

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 25, 2010.

[R11-31]

PREAMBLE

1. Sections Affected

Article 7
R4-46-704

Rulemaking Action

New Article
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. § 32-3667(A)

Implementing statutes: A.R.S. §§ 32-3667(A), 32-3662, 32-3664, 32-3665

3. The effective date of the rules:

April 5, 2011. Effective immediately, reasons described below in item 6.

The Board is establishing the new fee to protect the public from unregistered appraisal management companies.
A.R.S. § 41-1032(A)(1)

The fee rule will also benefit the regulated public by informing appraisal management companies of the new fee.
A.R.S. § 41-1032(A)(4).

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

Notice of Rulemaking Docket Opening: 16 A.A.R. 2039, October 15, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 2252, November 26, 2010

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

Name: Daniel Pietropaulo
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Phoenix, AZ 85007
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6. An explanation of the rule, including the agency's reasons for initiating the rule:

Effective July 29, 2010, Laws 2010, Ch. 336 which added A.R.S. §§ 32-3661 et seq. requires the Board of Appraisal to register and regulate appraisal management companies as that term is defined in statute. This is new legislation for a relatively new industry. The statutes provide that an initial registration is valid for one year, registration may be renewed every two years, and the fee for registration is to be set in rule. This rulemaking sets the fee so that it will be effective for the first round of renewals in July 2011. The Board has not been charging fees up to this point and the majority of registrations will renew in July and August of 2011. The renewals will be for two years, and if the fee is not set by July 28, 2011 the Board will be faced with implementing mandates of A.R.S. §§ 32-3661 et seq. for three consecutive years with no income, a situation which would be financially devastating to the Board of Appraisal.

Notices of Final Rulemaking

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:

Fiscal Impact of SB 1351, Appraisal Management Company Regulation, was prepared for the Arizona Board of Appraisal at the Board's request by intern Reynaldo J. Saenz, on April 14, 2010 and a copy can be obtained by contacting Daniel Pietropaulo whose contact information can be found in item 5 above. This impact statement was prepared at a time when there were only 11 states with AMC regulation. All of the states' regulations were less than one year old at that time and information was limited. The Board of Appraisal chooses not to rely on the report's estimation of fees from this study as some of the original assumptions have changed and other data has come forth since indicating increased costs for enforcement.

The Board staff also researched AMC fee structures from all 50 states and found Arizona's fee structure to be mid range nationally. This fee structure is explained in item 3c of the Economic Impact Statement (EIS) and is included as exhibit #5 of the EIS.

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

Not applicable

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

The public at large will benefit from this rule as it will establish sufficient fees from which the Board of Appraisal will be able to effectively administer registration and enforcement of A.R.S. §§ 32-3661 et seq. There will be a financial impact to small business because the fees will be a cost to small appraisal management companies at registration and renewal but this cost is not anticipated to be significant in relation to expected gross incomes. The financial impact to the consumer is not anticipated to be significant even if fees are passed through to them. Based on models demonstrated in the EIS the cost to the consumer, if passed through, would range from \$0.10 to \$0.83 per appraisal based on fees ranging from \$400 to \$600. Fees less than \$2,500 at initial and renewal application would not generate enough revenue to effectively operate the program.

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

None

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

No comments or requests for oral proceedings were received during the public comment period after the Notice of Proposed Rulemaking was published by the Secretary of State.

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

None

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

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 7. GENERAL PROVISIONS – FEES

Section
R4-46-704. Fee

ARTICLE 7. GENERAL PROVISIONS – FEES

R4-46-704. **Fee**

The fee to apply for initial registration is \$2,500 regardless of the number of appraisers on the appraiser panel. Upon expiration of the initial registration the fee to apply for a two year renewal registration is \$2,500 regardless of the number of appraisers on the appraiser panel.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITS AND COMPLIANCE FEES

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2010, Ch. 287, § 18. (See the text of § 18 on page 630.) The Governor's Office authorized the notice to proceed through the rulemaking process on October 28, 2010.

[R11-32]

PREAMBLE

1. Sections Affected

| | <u>Rulemaking Action</u> |
|------------|---------------------------------|
| R18-14-101 | Amend |
| R18-14-102 | Amend |
| R18-14-103 | Amend |
| R18-14-104 | Amend |
| R18-14-105 | Amend |
| R18-14-108 | Amend |
| R18-14-109 | New Section |
| R18-14-110 | New Section |
| R18-14-111 | New Section |
| R18-14-112 | New Section |
| R18-14-113 | New Section |

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

Authorizing statutes: A.R.S. §§ 49-104(C) and 49-203(A)(8)

Implementing statute: A.R.S. §§ 49-104(B)(11), 49-104(B)(13), 49-241.02(A), 49-242(E), 49-255.01(J) and 49-332(A)

3. The effective date of the rules:

July 1, 2011

This date corresponds to the beginning of the new fiscal year for the state and other political subdivisions and also corresponds to the expiration date of the temporary fee increase currently in R18-14-108. The Arizona Department of Environmental Quality is specifying this later effective date to minimize impact to the budgets of government entities in the current fiscal year. The public interest will not be harmed by this later date.

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

Notice of Rulemaking Docket Opening: 16 A.A.R. 1676, August 27, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 2319, December 3, 2010

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

Name: Wendy LeStarge
Address: Department of Environmental Quality
1110 W. Washington St. (MC 5415B-2)
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Telephone: (602) 771-4836 (Toll-free number in Arizona: (800) 234-5677)
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E-mail: lestarge.wendy@azdeq.gov

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

Background

This rulemaking revises fees for the aquifer protection permits (APP) and direct use of reclaimed water permits and establishes fees for the Arizona Pollutant Discharge Elimination System permits (AZPDES) programs under 18 A.A.C. 9, Articles 1, 2, 3, 6, 7, 9 and 10, as established in 18 A.A.C. 14, "Water Quality Protection Fees." House Bill 2767 (Laws 2010, 2nd Regular Session, Ch. 265) authorizes the Arizona Department of Environmental Quality (ADEQ) to increase fees for APPs, APP annual registrations, and dry well registrations, and to establish fees for AZPDES permits. House Bill 2767 became effective July 29, 2010 and authorizes a one-time rulemaking to increase and establish fees. After the one-time rulemaking, ADEQ cannot increase the fees by rule without specific statutory

authority. These fees will replace the General Fund monies currently used for these programs and ensure that these water quality permitting programs are self-sustaining. Under this rulemaking, ADEQ is increasing most of the APP and reclaimed water permit fees. The annual registration and dry well fees also will increase. AZPDES program fees will be established for the first time.

Laws 2010, 2nd Regular Session, Ch. 287, § 18 continues the moratorium on rulemaking for fiscal years 2010-2011, initiated in Laws 2009, 3rd Special Session, Ch. 7, § 28. ADEQ received authorization from the Governor's Office to proceed with this rulemaking on October 28, 2010.

Pursuant to A.R.S. § 49-203(A)(8), the Director of ADEQ shall assess and collect fees to cover reasonable costs to revoke, issue, deny, modify or suspend permits issued pursuant to Chapter 2. A.R.S. § 49-210 established the Water Quality Fee Fund (WQFF). House Bill 2767 establishes that all fees collected and deposited in the WQFF are to be used only for purposes prescribed in statute to fund ADEQ. A.R.S. § 49-210(E), as amended by House Bill 2767, states in part: "any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the Water Quality Fee Fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the Legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state."

Historically ADEQ's Water Quality Division had been funded through a variety of state revenue sources to support its major programs of APP and reclaimed water, AZPDES permitting, surface water monitoring and assessment, safe drinking water, and compliance and enforcement. In past years, the Water Quality Division received revenues from the WQFF, the General Fund, the Monitoring Assistance Program, and the Water Quality Assurance Revolving Fund. Even though the APP program has historically charged fees, the fees have never covered the full costs to implement and administer the program. Prior to passage of House Bill 2767, ADEQ had been statutorily prohibited from assessing fees for indirect costs for the APP program and from charging any fees for the AZPDES program.

On July 1, 2010, the operating General Fund was eliminated from ADEQ's budget. In response, ADEQ has implemented numerous cost reduction measures, including personnel reductions. To close a resulting \$5.7 million agency-wide shortfall for the 2010-2011 fiscal year, ADEQ was granted temporary limited authority to increase fees for fiscal year 2010-2011, in Laws 2010, 7th Special Session, Ch. 7, § 5. ADEQ published temporary fees in Notices of Exempt Rulemaking on May 21, 2010. The temporary fee authority ends June 30, 2011.

ADEQ's goal in this rulemaking is to establish water quality protection fees that will sustain the programs while avoiding disproportionate impact on any one group of stakeholders. The fees are based on conservative assumptions of revenues and with full awareness of the one-time rulemaking limitation in House Bill 2767. In advance of the Notice of Proposed Rulemaking, ADEQ met with a broad spectrum of stakeholders to discuss funding issues and to create preliminary drafts of these rules for stakeholders' consideration. ADEQ considered many informal comments from stakeholders that were incorporated into the proposed rules as a result.

Through this rulemaking, ADEQ is increasing and establishing fees to cover the full costs of administering and implementing the APP, reclaimed water, and AZPDES programs. ADEQ projects the fees in this rulemaking will result in approximately \$11.3 million of revenue annually, and will fully support the APP, reclaimed water, and AZPDES programs.

Water Quality Permitting Programs

ADEQ's Water Quality Division is responsible for issuing permits under the APP, reclaimed water, and AZPDES programs. An APP is the state permit required for any facility that seeks to discharge to the aquifer or vadose zone (the zone between the ground surface and any aquifer) (A.R.S. § 49-241). Facilities that typically obtain an APP include wastewater treatment plants, hard rock mines, and power plants (A.R.S. § 49-241(B)). Other facilities may be permitted to discharge under various APP general permits for dry wells, onsite wastewater treatment systems, certain impoundments, and treatment wetlands.

Direct reuse of reclaimed water recycles treated effluent for beneficial uses. ADEQ rules (18 A.A.C. 9, Articles 2 and 7) apply to wastewater treatment facilities supplying reclaimed water and to the sites where reclaimed water is applied or used. A reclaimed water individual permit is required for an owner or operator of a wastewater treatment facility that generates reclaimed water for direct reuse. A general permit is required for an owner or operator of a reclaimed water blending facility, a reclaimed water agent, or a person who directly reuses reclaimed water or gray water.

AZPDES is Arizona's version of the National Pollutant Discharge Elimination System Permit (NPDES) Program, which implements Section 402 of the Clean Water Act. In December 2002, Arizona was delegated authority from the U.S. Environmental Protection Agency (EPA) to implement the NPDES Permit Program. An AZPDES permit is required for a point source discharge of any pollutant to a navigable water under A.R.S. §§ 49-255(2) and 49-255.01(A). Facilities that typically obtain an AZPDES permit include wastewater treatment plants, power plants and mines. An AZPDES permit is also required for stormwater discharges from municipalities, construction projects and certain industrial facilities. According to A.A.C. R18-9-B904(A)(1), R18-9-C903(A)(1) and Section 402(b)(1)(B) of the Clean Water Act, ADEQ issues AZPDES permit for a maximum of five years. ADEQ must reissue general permits every five years and those facilities covered under a previous general permit that intend to continue to discharge must reapply when the new general permit is available.

There are other activities regulated under the AZPDES program that do not necessarily require a permit, including pretreatment programs and application of biosolids. Pretreatment programs regulate wastewater discharges from industrial and commercial facilities that discharge to publicly owned treatment works (POTW). The pretreatment program is implemented by a POTW that receives industrial discharges. ADEQ is the "Approval Authority," and is responsible for reviewing and approving the elements of a POTW's pretreatment program. Biosolids are defined as "sewage sludge, including exceptional quality biosolids, that is placed on, or applied to the land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer" (R18-9-1001(7)). ADEQ regulates the person who applies biosolids to land, but does not do so under a permit.

Both individual and general permits are issued under the APP, AZPDES, and reclaimed water programs. Individual permits are specific to each facility, and are most appropriate for the regulation of discharges from large or complex facilities and sources with a potential for significant environmental impact. ADEQ charges for reviews of individual permit applications at an hourly rate because review time will vary due to the type of facility and discharge. General permits are intended to regulate discharges from facilities where minimal differences exist from facility to facility and where discharges pose a reduced environmental risk. The general permit establishes the eligibility requirements, and the applicant must conduct proposed activities under pre-set limits established using conservative assumptions about the type of facility, and conditions necessary to manage the activities safely. ADEQ charges flat fees for reviews of general permit applications.

Adequate funding is necessary to maintain the permitting and post-permitting functions of these vital water quality programs mandated by both federal and Arizona statutes. While federal law establishes the authority for the AZPDES program, there is no federal requirement for permit fees, so these rules are not more stringent than federal law. Without the APP program, there would be no state regulation of discharges and resulting protection of aquifers which serve as significant sources of drinking water. Without an AZPDES program, EPA would implement the NPDES program in Arizona. Ensuring that adequate resources are available to support both programs will facilitate timely permit issuance while protecting public health and the environment.

Section by Section description of changes

The Article 1 rules were last changed in 2001. The Article 1 rulemaking on fees coincided with the rulemaking on the APP unified permitting system in 18 A.A.C. 9, Articles 1 through 7, which were comprehensively revised in 2001. Some of the changes in this rulemaking are designed to reflect current implementation of the APP program. Although the main focus of the Water Quality Protection Fees (Article 1) has been the APP fees, these fee rules also apply to reclaimed water permits, approvals for subdivisions, and dry well registrations. As the APP and AZPDES fee structures are similar, ADEQ is adding the AZPDES fees to Article 1 rather than creating a separate article.

R18-14-101. Definitions are updated to amend or delete terms that are no longer used because of other regulatory or statutory changes. The term "complex modification" for non-mining facilities is amended to reflect current implementation of the APP program. A new definition of "review hours" is added and applies to all programs. Two new definitions are added for optional reviews on APP Type 4 general permits (see discussion on R18-14-108). Terms relevant to the AZPDES program were added. As the Water Quality Division charges fees for a variety of services, including permits, the term "water quality protection service" is amended to fully encompass all services for which ADEQ charges a fee.

R18-14-102. Hourly Rate and Maximum Fees for APP and AZPDES Water Quality Protection Services. This Section establishes an hourly rate of \$122 for any water quality protection service for which an hourly rate is charged, including reviews of individual APPs, amendments to APPs, clean closure of a facility with an APP, AZPDES individual permits, pretreatment program approval under the AZPDES program, and reclaimed water individual permits. The hourly rate applies unless a flat fee is prescribed elsewhere in the Article. As House Bill 2767 requires ADEQ to establish a maximum fee for any individual permit, this Section also contains the maximum fees for any water quality protection services for which an hourly rate is charged. The maximum fees for an APP standard modification are amended to recognize the varying complexity of modifications. The maximum fee applies per modification, and is cumulative to \$150,000 for multiple modifications that may be submitted simultaneously. Also, a new maximum fee category for submittals under a compliance schedule is established. In the past, ADEQ has not charged for review of post-permitting submittals unless the submittal was part of an amendment to an individual APP. Routine reporting, such as self-monitoring discharge reports, are not subject to the hourly fees in this Section but are recovered as a cost under the APP annual registration fees or the AZPDES annual fees (R18-14-104). ADEQ also will charge at the hourly rate for an APP determination of applicability (under R18-9-106). The previous flat fee of \$100 failed to cover the full costs of review. ADEQ also will charge the hourly rate for reviewing proprietary and other reviewed products under R18-9-A309(E). The flat fees for the APP general permits are moved to R18-14-108.

R18-14-103. Initial Fees. This Section establishes initial applicable fees to be paid at the time a person submits a request for a water quality protection service to ADEQ. For a water quality protection service subject to the hourly rate, the applicant must make an initial payment of \$2,000. Subsection (C) states that ADEQ will not review an applicant's request for a water quality protection service if they have undisputed past due fees under Article 1.

R18-14-104. Annual Fees for Water Quality Protection Services Subject to Hourly Rate Fee. House Bill 2767 eliminated the annual registration fees for individual APPs established in A.R.S. § 49-242 and authorized ADEQ to establish annual registration fees in rule. This Section establishes the annual registration fees based on the amount of

discharge or influent allowed in the permit. This Section also establishes annual fees for individual AZPDES permits and approved pretreatment programs, and for individual reclaimed water permits. There is a reduced annual registration fee or annual fee for a newly permitted facility that has not yet been constructed. The language on maximum fees is now included in R18-14-102.

R18-14-105. Fee Assessment and Collection. Under the new definition of “review hours,” ADEQ charges for the hours or portions of hours that ADEQ staff spend to review a request for water quality protection services, and the hours spent by a supervisor or unit manager if requested by the applicant. Additional language is added on billing procedures. The text in subsection (B) is being deleted as ADEQ does not assess a separate fee for annual reclaimed water inspections.

R18-14-108. APP Water Quality Protection Services Flat Fees. This rulemaking repeals the temporary fee increases for Fiscal Year 2011 allowed under Laws 2010, 7th Special Session, Ch. 7, § 5. The temporary fee increases are effective until June 30, 2011, and these new permanent fees take their place. Flat fees related to APP general permits are moved from R18-14-102 to this new Section as well as other water quality protection services requiring a flat fee.

When APP general permits were created in 2001 in 18 A.A.C. 9, Article 3, ADEQ estimated appropriate fees based on the information then available for staff hours required to review permits. As part of this rulemaking, ADEQ analyzed the number of hours typically required to review applications and to make permit decisions for the various APP general permits. Thus, these fees more accurately reflect an updated assessment of the amount of time required for review.

Type 2 and Type 3 general permits each have an assigned fee, with Type 3 general permits taking more review time and consequently being assessed a higher fee. Type 2 and Type 3 general permits are available for both APP and reclaimed water. The prior rule did not distinguish between fees for an APP and reclaimed water Type 2 or Type 3 general permit. In recognition of the differences in complexity between the permits, ADEQ is establishing separate fees for an APP Type 2 or Type 3 general permit (Table 4) and a reclaimed water Type 2 or Type 3 general permit (Table 7.)

Further, after distinguishing reclaimed water general permits from the APP general permits, ADEQ found that within the APP Type 2 or Type 3 general permits, review times vary for particular general permits. ADEQ is establishing two tiers (standard and complex) for a Type 2 or Type 3 general permit to account for different review times, especially by technical staff, for the same permit type, with complex permits requiring more review time and consequently a higher fee. In this context, “complex” does not have the same meaning as “complex modification” in R18-14-101, but has the same meaning as ADEQ’s licensing time-frame rules in R18-1-501(9), “‘Complex’ means an application category that requires significantly more Department resources to review the application than applications processed in a companion standard category due to the size, novelty, complexity, or technical difficulty expressed in the application.” Within Table 4, all existing Type 2 APP general permits are determined to be standard permits, except for the 2.02 General Permit: Intermediate Stockpiles at Mining Sites (R18-9-C302), which is determined to be a complex permit. All existing Type 3 APP general permits are determined to be standard permits except for the 3.01 General Permit: Lined Impoundments (R18-9-D301) and the 3.04 General Permit: Non-Stormwater Impoundments at Mining Sites (R18-9-D304), which are determined to be complex permits. ADEQ plans to list any designation of “standard” or “complex” general permits in the underlying permit rules in 18 A.A.C. 9, Article 3, when these rules are amended in the future. ADEQ is establishing fees for amendments to Notices of Intent for a Type 2 or Type 3 APP general permit that are equal to the applicable renewal fee. ADEQ will not assess the amendment fee until the underlying rules are amended in 18 A.A.C. 9, Article 3 to specify requirements for amendments versus new permits.

Type 4 general permits, which apply mainly to onsite wastewater treatment facilities (“onsites”), establish the criteria for coverage under each permit in 18 A.A.C. 9, Article 3, Part E. Within Table 5, the Type 4 general permit fees are structured to more accurately reflect how the program processes and administers permits.

