upon a system of permit processing, emissions, and fixed administrative/inspection fees. The 2007 fee rule revision maintains that same system of fees, and deviates from the original percentage of revenue for reasons described in Section 9 above.

Because re-evaluation of the fee structure or the percentage of revenues in the 2007 rulemaking effects all of the sources regulated by this fee rule, ADEQ commits to using its stakeholder and rulemaking processes to work with the stakeholders to review and assess other approaches for balancing the need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the air program.

Comment 17: Some commentators expressed the thought that a viable permitting and monitoring process is in the regulated community's best interests.

Response 17: ADEQ acknowledges that there are different approaches for generating the revenue needed to offset the expenditures associated with administering the entire air permitting program. The Department has determined that this system of fees will result in a viable permitting and monitoring process.

Comment 18: Some commentators expressed that comments submitted upon, as well as recommended alternatives to, ADEQ's fee rule model attempted to avoid "nickel-and-diming" the proposals.

Response 18: It appears to the Department that the comments have been structured to focus on the bigger picture, and the constructive approach that is reflected in these comments is appreciated. ADEQ also acknowledges that its fee rule model did not cover each nickel and dime that the fee generates. Instead, the model principally focused on the larger picture, and attempted to simulate the largest and most predictable revenue streams. Items such as application fees for authorizations to operate (ATOs) could only be predicted on an average annual basis. The majority of these applications come in at the time that a general permit is first issued or renewed, but it is difficult to ascertain exactly when that revenue will be realized. Due to the small amount of money realized from this revenue stream (approximately \$285,000 over five years), and the fact that this money represents less than 0.75% of the revenue that is expected to be generated over that same time period under the 2007 revisions (approximately \$42,800,000 over five years), ADEQ determined it was best to leave this revenue stream unaccounted for in its model.

Comment 19: Some commentators suggested that the revenues generated to support the APAF should be driven largely by user fees.

Response 19: ADEQ acknowledges this comment and has determined that the revenue generated by the fee rule is largely driven by fees paid by ADEQ's regulated community. ADEQ acknowledges that there are different approaches for generating the revenue needed to offset the expenditures associated with the entire air permitting program. The Department has determined that the 2007 system of fees will result in a viable permitting and monitoring process.

Comment 20: Some commentators suggested that the refinery be dealt with as a "sidebar deal," meaning that non-refinery sources should not be required to subsidize the start-up of the refinery. Instead, the same commentators suggested that there should be a better matching between revenues and expenditures by removing the refinery from the analysis.

Response 20: For the purposes of the original fee rule model discussed with the stakeholders, ADEQ determined the costs associated with permit administration for a petroleum refinery by contacting other regulatory agencies and dis-

curring the existing workload for those agencies, and by reviewing the air quality permit to determine appropriate staffing levels. After further consideration, and based upon comments received, ADEQ has removed the language of the rule that addresses petroleum refineries, and has adjusted the model accordingly.

Comment 21: Some commentators stated that ADEQ should use the following approach when determining the appropriate fees:

- (i) determine the amount of funds required to perform the permit processing function;
- (ii) ensure that the revenues necessary to offset expenditures for the permit processing function are recovered through the fees assessed through the permit processing function;
- (iii) determine the remaining balance of funds that is necessary to support the remaining functions associated with administration of the permit; and
- (iv) ensure that revenues necessary to offset expenditures be collected using the following allocation:
 - (a) 78% of revenue should be generated by the fixed (administrative or inspection) fees, based upon factors that are derived from resource requirements; and
 - (b) 22% of revenue should be generated by the emissions (per ton) fee.

Response 21: ADEQ acknowledges that there are different approaches to generating the revenue needed to offset the expenditures associated with the entire air permitting program. For reasons described in the response to comment numbers 12 and 16 above; however, ADEQ cannot institute the requested changes made by this commentator. Because re-evaluation of the fee structure or the percentage of revenues in the 2007 rulemaking effects all of the sources regulated by this fee rule, ADEQ commits to using its stakeholder and rulemaking processes to work with the stakeholders to review and assess other approaches for balancing the need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the air program.

Comment 22: Some commentators recommended that general permit holders should pay their fair share of the permit processing and fixed (administrative and inspection) fees.

Response 22: As discussed in the response to comment number 12, the best information regarding the assessment of permit processing and fixed fees for general permit holders is the 1998 workload analysis. ADEQ has determined that this comment merits further investigation, and therefore commits to analyzing the data that results from the institution of timekeeping for permits and appropriate compliance personnel. Until additional data from this study are available, it is not possible to determine whether permittees with Authorizations To Operate (ATOs) under general permits should bear a higher or lower amount than those in the 2007 fee rule revision for permit processing and fixed (administrative and inspection) fees.

Comment 23: Some commentators recommended that ADEQ institute a timekeeping system so that current factors could be used in the assessment of the fixed (administrative and inspection) fees.

Response 23: ADEQ agrees with this comment, and will endeavor to institute a timekeeping system for appropriate permitting and compliance staff in order to track the actual hours spent administering each general permit, as well as all individual permits. After implementing this recommendation, ADEQ will develop the data necessary to review and potentially rebalance fixed (administrative and inspection) fees charged to every permit holder.

Comment 24: Some commentators recommended that the APAF should have separate, and potentially self-balancing, accounts, including one for permit processing, and one for all of the other fees (i.e. administrative, inspection, and emission fees).

Response 24: ADEQ, like many other state agencies, has a system for tracking both revenues and expenditures. ADEQ's current revenue and expenditure tracking system does not currently track revenues and expenditures with the level of specificity recommended by the commentator. ADEQ has determined; however, that instituting this recommendation would not require any change to the 2007 fee rule. As such, ADEQ will continue to consider this recommendation as it accounts for revenues and expenditures.

Comment 25: Some commentators suggested that the rule should allow, and not compel, the director to adjust fees by the Consumer Price Index (CPI) each year. The same commentators suggested that the rule should allow fees to "catch-up" again later based upon the CPI in the event that the year(s) goes by without an increase.

Response 25: ADEQ disagrees with this comment. Arizona Revised Statute § 49-426(E)(1) states that "...the director shall establish by rule a system of fees... [t]hese rules shall prescribe procedures for increasing the fee each year by the percentage if any by which the consumer price index for the immediately preceding calendar year exceeds the consumer price index for calendar year 1989." The Department understands this statute to prescribe not only the procedures for adjusting fees by the CPI each year, but also to prescribe that these procedures be implemented each year. As a result, no change has been made in response to this comment.

Comment 26: Commenter asserts that the amendments should be rejected and the balancing of fees and expenditures by the Department should be solved by cutting costs.

Response 26: ADEQ understands the concerns of the commenter, and has practiced fiscal responsibility by implementing strategies to increase efficiency and reduce costs to the stakeholders wherever possible. ADEQ's current workload, duties and responsibilities to both the public and EPA confirm the need to fill all existing positions, as well as create additional positions to assist in the administration of the air quality permitting program. ADEQ commits to implementing a timekeeping system for appropriate air quality compliance and permitting personnel which will provide the necessary data to associate those billable hours with the assigned workload and potentially rebalance the fees charged to permit holders.