The previous fees for Type 4.01 general permits (sewer collection systems) were capped at 300 service connections, and ADEQ could not recover its full costs when reviewing larger, more complex projects. The new fees for Type 4.01 general permits establish separate fees for individual sewer collection system components. Fees are established for review of individual components of the sewer system and the cumulative total maximum fee assessment of \$25,000. This fee structure allows system owners with relatively simple systems to be charged lower fees and ADEQ to fully recover costs for review of complex systems. All applicants are also provided the assurance of a maximum fee.

The Type 4.23 general permit is for onsite facilities requiring larger amounts of discharge (up to 24,000 gallons per day.) This permit covers multiple treatment technologies and disposal methods, which can be at multiple locations. ADEQ is establishing a base fee for one permit covering up to three treatment technologies and disposal methods, and up to two onsite wastewater treatment facilities. Each additional technology or location requires additional review and thus an additional fee for permit coverage, up to the maximum fee. ADEQ also establishes a fee for the annual report required under R18-9-E-323(G)(2).

The remaining Type 4 general permits (4.02 through 4.22) can be distinguished by three current types of base systems and 18 treatment technologies and disposal methods. Each Notice of Intent to Discharge describes one of the three base systems, and additional treatment technologies or disposal methods may or may not be required depending on physical conditions at the installation location. Typically, an applicant will pay \$1,200 for one of the three base sys-

tem general permits. If additional treatment technologies or disposal methods are required, each additional permit is \$500, and assessments for multiple disposal technology systems are subject to a maximum fee of \$3,700.

R18-14-108 also establishes fees for two new optional reviews. A courtesy (early) review is available for a Type 4.01 general permit, through which an applicant can submit specifications, design report, and construction drawings at the 60 percent completion stage and request that ADEQ perform a courtesy review for one-third of the full fee applicable to that type of project. This review is intended to provide the applicant the benefit of an early review of the application by ADEQ so that potential conflicts with the rules are identified early in the review process, and to provide the applicant opportunity to revise, if necessary, before finalizing the design. This review may reduce the applicant's costs associated with developing the design and make the final review more efficient. If the applicant submits the Notice of Intent with complete and revised supporting documentation within 180 days from the first submittal, the applicant pays the remaining two-thirds balance of the fee. If an applicant takes longer than 180 days to submit the Notice of Intent and documentation, the full applicable fee is due.

The other optional review is priority review, which is a service also available within the drinking water design review program (R18-14-201). A priority review is available for any Type 4 general permit. Under priority review, the applicant pays double the applicable fee in return for ADEQ's obligation to complete the application using not more than 50 percent of the maximum allowable time under licensing time-frames. ADEQ reserves the right to decline priority review requests if staffing levels or other workload factors prevent ADEQ from meeting the review time obligation.

R18-14-109. AZPDES Water Quality Protection Services Flat Fees. This Section establishes new fees related to AZPDES General Permits, and the annual report for land applicators of biosolids. Unless the permittee terminates coverage by filing the required notice of termination, annual fees are due for continued coverage under the general permit. ADEQ currently has four AZPDES General Permits:

- Municipal Separate Storm Sewer System (MS4),
- Construction Stormwater,
- Multi-Sector for Stormwater Discharges from Industrial Facilities (MSGP) (mining and non-mining),
- De Minimis (single source and area-wide).

This Section establishes a flexible fee structure to allow future non-stormwater general permits to be developed and assigned to specific categories depending on their complexity. As any draft AZPDES general permit must go through a public notice and comment period, subsection (B) requires that a draft permit identify the category to which it will be assigned and the applicable fee. Any interested person would have the opportunity to comment on the fee category assignment. The general permits for Municipal Separate Storm Sewer System, Construction Stormwater, and Multi-Sector for Stormwater Discharges from Industrial Facilities (MSGP) are categorized in Table 6. The De Minimis general permit, the only existing general permit categorized under Non-Stormwater Discharges, is assigned the following fee categories:

- Single Source is Level 1A,
- Area-wide (including project-wide and facility-wide) is Level 1B.

Table 6 also establishes fees for water quality protection services associated with AZPDES general permits, such as review of the pollution prevention plan, waivers under the Construction general permit, and no-exposure certificates under the MSGP.

The Construction general permit and MSGP allow for "co-permittees" to separately apply for coverage where there may be more than one person in control of a facility or discharge activity. One common example under the Construction general permit is where multiple homebuilder construction companies are in control of a single development. Under the MSGP, co-permittees may also exist at an airport where tenant airlines and refueling companies operate, all requiring permit coverage. Under the "co-permittee" situation, each entity pays a fee proportional to the amount of acreage under their control.

R18-14-110. Reclaimed Water Flat Fees. This Section establishes separate flat fees for the reclaimed water general permits. Previously, the fees for Type 2 and 3 reclaimed water general permits were the same as the APP Type 2 and 3 general permits in R18-14-102(C)(6). ADEQ's experience suggests there is a need for flexibility on the fees charged for future general permits on reclaimed or gray water. As with the APP Type 2 and 3 general permits, there are differences in complexity and review time within the reclaimed water Type 2 or Type 3 general permits. ADEQ is establishing two tiers (standard and complex) for a Type 2 or Type 3 general permit. "Complex" has the same meaning as in ADEQ's licensing time-frame rules in R18-1-501(9). "Complex" means an application category that requires significantly more Department resources to review the application than applications processed in a companion standard category due to the size, novelty, complexity, or technical difficulty expressed in the application. As listed in Table 7, all existing Type 2 reclaimed water general permits are determined to be standard permits, except for the Direct Reuse of Class C Reclaimed Water (R18-9-716), which is determined to be a complex permit. All existing Type 3 reclaimed water general permits are determined to be standard permits except for Gray Water (R18-9-719), which is determined to be a complex permit. ADEQ plans to list any designation of "standard" or "complex" general permits in the underlying permit rules in 18 A.A.C. 9, Article 7, when these rules are amended in the future. ADEQ is establishing fees to amend the Notice of Intent for a Type 2 or Type 3 reclaimed water general permit that are equal to the applicable renewal fee. ADEQ will not assess the amendment fee until the underlying rules are amended in 18 A.A.C. 9, Article 7 to specify requirements for amendments versus new permits.

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R18-14-111. Other Flat Fees. This Section identifies fees for other water quality protection services that are not directly related to an APP or AZPDES permit. House Bill 2767 authorizes ADEQ to establish fees for dry wells registrations, which had been set at \$10 in A.R.S. § 49-332. ADEQ also establishes fees for the transfer of dry well registration. ADEQ increases the fees for certificates of approval for sanitary facilities (subdivision approvals), and ranks the fee structure for subdivisions similar to 18 A.A.C. 5, Article 4 (Subdivisions) to account for the differences in subdivision size and system complexity.

R18-14-112. Implementation. The new fees will apply to water quality protection services on the effective date of the rules. On the effective date, applicants with a request in process for a water quality protection service subject to an hourly rate (such as an individual permit application or pretreatment program revision) will pay the new hourly rate for review work that is performed on or after the effective date. As the underlying rules for AZPDES do not inform when the applicable fee is due, this Section establishes that the applicable flat fee is to be paid at the time a person submits a request for a water quality protection service as specified in the underlying AZPDES general permit or in the AZPDES rules. In order to lessen the impact to stakeholders for this fiscal year, the effective date will not be any earlier than July 1, 2011.

Persons who have applied for coverage under an AZPDES general permit before the effective date will not have been assessed the initial fee for filing the Notice of Intent, but will be assessed annual fees for subsequent years of coverage unless a notice of termination is filed. ADEQ recently issued the AZPDES MSGP 2010 permits (mining and non-mining) on December 20, 2010, with an effective date for both permits of February 1, 2011. Existing facilities have 120 days from the effective date (i.e., until May 31, 2011) to submit the Notice of Intent, but will not have to pay the initial fee as such fees will not be effective any earlier than July 1, 2011. A facility will be assessed the applicable annual fee for coverage under the MSGP unless the facility has filed a notice of termination.

R18-14-113. Annual Report. ADEQ will publish an annual accounting of WQFF revenue and expenditure activity for the prior fiscal year.

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:

Information submitted to the Legislature as required under A.R.S. § 49-241.02(E). Arizona Department of Environmental Quality, Water Quality Division (2009)

State Permit Fee Survey (2007) conducted by the Association of State and Interstate Water Pollution Control Administrators. Available from Arizona Department of Environmental Quality, Water Quality Division

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

Not applicable

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

A. Background

ADEQ's goal in this rulemaking is to establish water quality protection fees that will sustain the APP, reclaimed water, and AZPDES permit programs while avoiding disproportionate impact on any one group of stakeholders. These fees are based on conservative assumptions and with full awareness of the one-time rulemaking limitations of House Bill 2767. Historically, the state General Fund has been used to fund the entire cost of the AZPDES program, at no direct cost to the regulated community, and to cover the indirect costs of the APP program. House Bill 2767 directs ADEQ to develop a fee structure sufficient to support the water quality permitting program in the absence of the General Fund. This rulemaking establishes a fee that is representative of the actual cost of providing the service, from development through issuance and managing the permit once in effect. Under these fees, the regulated community pays for only those water quality protection services required.

ADEQ's fees are based on the costs associated with the minimum level of staffing that ADEQ believes is necessary to effectively and efficiently implement and enforce the permitting programs within licensing time-frames. ADEQ anticipates that the increase in revenues from these rule changes will be sufficient to efficiently and effectively operate its water quality permitting programs while ensuring the solvency of the WQFF. ADEQ believes that the projected revenues represent the minimum necessary to process the existing and anticipated future permit workload efficiently and within applicable licensing time-frames. ADEQ does not anticipate the programs or associated staffing levels to expand as a result of this rulemaking. While ADEQ continues to explore and implement efficiency measures wherever possible, it believes the current level of staffing is necessary to effectively implement and sustain the programs. No new full-time positions are necessary to implement and enforce these amended rules.

This rulemaking addresses the shortfall created by the elimination of the General Fund from ADEQ's budget and includes the following categories of fees:

- Hourly-based fees for individual permits or water quality protection services subject to variable review times;
- Flat fees for water quality protection services subject to predictable average times for review, such as for general permits; and
- Annual fees to cover the costs of administering permit coverage.

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ADEQ calculated the hourly rate necessary to support the total costs of a full-time project manager or technical review staff in the water permitting programs using methodology and assumptions previously used by ADEQ's Air Quality Division during its fee rulemaking in 2007. The \$122 per hour rate is the foundation for developing the fees for drafting, issuing, and administering individual and general permits. Within the Water Quality Division, project managers and technical staff account for and bill applicants for time spent processing a request for a water quality protection service and producing a water quality permit.

ADEQ estimated the hourly rate for water permitting staff (project management and technical review) based on the permitting work of a full-time employee (FTE) and makes the following assumptions:

HOURS

- Assumes an FTE works 2080 hours annually (40 hours X 52 weeks).
- NON-PROGRAM HOURS include:
 - hours related to employee leave (sick, vacation, holiday), calculated at the maximum available of 320 hours.
 - hours related to training, meetings and minor tasks estimated at 340 hours.
 - hours lost due to employee turnover – assuming a rate of 10 percent - 208 hours.
 - TOTAL NON-PROGRAM HOURS estimated at 868 hours annually.
- PROGRAM HOURS are what remain when non-program hours are subtracted from the total annual hours. Program hours include both review and decision-making on specific applications (i.e. billable), and those hours not related to review of specific applications (i.e. non-billable). Some of the Program Hours are therefore not billable.
 - TOTAL PROGRAM HOURS = 2080 - 868 = 1212 hours/year.
 - NON-BILLABLE PROGRAM HOURS include customer service time, inter-division and inter-agency coordination, permit administration, and program development (rules and policies). This is estimated at 400 hours annually.
 - BILLABLE PROGRAM HOURS = 1212 - 400 = 812 hours/year.

COSTS

- Salaries + employee related expenses (ERE) related to Billable Program Hours performed by an FTE.
 - ERE (e.g., health insurance, worker's compensation) benefits at rate of 42 percent of salary.
 - A portion of Non-Program Hours in support of Billable Program Hours are included in costs. This is estimated at 582 hours/year (67 percent of total Non-Program Hours).
 - Program staff includes Project Managers, Engineers, and Hydrologists at an average hourly rate of \$24.04.

Cost = (812 + 582 hours) X \$24.04/hour X 1.42 = \$47,573

- Management/ Supervisory hours in support of the program staff work are included in costs, and are estimated at 200 hours/year. This includes unit and section managers at an average hourly rate of \$29.81.

Cost = (200 hours) X \$29.81/hour X 1.42 = \$8,428

- Administration Support hours in support of the program staff and management's and supervisors' work are included in costs, estimated at 200 hours/year at an average hourly rate of \$16.83.

Cost = (200 hours) X \$16.83/hour X 1.42 = \$4,758

- Subtotal of personnel services and ERE for the project manager, management staff, and administrative support staff (\$47,573 + \$8,428 + \$4,758 = \$60,758).
- Add Indirect expenses (48.64 percent of personal services and ERE by federal formula) for rent, utilities, etc., estimated at \$29,600 (\$60,758 X 0.4864 = \$29,600).
- Add Other Expenses such as per diem travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at \$8,750 (\$60,758 + \$29,600 + \$8,750 = \$99,108).
- Total Costs Related to Permit Process for one FTE= \$99,108.

HOURLY RATE

- Dividing the total costs of an FTE (\$99,108) by Billable Program Hours (812) yields the hourly rate for permit processing of \$122/hour (\$99,108 ÷ 812 billable program hours = \$122/hour).
- The remaining 686 hours of an FTE work year are not directly billable to permit processing (e.g., non-billable program hours and balance of the non-program hours (400 + 33 percent X 868 = 686)) and must be supported through annual registration and renewal fees.

The \$122 hourly rate is comparable to private sector rates and competitive with the rates charged by other ADEQ divisions and state agencies that are engaged in similar levels of technical review and project management. For comparison, the private sector consultant rate for similar work activities charged in ADEQ's expedited permit program typically ranges from \$130 to \$200 per hour. Using this same hourly rate calculation methodology, the Air Quality Division currently charges \$133.50 per hour, and the Waste Programs Division currently charges between \$127 and

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\$139 per hour. The Arizona Department of Water Resources, using the same hourly rate calculation methodology, is proposing to charge \$118 per hour. The nominal differences in fees charged between the divisions and agencies largely relate to the hourly rate differences between the specialty staff needed by each particular program. Those programs requiring more specialty technical review (e.g., by hydrologists or engineers) will have slightly higher hourly rates.

B. Identification of persons who will be directly affected by, bear the costs of or directly benefit from the rule-making:

Applicants and permittees of the APP, reclaimed water, and AZPDES permitting programs will be affected by these rules. Permittees include businesses, individuals, political subdivisions, federal agencies, and non-profit organizations. Other entities that may be indirectly impacted by the rules include customers of permittees. This rulemaking does not directly impact the fees of ADEQ's delegated government entities. A.A.C. R18-14-107 establishes authority for counties or other local governments to set independent fees for implementing ADEQ delegated water protection programs.

ADEQ anticipates that this rulemaking will affect at least 17,000 and possibly as many as 38,000 permitted facilities or activities, as well as an unknown number of facilities or activities in the future. Table I below shows the approximate breakdown of current permits, by program (APP/reclaimed, and AZPDES) and by type (individual and general). Certificates of sanitary facilities and dry well registrations are described under the APP program because they relate to groundwater issues and the staff has traditionally been organized under the APP program. The estimated number of AZPDES permits represents the range of active permits possible over a five-year period.

Table I. Approximate Breakdown of Current Permits by Program and Permit Type

| APP/Reclaimed Water Program | Approximate Number of Permits | AZPDES Program | Approximate Number of Permits |
|-------------------------------------|--------------------------------------|----------------------------|--------------------------------------|
| Individual Permits | 450 | Individual Permits | 75-160 |
| General Permits | | General Permits | |
| Type 2 | 500 | Construction | 5,000-20,000 |
| Type 3 | 300 | MSGP | 5,000-10,000 |
| Type 4 | 3,000 | De Minimis | 250-1,000 |
| Certificates of Sanitary Facilities | 100-150 annually | General and Individual MS4 | 50-75 |
| Dry well registrations | 2,100 annually | Biosolids applicators | 10-20 |
| Totals | 6,500 | Totals | 10,400-31,250 |

For some permitted entities, the cost of this rulemaking will be represented by the incremental increase in APP and reclaimed water fees. For other permitted entities, new costs will be incurred for AZPDES permits for which fees were not historically assessed. Some entities may require permit coverage under multiple water quality permitting programs and could incur APP, reclaimed water and AZPDES fees. The number of facilities or activities requiring coverage under general permits (e.g., construction, de minimis) will vary with the level of economic activity making it difficult to estimate the actual number of permits issued (and thus costs to permittees) in any given year or over time. The introduction of new fees adds further uncertainty to the projected number of AZPDES permits as some permittees that discharge only sporadically may choose to forego permit coverage as a result.

Table II below shows the types of permits typically required for six major classifications of permittees, as derived from the past five years of records. These classifications of permittees represent approximately 95 percent of the water quality protection permits issued by ADEQ. The balance of permittees (not shown on Table II) are discussed at the end of Section F.

Table II. Permit Requirements for Major Classifications of Permittees

| | Land Development Industry | Privately Owned Utilities | Industrial Facilities | Mining Facilities | Political Subdivisions | Power Plants |
|----------------------------|---------------------------|---------------------------|-----------------------|-------------------|------------------------|--------------|
| Aquifer Protection Permits | | | | | | |
| Individual | | X | X | X | X | X |
| Type 2 General Permits | | X | X | X | X | X |
| Type 3 General Permits | | X | X | X | X | X |

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| | Land Development Industry | Privately Owned Utilities | Industrial Facilities | Mining Facilities | Political Subdivisions | Power Plants |
|------------------------------------|---------------------------|---------------------------|-----------------------|-------------------|------------------------|--------------|
| Type 4.01 General Permit | X | | | | | |
| Type 4.02-4.23 General Permits | | | X | | | X |
| Reclaimed Water Permits | | | | | | |
| Individual | | | X | | | |
| Type 2 General Permits | | X | | | X | |
| Type 3 General Permits | | X | | | X | |
| AZPDES Permits | | | | | | |
| Individual | | X | X | X | X | X |
| Construction General Permit | X | | | | | |
| MSGP | | | X | X | X | X |
| General and Individual MS4 | | | | | X | |
| Other | | | | | | |
| Dry wells | X | X | X | X | X | X |
| Certificate of Sanitary Facilities | X | | | | | |

C. Cost-benefit analysis of probable costs and benefits to ADEQ and other agencies:

i. ADEQ'S COSTS

ADEQ's annual costs for the Water Quality permitting programs are approximately \$11.3 million: APP and reclaimed water at \$7.3 million and AZPDES at \$4.0 million. Cost estimates are broken down as follows:

Table III. Water Quality Permitting Program Costs

| Program | Current Costs |
|------------------------------|----------------------|
| AZPDES | |
| Individual & General Permits | \$ 1,435,456 |
| Compliance & Inspections | \$ 1,871,444 |
| Administration | \$ 670,517 |
| Total AZPDES Program | \$ 3,977,417 |
| APP/Reclaimed Water | |
| Individual & General Permits | \$ 3,872,219 |
| Compliance & Inspections | \$ 1,643,702 |
| Administration | \$ 1,765,583 |
| Total APP Program | \$ 7,281,504 |
| GRAND TOTAL | \$11,258,921 |

The hourly rate and flat permit fees are designed to support 67 percent of the annual cost of permits staff (project manager, technical reviewers and a portion of the annual costs of administrative and managerial staff that assists and directs the permit staff). The annual fee revenues (e.g., annual registration, annual fees and renewal fees) will support the portion of project manager/technical review staff time that is not directly billed to applicants (33 percent) through the hourly rate, as well as the costs to fully implement the program (e.g., compliance assurance, administration, data management).

ADEQ will incur costs to implement these rules. ADEQ is in the process of expanding its data management capabilities and existing software programs to allow for time tracking and invoicing for the AZPDES program. ADEQ is also

expanding its development of web-based portals to offer the regulated community the ability to apply for and pay for some permit applications online. Such web-based applications will require modifications to underlying databases that track applications for licensing time-frames and billing purposes. These types of costs are included under the "Administration" category as shown in Table III above.

ii. ADEQ'S REVENUES

These new and revised fees are estimated to generate approximately \$11.3 million in annual revenues to cover only the budgeted costs for providing these services. Revenue from hourly rate fees is estimated to generate roughly 35 percent of the needed water quality permitting program revenues. An additional 25 percent of program revenues will be generated through the collection of flat fees for general permits, certificates of sanitary facilities, dry well registrations and other miscellaneous water quality protection services. The remaining 40 percent of program revenues will be generated through annual fees to support Water Quality Division staff and activities for administration, billing, permit compliance and inspections, data management, and database development.

Under A.R.S. § 49-241.02(A), ADEQ is required to establish maximum fees. ADEQ reviewed the adequacy of maximum fees for APP individual permits as required under A.R.S. § 49-241.02(E) and will again review the maximum fees in 2014. In preparing the 2009 maximum fee report for the Legislature, ADEQ documented instances where the maximum fees were exceeded at the previous \$61 hourly rate. The maximum fees set in R18-14-102, Table 1 represent the highest amount ADEQ could bill an applicant for a permit and provide certainty as to the limit of fees that might be charged depending upon the complexity of the permit.

ADEQ has established flat rate fees for general permits based on an estimate of hours required to develop, issue, and administer the permits or water quality protection service (e.g., general permit, certificates, registration), multiplied by the \$122 hourly rate. For the APP, reclaimed water, drywell and certificate of sanitary facilities programs, ADEQ has nearly 10 years of time tracking data upon which to estimate time requirements. In reviewing time tracking data, ADEQ found that within the Type 2 or Type 3 general permits, review times vary for particular general permits. ADEQ established two tiers of fees, standard and complex, for the APP and reclaimed water general permits to account for different review times, which were on average, as follows:

- Standard APP Type 2: 12 hours,
- Complex APP Type 2: 24 hours,
- Standard APP Type 3: 36 hours,
- Complex APP Type 3: 60 hours,
- Standard reclaimed water Type 2: 5 hours,
- Complex reclaimed water Type 2: 6 hours,
- Standard reclaimed water Type 3: 12 hours, and
- Complex reclaimed water Type 3: 16 hours.

To allow for a flexible flat fee structure for existing and potential future AZPDES general permits, ADEQ set the flat rate fees based on an estimate of hours required to develop, issue, and administer permits over the five-year life of the general permit, multiplied by the \$122 hourly rate. That total cost was then divided by the number of potential permittees to establish the annual cost of the permit as listed in R18-14-109, Table 6. AZPDES permits cannot be issued for more than five years, so ADEQ must continually develop and re-issue AZPDES general permits. For the Construction and MSGP general permits, ADEQ has nearly 10 years of past records to base time estimates for those flat fees. For general permits for non-stormwater discharges, ADEQ has included the total anticipated staff hours and total number of potential permittees for each fee category.

AZPDES general permits are often more complex than APP and reclaimed water general permits and take more time to develop and administer (e.g., applicant/permittee assistance, data management, inspections, reviewing reports/pollution prevention plans, developing database applications). Each permit category in R18-14-109, Table 6 may have additional factors for establishing the fee. For example, the flat fee for the MS4 general permit (for smaller stormwater systems) increases as the population increases since greater population typically means greater geographic area covered by the permit and a more complex stormwater system for ADEQ staff to permit and inspect. Given the large number of permittees requiring Construction, MSGP, and De Minimis permit coverage, ADEQ is able to keep the development costs of these permits relatively low. The fees for the Construction general permit and MSGP are tiered based on the amount of acreage disturbed. The greater the area of disturbance, the greater potential for pollutant discharges and the more time needed to conduct an inspection. For the remaining category for non-stormwater general permits, the flat fees increase as the estimated amount of time required to develop and administer the permit increase. Pretreatment program costs are based on the estimated hours to approve a new or revised pretreatment program. The annual fee covers time to review the required annual report and conduct inspections or other program audits.

For the water quality protection service for biosolids applicators, the registration fees are based on the amount of ADEQ staff time required to review the average application, multiplied by the \$122 hourly rate. The annual report fee covers staff time to review the annual report and conduct inspections. The fee is tiered based on the total tons of biosolids applied because there are more data for ADEQ to review as the tonnage increases. Cost estimates for inspections are developed based on the average travel time to a biosolids application site in the state and the average time to conduct a site inspection.

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Revenues generated through annual fees will support Water Quality Division staff and activities for administration, billing, permit compliance and inspections, data management, and database development. This rulemaking provides for three types of annual and renewal fees:

- Annual registration fees for individual and area-wide APPs, based on the design flow of the facility,
- Annual fees for individual reclaimed water permits, the APP Type 4.23 general permit report, AZPDES individual and general permits, and the AZPDES pretreatment and application of biosolids programs, and
- Renewal fees for APP and reclaimed water general permits.

The annual registration fees for an individual APP are based on design flow of the facility. A greater design flow generally requires a greater level of effort by staff to inspect, manage data and administer the permit. With this rulemaking and in recognition of changed economic conditions that may have delayed facility construction plans, facilities that have obtained permit coverage but have not yet completed construction will be assessed a reduced annual fee that represents only the costs of permit administration (data management and billing.) The fee does not include the cost of inspections, as facilities yet to be constructed do not require inspections.

The AZPDES individual permit annual fees are also based on design flow of the facility, and the level of staff time related solely to additional AZPDES program requirements. For example, ADEQ's costs of a basic inspection for a facility having both an APP and AZPDES permit will be covered under the annual registration fee for the APP. In these cases, a separate inspection fee for the AZPDES will not be charged.

Annual registration fees and annual fees for AZPDES individual permits and the pretreatment program were calculated based on the typical number of staff hours needed to administer the permit, including hours devoted to billing, inspections and data management. The annual fee for an AZPDES individual permit will cover activities such as data review specific to the AZPDES permit or additional inspection time needed at the facility for one or more AZPDES permits (e.g., the MSGP permit, Construction general permit or biosolids program). For AZPDES general permits, which are generally issued for five years, the annual fees are one-fifth of the total cost of the permit. This annualization of the AZPDES fees is intended to mitigate the impact of these new fees to permittees by spreading the fees over the five-year term of coverage. APP annual registration fees have also been annualized for smaller discharges to spread the cost of maintaining the permit over a five-year period. Staff hours required to administer the APP for a smaller discharger may differ from year to year because inspections are not typically conducted every year for the smaller facilities, but the annual registration fees will remain the same.

Other state agencies that are required to obtain water quality permits will not be affected by the fee increases because A.R.S. §§ 49-104(C) and 49-203(A)(8) explicitly exempt state agencies from paying fees for ADEQ permitting services and inspections.

ADEQ's temporary fee rule increases the amounts assessed on existing fees (mainly APP and reclaimed water permits) from July 1, 2010 to June 30, 2011. As of February 28, 2011, ADEQ has collected \$1,371,600 in additional fees due to the temporary increase, making a total of \$3,817,300 in water quality protection services fees. Without the temporary fee increase, ADEQ would have collected \$2,445,700 in water quality protection services fees for the same period.

While ADEQ estimates the fees in this rulemaking will ultimately result in revenues of approximately \$11.3 million annually, it does not anticipate immediately generating \$11.3 million in the next fiscal year. The amount of revenue depends on the number of applications received and the number of permits renewed, which depends in part on the level of economic activity. The Arizona economy is beginning to show signs of improvement; however, ADEQ expects its revenues generated by these new fees will grow gradually over the next few years. For Fiscal Year 2012, ADEQ expects to generate less than its Fiscal Year 2012 appropriation of approximately \$10.4 million. Current program costs are approximately \$10.3 to \$11.0 million due to vacancies from reductions in force and layoffs. Until revenues from the fees increase to cover program costs, ADEQ will continue to rely on fiscal support from the Water Infrastructure Finance Authority and federal funds; however, these funds sources are facing significant decreases in the federal Fiscal Year 2012 budget.

D. Cost-benefit analysis of probable costs and benefits to permittees:

Based on the major classifications of permittees described in Table II, ADEQ has estimated the impacts of new fees, including annual fees, to a typical permittee of that permitting sector. In Table IV, the fees under this rulemaking are compared to fees in effect in 2009 (before the current temporary fee increase under the exempt rulemaking) to arrive at this estimate. The required permits for each typical permittee and the details of the fees' impact are estimated below. For purposes of these estimates, ADEQ has assumed that a typical entity is seeking all its new permits or amendments to existing permits for one facility or project in the same year. By this method, an upper bound (worst case) estimate of impact is presented for this analysis as such permit coverage is typically acquired and renewed over a period of years. Each typical permittee is assumed to have one drywell at their facility. With the exception of the land development industry, none of the scenarios envisions a construction project (e.g., initial construction or expansion of a facility, which would require a construction general permit) in the example year.

Individual APPs are issued for the life of the facility and require annual registration fees. Reclaimed water individual permits and AZPDES individual and general permits also have annual fees. Reclaimed water and APP Type 2 and Type 3 general permits have to be renewed on a varied schedule ranging from two to seven years, although the examples in Table IV assume that any renewal fees for Type 2 and Type 3 APP and reclaimed water general permits are

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renewed and paid in the same year. There are no renewal fees for dry well registrations, Type 4 general permits, or certificates of sanitary facilities. There is a new fee for the annual report for an APP Type 4.23 general permit.

In general, permittees with existing APP and reclaimed water permits will see a doubling, on average, of their current fees. The largest impact to AZPDES permittees will be the addition of new fees for program permits and authorizations. Prior to this rulemaking, ADEQ was prohibited from charging fees for the AZPDES permit program and was reliant on the General Fund to fund that program. The General Fund also supported the indirect costs of the APP/reclaimed water programs. With the elimination of the General Fund from ADEQ's budget, the new APP, reclaimed, and AZPDES fees must cover the entire cost of the permitting programs.

Table IV. Estimated Fee Costs by Permittee Type

| Permit Type by Permittee | Permit Fees | | | Annual Registration/Fees | | |
|---|-----------------|-------------------|--------------------------|--------------------------|---------------------------|----------------------------------|
| | Previous Fee | Estimated New Fee | Percentage Change in Fee | Previous Annual Fees | Estimated New Annual Fees | Percentage Change in Annual Fees |
| Land Development Industry | | | | | | |
| APP Type 4.01 general permit Centralized only | \$1,300 | \$4,000 | | N/A | N/A | |
| AZPDES Construction general permit | \$0 | \$350 | | N/A | \$350 | |
| Dry well registration | \$10 | \$100 | | N/A | N/A | |
| Certificates of Sanitary Facilities | | | | | | |
| Centralized sewer | \$300 | \$800 | | | | |
| Onsite | \$1,000 | \$2,000 | | | | |
| Dry-lot | \$1,000 | \$3,000 | | N/A | N/A | |
| TOTAL | | | | | | |
| Centralized sewer | \$1,610 | \$5,250 | 226% | N/A | \$350 | 100% |
| onsite subdivision | \$1,010 | \$2,450 | 142% | N/A | \$350 | 100% |
| Dry-lot subdivision | \$1,010 | \$3,450 | 241% | N/A | \$350 | 100% |
| Privately-owned Utilities | | | | | | |
| APP individual | \$9,150 | \$18,300 | | \$1,000 | \$2,500 | |
| APP Type 2.01 and 2.04 general permits | \$600 | \$3,000 | | \$240 | \$1,000 | |
| APP Type 3.01 general permit | \$1,500 | \$7,500 | | \$500 | \$1,500 | |
| Reclaimed Water Type 2 general permit | \$300 | \$600 | | \$120 | \$450 | |
| Reclaimed Water Type 3 general permit | \$1,500 | \$1,500 | | \$500 | \$1,250 | |
| AZPDES individual permit | \$0 | \$15,000 | | \$0 | \$500 | |
| Dry well registration | \$10 | \$100 | | N/A | N/A | |
| TOTAL | \$13,060 | \$46,000 | 252% | \$2,360 | \$7,200 | 205% |
| Industrial Facilities | | | | | | |
| APP individual | \$9,150 | \$18,300 | | \$5,000 | \$6,500 | |
| APP Type 2.01 and 2.04 general permits | \$600 | \$3,000 | | \$240 | \$1,000 | |
| APP Type 3.01 general permit | \$1,500 | \$7,500 | | \$500 | \$1,500 | |
| APP Type 4.23 general permit | \$1,800 | \$3,600 | | \$0 | \$200 | |
| Reclaimed Water individual permit | \$1,830 | \$3,660 | | \$0 | \$500 | |
| AZPDES individual permit | \$0 | \$20,000 | | \$0 | \$2,500 | |
| AZPDES MSGP | \$0 | \$500 | | \$0 | \$500 | |
| Dry well registration | \$10 | \$100 | | N/A | N/A | |

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| Permit Type by Permittee | Permit Fees | | | Annual Registration/Fees | | |
|--|--------------|-------------------|--------------------------|--------------------------|---------------------------|----------------------------------|
| | Previous Fee | Estimated New Fee | Percentage Change in Fee | Previous Annual Fees | Estimated New Annual Fees | Percentage Change in Annual Fees |
| TOTAL | \$14,890 | \$56,660 | 281% | \$5,740 | \$12,700 | 121% |
| Mining | | | | | | |
| APP individual | \$83,387 | \$166,774 | | \$8,500 | \$8,500 | |
| APP Type 2.02 general permit | \$300 | \$3,000 | | \$120 | \$1,000 | |
| APP Type 3.01, 3.03, and 3.04 general permits | \$4,500 | \$19,500 | | \$1,500 | \$6,500 | |
| AZPDES individual permit | \$0 | \$25,000 | | \$0 | \$2,500 | |
| AZPDES MSGP | \$0 | \$1,000 | | \$0 | \$1,000 | |
| Dry well registration | \$10 | \$100 | | N/A | N/A | |
| TOTAL | \$88,197 | \$215,374 | 144% | \$10,120 | \$19,500 | 93% |
| Political Subdivisions Small/Large | | | | | | |
| APP individual (small) | \$9,150 | \$18,300 | | \$1,000 | \$2,500 | |
| APP individual (large) | \$17,751 | \$35,502 | | \$8,500 | \$8,500 | |
| APP Type 2.01 and 2.04 general permits (both) | \$600 | \$3,000 | | \$240 | \$1,000 | |
| APP Type 3.01 general permits (both) | \$1,500 | \$7,500 | | \$500 | \$2,500 | |
| APP Type 3.03 general permit (large only) | \$1,500 | \$4,500 | | \$500 | \$1,500 | |
| Reclaimed Water Type 2 general permit (both) | \$300 | \$600 | | \$120 | \$450 | |
| Reclaimed Water Type 3 general permit (large only) | \$1,500 | \$1,500 | | \$500 | \$1,250 | |
| AZPDES individual permit (small) | \$0 | \$20,000 | | \$0 | \$500 | |
| AZPDES individual permit (large) | \$0 | \$30,000 | | \$0 | \$2,500 | |
| AZPDES MSGP (small) | \$0 | \$500 | | \$0 | \$500 | |
| AZPDES MSGP (large) | \$0 | \$1,000 | | \$0 | \$1,000 | |
| AZPDES MS4 general (small) | \$0 | \$5,000 | | \$0 | \$5,000 | |
| AZPDES MS4 individual (large) | \$0 | \$30,000 | | \$0 | \$10,000 | |
| AZPDES pretreatment (large only) | \$0 | \$10,000 | | \$0 | \$3,000 | |
| Dry well registration (both) | \$10 | \$100 | | N/A | N/A | |
| TOTAL small municipality | \$11,560 | \$55,000 | 376% | \$1,860 | \$12,450 | 569% |
| TOTAL large municipality | \$23,161 | \$123,702 | 434% | \$10,360 | \$31,700 | 205% |
| Power Plants | | | | | | |
| APP individual | \$15,250 | \$30,500 | | \$8,500 | \$8,500 | |
| APP Type 2.01 and 2.04 general permits | \$600 | \$3,000 | | \$240 | \$1,000 | |
| APP Type 3.01 and 3.03 general permits | \$3,000 | \$12,000 | | \$1,000 | \$4,000 | |
| APP Type 4.23 general permit | \$1,800 | \$3,600 | | \$0 | \$200 | |
| AZPDES individual permit | \$0 | \$20,000 | | \$0 | \$2,500 | |
| AZPDES MSGP | \$0 | \$500 | | \$0 | \$500 | |
| Dry well registration | \$10 | \$100 | | N/A | N/A | |

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| Permit Type by Permittee | Permit Fees | | | Annual Registration/Fees | | |
|--------------------------|--------------|-------------------|--------------------------|--------------------------|---------------------------|----------------------------------|
| | Previous Fee | Estimated New Fee | Percentage Change in Fee | Previous Annual Fees | Estimated New Annual Fees | Percentage Change in Annual Fees |
| TOTAL | \$20,660 | \$69,700 | 237% | \$9,740 | \$16,700 | 71% |

Several notes of explanation in the table notations:

- In this rulemaking, for both the APP and the reclaimed water programs, ADEQ has designated certain Type 2 or 3 general permits as “complex” – requiring more time to review, and therefore establishing a higher fee compared to a “standard” permit.
- The previous and estimated new fees presented for individual APP, reclaimed water, and AZPDES permits are based on the average number of staff hours to issue this permit type.

E. Cost-benefit analysis of probable costs and benefits to political subdivisions:

Under the assumptions presented in Table IV, political subdivisions, mainly municipalities, will be the most impacted by these fee increases. Municipalities, town, and political subdivisions represent approximately 40 percent of the individual water quality permitting universe and they will bear the greatest impact because they own or operate facilities and/or conduct multiple activities requiring both APP and AZPDES permit coverage. Larger municipalities also typically own and operate multiple, more complex, and larger facilities. For some permits, including permits for wastewater treatment plants and the municipal stormwater permit program, population size makes a difference, so the impacts to both a typical large municipality and a typical small municipality are shown. Smaller communities will likely be affected more than large communities because they have a smaller population over which to spread the costs.

Many municipalities (and some political subdivisions) operate wastewater treatment facilities (WWTPs), which require various APP, AZPDES, and reclaimed water permits. All wastewater treatment facilities require APP permits so these communities will, on average, realize a doubling of individual APP fees for treatment plants, and larger percentage increases in fees for certain types of general permitted discharging facilities (e.g., lined impoundments, dry-wells). Many municipalities also have reclaimed water permits, the fees of which, on average, also double. The typical municipality will also pay annual or renewal fees on most of these permits. The large municipality will experience no increase in its APP annual registration fees for its WWTP, which were originally set in A.R.S. § 49-242 (prior to House Bill 2767). The annual registration fees for these larger facilities, with discharges greater than 10 million gallons per day (mgd), are sufficient to cover staff time for inspections, data management and billing necessary to service the permit each year. The small municipality faces a 150 percent increase in its annual registration fees because these fees have not changed for 20 years. Fees for smaller discharges (e.g., less than one mgd) had ranged from \$25 to \$1,000 and did not cover the cost of permit administration, such as staff time spent on inspections (conducted on average every three to five years) and data management and billing.

The greatest cost impact to both small and large municipalities results from the new fees for the AZPDES permitting programs. Under the AZPDES program, municipalities may require an individual AZPDES permit for discharge to waters of the U.S.; municipal separate storm sewer system (MS4) permits (individual or general permits depending on population size); MSGP for large WWTPs, landfills or airports; as well as pretreatment program approval for WWTPs (for larger communities or those with certain industries). Previously these entities paid no fees for these permits and authorizations. The large municipality may have higher AZPDES annual fees based on the number of permits required and the size of facilities.