Comment 27: Commenter asserts that the Department should shift a greater portion of the budgetary needs into the emission fees.

Response 27: ADEQ acknowledges that there are different approaches for generating the revenue needed to offset the expenditures associated with administering the entire air permitting program. In the analysis leading up to the 2007 fee rule modification, ADEQ determined that the costs of its workload have increased across all categories and classifications of sources and permits. As a result, ADEQ determined that it was necessary to increase the revenue generated from each category and classification of source and permit, and therefore both emissions and fixed (administrative and inspection) fees have increased.

ADEQ has increased emissions fees from \$14.18 per ton to \$38.25 per ton of pollution emitted. The increased emissions fees (i.e. \$38.25 per ton of pollution emitted), are approximately 91% of the fee charged to similar sources by the U.S. EPA and other states pursuant to 40 CFR 70.9 (i.e. approximately \$41.93 per ton of pollution emitted).

The fixed (administrative and inspection) fees are principally used to offset the rest of the non-billable hours associated with administration of the air permitting program. These costs are spread over all permitted sources. ADEQ has determined that there is merit to other commentator's suggestions that these costs be reviewed for the purposes of equity. The best information available for this balancing; however, is from a 1998 workload analysis, which is the basis for the fee rule model that was used by ADEQ. Until additional data from the timekeeping study are available, it is not possible to adjust these fees in an equitable way. In addition, without further data, ADEQ cannot effectively determine the potential impacts this comment would have on small business.

Comment 28: Commenter asserts that the regulated community should be allowed to pay the annual administrative fees to ADEQ on a quarterly basis.

Response 28: ADEQ allows those permitted by the Department to establish payment plans with the Chief Financial Officer; however, the permittee is responsible for paying any interest charges that accrue on the balance that is not paid by the due date.

Comment 29: Commenter asserts that an error occurs in the Economic Impact Statement in the table documenting the proposed administrative fees for Class I Title V Sources.

Response 29: ADEQ agrees with the comment and the errors will be corrected in the Notice of Final Rulemaking.

Comment 30: Commentators support the comments submitted by the Arizona Chamber of Commerce and Industry.

Response 30: ADEQ appreciates the constructive comments provided by the Arizona Chamber of Commerce and the companies that it represents, and has responded to those comments in the responses to comments 1 through 26 and comments 46 through 60.

Comment 31: Commentator states that the Permit Fee program once again shifts the cost burden toward an emission-fee based program and less toward an appropriate administration-fee based program. Commentator asserts that the proposed emission fee is in many respects an emissions-based penalty tax which does not comport with the intent of EPA's August 4, 1993 guidance.

Response 31: ADEQ acknowledges that there are different approaches for generating the revenue needed to offset the expenditures associated with administering the entire air permitting program. The Department; however, cannot agree that an administration-fee based program is more or less appropriate than alternative approaches at this time.

ADEQ disagrees that the proposed emission fee is an emissions-based penalty tax. If the emissions fee were to be a penalty driven tax, the emissions fee would be levied against all sources of air pollution. As it stands, ADEQ's fee rule applies only after a source has the potential to emit more than 100 tons per year of a single pollutant. ADEQ also does not collect emissions fees for the most abundant of air pollution emissions, including emissions of carbon monoxide and carbon dioxide. Instead, ADEQ stops collecting emissions-based fees for emissions of particulate matter, sulfur dioxide, oxides of nitrogen, volatile organic compounds and lead at the time that the actual emissions of each pollutant reach 4,000 tons in a year. If the emissions fee were intended to be a tax, ADEQ would, at a minimum, collect fees for every ton of pollution emitted. Further, if ADEQ intended the emissions fee to be a penalty-based tax, ADEQ would apply escalating factors to the emissions-fee when emissions of pollution crossed specific thresholds.

ADEQ's use of an emissions fee for the administration of its air quality program is similar to the fee recommended by the U.S. EPA in its rules, as well as the fee structures used to support similar air permit administration programs in other states. The increased emissions fees (i.e. \$38.25 per ton of pollution emitted), are approximately 91% of the fees charged to similar sources by the U.S. EPA and other states pursuant to 40 CFR 70.9 (i.e. approximately \$41.93 per ton of pollution emitted). ADEQ also notes that this increased fee also remains significantly less than the emis-

sions fee charged by ADEQ in 2001 (i.e. \$39.24 per ton in 2001 dollars, or \$46.20 per ton in 2007 dollars), the year prior to the implementation of the first fee rule revision.

Comment 32: Commentator recommends that the permit fees should be heavily based on the administration fee, which more equitably accounts for the time and effort required to administer each particular permit. Commentator further suggests that depending heavily on revenues from emission fees runs the risk that if emissions are reduced either temporarily or permanently, revenues would also be reduced potentially making the fee program insolvent once again.

Response 32: ADEQ acknowledges that there are different approaches for generating the revenue needed to offset the expenditures associated with administering the entire air permitting program. The Department; however, cannot agree that an administration fee based program is more or less appropriate than alternative approaches at this time.

For the purposes of this fee rule, ADEQ did consider the positive and negative outcomes associated with relying on revenues from emissions fees. The Department acknowledges that there is some risk related to both temporary and permanent emissions reductions, but has determined that the risk is limited due to the 4,000 ton cap on emissions fees per pollutant. In addition, ADEQ has taken steps to ensure that estimated revenue generation will surpass expenditures slightly, so that the APAF will accumulate a fund balance, thereby minimizing potential future insolvency issues.

As discussed in the responses to other commentators, ADEQ commits to instituting a timekeeping system for appropriate air quality permitting and compliance personnel. This timekeeping system will provide sufficient information for the evaluation of alternative approaches for generating the revenue necessary to offset expenditures.

Comment 33: Commentator would support a more reasonable level of an emission fee increase from the present level of about \$14 to a level not higher than \$19 per ton, an increase of up to 35%.

Response 33: ADEQ acknowledges that there are different approaches for generating the revenue needed to offset the expenditures associated with administering the entire air permitting program. In the analysis leading up to the 2007 fee rule modification, ADEQ determined that the costs of its workload have increased across all categories and classifications of sources and permits. As a result, ADEQ determined that it was necessary to increase the revenue generated from each category and classification of source and permit, and therefore both emissions and fixed (administrative and inspection) fees have increased.

ADEQ has increased emissions fees from \$14.18 per ton to \$38.25 per ton of pollution emitted. The increased emissions fees (i.e. \$38.25 per ton of pollution emitted), are approximately 91% of the fee charged to similar sources by the U.S. EPA and other states pursuant to 40 CFR 70.9 (i.e. approximately \$42.03 per ton of pollution emitted). ADEQ also notes that this increased fee remains significantly less than the emissions fee charged by ADEQ in 2001 (i.e. \$39.24 per ton in 2001 dollars, or \$46.20 per ton in 2007 dollars), the year prior to the implementation of the first fee rule model.