Under the assumptions presented in Table IV, the hypothetical small municipality will realize a water quality permitting fees increase from \$12,000 (prior to 2009) to nearly \$55,000, a nearly 375 percent increase. This increase is largely due to the addition of new AZPDES fees and general permit fee increases. Annual fees for small municipalities are estimated to increase from \$2,000 to \$12,500, nearly 570 percent, again largely due to new AZPDES annual fees, and increased APP annual registration fee and APP general permit renewal fees.

The hypothetical large municipality is estimated to realize a water quality permitting fees increase from \$23,000 to \$124,000 (approximately 434 percent) and annual fee increases from \$10,500 to \$31,700 (205 percent). The increases are largely due to the new AZPDES fees, and increases in the APP and reclaimed water Type 2 and Type 3 general permit fees.

Municipalities faced with paying for AZPDES permits for the first time, especially those that rarely or never discharge, may now consider foregoing AZPDES permit coverage. Those municipalities will balance the risk of not having the protections of permit coverage against the potential to discharge unlawfully without a permit during unforeseen or emergency situations. The penalties for discharging without a permit can reach \$25,000 a day.

In recognition of the impact of these new fees especially to smaller municipalities, ADEQ is currently developing a series of AZPDES general permits for specific types of typical discharges. In an effort to reduce costs to municipalities that may wish to maintain the protections of permit coverage, the five-year cost of permit issuance and administration is prorated over the five-year term of the permit. For example, ADEQ is considering a general AZPDES permit for small WWTPs (less than one mgd) that discharge to certain types of non-perennial waters. ADEQ esti-

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mates the annual cost to a permittee for such a general permit will be \$2,000, with the five-year cost of \$10,000. By contrast, the estimated cost for an individual permit for the same small WWTP would likely be in the range of \$15,000 - \$20,000, plus the required annual fees for AZPDES-specific activities. ADEQ anticipates these new general AZPDES permits will be available in July or August 2011. ADEQ will reach out to small communities that are eligible for these new general permits.

ADEQ is also developing an AZPDES emergency discharge general permit as shown in Table 6 of R18-14-109. The \$10,000 cost of this proposed general permit is to cover the estimated 80 hours of staff time for activities including public notice, pre- and post-discharge monitoring and data review for discharges. This general permit will allow an emergency discharge in certain circumstances for a facility that may have otherwise elected to forego AZPDES permit coverage. The permit cost is much less than the potential maximum penalties of \$25,000 per day that could be assessed for discharging without a permit.

ADEQ is also considering development of both AZPDES and APP general permits for discharges from groundwater remediation projects or discharges of groundwater for environmental enhancement projects. The estimated fee to issue an APP individual permit for these types of discharges is \$20,000 to \$30,000 and AZPDES permit coverage is estimated at \$15,000 to \$20,000. By contrast, coverage under the proposed APP general permit, good for five years, is estimated to range from \$1,500 to \$7,500 and the general permit under the AZPDES program is estimated to range from \$1,250-\$1,500 per year or \$6,000-\$7,500 for a five-year permit. This potential use of general permits represents a substantial potential savings to the regulated municipality.

F. Cost-benefit analysis of probable costs and benefits to businesses:

Table IV estimates the impacts to the classification of facilities affected by this rulemaking. A description of these costs for each classification is provided below.

i. Land development permittees

The land development industry typically requires the fewest types of permits, but obtains nearly 60 percent of all permits issued under the AZPDES Construction general permit. For purposes of this costs analysis, and as illustrated in Table IV, the typical land developer developing a 100-lot subdivision on less than 50 acres, will install a centralized sewer collection system that requires an APP Type 4.01 general permit.

Based on this scenario, the cost increases for the necessary APP permits and certificate of sanitary facilities will more than double. Previously there were no fees for the AZPDES Construction general permit. Under the new AZPDES fees, the developer will be assessed a fee for the initial Construction general permit coverage and if construction takes longer than one year, an annual renewal fee for each additional year of coverage until the land developer files a notice of termination. Overall, this hypothetical land developer will realize increases from \$1,610 to \$5,250 (226 percent) as a result of these new water quality permitting fees.

If the same land developer installs onsite wastewater treatment facilities instead of a centralized sewage collection system, the cost impacts would be slightly varied. Subdivisions served by onsite wastewater systems and "dry-lot" subdivisions (where no centralized water system is provided) require significantly more time to review and are assessed a higher fee than a subdivision with a centralized sewer collection system connected to a WWTP. The same basic project developed as an onsite subdivision would experience fee increases of slightly more than double, from \$1,100 to \$2,450 (122 percent), while a dry-lot subdivision project, because of the greater review time, would have increases similar to the original sewer project from \$1,100 to \$3,450 (213 percent).

ii. Privately-owned utilities

Table II shows that privately-owned wastewater treatment facilities rank high in the number of required permits. Approximately 36 percent of individual permits in the APP and AZPDES programs are for discharges from privately-owned wastewater treatment facilities. This permitting sector will be moderately affected by these new fees. For purposes of this cost analysis and as illustrated in Table IV, the typical privately-owned WWTP is designed for a treatment and/or discharge capacity of less than one mgd. These small, non-publicly-owned WWTPs are not subject to many of the AZPDES requirements for large municipalities, such as pretreatment and MSGP permit coverage.

Like other facilities with individual APP and reclaimed permits, privately-owned utilities will see a doubling on average of their current fees, and larger percentage increases in fees for certain types of general permitted facilities (e.g., lined impoundments, drywells). These utilities will also be assessed annual or renewal fees on most of these permits. Like the small municipality, a privately-owned utility faces a 150 percent increase in its annual registration fees because these fees have not changed for 20 years. Fees for smaller discharges (e.g., less than one mgd) had ranged from \$25 to \$1,000 and did not cover the cost of permit administration, such as staff time spent on inspections (conducted on average every three to five years) and data management and billing. Private utilities will likely realize a three-fold increase in permitting fees from \$13,000 to \$46,000, largely due to the new fees for an AZPDES individual permit and increases in general permits. Annual fees will increase from \$2,400 to \$7,200 due to the changes in annual registration fees for small facilities and the higher renewal fees for general permits.

Privately-owned WWTPs will also likely benefit from the future development of new general permits for smaller WWTPs that discharge to certain types of non-perennial waters. With this rulemaking and in recognition of changed economic conditions that may have delayed facility construction plans, facilities that have obtained permit coverage

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but have not yet completed construction will be assessed a reduced annual fee that represents only the costs of permit administration (data management and billing) but not inspections, as facilities yet to be constructed do not require inspections.

iii. Industrial facilities

Table IV examines the potential cost impacts of fees to the industrial sector. This sector represents approximately 11 percent of the individual APP and AZPDES permits and includes steel fabrication, electronics manufacturing, refineries, and gas storage facilities. Estimated cost impacts to this sector are similar to those of the privately-owned utilities. Fees for individual APP and reclaimed water permits will double on average. Annual renewal fees for the average industrial facility will increase approximately 30 percent from \$5,000 to \$6,500. Fees for APP general permits and renewals will realize a larger percent increase depending on the types of facilities constructed, as industrial sites often employ discharging facilities that require general permits designated as “complex” for fee purposes.

This hypothetical industrial facility will realize total fee increases from approximately \$15,000 to nearly \$57,000, a 281 percent increase, over half of the increase due to new AZPDES fees and the doubling of the hourly fee for both individual APP and reclaimed permits. The total annual fees may double and include an increase in the APP annual registration fee, a new AZPDES annual fee for the individual permit and the MSGP, and increases in the renewal fees for the APP general permits.

Additionally, if the industrial facility is not within incorporated communities served by a centralized sewer, it would likely require onsite wastewater treatment for employees. For example, fees for large onsite wastewater systems treating greater than 3,000 gallons per day (gpd) will double. As with most APP permits, an annual report fee to cover staff review time has also been established.

iv. Mining facilities

The mining sector represents approximately 10 percent of the individual APP and AZPDES permit universe. As Table IV shows, the mining sector requires relatively few water permits but those individual permits obtained tend to be more complex (and thus more costly on average) than permits for other sectors. Accordingly, while the estimated percentage increase in the new fees appears less than for most of the other sectors, the absolute cost impacts are significant. Mining facilities have always been costly to permit and maintain given the size (mines often cover many acres of land), the complexity, and the number of discharging facilities at mines. Cost impacts for APP permits for the mining sector will double as with all other permitted sectors. The annual registration fees however, which were originally set in A.R.S. § 49-242 (prior to House Bill 2767), have not been changed. The APP annual registration fees for these larger facilities, with discharges greater than 10 mgd, are sufficient to cover staff time for inspections, data management and billing necessary to administer the permit each year. Fees for APP general permits and renewals will realize a larger percent increase because most mines construct and operate discharging facilities that require general permits designated as “complex,” which are subject to higher fees. For mining facilities that discharge to surface waters, an individual AZPDES permit is required as well as coverage under the AZPDES MSGP, and new AZPDES fees will be assessed.

Overall, the hypothetical mine will realize permit fee increases from approximately \$90,000 to \$215,000 (a 144 percent increase) largely attributable to new AZPDES fees, increases in APP hourly fees and a greater use of “complex” general APP permits by this sector. The annual fees will likely increase, primarily as a result of the renewal of APP general permits designated as “complex” and AZPDES permits.

v. Power Plants

Steam electric generating stations represent approximately six percent of the individual APP and AZPDES permit universe. While these facilities require relatively few water permits, they are large, often are complex to review, and many require AZPDES permits for discharges to surface waters and stormwater. This sector will likely realize doubling of fees for individual APP permits, as with all other permitted sectors. Fees for APP general permits and renewals will realize a larger percent increase because the discharging facilities associated with power plants often require general permits designated as “complex,” which are subject to higher fees. If the facility will discharge to surface waters, an individual AZPDES permit is required as well as coverage under the AZPDES MSGP, and new AZPDES fees will be assessed.

Overall, the steam electric power plant will realize permit fee increases from approximately \$21,000 to \$70,000 (a 240 percent increase), which reflects the cost impact of new AZPDES fees, increases in APP hourly fees and a greater use of “complex” general APP permits by this sector. The annual fees will also likely increase, primarily as a result of the renewal of general permits for “complex” facilities and assessments for AZPDES permits for which fees have not previously been charged.

Additionally, if the steam electric generating station is not within an incorporated municipality that can be served by a centralized sewer, it would likely require onsite wastewater treatment for employees. For example, fees for large onsite wastewater systems treating greater than 3,000 gallons per day (gpd) will double. As with most APP permits, an annual report fee to cover staff review time has also been established.

vi. Other entities

The cost impacts to biosolids land applicators are not presented in Table IV, but this sector will be impacted by new fees. There are currently 10 commercial biosolids land applicators registered with ADEQ. Any new biosolids land applicator that seeks registration after the effective date of these rules will be assessed the initial registration fee. Any existing biosolids land applicator will be assessed the registration amendment fee if new lands are added to their initial registration. Biosolids land applicators are required to submit an annual report for the prior year during which they land-applied biosolids, and ADEQ inspects land application sites. The inspection cost is included in the fee for the annual report. ADEQ has tiered the annual report fee based on the amount of dry metric tons of biosolids applied. The time to review the analytical data in the annual report and to conduct inspections increases with the volume of biosolids applied. Under the three proposed tiers, two of the currently registered biosolids land applicators will pay the annual report fee for greater than 15,000 dry metric tons applied; three will pay the annual report fee for greater than 7,500 and 15,000 dry metric tons applied; and five will pay the annual report fee for less than or equal to 7,500 dry metric tons applied. During any given year, if a land applicator does not land apply biosolids, they will not be assessed an annual fee for that year and are not required to submit an annual report.

Other types of permittees that have not been discussed include truck stops and gas stations, fish hatcheries, mobile home and recreational vehicle parks, marinas, recharge projects, and habitat restoration projects. These types of facilities may require an individual APP or AZPDES permit and one or more APP or AZPDES general permits. As discussed in the previous sections, these facilities' costs related to APPs are estimated to generally double, and they will be assessed new fees for any required AZPDES permit, as well as annual or renewal fees.

Some entities such as the U.S. National Park Service, U.S. Forest Service, or non-profit organizations such as the Nature Conservancy, also have occasional projects that may require AZPDES general permit coverage for construction over one acre, or APP Type 4 general permits for onsite wastewater treatment facilities. As discussed in the previous sections, these facilities' costs related to APPs are estimated to generally double, and they will be assessed new fees for any required AZPDES permit, as well as annual or renewal fees.

vii. Other states

As part of its research in developing these fee rules, ADEQ has analyzed fees charged by other states for similar programs.

Groundwater protection programs

Arizona is one of the few states that has a permitting program for the protection of groundwater. ADEQ was able to find only two states with programs comparable with the APP program: Utah and Oregon. The Utah Department of Environmental Protection groundwater program is very similar to ADEQ's in structure. It has general permits, and individual permits, for which hourly rates are charged (currently \$90/hour). In addition, an annual \$25 fee is charged on each onsite wastewater system which is remitted to the state for use in program training. Annual permit administration fees, ranging from \$350 to \$2,800, are designed to pay for Department costs of inspections, data management and data review, and are based on size, acreage of disturbance or system configuration. Oregon's water pollution control facility permits are issued for land irrigation of wastewater, wastewater lagoons, onsite wastewater systems and drywells. The program includes an annual renewal fee as well as an annual fee based on population served, ranging from \$50 (less than 100 persons served) to over \$87,000 for populations exceeding 500,000. Permitting fees for municipal/domestic wastewater treatment facilities range from \$820 to \$30,000, with annual renewal fees from \$1,000 to \$11,000. Onsite system permit fees range from \$500 to \$2,500, with renewal fees of \$130 to \$1,300. Industrial wastewater facilities range from \$9,500 to \$47,000, with renewal fees from \$1,225 to \$15,250.

Surface water permitting program

The discussion below compares the AZPDES program to other states that have been delegated the NPDES permitting program. In the few states that do not have primacy, EPA issues the NPDES permits and there is no fee. The NPDES program fee schedules for other states widely vary and it is unclear what other funding sources may support the program and whether these fees are intended to cover the full cost of NPDES permit issuance and administration. The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) published a national survey of NPDES permitting fees in 2007. While there is a fairly wide range of fees between states for any given type of permit, the survey provides a general picture at the national level for comparison. The permit type, the range of fees charged, the structure (e.g., initial fee, hourly, annual), and the basis for the fees (e.g., gallons of discharge) are described below.

Individual Municipal/Domestic Wastewater Discharge Permits

ADEQ assesses a \$2,000 initial application fee and charges \$122 per hour for review time. The maximum fee for minor facilities (less than one mgd) is \$15,000 and \$50,000 for major facilities (greater than 10 mgd). Annual fees for these permits range from \$250 for minor facilities to \$4,000 for facilities greater than 10 mgd. For comparison, the ASIWPCA survey shows the application fees for both minor and major facilities range from \$50 to nearly \$29,000; permitting fees for facilities range from \$60 to \$60,000 (for minors) and \$118,500 (for majors). Annual fees range from \$100 to over \$500,000 but the averages are \$9,800 for minor and \$47,000 for major facilities.

Individual Industrial Discharge Permits

ADEQ assesses a \$2,000 initial application fee and charges \$122 per hour for review time. The maximum fee for industrial facilities is \$30,000. Annual fees for these permits range from \$500 for minor industrial facilities to \$2,500 for major industrial facilities. The survey shows the application fees for both minor and major facilities range from \$50 to nearly \$38,000; permitting fees for facilities range from \$60 to \$50,000 (for minors) and \$118,500 (for majors). Annual fees range from \$100 to nearly \$465,000 but the averages are \$18,400 for minor and \$35,000 for major facilities.

Industrial Stormwater General Permits (MSGP)

ADEQ is instituting a tiered set of flat fees for these permits based on the size of the facility that would generate stormwater discharges. The fees range from \$350 for sites less than one acre; \$500 for sites between one and 40 acres; and \$1,000 for sites greater than 40 acres. The overall average fee based on the current MSGP database is \$577. The annual fee is the same as the permit authorization fee. The ASIWPCA survey shows that application fees in other states range from \$50 to \$20,000 with an average of \$1,290. Annual fees range from \$55 to \$5,000 with an average of \$637.

Construction Stormwater General Permits

ADEQ is instituting a tiered set of flat fees for these permits based on the amount of land disturbed during construction. The fees range from \$250 for sites less than one acre; \$350 for sites between one and 50 acres; and \$500 for sites greater than 50 acres. The overall average fee based on the current construction general permit database is \$368. The annual fee is equal to the permit authorization fee until the permittee files a notice of termination. The ASIWPCA survey shows that application fees in other states range from \$50 to \$7,500 with an average of \$603. Annual fees range from \$60 to \$11,700 with an average of \$955.

Municipal Separate Storm Sewer System (MS4) Permits

Phase I MS4 municipalities require individual AZPDES permits. ADEQ assesses a \$2,000 initial application fee and charges \$122 per hour for review time. The maximum fee for Phase I MS4 municipalities is \$40,000; the annual fee is \$10,000. Phase II MS4 permittees are covered under an AZPDES general permit. ADEQ is instituting a tiered set of flat fees for Phase II permittees based on population in the permitted area. The fees range from \$2,500 for populations less than 10,000 persons; \$5,000 for populations greater than 10,000 but less than 100,000 persons; to \$7,500 for populations greater than 100,000. Annual fees are the same as the permit authorization fees. The ASIWPCA survey shows the application fees for Phase I MS4 permits range from \$100 to \$7,800. Annual fees ranged from \$100 to \$42,000 with an average of \$9,000. Application fees for Phase II permittees ranged from \$50 to nearly \$7,800. Annual fees range from \$80 to \$118,500 with an average of \$8,300.

G. Probable impact on public and private employment:

Private and public employment is not directly affected by these rules.

H. Probable impact on small businesses:

Small businesses with facilities that require APP or AZPDES permit coverage include small construction companies, truck stops and gas stations, and mobile home and recreational vehicle parks. Generally, these types of small businesses do not operate facilities requiring reclaimed water permits, although a small golf course could have a reclaimed water general permit for use of treated effluent for irrigation. Small construction companies will have the new cost of the AZPDES fees for coverage under the Construction general permit for projects disturbing one or more acres of land. Truck stops and gas stations likely have general APP permits for drywells and will also be assessed the increased APP fees. Small businesses tend to have a smaller customer base over which to spread the costs of the increased fees.

Truck stops, gas stations, and mobile home and recreational vehicle parks that are not within incorporated communities served by centralized sewer would likely require onsite wastewater treatment. The APP Type 4.23 general permit is for larger onsite facilities (up to 24,000 gallons per day). ADEQ is retaining its current base fee, which includes coverage of up to three treatment technologies and/or disposal methods and up to two onsite wastewater treatment facilities at the site, and establishes a maximum fee. Each additional treatment facility, treatment technology or disposal method requires an additional fee, in recognition of the additional review time required due to the increased system complexity. ADEQ also is adding a fee for the Type 4.23 annual report required under R18-9-E-323(G)(2) to cover staff review time.

Small privately-owned wastewater treatment facilities may be more impacted by the new AZPDES fees than other small businesses as they tend to serve smaller communities and lack the customer base to absorb the cost increases. For the APP annual registration fees, the smallest dischargers will be assessed the largest percentage increase, due to the fact that annual registration fees were originally set in statute in 1990 and have not been adjusted for inflation or otherwise raised for 20 years. The prior annual registration fees for smaller discharges (less than 100,000 gpd) were never adequate to support post-permitting activities (e.g., inspection, data management, compliance assistance). The fee increase for the smallest dischargers is necessary to support the staff time necessary to maintain the permit.

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1. *Administrative costs and other costs required for compliance:*

This rulemaking establishes fees for water quality protection services. These rules do not have separate administrative costs, or other compliance costs for small businesses.

2. *Description of the methods used by ADEQ for reduction of impact on small businesses:*

(i) *Establish less costly compliance requirements, including establishing performance standards to replace design or operational standards in the proposed rulemaking.*

While this rulemaking only establishes fees, ADEQ is in the process of developing both APP and AZPDES general permits that may be less costly to small businesses. These general permits will have lower fees and more streamlined requirements than individual permits.