ADEQ has revised the fee rule two previous times, once in 2002 and once in 2004. Both revisions ultimately failed to provide sufficient revenue to cover expenditures associated with the administration of the air permitting program. ADEQ has determined that billable emissions (and emissions fees) have been effectively constant since 2004. In that same time period, administrative and permitting fees have fluctuated due to fluctuations in the total number of permits administered by ADEQ and billable hours generated each year. In an attempt to resolve insolvency issues for both the short and long term, ADEQ determined that it was most appropriate to place a greater emphasis on billable emissions, while preserving the fee rule structure initiated 2002. ADEQ is committed to instituting a timekeeping system for appropriate air quality permitting and compliance personnel. Using the data resulting from this system, ADEQ commits to using the rulemaking process to work with its stakeholders to identify other approaches for balancing its need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the air permits program.

Comment 34: Commentator recommends that the entire permit fee be based on an administration fee and that emissions fees be eliminated.

Response 34: As described in responses to previous comments, ADEQ acknowledges that there are different approaches for generating the revenue needed to offset the expenditures associated with administering the entire air permitting program. In the analysis leading up to the 2007 fee rule modification, ADEQ determined that the costs of its workload have increased across all categories and classifications of sources and permits. As a result, ADEQ determined that it was necessary to increase the revenue generated from each category and classification of source and permit and therefore both emissions and fixed (administrative and inspection) fees have increased.

The fixed (administrative and inspection) fees are principally used to offset the rest of the non-billable hours associated with administration of permits. These costs are spread over all permitted sources, which would require the re-evaluation of fixed fees with representatives of each source category or permitted facility. For the reasons discussed in the responses to comments 12 and 16, ADEQ cannot make the recommended change. In addition, without further data, ADEQ cannot effectively determine the potential impacts that implementing this comment would have on small business.

Comment 35: Commentator recommends that no more than 22% of the Title V funds result from emissions based

fees.

Response 35: ADEQ acknowledges that there are different approaches to generating the revenue needed to offset the expenditures associated with the entire air permitting program, and has addressed this comment in its response to comment number 16. Instead, ADEQ commits to using the rulemaking process to work with its stakeholders to identify other approaches for balancing its need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the administration of the air permits program. Implementation of this recommendation would require a new rulemaking to ensure that the entire stakeholder community has an opportunity to review and comment upon the resulting fees for each source category.

Comment 36: Commentator states that revenues received under a Title V permit fee structure should not be used to subsidize non-Title V permit program administration.

Response 36: Please see the response to comment 43.

Comment 37: Commentator recommends that proper adjustments to the General Permit fee program would go a long way toward balancing the non-Title V sources budget without subsidy through use of Title V funds.

Response 37: ADEQ acknowledges that there are different approaches to generating the revenue needed to offset the expenditures associated with the entire air permitting program. ADEQ also agrees that it is important that any adjustments to the General Permit fee program must be appropriately applied. Some of the recommended adjustments supported by this and other commentators would result in a large increase to the fees paid by all general permit holders. The Department has determined that this is not the appropriate solution in all cases. Instead, ADEQ commits to using the rulemaking process to work with its stakeholders to identify other approaches for balancing its need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the air permits program. Implementation of this recommendation would require a new rulemaking to ensure that the entire stakeholder community has an opportunity to review and comment upon the resulting fees for each source category.

Comment 38: Commentator recommends that ADEQ use an accounting method to track unused dollars by calendar year, and track spending of unused dollars while segregating the spending between the Title V program and other air quality regulatory programs.

Response 38: ADEQ will continue to consider this recommendation, but has determined that the fee rule would not require a revision if implementation of the recommendation is determined to be warranted.

Comment 39: Commentator would support a small annual funding surplus in the range of 1-3%, but not the 10% level in the proposed rule.

Response 39: ADEQ appreciates the commentator's understanding that a funding surplus is necessary to ensure long term solvency of the APAF. ADEQ has considered the recommended range of 1-3%; however, and has determined that it cannot propose a fee rule with such a slim margin of funding surplus.

From 1993 through 2002, using primarily an emissions-fee driven program, ADEQ accumulated a surplus of funds in the APAF. Based upon comments and concerns from its stakeholders, ADEQ revised its fee rule in 2002 to place a larger emphasis on fixed (administrative and inspection) and permit fees, while deemphasizing its reliance on emissions fees. From 2002 through 2004, APAF expenditures far outpaced revenues (by 50% in Fiscal Year 2003, and approximately 20% in Fiscal Year 2004) and the Fund balance was nearly completely exhausted. ADEQ took actions to reduce costs and find alternative means of supporting the Fund (i.e., a one time transfer of non-Title V expenditures to the Federal Fund in 2004) while the fee rule was revised. Reasons identified for the shortfall in revenue included a migration of sources from individual permits to general permits and incorrect assumptions about the number of billable hours that could be generated by air quality permitting staff.

In 2004, ADEQ completed revisions to its fee rule, but did not provide for any potential surplus. The Department did realize additional revenue from the 2004 fee rule revisions; however, the revenue increase was not sufficient to cover expenditures in the following fiscal years. Additionally, the revenue stream remained flat in Fiscal Years 2005 and 2006, despite CPI adjustments. Costs to run the program; however, increased. Practicing fiscal responsibility, ADEQ limited expenditures to levels significantly less than its expenditure authority (through such means as maintaining vacant positions) in order to limit the impacts of the revenues unrealized by the 2004 revisions.

ADEQ's current workload confirms the need to fill all existing positions, as well as create additional positions to assist in the administration of the air quality permitting program. Because the 2002 and 2004 fee rule revisions resulted in insufficient revenues, ADEQ has determined that an estimated 10% funding surplus level is both necessary and appropriate.

Comment 40: Commentator recommends assessing different levels of administrative fees based upon the complexity of each source category.

Response 40: ADEQ acknowledges that there are different approaches to generating the revenue needed to offset the expenditures associated with the entire air permitting program. ADEQ also agrees that it is important that any adjustments to the program fees must be appropriately applied. The Department commits to using the rulemaking process to work with its stakeholders to identify other approaches for balancing its need to generate revenue that offsets the

expenditures necessary to effectively perform the duties associated with the air permits program. Implementation of this recommendation would require a new rulemaking to ensure that the entire stakeholder community has an opportunity to review and comment upon the resulting fees for each source category.

Comment 41: Commentator asserts that ADEQ's proposed fees rule is fundamentally unfair. Fees for one of the commentator's facilities would increase nearly three-fold, largely due to ADEQ's proposal to increase the emission-based fees by 170%.

Response 41: As discussed in the response to comment 39, ADEQ initially implemented an emissions-fee driven program to ensure that APAF revenues outpaced expenditures. In 2002 ADEQ changed the fee system to focus less on emissions fees, and place a greater emphasis on fixed (administrative and inspection) fees as well as permit processing fees.

As discussed in the response to comment 39, and described more fully in item 9, ADEQ failed to realize projected revenues after the 2002 and 2004 fee rule modifications. ADEQ acknowledges that there are different approaches to generating the revenue needed to offset the expenditures associated with the entire air permitting program. ADEQ also agrees that it is important that any adjustments to the fixed (administrative and inspection) fee program must be appropriately applied. Some of the recommended adjustments supported by this and other commentators would result in a large increase to the fees paid by all general permit holders. The Department has determined that this is not the appropriate solution in all cases. A significant number of general permits are issued to facilities that are smaller and less complex, requiring ADEQ to spend relatively small amounts on permitting and compliance assurance. Additionally, some general permits are issued to small business owners or rural communities where an across-the-board increase in fees would result in potentially unfair impacts to that small business or community.

As discussed in the responses to comments 12 and 16, ADEQ cannot make the change recommended by this comment. Instead, ADEQ commits to using the rulemaking process to work with its stakeholders to review and assess other approaches for balancing its need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the air permits program. Implementation of this recommendation would require a new rulemaking to ensure that the entire stakeholder community has an opportunity to review and comment upon the resulting fees for each source category.

Comment 42: Commentator asserts that general permits have doubled since 2005, and that ADEQ's resource demands to administer the general permits presumably doubled as well, yet fees for general permits do not rise to a level that ensures that the costs of inspecting and administering these sources.

Response 42: While ADEQ acknowledges that the number of general permits that have been issued has increased significantly since 2005, it has been determined that the commentator's presumption of the workload increasing proportionately cannot be verified. In an effort to provide more recent information about work practices, ADEQ, in its responses to numerous comments above, has committed to ensuring that all appropriate permitting and compliance personnel track the number of hours spent administering the permitting program. Because re-evaluation of the fee structure or the percentage of revenues in the 2007 rulemaking affects all of the sources regulated by this fee rule, ADEQ commits to work with the stakeholders to review and assess other approaches for balancing revenues necessary to effectively perform the duties associated with the air program.

Comment 43: Commentator states that ADEQ's proposed fee rule violates federal and state law. Commentator further states that the Clean Air Act prohibits states from using Title V revenues to subsidize non-Title V permit program costs, and that Arizona law incorporates that prohibition by reference. Commentator states that there is no independent state authority for ADEQ to go beyond the Clean Air Act, yet ADEQ's fees proposal would obtain disproportionate revenues from large stationary sources, and use the excess revenues to subsidize the costs of regulating smaller sources and sources with general permits.

Response 43: Title V of the Clean Air Act contains no prohibition against charging Title V sources fees greater than necessary to cover the costs of developing and administering a permit program for Title V sources. Instead, CAA § 502(b)(3)(A) requires states to charge Title V sources fees that are "sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title." (Emphasis added). In other words, Title V requires a minimum, not a maximum, permit fee. This is confirmed by CAA § 502(3)(B), the Title V provision allowing states to make a *prima facie* showing of compliance with the fee requirement by imposing an emission fee of \$25 per ton plus inflation. To satisfy Title V requirements using this method, a state must charge "an amount *not less than* \$25 per ton of each regulated pollutant. . . ." (Emphasis added.)

Part 70 provides that:

The state program shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are *sufficient* to cover the permit program costs and shall ensure that *any fee required by this section* will be used solely for permit program costs.

40 CFR 70.9(a) (emphasis added). To the extent a fee is greater than the minimum required by Title V, it is "not required by this section." Using that portion of the fee for purposes other than the development or administration of a permit program for Title V sources is therefore consistent with the rule.

In particular, EPA has made it clear that, contrary to the commentator's assertion, Title V revenues may be used to fund permitting costs associated with non-Title V sources. In the final approval of the Nebraska Title V program, EPA addressed a comment objecting that "[p]ermitting agencies might use Title V fees to administer the Class II source program (the operating permit program for non-Title V sources)." EPA responded:

Fees collected under Title V may only be used for Title V activities. As stated in EPA's proposals on the state and local programs (at 60 FR 5885 and 60 FR 125223), the program submittals include a demonstration that separate funds have been created for handling the Title V fees. Permitting authorities will be expected to keep appropriate records to show that the fees are used only for activities relating to Title V.

There may be sources in the class II program; however, for which the state and local agencies may utilize Title V funding in permit processing (such as sources potentially subject to Title V, which take restrictions in Class II permits so that they will not be required to obtain Title V permits). EPA considers such permitting to be a valid Title V activity. However, the state must use other funds for permitting and other activities which have no relationship to the Title V program.

60 Fed. Reg. 53872, 53873 (Oct. 18, 1995) (emphasis added).

As documented in ADEQ's fee model, 305 of the 788 currently permitted sources are Title V sources under the fee rule. ADEQ's Air Quality Permits and Compliance Sections have estimated that of the remaining 483 non-Title V sources, approximately 233 have permits imposing restrictions that assist them in avoiding classification as Title V. These sources are referred to as "synthetic minor" sources to distinguish them from "natural minor" sources that do not require restrictions to keep emissions below Title V thresholds. Under the EPA decision cited above, ADEQ may legitimately use revenues generated by Title V sources to fund permitting activities related to synthetic minor sources. These sources comprise approximately 70 percent of the sources subject to the state's air quality permit program.

The remaining non-Title V, natural minor sources consist of smaller, less complex facilities that require ADEQ to spend relatively small amounts on permitting and compliance assurance. For example, natural minor sources, unlike most synthetic minor sources, do not require regular inspections. Although the fees charged to these sources are also low, they are probably adequate to cover the costs of issuing and administering their permits. There is therefore no reason to assume that fees collected from Title V sources will be used to fund "permitting and other activities which have no relationship to the Title V program." This is particularly so since, as noted in the response to comment 55 below, EPA has previously determined that ADEQ's accounting system is adequate to assure that Title V program revenues are used to fund only allowed costs.

Comment 44: Commentator states that ADEQ must correctly classify facilities under the fee rule. Commentator further states that classifying two oil-fired utilities as the same as coal fired utilities is unfair, as neither facility operates enough during a 12-month window to trigger any source testing requirements. Commentator asserts that oil-fired utilities are clearly more similar to gas fired plants than to coal fired plants, and recommends that ADEQ change the source categories as follows: (1) Utilities – Coal; and (2) Utilities – Natural Gas and Oil.

Response 44: ADEQ agrees with this comment and has amended the rule to re-categorize the utility sectors as follows: (1) "Utilities – Coal Fired," and (2) "Utilities – Fossil Fuel Fired Except Coal."

Comment 45: Commentator supports the comments submitted by the Arizona Chamber of Commerce and Industry.

Response 45: ADEQ appreciates the constructive comments provided by the Arizona Chamber of Commerce and the companies that it represents, and has responded to those comments in the responses to comments 1 through 26 and comments 46 through 60.

Comment 46: Commentator submits that an appropriate fee rule must be fair in the way that it distributes ADEQ's air program costs through the fees imposed on different types of sources and permittees, as well as ensure accountability for the air program costs that result in air fee increases.

Response 46: ADEQ disagrees with the insinuation that the 2007 fee rule revisions are unfair and inappropriate. As discussed in the responses to previous comments, ADEQ has used the same fee rule model that stakeholders reviewed and accepted in the 2002 and 2004 fee rule revisions. For reasons also described in responses to previous comments, ADEQ has determined that it is necessary and appropriate to make the changes associated with the 2007 revisions.