(ii) *Establish less costly schedules or less stringent deadlines for compliance, or consolidate or simplify the rule's compliance or reporting requirements in the proposed rulemaking.*

As a fee rule, this rulemaking does not establish any deadlines for compliance or reporting schedules for small businesses. ADEQ has attempted to structure the fees to accommodate small businesses that may be more impacted by the new fees as they tend to have a smaller customer base over which to spread the costs of the increases.

- ADEQ has determined the total cost for each permit, and in many cases will assess those costs annually and evenly over the term of the permit to assist small business with budgeting.
- Efficiencies enacted in the permitting programs as well as the development of new general permits provide the primary means for reducing the impact of those fee increases on small businesses. To mitigate the impacts of the new and increased permitting fees on small businesses, ADEQ has also:
 - Developed tiered fees within general permits and individual permits that recognize distinctions in both complexity and varying levels of time to issue and maintain the permits and thus reduce financial impact to applicants for standard permits;
 - For AZPDES general permits, designed an annual fee that allows the costs of developing, issuing and servicing the permit to be distributed over the five year term of the permit;
 - Reduced annual fees for facilities that obtain permit coverage but are not yet constructed, in recognition of ADEQ's lower level of time to service such permits;
 - Initiated development of new general permits for specific facilities or activities that are similar in nature and can be effectively regulated under a streamlined general permitting process;
 - Established a voluntary courtesy review during preliminary design of sewer collection systems that will provide the applicant feedback early in the design stage to resolve issues before final submittal, saving both time and money. If an applicant chooses courtesy review but is unable to submit final documentation within the 180 day period, the applicant pays the full applicable fee, forfeiting the one-third fee previously paid; and
 - Created a separate fee for a small onsite subdivision of 10 lots or less.

ADEQ is also expanding its development of web-based portal applications to offer the regulated community the ability to apply and pay for some permit applications online.

The availability of general permits may reduce the impact to small businesses under all three Water Quality programs. General permits are expected to reduce costs and increase regulatory certainty for small businesses and the entire regulated community because applicants for coverage are assessed a fixed fee rather than an hourly rate for permit processing. While being protective of the environment, general permits tend to be easier to apply for and include less monitoring and reporting requirements than do individual permits and provide assurances to the regulated community that everyone covered under the general permit is being held to the same standards. ADEQ has also attempted to make the impact of the fees more equitable by creating tiers within the general permits. For example, for the Type 2 and Type 3 APP and reclaimed water general permits, ADEQ has established the tiered system of fees in recognition of the complexity and the greater level of time to process certain applications. ADEQ will assess a higher fee for only the more complex permits, providing a more equitable system for all permittees. The organization of the tiered fees for general permits allows flexibility for the creation and use of potential future general permits. In addition, for the AZPDES program, the general permit annual fee is structured such that the costs of developing, issuing and servicing the permit are distributed over the five year permit term.

(iii) *Exempt small businesses from any or all requirements of the proposed rulemaking.*

While not exempting small businesses from these fee rules, ADEQ created two categories of lesser fees for smaller projects: subdivisions (certificate of sanitary approval); and land application of biosolids. Other methods implementing the statutory objectives of this rulemaking to generate fees necessary to support the costs of water quality permitting services that might reduce the impact on small businesses or be less costly or intrusive would not be feasible. ADEQ will continue to explore ways to mitigate the impacts of fees to small businesses and all members of the regulated community.

I. Probable costs and benefits to private persons and consumers:

Generally, private persons (who are not sole proprietor small businesses) do not engage in activities that require permit coverage under the APP, reclaimed water, or AZPDES programs. Occasionally, private persons may require water quality permit coverage from ADEQ. For example, construction projects impacting one acre or more require AZPDES construction general permit coverage, and placer mining activities (the extraction of minerals from surface water sediment through panning, washing, or dredging) might require MSGP coverage. If permit coverage is required, the private person will be subject to the permit fees.

In counties that do not have a full delegation authority for approval of onsite wastewater treatment systems from ADEQ, private persons will pay an incremental increase in fees for APP Type 4 general permits for these treatment facilities because they will need to obtain their Type 4 general permit directly from ADEQ. The fees for the average individual onsite wastewater treatment facility increased about 200 percent, from an original cost/fee of \$400 to the new fee of \$1,200. ADEQ does not know if counties that do have a full delegation of authority for approval of onsite systems will raise their fees.

ADEQ expects a minimal indirect impact to consumers and the general public. From the consumer's perspective, if permitted entities bear additional costs or realize savings, these entities may pass the costs or savings on to the consumer and the public through products, services or utility rates. There is no way for ADEQ to predict whether these costs or benefits will be passed on or what the actual costs or benefits may be for each permittee. The increased fees will allow ADEQ to process applications and conduct inspections in a timelier manner, which benefits those persons seeking permits and approvals and protects public health and safety.

Establishing sufficient and sustainable revenues to support water quality permitting programs facilitates timely issuance of water quality permits by ADEQ (rather than EPA) to further improve water quality with appropriate permit conditions. Adequate staffing levels for inspections, compliance, and enforcement increase incentives for compliance through regular inspections and create a level regulatory environment for all business. These efforts help to reduce unpermitted discharges from regulated sources, which in turn prevent adverse health effects that cost the public in medical care and lost productivity, and environmental degradation.

J. Probable effect on state revenues:

ADEQ estimates that fees from this rulemaking will directly affect state revenues by increasing revenues to the WQFF Fund to \$11.3 million annually, enough to cover the costs of the three water quality programs. ADEQ does not anticipate generating \$11.3 million in the next fiscal year since the amount of revenue depends on the number of applications received and the number of permits renewed, which depends in part on the level of economic activity. The Arizona economy is beginning to show signs of improvement; however, ADEQ expects its revenues generated by these new fees will grow gradually over the next few years.

K. Description of less intrusive or less costly alternative methods of achieving the proposed rulemaking.

ADEQ's goal in this rulemaking is to establish water quality protection fees that will sustain the programs while avoiding disproportionate impact on any one group of stakeholders. Other methods implementing the statutory objectives of this rulemaking to generate fees necessary to support the costs of water quality permitting services that might be less costly or intrusive would not be feasible.

House Bill 2767, in combination with the recent appropriations bills, finalizes ADEQ's transition away from the General Fund. As recent as fiscal year 2007, the General Fund accounted for 26 percent of the total Water Quality Division budget. Effective in fiscal year 2011, the state General Fund has been eliminated from the ADEQ budget and the subsequent shortfall is being reconciled through budget reductions, temporary use of other funds, and increased fees. As the General Fund has been reduced, ADEQ has been able draw on federal funds until water quality protection fees are established. The Water Infrastructure Finance Authority has also provided short-term access to infrastructure monies but has informed ADEQ that this is not sustainable beyond fiscal year 2012. ADEQ has aggressively pursued federal grant opportunities, and used EPA grants to develop its regulatory programs. While EPA often makes grants available for the development of program capacity, ADEQ is not aware of federal grants for continuing maintenance of a delegated state program. Notwithstanding aggressive budget reductions that resulted in loss of staff through reductions in force and layoffs, fee increases are necessary to cover the full cost of implementing and administering the programs.

ADEQ's ability to raise revenue is limited by the powers and duties granted it through statute, specifically A.R.S. §§ 49-104(C) and 49-203(A)(8). While ADEQ can impose civil and criminal penalties of up to \$25,000 per day, both civil and criminal penalties obtained under an environmental enforcement action must be deposited in the General Fund (A.R.S. §§ 49-262(E) and 49-263(G)).

L. Explanation of the limitations of the data available for this economic small business and consumer impact statement.

ADEQ believes there is adequate data to provide all of the information required by A.R.S. § 41-1055(B). ADEQ believes it has explained the limitations of the data and the methods employed in its attempt to characterize the probable impacts.

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M. Conclusion

ADEQ believes the benefits to the environment by ensuring proper permitting and oversight through inspections and data management, outweigh the increase in permitting fees. While ADEQ recognizes that the regulated community will be impacted by this rulemaking, by achieving a sustainable balance between revenues and expenditures, the regulated community is avoiding the potential impacts of failure of the Water Quality Fee Fund and disruptive interruptions in service that would result from fund insolvency. Without new and increased fees to replace the loss of the general fund, the WQFF will not be able to sustain revenues to support the program. Under the Clean Water Act and federal implementing regulations, should ADEQ no longer be able to staff and operate the AZPDES permitting program, EPA would be forced to rescind the delegation and resume management of the program for the state, resulting in increased costs and potential delays to Arizona businesses that would be required to deal with the EPA rather than ADEQ. ADEQ's inability to fully staff the APP and reclaimed water programs would also result in delays in issuing legally required permits, negatively impacting the state's economy and potentially jeopardizing groundwater quality.

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

Conforming, grammatical, formatting, and other minor changes have been made throughout the rule package by ADEQ and as suggested by the Governor's Regulatory Review Council staff. ADEQ has made the following changes in response to comments as described in item 11.

R18-14-101. Definitions

In the definition for "Review-related costs," the following language was initially proposed to be deleted: "documented in writing by the Department and agreed to by an applicant." ADEQ retains this language in the final rulemaking.

R18-14-102. Table 1. Maximum Fees

The following changes are made in Table 1:

Under the APP Program, for standard modification to an individual or area-wide APP, the phrase "per submittal" is added as follows:

| | |
|---|------------------|
| ▪ <u>Maximum fee (cumulative per submittal)</u> | <u>\$150,000</u> |
|---|------------------|

Under the APP Program, for an APP issued before July 1, 2011, language is added to clarify that the three situations listed to describe each maximum fee are exclusive of one another, as follows:

For an APP issued before July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee. The applicable maximum fee for all compliance schedule submissions shall be according to one of the three maximum fee categories listed below. The maximum fee is for the lifetime of the APP unless a new compliance schedule is established in the APP due to a modification that is classified as a significant amendment under R18-9-A211(B) and a complex modification under R18-14-101(2).

Under the APP Program, for an APP issued before July 1, 2011, language is added to clarify each of the three situations listed to describe each maximum fee as follows:

- *For a permit with a compliance schedule where one or more submissions require a permit modification that requires a determination or reevaluation of BADCT, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of: ...*
- *For a permit with a compliance schedule where one or more submissions require a permit modification, but no determination or reevaluation of BADCT is required, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of: ...*
- *For a permit with a compliance schedule requiring one or more submissions that require ADEQ review but do not require a permit modification, the maximum fee for the permit's entire compliance schedule is: ...*

R18-14-109. AZPDES Water Quality Protection Services Flat Fees

In subsection (B), the citation to A.A.C. R18-9-A907(A) was incorrect and is changed to A.A.C. R18-9-A907(B). This minor change in the citation is not a substantial change from the published proposed rule according to A.R.S. § 41-1025(B). A.A.C. R18-9-A907 (Public notice) establishes the public notice provisions that ADEQ complies with before issuing an AZPDES permit. Subsection (A) refers to individual permits; subsection (B) refers to general permits. Subsection (B) is the correct reference in explaining how ADEQ will publish notice of a draft AZPDES general permit and include the fee category assignment in the draft general permit.

R18-14-109. Table 6. AZPDES Water Quality Protection Services Flat Fees

The following changes are made in Table 6:

Under the category Construction General Permit, the upper limit for middle tier is increased from 40 acres to 50 acres, as follows:

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| | | |
|--|--------------|--------------|
| <u>The fee is based on the amount of acreage identified in the Notice of Intent:</u> | | |
| ▪ <u>Less than or equal to 1 acre</u> | <u>\$250</u> | <u>\$250</u> |
| ▪ <u>Greater than 1 acre but less than or equal to 50 acres</u> | <u>\$350</u> | <u>\$350</u> |
| ▪ <u>Greater than 50 acres</u> | <u>\$500</u> | <u>\$500</u> |

This minor change in the amount of acreage of two of the tiers is not a substantial change from the published proposed rule according to A.R.S. § 41-1025(B). Persons with construction projects between 41 and 50 acres would have paid a higher fee (\$500) under the proposed rule, and now face less impact because they will pay \$150 less in fees (\$350).

Under the category General Permits for Non-Stormwater Discharges, in response to suggestions by the Governor’s Regulatory Review Council staff, ADEQ has included the total anticipated staff hours and total number of potential permittees for each fee category.

| | | | |
|---|--------------|----------------|----------------|
| <u>The fee is based on the Department’s total anticipated staff hours (including permit development, customer service, review of the notice of intent, and annual data review and inspections) divided by the total number of potential permittees over a five-year period:</u> | | | |
| ▪ <u>Level 1A</u> | | <u>\$250</u> | <u>\$250</u> |
| • <u>Staff hours:</u> | <u>1,500</u> | | |
| • <u>Number of potential permittees:</u> | <u>750</u> | | |
| ▪ <u>Level 1B</u> | | <u>\$500</u> | <u>\$500</u> |
| • <u>Staff hours:</u> | <u>1,500</u> | | |
| • <u>Number of potential permittees:</u> | <u>375</u> | | |
| ▪ <u>Level 2</u> | | <u>\$1,250</u> | <u>\$1,250</u> |
| • <u>Staff hours:</u> | <u>1,000</u> | | |
| • <u>Number of potential permittees:</u> | <u>100</u> | | |
| ▪ <u>Level 3</u> | | <u>\$1,500</u> | <u>\$1,500</u> |
| • <u>Staff hours:</u> | <u>1,300</u> | | |
| • <u>Number of potential permittees:</u> | <u>100</u> | | |
| ▪ <u>Level 4A</u> | | <u>\$2,000</u> | <u>\$2,000</u> |
| • <u>Staff hours:</u> | <u>1,600</u> | | |
| • <u>Number of potential permittees:</u> | <u>100</u> | | |
| ▪ <u>Level 4B</u> | | <u>\$2,500</u> | <u>\$2,500</u> |
| • <u>Staff hours:</u> | <u>1,900</u> | | |
| • <u>Number of potential permittees:</u> | <u>100</u> | | |

This minor change in adding additional information is not a substantial change from the published proposed rule according to A.R.S. § 41-1025(B). The fee categories and corresponding fee amounts have not changed. ADEQ has supplied additional information on each fee category that will assist a person in the future in commenting on the fee category assignment of a draft general permit as allowed in R18-14-109(B).

Under the category Biosolids Land Applicators, for the annual report, the two tiers are reorganized as three tiers, as follows:

| | | |
|--|------------|----------------|
| <u>Annual report based on amount of dry metric tons applied</u> | | |
| ▪ <u>Less than or equal to 7,500 dry metric tons</u> | <u>N/A</u> | <u>\$2,500</u> |
| ▪ <u>Greater than 7,500 dry metric tons but less than or equal to 15,000 dry metric tons</u> | <u>N/A</u> | <u>\$3,000</u> |
| ▪ <u>Greater than 15,000 dry metric tons</u> | <u>N/A</u> | <u>\$4,500</u> |

This minor change in creating a third tier and lowering the fees are not substantial changes from the published proposed rule according to A.R.S. § 41-1025(B). As discussed in ADEQ’s response to Comment # 37, there are only 10 to 12 biosolids land applicators in Arizona, and the land applicators apply similar amounts of biosolids every year. The three tiers reflect a grouping of Arizona’s biosolids land applicators as small, medium, or large, based on the amount of biosolids regularly land applied. Under the proposed rule, two of the biosolids land applicators would have

been in the previous tier of greater than 25,000 dry metric tons and would have been assessed the \$6,000 fee for the annual report. In the final rule, the same two biosolids land applicators are in the tier of greater than 15,000 dry metric tons, but now will be assessed the \$4,500 fee for the annual report. The remaining eight biosolids land applicators will be assessed the same fee of \$3,000 or a lesser fee of \$2,500 for the annual report. There are two biosolids land applicators within the second tier that land apply around 12,000 dry metric tons per year, that possibly could pay more if they increased the amount of biosolids land applied. However, it is unlikely they are negatively affected by lowering the tier to 15,000 dry metric tons because, at 15,000 dry metric tons, the monitoring requirements under the biosolids rules (A.A.C. R18-9-1012) increase. The increased monitoring costs for applying greater than the threshold amount of 15,000 dry metric tons is a limiting factor for increasing the amount of biosolids land applied in a year.

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

In addition to the comments listed below, ADEQ received various comments supporting the water quality permitting programs and understanding the need for increased fees due to the elimination of the General Fund from ADEQ's budget.

RULEMAKING PROCESS

Comment #1

Arizona Manufacturers Council (AMC): Thank you for the opportunity to comment on the Department of Environmental Quality's proposed rules for permit and compliance fees. The Arizona Manufacturers Council has very much appreciated the open manner in which this rulemaking and stakeholder process has been conducted.

Arizona Mining Association (AMA): The AMA greatly appreciates ADEQ's public outreach process that preceded the current proposal, a process that covered several months and included multiple public meetings and the sharing of multiple draft versions of the proposal. As a result of this stakeholder process, we believe that the issues remaining in the proposal are few and relatively minor in nature. The AMA believes that the current process is an example of how collaborative stakeholder outreach can narrow or eliminate contentious issues prior to initiation of the formal rule-making process.

Response: Comments noted.

Comment #2

City of Tucson (COT): COT participated in one ADEQ stakeholder meeting on September 23, 2010 and wrote an informal e-mail comment to ADEQ staff regarding the proposed fees on November 29, 2010. COT's comment is as follows: "One of our questions was: when is the proposed rule being released? We never received a response to this question. In fact, the COT was not noticed about the proposed fee rule and only discovered that the rule had been released at a subsequent ADEQ stakeholder meeting regarding solid waste. If ADEQ intends to engage stakeholders, all permit holders should be noticed in advance of the stakeholder meetings so that meaningful feedback can be provided. In addition, signup sheets from stakeholders meetings should be utilized and comments received should be addressed."

Town of Marana: We do not believe that we were given ample notification and a realistic time-frame in which to provide comments.

Response: Prior to publishing the Notice of Proposed Rulemaking, ADEQ provided multiple opportunities for stakeholders to engage with the agency as the rule was drafted and ultimately, formally proposed. Going above and beyond what is required, ADEQ held two public meetings on September 9 and 23, 2010 in Phoenix, with web-based connections to ADEQ's offices in Tucson and Flagstaff, which both the City of Tucson and the Town of Marana attended. Notices of those general sessions were sent to trade associations, consultants and other interested parties. ADEQ also set up an electronic mailing list to keep interested stakeholders informed. ADEQ met with a broad spectrum of stakeholders to discuss funding issues and distributed preliminary drafts of these proposed rules for stakeholders' consideration. Formal public notice and opportunity to comment on these rules was provided to the regulated community through the publication of the Notice of Proposed Rulemaking, and ADEQ notified subscribers to its electronic mailing list that the proposed rule had been published and provided a link on the ADEQ web site. ADEQ also conducted two oral proceedings as part of the public comment period.

Comment # 3

Paul Miller: Having come to these kind of formal hearings for almost 30 years, I'm perplexed, especially as to this one, why rural AZ is not afforded the opportunity to have a formal hearing in Kingman, or Yuma, or wherever it may be, and that we're asking people to take time off from their jobs in the middle of the week to come to here, where it seems to me so unethical. It seems like the system is contrived so that we don't allow public input. My question is what are we afraid of the public?

Response: During the informal stakeholder process, ADEQ utilized technology to provide stakeholders in other parts of the state the opportunity to participate. ADEQ established remote participation locations in Flagstaff and Tucson that were accessed by rural Arizona stakeholders. Despite ADEQ's efforts, turnout was low at the remote locations. Draft rules were posted on the agency web site immediately following the meetings and an electronic mailing list was developed to keep interested parties engaged. As required by law, the formal public notice and opportunity to comment on these rules was provided to the regulated community through the publication of the Notice of Proposed Rule-

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making. ADEQ also conducted oral proceedings as part of the public comment period in Tucson and Phoenix, thereby affording a reasonable opportunity to persons to participate. Out of 11 comments received, two were made at the oral proceedings, two were via e-mail and made at the oral proceedings, and seven were submitted via e-mail.