To develop the data necessary to determine whether alternative fee methodologies are appropriate, ADEQ will institute a timekeeping system for appropriate permitting and compliance staff in order to track the actual hours spent administering each general permit, as well as all individual permits. After implementing this recommendation, ADEQ will develop the data necessary to review and potentially rebalance the fees charged to every permit holder.

Comment 47: Commentator states that Arizona statutes place a cap on County air fees at "an amount not greater than ten per cent more than the fees or costs charged by the state for similar state permits or approvals." A.R.S. §§ 49-101(1), 49-1112(B), 49-480. Commentator states that the counties already are lining up to increase their air fees, and that reopening the ADEQ rulemaking now and promptly reaching an appropriate consensus would have the added benefit of avoiding controversy or confusion in the county fee rulemakings.

Response 47: ADEQ acknowledges that the county air quality programs are also in various stages of revising their fee rules. ADEQ disagrees; however, that its proposed rulemaking adds controversy or confusion to the county fee rulemakings. While ADEQ's fees do set a cap for county fees, the counties have the ability to address peculiar local conditions under A.R.S. § 49-112(A)(3) that authorize them to deviate from ADEQ's fee structure. In addition, ADEQ's 2007 fee rule revisions places a significant emphasis on emissions-based revenues. The counties, on the other hand, do not rely heavily on emissions-based fees for support of their programs. According to discussions with representatives from the county programs, ADEQ's 2007 fee rule revisions to administrative fees will either provide necessary relief for source categories where fees are insufficient to cover the costs at a county program, or will have little impact on the fee rules proposed by each county.

Comment 48: Commentator requests that ADEQ reopen the current rulemaking process, rather than issuing a final rule as proposed by ADEQ.

Response 48: ADEQ has determined that it cannot reopen the current rulemaking process, and delay issuing a final rule. Based upon revenue and expenditure projections at the commencement of public comment period, the APAF will have between \$200,000 and \$400,000 of remaining fund balance in November 2007. This fund balance is less than one month's worth of operating expenses. Delaying the finalization of the 2007 fee rule revisions in order to develop an alternative approach would delay the implementation of the fee structure until the 2009 billing cycle, which would result in a negative fund balance in the fall of 2008.

Comment 49: Commentator states that the proposed fee rule would increase the emission-based fee by 170%, thereby shifting a greater portion of the air program costs from Class I sources to Class II sources, because only Class I sources pay the emission-based fee.

Response 49: ADEQ acknowledges that only Class I sources pay the emissions-based fees. As discussed in the response to comment 41, and in detail in item 9, the 2002 and 2004 fee rule revisions placed a greater emphasis on less predictable sources of income, specifically fixed (administrative and inspection) and hourly permit processing fees, while de-emphasizing ADEQ's reliance on the most stable source of revenue, billable emissions. Since 2004, billable emissions have been nearly constant, and after reviewing expected state and federal rulemakings, ADEQ has determined that billable emissions are not likely to change in the near future.

Comment 50: Commentator states that despite total general permits almost doubling (from 99.5 to 181) since 2005, the proposed rule does not revise annual administrative fees to ensure that the corresponding costs of inspecting and administering these general permit sources are shifted from the fee structure for individual permits to the fee structure for general permits.

Response 50: ADEQ acknowledges that there are different approaches to generating the revenue needed to offset the expenditures associated with the entire air permitting program. ADEQ also agrees that it is important that any adjustments to the fixed (administrative and inspection) fees must be appropriately applied. Some of the recommended adjustments supported by this and other commentators would result in a large increase to the fees paid by all general permit holders. For reasons discussed in the response to comment 42, the Department has determined that this is not the appropriate solution in all cases. Instead, ADEQ commits to using the rulemaking process to work with its stakeholders to identify other approaches for balancing its need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the air permits program. Implementation of this recommendation would require a new rulemaking to ensure that the entire stakeholder community has an opportunity to review and comment upon the resulting fees for each source category.

Comment 51: Commentator states that the proposed rule leaves the permit processing fee for general permits unchanged at a flat rate of \$500, which does not cover ADEQ's time devoted to general permitting and therefore shifts a greater portion of costs to sources that hold individual permits that will pay an hourly rate of \$133.50 for permit processing (a 35% increase since 2004).

Response 51: ADEQ acknowledges that the application fee for a general permit remains unchanged at a flat rate of \$500 under the 2007 fee rule revision. ADEQ has taken steps to ensure that more of the costs associated with processing general permit applications is recovered by expanding this application fee to cover not only new and renewal general permit applications, but also applications for any new equipment that will be covered under a general permit.

ADEQ also agrees that it is important that the costs associated with administering general permits be equitably distributed to the general permit holders. Some of the recommended adjustments supported by this and other commentators would result in a large increase to the application fees paid by all general permits holders. The Department has determined that this is not the appropriate solution in all cases. At the time of the 2007 fee rule revision, ADEQ did not have enough data to determine the full impacts that this would have on small business, or on the specific general permit holders. As a result of this lack of data, and based upon recommendations from commentators, ADEQ will institute a timekeeping system for appropriate permit and compliance personnel that can be used to determine the actual costs associated with processing and administering all air quality permits. ADEQ also commits to using the rulemaking process to work with its stakeholders to identify other approaches for balancing its need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the air permits program.

Comment 52: Commentator states that ADEQ's calculation of administrative flat fees for the various source categories is based on many assumptions (including but not limited to a 1998 time and motion study that has not been

updated), and there is no requirement or system for ADEQ to account for its time in administering its permitting program that would allow ADEQ's assumptions to be truth-checked or adjusted as needed in the future to reflect reality.

Response 52: As discussed in responses to previous comments, ADEQ commits to instituting a timekeeping system for appropriate air quality permits and compliance personnel, providing ADEQ with the data necessary to "truth-check" any additional amendments made to the fee rule.

Comment 53: Commentator requests that the rule be revised such that the Director is not compelled to increase fees annually by the Consumer Price Index.

Response 53: Please see the response to comment 25.

Comment 54: Commentator states that should ADEQ rely on insolvency as a reason for denying the request to postpone the rulemaking, then the commentator requests that ADEQ explain the options available to it for otherwise addressing the insolvency concern, even if the option is temporary, as well as why such options were rejected.

Response 54: ADEQ did consider alternative options available to it for otherwise addressing the insolvency concern, and determined that the options were not feasible. The options considered were as follows:

(1) Issue bills pursuant to the existing fee rule and commence a new rulemaking with a supplemental billing in the future.

ADEQ considered this option, but chose not to employ it for several reasons. First, revenue and expenditure projections at the time of the public comment period showed that staying the course with the existing fee rule would result in the APAF having a negative fund balance in fall of 2008. The stakeholder process for the first fee rule revision in 2002 was contentious and took a significant amount of time to complete due to fact that the changes affected more than 800 permit holders. The second fee rule revision in 2004 was less contentious and took less time due to the fact that ADEQ only modified the fee structure adopted in 2002. The proposed revisions recommended by this and other commentators would use a different model to rebalance the fees for all existing permit holders (approximately 780) and would require extensive analysis by all involved. ADEQ was uncertain that this process could be completed prior to fall of 2008, thereby only delaying insolvency for a short period of time. Additionally, ADEQ does not have sufficient data to ensure that any changes resulting from the new rulemaking would be equitable or more representative of actual costs incurred by ADEQ than the changes made in the 2007 rule revisions. Instead, ADEQ would require the data from the timekeeping system it commits to implement in order to evaluate an alternative system of fees.

(2) Add 30-days to the public comment period.

ADEQ considered this option, but determined that a 30-day extension to the public comment period would delay any potential effective date of the rule until February 2008. The APAF would be insolvent in December unless bills were sent under the existing rule, resulting in the same issues described in number 1.

(3) Expenditure shifting to make options 1 or 2 work.

ADEQ's Federal Clean Air Act Section 105 grant does not currently have the carry-forward that was available for the one-time expenditure shift that occurred in 2004. In 2004, \$1.3 million associated with the administration of the non-Title V permitting program was shifted onto the 105 grant for this exact purpose. Since that time, EPA has been reducing the amount of money given to the states through the 105 grant. Additionally, at the time of the fund transfer, EPA explained that they would allow such a shift only one time. Other funds considered included the General Fund, but the Air Quality Division receives virtually no General Fund money. Additionally, the General Fund is experiencing a shortfall in revenues this Fiscal Year, so additional monies are unavailable.

Comment 55: Commentator suggests that pursuant to EPA guidance, ADEQ should develop a rational method based on sound accounting principals for segregating the costs of the Title V permitting program from other costs associated with the air program.

Response 55: Please see the response to comment 43. In addition, in Finding 7.4 on page 30 of its "Arizona Department of Environmental Quality Title V Operating Permit Program Evaluation Final Report" issued June 2, 2006, EPA made the finding that "Title V funds are tracked and accounted for in a precise and detailed manner." In the discussion regarding that finding, EPA refers to 40 CFR 70's requirement that the permit program ensure that Title V fees that are collected are adequate to cover Title V permit program costs and are used solely to cover the permit program costs. EPA commended ADEQ for its tracking and implementation of its fee program, and encouraged ADEQ to maintain its existing good accounting practices.

Comment 56: Commentator requests that should ADEQ proceed to final rulemaking, that the rule be revised to accomplish a 78%/22% balance between administrative fees and emission based fees.

Response 56: Please see the response to comment number 21.

Comment 57: Commentator requests that should ADEQ proceed to final rulemaking, that the rule be revised to add a new provision to the final ADEQ Fee Rule that commits ADEQ to (i) an auditable system to account for its time administering its permit program for each permittee and (ii) a mechanism for re-balancing and adjusting the various fees in response to the timekeeping data.

Notices of Final Rulemaking

Response 57: As discussed in the responses to previous comments, ADEQ commits to a timekeeping system for appropriate air quality permitting and compliance personnel and that it will use the rulemaking process to work with its stakeholders to identify other approaches for balancing its need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the air permits program.

Comment 58: Commentator requests that should ADEQ proceed to final rulemaking, that the rule be revised to further refine the list of general permit industry categories in A.A.C. R18-2-511 to position ADEQ in future rulemakings to be able to charge general permit holders annual administrative or inspection fees that accurately reflect ADEQ's workload.

Response 58: This comment has merit, but ADEQ is not able to address the commentator's request that the list be further refined in this rulemaking. ADEQ had determined that refining the list of general permits without assigning a different fee for each general permit would have little effect at this time. ADEQ has determined that assigning different fees for each general permit would result in a rule that is substantially different under A.R.S. § 41-1025, creating issues addressed in the response to comment number 54. ADEQ has determined that the best course of action is to institute a timekeeping system for appropriate air quality permitting and compliance personnel, and revisit the fee rule with the data that are collected in the system.

Comment 59: Commentator requests that, should ADEQ proceed to final rulemaking, the rule be revised to commit to work in good faith with stakeholders toward the goal of promptly making any other appropriate revisions to the new fee rule.

Response 59: ADEQ commits to using the rulemaking process to work with its stakeholders to identify other approaches for balancing its need to generate revenue that offsets the expenditures necessary to effectively perform the duties associated with the air permits program.

Comment 60: Commentator believes that instituting all of the changes recommended by the stakeholders, to the extent that they involve revisions to the language and terms of the proposed rule, can be made in the final rule without meeting the criteria for "substantially different" under A.R.S. § 41-1025.

Response 60: ADEQ cannot agree with this comment. While ADEQ appreciates the cooperation exhibited by this and other commentators, ADEQ has issued air quality permits to more than 780 different facilities, not all of whom are represented by those who have commented on the 2007 fee rule revision. To ensure that any changes are not "substantially different," every potentially affected party would need to come to the same conclusion. ADEQ has determined that the best method for ensuring that all potentially affected parties have an opportunity to comment is to work through the rulemaking process.

Comment 61: Commentator suggests that the current statutory framework may prohibit ADEQ from using Title V proceeds to subsidize other air permitting programs.

Response 61: Please see the response to comment 43.

Comment 62: Commentators supports the comments submitted by the Arizona Chamber of Commerce and Industry.

Response 62: ADEQ appreciates the constructive comments provided by the Arizona Chamber of Commerce and the companies that it represents, and has responded to those comments in the responses to comments 1 through 26 and comments 46 through 60.

Comment 63: Commentator states that the Air Quality Division of ADEQ has been good to work with and fair in their administration.

Response 63: ADEQ acknowledges and appreciates this comment.

Comment 64: Commentator states that higher fees will be paid if that is what it takes to keep the fund solvent. Commentator further states that the concept of the fund is a good one and is fiscally responsible.

Response 64: ADEQ acknowledges and appreciates this comment.

Comment 65: Commentator states that the problem with the fee rule comes from the push to go to general permits. Commentator states that his crematory facility does not qualify for a general permit, and that he gladly pays for the additional flexibility. Commentator suggests that the fees for general permits should be increased so that there is not a shortfall generated when permits move from an individual permit to a general permit.

Response 65: ADEQ acknowledges and appreciates this comment, and, as described in responses to previous comments, will be instituting a timekeeping system for appropriate permitting and compliance personnel. This timekeeping system will provide more recent data than the 1998 workload analysis for reviewing and assessing alternative approaches. As discussed in the responses to comments 12 and 16, ADEQ cannot make the recommended changes at this time, but instead commits to using its stakeholder and rulemaking processes for evaluating and vetting alternative fee rule approaches.

Comment 66: Commentator states that general permit fees for Class 2, Title V small sources have a proposed increase from \$540 to \$840. This represents a 55% increase which is greater distribution of increased fees than the overall 40% average increase. Commentator states that a 40% increase would result in a fee of approximately \$750. Commentator states that his industry represents the smallest of small industries, and that the larger increase, by pro-

portion, is significantly larger and more damaging. Commentator requests relief by limiting the size of the increase in annual fees.