GENERAL COMMENTS

Comment # 4

Town of Marana: At the time that the state took primacy of this program, the communities were told that this was to be funded by the state and not by the communities. This was an unfunded mandate which local governments have had to determine how to fund.

Response: At the time of program delegation from EPA, the AZPDES program was being funded through the General Fund. The General Fund has since been eliminated as a funding source for ADEQ, and the agency must now pursue fees to support the permitting program. The purpose of this rulemaking is to create a program that is self-sufficient and no longer reliant upon the General Fund.

Comment # 5

Southern Arizona Home Builders Association: As builders struggle to compete against a wave of foreclosures and developers face a tighter lending environment, new fees and regulations, like those being proposed for the AZPDES program challenge an expeditious recovery. That being said, we understand the importance of the service offerings provided by ADEQ as well as the funding problems the Department currently faces and would like to be part of the solution to address the situation.

Response: Comment noted. As clarification, this rulemaking only addresses fees for existing Water Quality Division permitting programs. No new regulations are proposed.

Comment # 6

Southern Arizona Home Builders Association: Concerns have been expressed by our members that the new fee schedule could set the stage for “double dipping.” In other words, if ADEQ establishes new fees to MS4’s it seems highly probably the MS4’s will seek to recoup their costs by adding their own new fees for private developers. This is an adverse impact that we would like to see prevented.

Response: From the consumer’s perspective, if permitted entities bear additional costs or realize savings, these entities may pass the costs or savings on to the consumer and the public through products, services or utility rates. There is no way for ADEQ to predict whether these costs or benefits will be passed on or what the actual costs or benefits may be for each permittee. The increased fees will allow ADEQ to process applications and conduct inspections in a timelier manner, which benefits those persons seeking permits and approvals and protects public health and the environment.

Comment # 7

Southern Arizona Home Builders Association: Has the Department explored pursuing federal grants (through EPA for example) as a possible source of revenue that would off-set some of the fee levels? If so, what were the findings?

Response: ADEQ has aggressively pursued federal grant opportunities and used EPA grants to develop its regulatory programs. While EPA often makes grants available for the development of program capacity, ADEQ is not aware of federal grants for continuing maintenance of a delegated state program.

Comment # 8

Southern Arizona Home Builders Association: Does ADEQ receive revenue collected from civil penalties for CWA violations from EPA? If so, are those revenues used to fund the AZPES program?

Response: No. Civil penalties collected by ADEQ must be deposited in the General Fund (A.R.S. §§ 49-262(E) and 49-263(G)); civil penalties obtained by EPA must be deposited in the Federal Treasury.

Comment # 9

Southern Arizona Home Builders Association: We have some questions about whether establishing a public sector fee scheduled simply based on “hourly-rate” is a fair approach. There are many varying site specific factors that contribute to the amount of work or services being performed. A fee schedule based on an hourly average implies that all projects, regardless of size, proximity to drainage ways and potential impact on the watershed require the same level of service. What other options have been explored for establishing the fees?

Response: Using available records, ADEQ has made fact-based assumptions of the required level of time (and thus the fee) for general permits. Because general permits provide coverage for facilities, activities or practices that are substantially similar in nature, ADEQ believes a set fee based on the average level of time is appropriate and fair. The alternative available to permittees would be to apply for individual permits, also billed on an hourly rate, that typically take longer to process and cost more money. ADEQ has attempted to make the impact of the fees equitable by creating tiers within the general permits fee structure in recognition of the differences in complexity of certain applications and the greater level of time required to process those applications. ADEQ will charge a higher fee only for

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the more complex permits. The fee for the AZPDES Construction general permit for example, ranges from \$250 to \$500, with a weighted average cost of \$368 per notice of intent.

Comment # 10

Paul Baughman, Town of Marana: Is there a way ADEQ can assist us in our budgeting process when planning for future permits as the maximum amounts are large?

Response: The maximum fees set in R18-14-102, Table 1 represent the highest amount ADEQ could bill an applicant for a permit and provide certainty as to the limit of fees that might be charged depending upon the complexity of the permit. The maximum fees are not the average fee that an applicant will pay on an individual permit. A community could choose to budget based on the maximum fee amounts. On an informal and as-requested basis, ADEQ has worked and will continue to work with communities to inform their budget decisions and can provide permit cost estimates to applicants.

Comment # 11

Michael Block, Metro Water District: The District would like to see ADEQ do more extensive outreach to public water supply companies through the drinking water group to educate them on the AZPDES permit requirements, like the De Minimis permits, so that other entities that are in compliance and doing this, that other water providers, well drillers, also get on board for this, so costs are not disproportionate.

Response: ADEQ agrees and will continue internal training for staff, permitting workshops for the regulated community and consultants, update the agency web site, and work through professional organizations to conduct compliance assistance efforts.

Comment # 12

Michael Block, Metro Water District: Regarding fee amounts under the AZPDES for De Minimis permits, we don't see a large regulatory impact for our entity. Timing is such that we'll be going through budgeting process this year, and we're estimating \$5,000 for our impact.

Response: Comment noted.

Comment # 13

City of Tucson: COT would prefer fixed fees instead of maximum fees for annual budgeting purposes. It is difficult to forecast a budget based on the maximum fee and inappropriate during this austere financial climate to budget for the maximum fee. A municipality should not have to choose between laying off staff and paying for permits.

Response: The maximum fees set in R18-14-102, Table 1 represent the highest amount ADEQ could bill an applicant for a permit and provide certainty as to the limit of fees that might be charged depending upon the complexity of the permit. The maximum fees are not the average fee that an applicant will pay on an individual permit. On an informal and as-requested basis, ADEQ has worked and will continue to work with communities to inform their budget decisions and can provide permit cost estimates based on other similar permitting situations.

ADEQ is developing additional general permits. The availability of these general permits may reduce the impact to applicants under all three water quality programs. General permits are expected to reduce costs and increase regulatory certainty for the regulated community because applicants are assessed a fixed fee rather than an hourly rate for permit processing and there will be confidence that all permittees covered by the general permit are held to the same regulatory expectations.

Comment # 14

City of Tucson: COT often contacts ADEQ regarding project related regulatory issues prior to submitting modifications or applications. These communications improve compliance and permittees should not be billed for this time.

Response: On July 1, 2010, the operating General Fund was eliminated from ADEQ's budget. As a result, ADEQ is increasing and establishing fees to cover the full cost of administering and implementing its water quality permit programs. While ADEQ will continue the practice to not bill applicants directly for customer service and general regulatory discussion, such as telephone discussion of whether permit coverage is required for a proposed activity, such activities are considered non-billable program time, the costs for which ADEQ recovers through annual fees. In this rulemaking, ADEQ has clarified that the pre-application meetings, usually requested by an applicant or a person preparing to file an application, are billable except for the first hour of the project manager's time.

Comment # 15

City of Tucson: The issue of staff attrition needs to be addressed so that the permittee should not have to pay for new staff to become familiar with permitting issues.

Response: ADEQ has taken measures to minimize the impact of turnover to permittees by cross-training project managers and other technical staff. Increasing the availability of general permits should also reduce the impact of staff turnover.

Comment # 16

City of Tucson: ADEQ needs to be accountable on the timeline for each permit action. If ADEQ intends to charge fees for environmental permitting, then ADEQ needs to commit to a specific timeline.

Town of Marana: What level of service is an applicant guaranteed? For example, there should be a specific review time-frame to which ADEQ can commit as a performance measure.

Response: Since 1999, ADEQ has been operating under licensing time-frames established in 18 A.A.C. 1, Article 5. The penalties for ADEQ's failure to meet the overall time-frame include a rebate of fees submitted, plus a two percent penalty (raised from one percent during the last Legislative Session.) In Fiscal Year 2010 (the most recent year reported) the Water Quality Division refunded \$3,000 related to a Type 3 APP and paid no penalties to the General Fund. ADEQ continues to improve its staff training and process improvement and uses internal performance measures to evaluate timeliness of permit issuance.

PREAMBLE

Comment # 17

Arizona Mining Association: Most regulatory general APPs that a mine site might utilize are Type 2 or 3 permits. Under the proposed rule, the initial and renewal fees for these permits are based on whether they are considered standard or complex. The definition of "complex" is that used in the licensing time-frames rules (A.A.C. R18-1-501(9)), which is somewhat vague. Merely from reading the rule text, therefore, one would not know what fees apply to each permit. In the preamble, however, ADEQ specifically identifies which Type 2 and 3 permits are standard and which are complex. See 16 A.A.R. at 2322. According to the preamble language, all Type 2 and 3 permits are considered standard except for intermediate stockpiles at mining sites (2.02 General Permit), lined impoundments (3.01 General Permit) and nonstormwater impoundments at mining sites (3.04 General Permit). The AMA suggests that this information be included in the text of the rule to make clearer to regulated entities which permits are subject to which fees.

Response: Creating the tiered flat fees for general permits results in a more equitable cost impact. ADEQ can account for the complexity of certain applications and the greater level of time needed to process those applications. Thus, applicants for "standard" general permits do not subsidize the costs to review "complex" general permits. ADEQ has specified in the Preamble which permits are complex and which are standard, and plans to explain the standard/complex fee designation to applicants on its web site and on application forms for the Type 2 and 3 general permits. ADEQ plans to list any designation of "standard" or "complex" general permits in the underlying APP rules in 18 A.A.C. 9, Article 3, when these rules are amended in the future. It would be duplicative to list standard and complex designations in these fee rules when they most appropriately belong in 18 A.A.C. 9, Article 3. No change in the rule was made.

Comment # 18

Arizona Mining Association: With respect to the classifications set forth in the preamble to the proposed rule, the AMA also questions why the 2.02 General Permit would be considered as complex in comparison to the other categories of Type 2 permits. A review of the conditions applicable to the facilities eligible for a 2.02 General Permit (see A.A.C. R18-9-C302) suggests that the conditions are very straightforward and should not result in any type of a detailed review by ADEQ. In contrast, several of the other categories of Type 2 permits have lengthy and detailed conditions, including expansive design and operational requirements, recordkeeping requirements, inspection requirements, and spill reporting requirements. There does not appear to be any objective basis upon which to identify the 2.02 General Permit as complex and this categorization should be removed from the rule and accompanying preamble.

Response: A review of the most recent five years of time tracking records reveals that the Type 2.02 general permit requires a greater level of time to review, on average 24 hours as compared to 12 hours for a standard APP Type 2, primarily due to the need for technical staff to evaluate the stability of the stockpile. Neither the definition of "intermediate stockpile" in R18-9-101 nor the general permit in R18-9-C302 place any limitations on the size and thus complexity of the facilities. No change in the rule was made.

R18-14-101. Definitions

Comment # 19

Arizona Mining Association: Expansion of "Review-Related Costs" (proposed R18-14-101(7)(e)). The current rule allows ADEQ to charge applicants for four specific types of review-related costs (e.g., court reporter services for public hearings), and also to charge for other reasonable review-related costs documented in writing by ADEQ and agreed to by the applicant. The Department proposes to modify this latter catch-all category to encompass all "other reasonable and necessary review-related expenses." It is unclear why the requirement for the expenses to be documented in writing and agreed to by the applicant have been removed, or what additional expenses ADEQ is looking to recover as a result of this change. No explanation is provided in the preamble. The AMA is concerned with the potential breadth of this proposal and the fact that the additional expenses do not need to be documented in any fashion by ADEQ. The AMA therefore suggests retaining the existing language unless ADEQ can better articulate what additional costs it intends to recover from applicants.

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Response: ADEQ agrees. In reviewing the types of costs associated with review of individual permit applications, the items listed in subsections (a) through (d) cover the majority of costs. Other costs could continue to be included under agreement with the applicant and ADEQ will include the language “documented in writing by the Department and agreed to by an applicant,” as explained in the description of the changes between the proposed rules and final rules.

R18-14-102. Hourly Rate and Maximum Fees for Water Quality Protection Services

Comment # 20

Arizona Mining Association: The AMA strongly supports the approach of placing a cap on the total fees associated with submissions under compliance schedules, and understands why ADEQ is proposing different caps for existing permits and future permits. We do have several comments on the precise manner in which these caps have been proposed.

For permits issued before July 1, 2011, the proposal lists three separate maximum fees: one for permit modifications requiring a determination or reevaluation of BADCT (\$150,000), one for other permit modifications (\$100,000), and one for “all other submittals” (\$100,000). (This latter category presumably encompasses situations where ADEQ has to review submissions made by a permittee but no permit modification is required.) What is not clear from the proposal is whether these three maximums are applied in the alternative or are additive. For example, if a single compliance schedule has 10 items, five of which require permit modifications based on a BADCT determination and five of which do not, it is unclear whether the maximum fee for all 10 compliance schedule items is \$150,000 (the fee associated with modifications requiring on BADCT determination) or \$250,000 (the fee associated with modifications requiring a BADCT determination plus an additional fee for review of items not requiring BADCT analysis).

In conversations with ADEQ management subsequent to the release of the proposed rule, AMA representatives were informed that ADEQ’s intent is that the maximum fees are not intended to be additive (i.e., only one of the listed maximum fees applies to all submissions made under a compliance schedule). In the above example, this means that the maximum fee for all 10 items in the compliance schedule would be \$150,000 because some of those items involved permit modifications requiring a BADCT determination.

The AMA supports this approach, but believes that the rule language (the fifth item in Table 1) should be modified to make this interpretation clear. For example, the first paragraph of the relevant table entry could be modified to read as follows:

For an APP issued before July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and IS APPLIED TOWARD the APPLICABLE maximum fee SPECIFIED BELOW. FOR EACH SUCH PERMIT, THE MAXIMUM FEE FOR ALL COMPLIANCE SCHEDULE SUBMISSIONS REQUIRED UNDER THE PERMIT WILL BE DETERMINED BASED ON THE TYPE OF SUBMISSION(S) REQUIRED, AND WILL BE ONE OF THE THREE MAXIMUM FEE LEVELS LISTED BELOW. Maximum fee is for the lifetime of the APP unless a new compliance schedule is established in the APP due to a modification that is classified as a significant amendment under A.A.C. R18-9-A211(B) and a complex modification under R18-14-101(2).

Language in the preamble could be added to provide additional clarification, but the AMA believes that the rule language itself should be modified in some fashion to make clear that the maximum fees specified in this table entry are not to be aggregated.

Response: The three maximum fees listed for compliance schedules are exclusive, not additive. ADEQ agrees that the rule language could be clearer and has made changes, as explained in the description of the changes between the proposed rules and final rules.

Comment # 21

Arizona Mining Association: The AMA also feels that the language describing the maximum fees for a compliance schedule in an existing permit could be modified to improve clarity:

- For a PERMIT WITH A COMPLIANCE SCHEDULE WHERE ONE OR MORE SUBMISSIONS NECESSITATES A permit modification requiring AN INITIAL determination or A reevaluation of BADCT, the fee is assessed as described above for EACH standard modification, with a maximum fee FOR THE PERMIT’S ENTIRE COMPLIANCE SCHEDULE of: \$150,000
- For A PERMIT WITH A COMPLIANCE SCHEDULE WHERE ONE OR MORE SUBMISSIONS NECESSITATES A PERMIT MODIFICATION BUT NO DETERMINATION OR REEVALUATION OF BADCT IS REQUIRED, ~~all other modifications~~, the fee is assessed as described above for EACH standard modification, with a maximum fee FOR THE PERMIT’S ENTIRE COMPLIANCE SCHEDULE of: \$100,000
- FOR A PERMIT WITH A COMPLIANCE SCHEDULE REQUIRING ONE OR MORE SUBMISSIONS NECESSITATING ADEQ REVIEW, BUT NOT REQUIRING A PERMIT MODIFICATION, THE CUMULATIVE MAXIMUM FEE FOR THE PERMIT’S ENTIRE COMPLIANCE SCHEDULE IS ~~All other submittals \$100,000-\$50,000~~

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Response: ADEQ agrees that the rule language could be clearer and has made changes, as explained in the description of the changes between the proposed rules and final rules.

Comment # 22

Arizona Mining Association: Regarding the third bullet above, ADEQ proposes a maximum fee of \$100,000 for reviewing “other submittals” required under compliance schedules in existing APPs. This appears intended to encompass review of submissions that do not require a permit amendment of any kind. The AMA believes that \$100,000 (equating to roughly 820 hours of review time) is an excessively high amount to charge for ADEQ review of items that do not require permit amendments. The AMA believes that a maximum fee of \$50,000 (equating to roughly 410 hours of review time) is more than sufficient to cover any reasonable maximum fee for this type of review.

Response: Prior to this rulemaking, ADEQ had no means of charging for post-permitting activities and instead had to review and recover its costs under a future permit action(s). Post-permitting submittals now subject to fees and requiring ADEQ review will include an engineer’s certificate of completion, as-built plans, and site-specific periodic reports. ADEQ will charge the \$122 hourly rate to review these types of submittals, up to the maximum fee. APPs are issued for the life of a facility, which can exceed 30 years. Eight hundred twenty hours (\$100,000 divided by \$122 per hour) over 30 years averages to 27 hours per year (or less than four days per year) to review submittals for often very complex mine sites. The maximum fees set in R18-14-102, Table 1 represent the highest amount ADEQ could bill an applicant for a permit and provide certainty as to the limit of fees that might be charged depending upon the complexity of the permit. The maximum fees are not the average fee that an applicant will pay on an individual permit. Nevertheless, ADEQ will continue to review fee maximums as required by A.R.S. § 49-241.02(E). No change in the rule was made.

Comment # 23

Arizona Mining Association: In our discussions with ADEQ, we thought there was agreement that routine submissions, such as monitoring reports (which in some recent permits are repeated as compliance schedule submissions), would not be subject to hourly fees. It is our understanding that review of this sort of routine data is budgeted to be covered out of annual registration fees rather than permit review hourly fees. If this understanding is accurate, the final rule should clarify that routine submittals, whether or not pursuant to a compliance schedule, will not incur hourly review fees. One way this could be accomplished is by adding language stating that routine reports and data that ADEQ reviews as part of general permit administration are not subject to hourly fees.

Response: Routine reporting, such as a self-monitoring discharge report, is not subject to hourly fees and is recovered under the annual registration fees. The rules establish the activities for which ADEQ will assess a fee. Under past practices, at times ADEQ used compliance schedules for requiring data or information that would then be used for a future amendment to the APP, and allow ADEQ to assess a fee for review once the application for amendment was filed. This Section will allow ADEQ to assess a fee for review of post-permitting activities for the first time, other than routine reporting. While ADEQ’s permitting practices will distinguish what items properly belong in the compliance schedule, this may not be the case for existing APPs. ADEQ is developing a policy related to APPs approved before the July 1, 2011 effective date to clarify what items in past compliance schedules will be assessed a fee for review. The compliance schedule policy will help clarify what is not routine reporting or submissions, and what will require an additional fee to review. ADEQ has added additional language to the Preamble to clarify this. No change in the rule was made.

Comment # 24

Arizona Mining Association: For APPs issued prior to the effective date of the rules, it should be clarified that any fees paid after permit issuance for processing permit amendment applications pursuant to a compliance schedule, count against the cumulative cap being proposed by these rules.

Response: ADEQ agrees and will include this information in correspondence with future APP applicants who are seeking permit amendments.

Comment # 25

Arizona Mining Association: For APPs issued on or after July 1, 2011, the proposed maximum fee for compliance schedule items is \$100,000. The AMA believes that recent discussions regarding the appropriate nature of compliance schedules, as well as the possibility of developing a policy on the appropriate scope of compliance schedules, will help limit the breadth of such schedules in the future. As a result, we believe the \$100,000 cap proposed by ADEQ (representing roughly 820 hours of review time) is somewhat high. We suggest instead a \$75,000 cap (equivalent to roughly 615 hours of review time).