Response 66: ADEQ has revisited its fee rule model and has determined that the average fee increase associated with General Permits is greater than 40%. The proposed rule should have reflected an increased fee for Class I Title V Small Sources of \$810 per year, rather than \$840 per year. As discussed in the response to comment number 20, the refinery has been removed from the revised fee rule, and the model was adjusted accordingly. The adjustment resulted in an increase in the fee for Class I Title V Small Sources to \$750 per year, or a decrease in \$90 per year from the fee in the preamble to the proposed rule.

Comment 67: Commentator states that they agree with the concept behind the establishment of the APAF, including the concepts of “user pay” and “full cost recovery.” Commentator also agrees with the concept that it should be responsible for actual costs associated with the administration of its permit.

Response 67: For the purposes of the original fee rule model discussed with the stakeholders, ADEQ determined the costs associated with permit administration for a petroleum refinery by contacting other regulatory agencies and discussing the existing workload for those agencies, and by reviewing the air quality permit to determine appropriate staffing levels. After further consideration, and based upon comments received, ADEQ has removed the language of the rule that addresses petroleum refineries, and has adjusted the model accordingly.

Comment 68: Commentator states that based upon information from other states with oil refineries, ADEQ’s estimate that three FTE’s will be required is high. Commentator states that there will be a “learning period” for both the ADEQ and the company on roles and responsibilities for monitoring, reporting and analysis, and that the commentator’s adoption of an Environmental Management System should assist in minimizing the overlap and therefore minimize costs.

Response 68: For the purposes of the original fee rule model discussed with the stakeholders, ADEQ determined the costs associated with permit administration for a petroleum refinery by contacting other regulatory agencies and discussing the existing workload for those agencies, and by reviewing the air quality permit to determine appropriate staffing levels. After further consideration, and based upon comments received, ADEQ has removed the language of the rule that addresses petroleum refineries, and has adjusted the model accordingly.

Comment 69: Commentator states that the concept of phasing in the Administrative Fee after the commencement of construction of a petroleum refinery is not unreasonable, as ADEQ will have costs associated with this phase of the project, as well as hiring and training costs. Commentator suggests that the ultimate costs will be lower than ADEQ’s forecasts, and suggests limiting the fee to 50% of the forecasted expenditure until the actual refinery commences operation.

Response 69: For the purposes of the original fee rule model discussed with the stakeholders, ADEQ determined the costs associated with permit administration for a petroleum refinery by contacting other regulatory agencies and discussing the existing workload for those agencies, and by reviewing the air quality permit to determine appropriate staffing levels. After further consideration, and based upon comments received, ADEQ has removed the language of the rule that addresses petroleum refineries, and has adjusted the model accordingly.

Comment 70: Commentator states that it does not take exception to the “emission-based” fee structure as long as it is applied equally to sources in the state.

Response 70: ADEQ acknowledges and appreciates this comment.

12. Any other matter prescribed by statute that is applicable to the specific agency or to any other 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 made as an emergency rule?

Yes. Adopted and effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency rule expired; text deleted. New Section adopted effective November 15, 1993.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

Notices of Final Rulemaking

ARTICLE 3. PERMIT AND PERMIT REVISIONS

Section
R18-2-326. Fees Related to Individual Permits

ARTICLE 5. GENERAL PERMITS

Section
R18-2-511. Fees Related to General Permits

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-326. Fees Related to Individual Permits

- A. Source Categories.** The owner or operator of a source required to have an air quality permit from the Director shall pay the fees described in this Section unless authorized to operate under a general permit issued under Article 5. The fees are based on a source being classified in one of the following three categories:
1. Class I Title V sources are those required or that elect to have a permit under R18-2-302(B)(1).
 2. Class II Title V sources are those required to have a permit under R18-2-302(B)(2) and for which either R18-2-302(B)(2)(a)(i) or (ii) applies.
 3. Class II Non-Title V sources are those required to have a permit under R18-2-302(B)(2) and for which neither R18-2-302(B)(2)(a)(i) nor (ii) applies.
- B. Fees for Permit Actions.**
1. The owner or operator of a Class I Title V source, Class II Title V source, or Class II Non-Title V source shall pay to the Director the following:
 - a. ~~\$98.80~~ \$133.50 per hour, adjusted annually under subsection (H), for all permit processing time required for a billable permit action; and
 - b. the actual costs of public notice conducted according to R18-2-330.
 2. The Director may require periodic payment of permit processing fees based on the most recent accounting of time spent processing the permit including any fees for contractors.
 3. Upon completion of permit processing activities other than issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final itemized bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. Except as provided in subsection (G), the Director shall not issue a permit or permit revision until the final bill is paid in full.
- C. Class I Title V Fees.** The owner or operator of a Class I Title V source that has undergone initial startup by January 1 shall annually pay to the Director an administrative fee plus an emissions-based fee as follows:
1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class I Title V Source Category	Administrative Fee
Aerospace	\$ 14,450 <u>\$20,800</u>
<u>Air Curtain Destructors</u>	<u>\$750</u>
Cement Plants	\$ 44,520 <u>\$ 63,690</u>
Combustion/Boilers	\$ 10,820 <u>\$15,480</u>
Compressor Stations	\$ 8900 <u>\$12,730</u>
Electronics	\$ 14,320 <u>\$20,490</u>
Expandable Foam	\$ 10,260 <u>\$14,680</u>
Foundries	\$ 13,640 <u>\$19,520</u>
Landfills	\$ 11,150 <u>\$15,960</u>
Lime Plants	\$ 41,700 <u>\$60,160</u>
Copper & Nickel Mines	\$ 10,480 <u>\$15,000</u>
Gold Mines	\$ 10,480 <u>\$15,000</u>
Mobile Home Manufacturing	\$ 10,370 <u>\$14,830</u>
Paper Mills	\$ 14,310 <u>\$20,480</u>
Paper Coaters	\$ 10,820 <u>\$15,480</u>
Petroleum Products Terminal Facilities	\$ 15,890 <u>\$22,730</u>
Polymeric Fabric Coaters	\$ 14,310 <u>\$20,480</u>
Reinforced Plastics	\$ 10,820 <u>\$15,480</u>

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Semiconductor Fabrication	\$ 18,830 <u>\$26,930</u>
Copper Smelters	\$ 44,520 <u>\$63,690</u>
Utilities - Natural Gas <u>Fossil Fuel Fired Except Coal</u>	\$ 11,490 <u>\$16,440</u>
Utilities - Fossil Fuel Except Natural Gas <u>Coal Fired</u>	\$ 22,760 <u>\$32,570</u>
Vitamin/Pharmaceutical Manufacturing	\$ 11,050 <u>\$15,800</u>
Wood Furniture	\$ 10,820 <u>\$15,480</u>
Others	\$ 11,150 <u>\$20,490</u>
Others with Continuous Emissions Monitoring	\$ 14,320 <u>\$20,490</u>

2. An emissions-based fee of ~~\$13.24~~ \$38.25 per ton of actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier. The fee is adjusted annually under subsection (d) and due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
 - a. For purposes of this Section, “actual emissions” means the quantity of all regulated pollutants emitted during the calendar year, as determined by the annual emissions inventory under R18-2-327.
 - b. For purposes of this Section, regulated pollutants consist of the following:
 - i. Nitrogen oxides and any volatile organic compounds;
 - ii. Conventional air pollutants, except carbon monoxide and ozone;
 - iii. Any pollutant that is subject to any standard promulgated under Section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds; and
 - iv. Any federally listed hazardous air pollutant.
 - c. For purposes of this Section, the following emissions of regulated pollutants are excluded from a source’s actual emissions:
 - i. Emissions of any regulated pollutant from the source in excess of 4,000 tons per year;
 - ii. Emissions of any regulated pollutant already included in the actual emissions for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM₁₀;
 - iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(E)(8);
 - iv. Fugitive emissions of PM₁₀ from activities other than crushing, belt transfers, screening, or stacking; and
 - v. Fugitive emissions of VOC from solution-extraction units.
 - d. The Director shall adjust the rate for emission-based fees every November 1, ~~beginning on November 5, 2004~~ after December 4, 2007, by multiplying ~~\$13.24~~ \$38.25 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2004~~ 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

D. Class II Title V Fees. The owner or operator of a Class II Title V source that has undergone initial startup by January 1 shall pay the applicable administrative fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

CLASS II Title V Source Category	Administrative Fee
Synthetic minor sources, except portable sources	Administrative fee from Class I Title V table for category
Stationary	\$ 5,640 <u>\$8,070</u>
Portables	\$ 5,640 <u>\$8,070</u>
Small Source	\$ 560 <u>\$750</u>

E. Class II Non-Title V Fees. The owner or operator of a Class II Non-Title V source that has undergone initial startup by January 1 shall pay the applicable inspection fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class II Non-Title V Source Category	Inspection Fee
Stationary	\$ 3,660 <u>\$5,230</u>
Portables	\$ 3,660 <u>\$5,230</u>
Gasoline Service Stations	\$ 560 <u>\$750</u>

F. The Director shall mail the owner or operator of each source an invoice for all fees due under subsections (C), (D), or (E) by December 1.

Notices of Final Rulemaking

- G.** Any person who receives a final itemized bill from the Director under this Section for a billable permit action may request an informal review of the hours billed and may pay the bill under protest as provided below:
1. The request shall be made in writing, and received by the Director within 30 days of the date of the final bill. Unless the Director and person agree otherwise, the informal review shall take place within 30 days after the Director's receipt of the request. The Director shall arrange the date and location of the informal review with the person at least 10 business days before the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. The Director shall mail his or her decision on the informal review to the person within 10 business days after the informal review date.
 2. The Director's decision after informal review shall become final unless, within 30 days after person's receipt of the informal review decision, the person requests a hearing under R18-1-202.
 3. If the final itemized bill is paid under protest, the Director shall take final action on the permit or permit revision.
- H.** The Director shall adjust the hourly rate every November 1, to the nearest 10 cents per hour, ~~beginning on November 5, 2004, after December 4, 2007,~~ by multiplying ~~\$ 98.80~~ \$133.50 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2004~~ 2007. The Director shall adjust the administrative or inspection fees listed in subsections (C), (D), and (E) every November 1, to the nearest \$10, ~~beginning on November 5, 2004~~ December 4, 2007, by multiplying the administrative or inspection fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2004~~ 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.
- I.** An applicant for a Class I or Class II permit or permit revision may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days before filing the application. The request shall be accompanied by an initial fee of \$15,000. The fee is non-refundable to the extent of the Director's costs for accelerating the processing if the Director undertakes the accelerated processing described below:
1. If an applicant requests accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision according to the following schedule:
 - a. For applications for initial Class I and II permits under R18-2-302 or significant permit revisions under R18-2-320, the Director shall issue or deny the proposed permit or permit revision within 120 days after the Director determines that the application is complete.
 - b. For minor permit revisions under R18-2-319, the Director shall issue or deny the permit revision within 60 days after receiving a complete application.
 2. At any time after an applicant requests accelerated permit processing, the Director may require additional advance payments based on the most recent estimate of additional costs.
 3. Upon completion of permit processing activities but before issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. The final bill shall include all regular permit processing and other fees due, and, in addition, the difference between the cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring, or supervising the work of outside consultants, and all advance payments submitted for accelerated processing. In the event all payments made exceed actual accelerated permit costs, the Director shall refund the excess advance payments. Nothing in this subsection affects the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.
- J.** Inactive Sources. The owner or operator of a permitted source that has undergone initial startup but was shut down for the entire preceding year shall pay 50 percent of the administrative or inspection fee required under subsection (C), (D), or (E). The owner or operator of a source claiming inactive status under this subsection shall submit a letter to the Director by ~~October~~ December 15 of the ~~billing~~ calendar year for which the source was inactive. Termination of a permit does not relieve a source of any past fees due.
- K.** If an applicant uses the Tier 4 method for conducting a risk management analysis (RMA) according to R18-2-1708(B), the applicant shall pay any costs incurred by the Director in contracting for, hiring or supervising work of outside consultants.
- ~~K-L.~~** Transition.
1. Subsections (A) through (J) of this Section are effective ~~November 5, 2004~~ December 4, 2007. The first administrative or inspection fees are due on February 1, ~~2005~~ 2008.
 2. Except as provided in subsection (b), all fees incurred after ~~November 5, 2004~~ December 4, 2007, are payable in accordance with the rates contained in this Section.
 - a. Emission-based fees for calendar year ~~2003~~ 2006 shall be billed at ~~\$ 13.24~~ \$38.25 per ton and be due February 1, ~~2005~~ 2008.
 - b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
 - c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department.

Notices of Final Rulemaking

ARTICLE 5. GENERAL PERMITS

R18-2-511. Fees Related to General Permits

- A. Permit Processing Fee. The owner or operator of a source that applies for authority to operate under a general permit shall pay to the Director \$500 with the submittal of ~~the~~ each application. This fee applies to the owner or operator of any source who intends to continue operating under the authority of a general permit that has been proposed for renewal. This fee also applies to requests for new Authorizations to Operate (ATOs) for new equipment.
- B. Administrative or Inspection Fee. The owner or operator of a source ~~with authority required to operate under~~ have a general permit, ~~that has undergone initial startup by January 1,~~ shall pay, for each calendar year, the applicable administrative or inspection fee from the table below, by February 1 or 60 days after the Director mails the invoice, whichever is later.

General Permit Source Category	Administrative Fee
Class I Title V General Permits	Administrative fee for category from R18-2-326(C)
Class II Title V Small Source	\$ 540 <u>\$750</u>
Other Class II Title V General Permits	\$ 3,250 <u>\$4,520</u>
	Inspection Fee
Class II Non-Title V Gasoline Services	\$ 540
Class II Non-Title V Crematories	\$ 1,080 <u>\$1,500</u>
Other Class II Non-Title V General Permits	\$ 2,170 <u>\$3,020</u>