Response: ADEQ believes that \$100,000 is a conservative estimate for the maximum fee warranted for the lifetime of the APP (which can be over 30 years.) As noted earlier, 820 hours averages out to less than four days of staff time per year to review submittals for often very complex mine sites. ADEQ will charge the \$122 hourly rate to review these types of submittals, up to the maximum fee. The maximum fees set in R18-14-102, Table 1 represent the highest amount ADEQ could bill an applicant for a permit and provide certainty as to the limit of fees that might be charged depending upon the complexity of the permit. The maximum fees are not the average fee that an applicant

will pay on an individual permit. Nevertheless, ADEQ will continue to review fee maximums as required by A.R.S. § 49-241.02(E). No change in the rule was made.

ADEQ is also committed to reviewing revenues generated from these fees on a regular basis to ensure that they are commensurate with the agency's costs. Although ADEQ cannot increase these fees by rule without specific statutory authority, it can decrease the fees through rule on its own initiative and will do so if the fees generated consistently exceed the costs to the agency to implement the program.

Comment # 26

Arizona Mining Association: ADEQ proposes that the cumulative maximum fee for standard modifications to individual or area-wide APPs be \$150,000, which amount is equivalent to the maximum fee cap proposed for complex modifications. AMA believes that the proposed cumulative maximum fee for standard modifications is excessive and could result in a significant financial burden on APP permittees that are merely seeking standard modifications to an already issued permit. Additionally, it is uncertain how ADEQ will determine whether a particular modification submittal contains multiple modification requests and how the submittal will be characterized under the proposed rule. We are particularly concerned with the situation when a permit may need multiple revisions because it was issued by ADEQ with technical errors or other mistakes. It is unclear how such an amendment request would be characterized but it appears that without further clarification ADEQ would be able to characterize such a request as presenting multiple modifications and therefore be able to assess additional and substantial fees to correct such prior permitting errors. Because of these concerns, the AMA believes that a cumulative cap of \$75,000 (equating to roughly 615 hours of review time) is more appropriate and supportable than \$150,000.

Response: ADEQ does not consider the maximum cumulative fee set for the APP standard modifications to be excessive. All fees are based on ADEQ's estimated level of staff time multiplied by the \$122 hourly rate. Under A.R.S. § 49-241.02(A), ADEQ is required to establish maximum fees. ADEQ reviewed the adequacy of maximum fees for APP individual permits as required under A.R.S. § 49-241.02(E). In preparing the 2009 maximum fee report for the Legislature, ADEQ documented instances where the maximum fees were exceeded at the previous \$61 hourly rate. The maximum fees set in R18-14-102, Table 1 represent the highest amount ADEQ could bill an applicant for a permit and provide certainty as to the limit of fees that might be charged depending upon the complexity of the permit. The maximum fees are not the average fee that an applicant will pay on an individual permit. Nevertheless, ADEQ will continue to review fee maximums as required by A.R.S. § 49-241.02(E).

Technical errors in an APP are typically corrected through a modification under R18-9-A211(C)(1) through (3), at no cost to the permittee. ADEQ plans to explain how an amendment request is characterized in the administrative completeness letter sent to the permittee. No change has been made to the rule.

ADEQ is committed to reviewing revenues generated from these fees on a regular basis to ensure that they are commensurate with the agency's costs. Although ADEQ cannot increase these fees by rule without specific statutory authority, it can decrease the fees through rule on its own initiative and will do so if the fees generated consistently exceed the costs to the agency to implement the program.

Comment # 27

Arizona Mining Association: ADEQ proposes that the maximum fee for complex modifications to individual or areawide APPs be \$150,000. Our understanding is that processing complex modifications has not required the same level of effort from ADEQ as initial issuance of permits. The proposed cap of \$150,000 for complex modifications represents approximately 1230 hours of review time. Although less than the maximum fee for issuance of a new permit, this number still strikes us as somewhat high. The AMA believes that a cap of \$100,000 (equating to roughly 1025 hours of review time) is more appropriate than \$150,000.

Response: ADEQ does not consider the maximum fee set for the APP complex modifications to be unreasonably high. All fees are based on ADEQ's estimated level of staff time multiplied by the \$122 hourly rate. Under A.R.S. § 49-241.02(A), ADEQ is required to establish maximum fees. ADEQ reviewed the adequacy of maximum fees for APP individual permits as required under A.R.S. § 49-241.02(E) and will again review the maximum fees in 2014. In preparing the 2009 maximum fee report for the Legislature, ADEQ documented instances where the maximum fees were exceeded at the previous \$61 hourly rate. The maximum fees set in R18-14-102, Table 1 represent the highest amount ADEQ could bill an applicant for a permit and provide certainty as to the limit of fees that might be charged depending upon the complexity of the permit. The maximum fees are not the average fee that an applicant will pay on the individual permit. Nevertheless, ADEQ will continue to review fee maximums as required by A.R.S. § 49-241.02(E). No change has been made to the rule.

ADEQ is committed to reviewing revenues generated from these fees on a regular basis to ensure that they are commensurate with the agency's costs. Although ADEQ cannot increase these fees by rule without specific statutory authority, it can decrease the fees through rule on its own initiative and will do so if the fees generated consistently exceed the costs to the agency to implement the program.

Comment # 28

Arizona Mining Association: As compared to the draft October 2010 rule language, ADEQ has increased the proposed maximum fee (from \$10,000 to \$15,000) for an amendment to insert calculated alert levels and/or AQLs into a

permit if the methodology for doing so is set forth in the initial permit. (This is classified as a minor amendment pursuant to A.A.C. R18-9-A211(C)(7).) This seems like a fairly basic mathematical exercise, and it is unclear why a \$10,000 cap (equating to roughly 82 hours of review time) would not be sufficient to perform the necessary calculations. Moreover, the proposed \$15,000 cap (equating to roughly 123 hours of review time) is the exact same cap that applies to calculation of alert levels or AQLs when the calculation methodology is not set forth in the permit (this constitutes an “other” amendment pursuant to A.A.C. R18-9-A211(D)(2)(h)). The AMA believes that a lower fee cap should apply where the calculation methodology is set forth in the permit, and suggests that this particular amendment should be subject to a \$10,000 fee cap, as initially suggested by ADEQ.

Response: A review of the most recent five years of time-tracking records indicate that R18-9-A211(C)(7) minor amendments often require significant data verification of calculated alert levels, AQLs or other permit limits. If the methodology is specified in the permit, it can be a straightforward data verification exercise. If the permittee proposes its own methodology, this can require significant review as to the appropriateness and validity of the calculations, which would likely exceed a \$10,000 maximum fee.

ADEQ posted draft rules for interested stakeholders to comment on in September 2010. ADEQ met separately with representatives of AMA to discuss fees for permit amendments and assessing fees for post-permitting activities, both of which have led to more complicated APPs in the past for mining facilities. As a result of various discussions, ADEQ reworked the fee structure for permit amendments so that standard modifications were no longer one category (as in the previous fee structure) and established a new fee structure for submittals under a compliance schedule. ADEQ initially proposed a \$10,000 maximum fee for minor amendments under R18-9-A211(C)(7) based on time tracking data categorized as minor amendments. Program staff continued to review subsets of the time tracking data for minor amendments and found past instances where a \$10,000 maximum fee would have been insufficient to cover ADEQ’s costs if assessed at \$122 per hour.

The maximum fees set in R18-14-102, Table 1 represent the highest amount ADEQ could bill an applicant for a permit and provide certainty as to the limit of fees that might be charged depending upon the complexity of the permit. The maximum fees are not the average fee that an applicant will pay on an individual permit. Nevertheless, ADEQ will continue to review fee maximums as required by A.R.S. § 49-241.02(E). No change has been made to the rule.

R18-14-104. Annual Fees for Water Quality Protection Services Subject to Hourly Rate Fee

Comment # 29

Arizona Mining Association: The AMA does not object to the proposed APP annual registration fees contained in proposed A.A.C. R18-14-104(A), Table 2. However, we believe the rule language should reflect the provisions of A.R.S. § 49-242(F), which provides that for sites with more than one permit, the owner shall pay an annual fee based on the permit that covers the greatest gallons of discharge or influent plus one-half of the annual registration fee otherwise applicable to each additional permit.

Response: ADEQ believes that the statute is clear and does not believe there is a need to repeat statutory language in rule. No change has been made to the rule.

R18-14-105. Fee Assessment and Collection

Comment # 30

Arizona Mining Association: The AMA strongly supports enhancing the level of detail that will be provided on billing statements sent to permit applicants. Given the significant increase in fees being proposed, it is reasonable for ADEQ to provide some additional detail on how its time is being spent in reviewing permits.

Response: Comment noted.

R18-14-109. AZPDES Water Quality Protection Services Flat Fees

Comment # 31

Town of Marana: Has ADEQ researched fees of similar states? The Town of Marana presently has a \$280 review fee for a Stormwater Management Plan intended to cover staff time. The proposed fee in the rulemaking for ADEQ is \$1,000. How was that fee determined?

Southern Arizona Home Builders Association: The \$1,000 review fee (and \$500 additional submittal fee) for pollution prevention plans under the Construction General Permit will impose significant hardships on small and medium sized builders. In fact, we believe it is problematic for all builders. We ask this to be reconsidered.

Response: The fees for stormwater pollution prevention plans are only applicable if ADEQ requests submittal of the stormwater pollution prevention plan. Requirements for submittal of a stormwater pollution prevention plan are established in the general permit. Generally ADEQ requests and reviews about 50 construction stormwater pollution prevention plans per year, out of 2,000 to 3,000 Notices of Intent received per year. All fees in this rulemaking (including for the AZPDES stormwater pollution prevention plans) are based on ADEQ’s level of staff time multiplied by the \$122 hourly rate. In reviewing time-tracking records since 2007, ADEQ’s staff takes approximately eight hours to thoroughly review an AZPDES stormwater pollution prevention plan. ADEQ believes that this flat fee cov-

ers the average time to review a stormwater pollution prevention plan and provides certainty to permittees on their potential costs, as opposed to a fee on an hourly basis. No change has been made to the rule.

Comment # 32

Arizona Manufacturers Council (AMC): The AMC is submitting comments focused on Section R18-14-109 of the permits and compliance fee proposed rule. Our members are particularly concerned with Table 6, the Multi-Sector General Permit category which includes a ‘No Exposure Certification’ fee. There is a new initial fee for this certification that is set at \$1,250.00 even though the ‘No Exposure Certification’ is not a listed permit.

As stated in Arizona Department of Environmental Quality’s Arizona Pollutant Discharge Elimination System General Permit for Stormwater Discharges, Permit NO. AZMSG2010-002, signed 20 December 2010, effective 1 February 2011, the ‘No Exposure Certification’ is an exclusion from Stormwater permitting by 40 CFR 122.26(g)(4)(iii).

As the ‘No Exposure Certification’ is not a permit and identifies “no exposure” from industrial activities to stormwater, this new fee is essentially a fee for non-discharging activities. In fact, assigning a fee to the ‘No Exposure Certification’ is in essence, penalizing a site that works to prevent an industrial discharge. The proposed rule creates perverse disincentives for firms that have invested in preventing stormwater pollutions by imposing a fee on a non discharge activity. Traditionally fees have been used to address the costs of ongoing regulation of permitted facilities but this new fee expands that concept to activities that do not require ongoing regulation.

For these reasons the AMC requests that the fee for the ‘No Exposure Certification’ be removed from the proposed rule.

Response: The “No Exposure Certification” is a conditional exclusion allowed in lieu of stormwater permitting provided in 40 CFR 122.26(g), which is incorporated by reference into Arizona rules at A.A.C. R18-9-A905(A)(1)(d). This exclusion is predicated on the facility or discharge activity meeting certain criteria, including that the operator submit a no-exposure certification form that ADEQ must process, track, and retain records for (40 CFR 122.26(g)(1)(iii)) and that the operator allow ADEQ to conduct inspections at the facility (40 CFR 122.26(g)(1)(iv)). ADEQ’s review and approval of the “no-exposure certification” is a water quality protection service under R18-14-101(9), for which ADEQ incurs cost associated with administering the program. The requirement to re-submit the certification every five years is similar to the requirement to submit a notice of intent for permit coverage when the industrial permit is re-issued on a five-year cycle. Though not a permit, the fee established for the “no exposure certification” is equivalent to the normalized five-year permit fee because ADEQ’s time associated with processing the no-exposure certificate is similar.

ADEQ disagrees that the fee penalizes or otherwise creates a disincentive for a site to meet the conditional exclusion requirements. The incentive for operators to establish and operate a facility or discharge activity that meets the conditional exclusion requirements is to reduce or eliminate potential expenses tied or associated with permit compliance, such as preparing and implementing a stormwater pollution prevention plan, conducting stormwater monitoring and facility inspections, and reporting. No change has been made to the rule.

ADEQ is committed to reviewing revenues generated from these fees on a regular basis to ensure that they are commensurate with the agency’s costs. Although ADEQ cannot increase these fees by rule without specific statutory authority, it can decrease the fees through rule on its own initiative and will do so if the fees generated consistently exceed the needs of the agency to implement the program.

Comment # 33

Michael Block, Metro Water District: In Table 6 for the AZPDES flat fees on the Construction general permit and the Multi-Sector general permit, the first item in each references a permit required for less than or equal to one acre. The District is not aware that under current rules for stormwater construction that disturbances of less than one acre require a permit so we’re confused how this would be required when individuals or entities are not submitting for a permit.

Response: Under the AZPDES Construction general permit (based on 40 CFR 122.26(b)(14)(x) and (b)(15)(i) and incorporated by reference in A.A.C. R18-9-A905(A)(1)(d), ground disturbances of less than one acre that are part of a larger common plan of development or sale must have permit coverage and a fee is established in this rule for such circumstances.

Comment # 34

Home Builders Association of Central Arizona (HBACA): Under the proposed construction general permit fees, the acreage amounts are broken down into three categories: less than an acre, 1 acre to 40 acres, and greater than 40 acres. The HBACA is supportive with the three tiered model for the fees, but would like to see the acreage limit for projects up to 40 acres increased to 50 acres. The middle tier permits were designed to accommodate the “average sized” subdivision to ensure that those projects would only pay their proportionate share for the costs associated with processing the permit. We believe that increasing the acreage amount to 50 acres would better represent average sized subdivisions and would ensure that this group of permittees will be paying their fair share to process their respective permit.

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Scot Mussi, Home Builders Association of Central Arizona: On the acreage amounts, we'd like to see the amount for 40 acres be modified to 50 acres. This would still fit within the guidelines of what the Department is trying to achieve, as far as getting people to pay their proportional share. We don't think it'll be a big burden as far as changing how much time or energy that needs to be invested into those projects because those are set projects to begin because 40 acres is looked at by the Department as a standard subdivision. We're just looking for a little more flexibility on that amount.

Southern Arizona Home Builders Association: With respect to the General Construction Permit fee tiers we request modifying the acreage amounts for the middle tier. It is our preference that the acre cap for fee amounts in the middle tier (Greater than 1 but less than or equivalent to 40 acres) be increased to a minimum of 50 acres.

Response: The three fee tiers based on acreage were established through an analysis of the data in the entire Construction general permit database since 2008, when the permit was reissued. The average acreage of all notices of intent in the database was approximately 25 acres and ADEQ constructed the three tiers around that assumed average. ADEQ has re-examined the universe of Construction general permit authorizations based on the comments. Even with the slowdown in the economy, traditional land development accounts for over 60 percent of the active Construction general permit authorizations. Of the nearly 1,300 active notices of intent for subdivision development, the average size is 47.3 acres. Based on this, ADEQ agrees to raise the middle tier for the Construction general permit from 40 acres to 50 acres to encompass the size of the average subdivision. With this change in acreage, ADEQ's annual revenues will be reduced by approximately \$13,200.

Comment # 35

R18-14-109(C)

Home Builders Association of Central Arizona: As the proposed rule is currently drafted, permits issued prior to the introduction of the construction general permit fee will be required to pay the annual renewal permit fee. This is a cost that existing projects simply cannot afford. One of the biggest issues facing the home building industry is higher fees and taxes being tacked on to existing projects, and this fee would be just another example.

As an alternative, we believe that the best approach would be to grandfather existing projects that were approved prior to the new fees going into effect. This would provide existing projects that were permitted prior to the new fees going into effect with the certainty that they need during these difficult economic times. Without this protection, many projects will be harmed by this unexpected financial burden.

Scot Mussi, Home Builders Association of Central Arizona: On implementation, one of the greater concerns for our members is cost certainty. That's why grandfathering with a lot of these permits that will be renewed is a big issue. We have a lot of projects out there with planned costs with very tight margins and the idea there would be a renewal fee tacked on for permits that have already been approved is a big concern. We'd like to see that those get grandfathered into the implementation of the plan so those permits aren't being assessed a fee for projects already approved.

Southern Arizona Home Builders Association: It is our understanding permits issued prior to the effective date of the new fees would be subject to payment of said fees. We request that any permits issued prior to the effective date are "grandfathered" and not charged fees associated with this rulemaking.

Response: ADEQ understands the concern of increased fees and their impact on all regulated entities, including the homebuilding industry. Those permittees with active authorizations prior to the effective date of the rule will not be required to pay for those authorizations. Annual renewal fees to maintain the permits would only be assessed to those projects that extend beyond 365 days from the original authorization date. The entire fee rules, especially the AZPDES general permits, have been based on expected level of agency effort over the permit term divided by the permit term. This was done to reduce the initial cost impact of issuing the permit and spread the costs to maintain the permit over the likely term of coverage. Because of the number of permittees under the Construction general permit and the expanse of the permittee universe, ADEQ was able to keep the average cost of Construction general permit authorization to approximately \$350 per notice of intent and annual renewal fee.

Just as additional fees will cut into the overall profitability of a project, grandfathering existing permits for homebuilders or any other stakeholder group would reduce needed revenues to sustain the water permitting programs. In the Construction general permit database, there are approximately 1,300 active notices of intent categorized as subdivision development. As discussed above in the response to comment # 34, the average subdivision covers 10 to 50 acres. Approximately 25 percent of subdivision projects historically have sought renewal of coverage under the Construction general permit beyond the first 12 months, and would therefore incur an average annual fee of \$350 for each additional year of coverage. At \$350 per annual fee, "grandfathering" those 25 percent of 1,300 authorizations would negatively impact ADEQ's annual revenue by \$113,750. If ADEQ were to grandfather all notices of intent active prior to the new fees, the reduced revenue would be \$360,000 annually just for the construction permit program. If ADEQ were, for fairness, to expand the grandfathering concept to all existing authorizations under other AZPDES general permits (MSGP or De Minimis general permit) in existence when these fees become effective, this would further reduce annual revenues by nearly \$3,000,000. ADEQ's goal in this rulemaking is to establish water quality protection fees that will sustain the programs while avoiding disproportionate impact on any one group of stakeholders.

For these reasons, ADEQ cannot agree to grandfather current authorizations for homebuilders or any other stakeholder group. No change has been made to the rule.

Comment # 36

Michael Block, Metro Water District: Under the proposed rule to include AZPDES general permits for groundwater remediation systems, the District urges ADEQ to avoid having existing groundwater remediation facilities permitted under AZPDES De Minimis Areawide or Individual permits to undergo having to obtain a separate General Permit and paying additional fees. The District constructed a groundwater remediation treatment system constructed and funded by ADEQ as an Interim Remedial Action to the El Camino Del Cerro/Shannon Road WQARF site. The treatment system is covered under an areawide AZPDES De Minimis General Permit. The District believes it would be an unnecessary regulatory burden for water providers and communities with existing areawide or individual AZPDES De Minimis General Permits to obtain a new general permit specifically for groundwater remediation systems and would not be cost effective. Further, if such a requirement or fee were imposed, the cost would likely be later paid by ADEQ under the District's WQARF Interim Remedial Action contract with ADEQ for the reimbursement of operation and maintenance costs for the South Shannon Treatment System.

Response: In the preliminary summary of the economic, small business, and consumer impact section of the Notice of Proposed Rulemaking, ADEQ discussed developing new AZPDES and APP general permits, including those for discharge activities associated with groundwater remediation projects or discharges of groundwater for a host of environmental enhancement projects. These rules do not contain any new general permits, but do establish a flexible fee structure for such future general permits (R18-14-108 Table 4 and R18-14-109 Table 6). At this time, ADEQ is not proposing a filter backwash general permit for the type of discharge described. The general permit for groundwater remediation projects that ADEQ is planning to develop would be for the discharge of treated groundwater to surface water. Under the situation described, Metro Water District would not need to obtain general permit coverage to replace its existing De Minimis general permit areawide approval.

General permits typically note that, in addition to an individual permit, there may be other general permits that could be used to obtain AZPDES discharge authorization. As ADEQ proceeds with the development of new general permits, it will be important to identify possible alternate permits and assure that similar discharges are addressed consistently between the permits. Stakeholder participation will be valuable to ensure that all discharge scenarios are considered. Where alternate permit coverage is available, the applicant would be allowed to apply for either permit. In addition, each new general permit will specify associated fees. As these new general permits are developed, stakeholders will have the opportunity to comment on such fees and any overlap with existing permits.

R18-14-109. Table 6 (Biosolids)

Comment # 37

Robert Regester: Biosolids Management is a land applier of biosolids in Arizona. We concentrate on the servicing the needs of small cities and towns in Arizona. I am concerned that the annual fees for land appliers are structured to favor the large corporations that service large cities as well as land appliers that market cities outside of Arizona and land apply these biosolids in Arizona. The proposed registration fees also favor large farms over smaller farms.

The current annual reporting fees are:
Up to 25,000 dry tons \$3,000
25,000 and more dry tons \$6,000

A company's gross income is proportional to the volume of business that it performs. In this industry, that volume is usually based on the units of dry tons. It is common for large land appliers to land apply over 35,000 dry tons per year. A land applier applying 35,000 dry tons at the proposed rate will pay \$0.17 per dry ton. A land applicator that applies 1,500 dry tons will be forced to pay \$2.00 a dry ton. Based on a per unit cost, this fee is about 20 times more than that of a large company. The proposed fee structure will have a dramatic impact on the overhead cost of a small land applicator. A price scale more proportional on volume must be established or the Department will unintentionally be providing favoritism to the larger corporations.

Land application sites are based on land operated by a particular farm. I have worked with operators who farmed 30 acres and those who farmed 3,500 acres. The site registration fee is the same regardless of whether it entails one field (or line item of information) or if the application was pages and pages of information. The rigid structure in the registration fees will inhibit small farms from finding land applicators that are willing to invest in the registration of smaller farms. To be fair to all size farms the registration fees should be based more consistently with land mass.

When Arizona biosolids are land applied the generator who has paid for a NPDES permit must report biosolids quality information. This review is covered by fees, which the generator has paid as part of the NPDES permit. When out of state biosolids are land applied the reporting of biosolids quality is part of the land applicators annual report. The reporting is much more intensive then that of an in state applicator where the generator has performed this report. Under the proposed rule, no additional fees are assessed to land applicators importing out of state biosolids although the reporting and monitoring requirements are much greater.

I urge the Department to consider the economic impact these fees will have on small and local cities, farms and land applicator before promulgating this rule.

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Response: ADEQ appreciates the suggestions. ADEQ is one of seven states that has been delegated the biosolids program under NPDES. The number of biosolids land applicators in Arizona is small, ranging from 10 to 12 at any given time and the amounts of biosolids that the land applicators annually apply ranges from 90 dry metric tons to over 63,000 dry metric tons. Due to contracts to obtain biosolids from a limited number of biosolids generators, and contracts with farmers to land apply biosolids on fields, the biosolids land applicators as a group tend to land apply similar amounts of biosolids on an annual basis. ADEQ's administration of the biosolids program is time-intensive and requires regular data review and annual inspection of fields to protect public health and the environment from adverse effects of a pollutant in the biosolids, including pathogens such as fecal coliform.

Fees have been set through the examination of the most recent two years of existing records of ADEQ level of staff time to implement the program. ADEQ's level of staff time of regular data review and inspection of fields for small versus large applicators varies only in the amount of data subject to review. As proposed by the commenter, per-ton based fees for land applicators that apply small amounts would not support even one hour of ADEQ review time, whereas the same per-ton based fees for land applicators that apply large amounts would pay more than what it costs ADEQ to provide water quality protection services, and would end up subsidizing the costs for smaller land applicators.

ADEQ's goal in this rulemaking is to establish water quality protection fees that will sustain the programs while avoiding disproportionate impact on any one group of stakeholders. As a result, ADEQ believes that the most equitable fee structure for land applicators of biosolids remains a flat fee. In seeking to reduce the impact to small business whenever possible, ADEQ reexamined the range of hours required to provide water quality protection services related to biosolids. The flat fee for the annual report is based on two activities: ADEQ's review of the annual report, and an inspection. ADEQ has changed Table 6 to establish three tiers instead of two, each based on the amount of dry metric tons applied, as explained in the description of the changes between the proposed rules and final rules. For amounts less than 7,500 dry metric tons, ADEQ estimates the review of the annual report to cost \$500 with an inspection cost of \$2,000, equaling an annual fee of \$2,500. For amounts between 7,500 and 15,000 dry metric tons, ADEQ estimates that the review of the annual report increases to \$1,000 with an inspection cost still of \$2,000, equaling an annual fee of \$3,000. For amounts over 15,000 dry metric tons, there is substantially more data to review with an inspection, resulting in an annual fee of \$4,500. With this change in the tiers, ADEQ's annual revenues will be reduced by approximately \$7,000.

As for the registration fees, the applicator may register multiple fields on the initial or amended registration. The amount of time it takes ADEQ to review and approve a 'Request for Registration' or a supplemental request does not change depending on the size of the farm. As for out-of-state preparers of biosolids, the applicator is required to provide some additional information on the annual report for biosolids that are prepared out-of-state, however, ADEQ's time to review this additional information is minimal and does not justify an additional fee.

R18-14-112. Implementation

Comment # 38

City of Glendale: We have had many questions lately regarding when our AZPDES MS4 permit fee would be due. If I understand the rules correctly, R18-14-104, Table 3 states that the fee of \$10,000 is subject to an hourly rate fee. R18-14-105 states that the fee will be billed monthly or quarterly. Our permit was issued 8/27/2010. Can you please provide me a better idea of when these fees will be due and how they will be billed?

Response: The annual fees established in the tables in R18-14-104 are flat fees. The phrase "an AZPDES-related water quality protection service subject to an hourly rate fee" is meant to distinguish individual permits and other water quality protection services where the initial approval process is assessed at an hourly rate as opposed to flat fees for general permits and specified water quality protection services. The billing statements in R18-14-105 refer to the initial permit application process, not the annual fees. ADEQ is in the process of establishing internal guidelines for the collection schedules for the new fees. In an effort to mitigate the fiscal impacts of the new fees to permittees, ADEQ is proposing to bill annual fees in the calendar quarter preceding the permit or authorization anniversary date.

R18-14-113. Annual Report

Comment # 39

Arizona Mining Association: The AMA also supports preparation of an annual report on Water Quality Fee Fund revenues and expenditures, as proposed in the rule. The Water Quality Division has been forced in a short time to become self-sufficient, and has had to make various assumptions and estimates in developing a proposed fee structure to achieve this goal. Compiling and disseminating annual information on revenues and expenditures will help determine how accurate the Department's assumptions were, and will also help keep the public informed as to whether the fees have been set at appropriate levels to adequately fund the Division.

Response: Comment noted.

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

None

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

Not applicable

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITS AND COMPLIANCE FEES**

ARTICLE 1. WATER QUALITY PROTECTION FEES

Section

| | |
|-------------|---|
| R18-14-101. | Definitions |
| R18-14-102. | Hourly Rate and Flat Rate <u>Maximum</u> Fees for Water Quality Protection Services |
| R18-14-103. | Initial Fees |
| R18-14-104. | Maximum Annual Fees for Water Quality Protection Services Subject to Hourly Rate Fee |
| R18-14-105. | Fee Assessment and Collection |
| R18-14-108. | APP Water Quality Protection Services Flat Fees for Fiscal Year 2011 |
| R18-14-109. | <u>AZPDES</u> Water Quality Protection Services Flat Fees |
| R18-14-110. | <u>Reclaimed Water</u> Flat Fees |
| R18-14-111. | <u>Other Flat Fees</u> |
| R18-14-112. | <u>Implementation</u> |
| R18-14-113. | <u>Annual Report</u> |

ARTICLE 1. WATER QUALITY PROTECTION FEES

R18-14-101. Definitions

In addition to the definitions in A.R.S. §§ 49-201, 49-241.02, 49-255, 49-331, and ~~49-362(I)~~, and A.A.C. R18-9-101, and A.A.C. R18-9-701, and A.A.C. R18-9-A901, the following terms apply to this Article:

1. “APP” means an Aquifer Protection Permit.
- ~~2.~~ “Complex modification” means:
 - a. A revision of an individual Aquifer Protection Permit for a facility within a mining sector as defined in A.R.S. § ~~49-241.02(F)(2)~~ 49-241.02(F)(1); and
 - b. A revision of an individual Aquifer Protection Permit for a facility within a ~~dry well, industrial, or wastewater~~ non-mining sector due to any of the following:
 - i. An expansion of an existing pollutant management area requiring a new or relocated point of compliance;
 - ii. A new subsurface disposal including injection or recharge, or new wetlands construction;
 - ~~iii. Incorporation of an extensive compliance schedule into a permit;~~
 - ~~iv. A discharge to the waters of the United States with the potential to impact the downgradient protective uses;~~
 - ~~v. iii.~~ Submission of data indicating contamination, or identification of a discharging facility or pollutants not included in previous applications that requires reevaluation of BADCT; or
 - ~~vi. iv.~~ Closure of a facility that cannot meet the clean closure requirements of A.R.S. § 49-252 and requires post-closure care, monitoring, or remediation.
- ~~2.~~ “Owner or operator” means a person with a vested interest in real or personal property, or an authorized representative or agent of that person.
3. “Courtesy review” means a design review service that the Department performs within 30 days from the date of receiving the submittals, of the 60 percent completion specifications, design report, and construction drawings for a sewage collection system.
4. “Priority review” means a design review service for an APP Type 4 permit application that the Department completes using not more than 50 percent of the total review time-frame for the applicable Type 4 permit application as specified in 18 A.A.C. 1, Table 10.
- ~~3-5.~~ “Request” means a written application, notice, letter, or memorandum submitted by an applicant to the Department for water quality protection services. ~~A~~ The Department considers a request is made at the time on the date it is received by the Department.
6. “Review hours” means the hours or portions of hours that the Department’s staff spends on a request for a water quality protection service. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
- ~~4-7.~~ “Review-related costs” means any of the following costs applicable to a specific ~~application~~ request for water quality

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protection service:

- a. Presiding officer services for public hearings on a permitting decision;
 - b. Court reporter services for public hearings on a permitting decision;
 - c. Facility rentals for public hearings on a permitting decision;
 - d. Charges for laboratory analyses performed during the application review, and
 - e. Other reasonable, ~~direct, plan~~ and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
5. ~~“Significant Industrial Users” means the same as in 40 CFR 403.3(t).~~
6. ~~“Site visit” means an inspection conducted before issuing a permit or approval.~~
- 7-8. ~~“Standard modification” means an amendment to an individual Aquifer Protection Permit that is not a complex modification.~~
- 8-9. ~~“Water quality protection service” means:~~
- a. Reviewing a request for ~~a~~ an APP determination of applicability;
 - b. Issuing, renewing, amending, transferring, or denying an aquifer protection permit, an AZPDES permit, or a reclaimed water permit;
 - c. Reviewing supplemental information required by a permit condition, including closure for an APP;
 - d. Performing a an APP clean closure plan review;
 - e. Issuing or denying a Subdivision Approval Certificate of Approval for Sanitary Facilities for a Subdivision;
 - f. Registering or transferring registration of a dry well;
 - g. Conducting a site visit;
 - h. Registering a significant industrial user; or
 - i. ~~Conducting an annual reclaimed water inspection.~~
 - h. Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E);
 - i. Reviewing, processing, and managing documentation related to an AZPDES general permit, including a notice of intent, notice of termination, certificate of no exposure, and waiver;
 - j. Registering and reporting land application of biosolids; or
 - k. Pretreatment program review, inspection, or audit.

R18-14-102. Hourly Rate and ~~Flat Rate~~ Maximum Fees for Water Quality Protection Services

- A. The Department shall assess and collect an hourly rate fee ~~or a flat rate fee~~ for a water quality protection service, except for minor permit amendments specified under A.A.C. R18-9-A211(C)(1), (C)(2) (2) and (C)(3) (3) and A.A.C. R18-9-B906(B), unless a flat fee is otherwise designated in this Article.
- B. Hourly rate fees. ~~Except as established under subsection (C), the~~ The Department shall calculate the fee using an hourly rate of ~~\$61~~ \$122, multiplied by the number of review hours to provide a water quality protection service, plus any applicable review-related costs, up to the maximum fee specified ~~under R18-14-104 in subsection (C).~~
1. ~~The Department shall not charge an applicant for the first 60 minutes of Department pre-application consultation time costs for the project manager.~~
 2. ~~The Department shall not charge the applicant travel time.~~
- C. ~~Flat rate fees.~~ The Department shall assess a flat rate fee for the following water quality protection services:
1. Dry well registration, \$10 per dry well;
 2. Significant industrial user registration, \$250 per year;
 3. Determination of applicability, \$100 per request:
 - a. If the Department determines that an individual permit is required or that the applicant qualifies for a Type 2, Type 3, or Type 4 General Permit, the \$100 fee shall be applied to the final bill for the individual permit or to the flat rate fee for the general permit.
 - b. If the determination of applicability is completed as part of an area wide permit issued under A.R.S. § 49-243(P), the fee for the individual permit applies.
 4. Subdivision approval. Approvals are granted in phases of 150 lots or less:
 - a. Sewage treatment and disposal is provided outside the boundaries of the individual lots, 150 lots or less, \$300;
 - b. Sewage treatment and disposal will be located within the boundary of the lot, 40 lots or less, \$500; 41 to 150 lots, \$1000;
 - e. The appropriate fee specified in (C)(4)(a) and (C)(4)(b) applies to each phase if a subdivision includes more than 150 lots.
 5. Type 1 General Permits. No fee is required;
 6. Type 2 and Type 3 General Permits:
 - a. New permit, expansion, and renewal fees, established in Table 1;
 - b. Transfer of ownership, \$50 per transfer;
 - e. If a site contains more than 1 facility covered by the same Type 2 or Type 3 General Permit and each facility is substantially similar in design, construction, and operation, the applicant shall pay the fee established under (C)(6)(a) or (C)(6)(b) for the first facility and one third of the fee for each additional facility.

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7. **Type 4 General Permits-**
- a. New permit and expansion fees established in Table 1 plus any of the following:
 - i. A request for an alternative design, installation, or operational feature, \$75 per change;
 - ii. A design requiring an interceptor, \$100 per interceptor;
 - iii. A site visit verifying a construction deviation, \$150 per site visit.
 - b. If an onsite wastewater treatment system is based on a design that combines elements from more than one Type 4 General Permit, the applicant shall pay the greatest fee established in Table 1 for the appropriate Type 4 General Permit; \$250 for each additional general permit used in the design, and any additional fee specified in subsections (C)(7)(a)(i), (C)(7)(a)(ii), and (C)(7)(a)(iii).
 - c. Transfer of ownership, \$50 per transfer for the first Type 4 General Permit.
- D.** The Department shall not review a request for a water quality protection service if:
- 1. The initial fee established in R18-14-103 or flat rate fee established in subsection (C) has not been paid, or
 - 2. The owner or operator has an outstanding water quality protection service bill not under appeal.
- C.** Maximum fees for a water quality protection service assessed at an hourly rate are as follows:

Table 1. General Permit Maximum Fees

| General Permit Type | Permit Description | New Permit, Expansion, and Renewal Fee With Change | Renewal Fee With No Change |
|---|---|--|----------------------------|
| Type 1 | All Type 1 General Permits | No Fee | No Fee |
| Type 2 | All Type 2 General Permits | \$300 | \$120 |
| Type 3 | All Type 3 General Permits | \$1500 | \$500 |
| Type 4 | | | |
| SEWER COLLECTIONS SYSTEMS | | | |
| 4.01 | Gravity Sewer Only with Manholes | | |
| | -Serving less than or equal to 50 connections | \$500 | No Fee |
| | -Serving 51 to 300 connections | \$1000 | No Fee |
| | -Serving 301 or more Connections | \$1500 | No Fee |
| | Force Mains Including Gravity Sewer Components | | |
| | -Serving less than or equal to 50 connections | \$800 | No Fee |
| | -Serving 51 to 300 connections | \$1300 | No Fee |
| | -Serving 301 or more connections | \$1800 | No Fee |
| ONSITE WASTEWATER TREATMENT FACILITIES | | | |
| 4.02 | Septic tank/conventional disposal, less than 3000 gallons per day | \$400 | No Fee |
| 4.03 | Composting toilet, less than 3000 gallons per day | \$400 | No Fee |
| 4.04 | Pressure distribution system, less than 3000 gallons per day | \$500 | No Fee |
| 4.05 | Gravelless trench, less than 3000 gallons per day | \$500 | No Fee |
| 4.06 | Natural seal evapotranspiration bed, less than 3000 gallons per day | \$600 | No Fee |
| 4.07 | Lined evapotranspiration bed, less than 3000 gallons per day | \$600 | No Fee |
| 4.08 | Wiseonsin mound, less than 3000 gallons per day | \$500 | No Fee |
| 4.09 | Engineered pad system, less than 3000 gallons per day | \$600 | No Fee |
| 4.10 | Intermittent sand filter, less than 3000 gallons per day | \$600 | No Fee |
| 4.11 | Peat filter, less than 3000 gallons per day | \$600 | No Fee |
| 4.12 | Textile filter, less than 3000 gallons per day | \$600 | No Fee |
| 4.13 | Ruek® system, less than 3000 gallons per day | \$600 | No Fee |
| 4.14 | Sewage vault, less than 3000 gallons per day | \$400 | No Fee |

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|------|--|--------|--------|
| 4.15 | Aerobic system/subsurface disposal, less than 3000 gallons per day | \$800 | No Fee |
| 4.16 | Aerobic system/surface disposal, less than 3000 gallons per day | \$1000 | No Fee |
| 4.17 | Cap system, less than 3000 gallons per day | \$400 | No Fee |
| 4.18 | Constructed wetlands, less than 3000 gallons per day | \$600 | No Fee |
| 4.19 | Sand lined trench, less than 3000 gallons per day | \$500 | No Fee |
| 4.20 | Disinfection device, less than 3000 gallons per day | \$500 | No Fee |
| 4.21 | Sequencing batch reactor, less than 3000 gallons per day | \$600 | No Fee |
| 4.22 | Subsurface drip irrigation, less than 3000 gallons per day | \$500 | No Fee |
| 4.23 | Onsite wastewater treatment facility, flow from 3000 to less than 24,000 gallons per day | \$1800 | No Fee |

| <u>Program Area</u> | <u>Permit Type</u> | <u>Maximum Fee</u> |
|---------------------|--|--------------------|
| <u>APP</u> | <u>Individual or area-wide</u> | <u>\$200,000</u> |
| <u>APP</u> | <u>Complex modification to individual or area-wide</u> | <u>\$150,000</u> |
| <u>APP</u> | <u>Clean closure of facility</u> | <u>\$50,000</u> |
| <u>APP</u> | <u>Standard modification to individual or area-wide (per modification up to the maximum fee, and modification can be reassigned under A.A.C. R18-1-516):</u> <ul style="list-style-type: none"> ▪ <u>Maximum fee (cumulative per submittal)</u> <u>\$150,000</u> ▪ <u>Modification under A.A.C. R18-9-A211(C)(1) through (3)</u> <u>No fee</u> ▪ <u>Modification under A.A.C. R18-9-A211(C)(4) through (6)</u> <u>\$5,000</u> ▪ <u>Modification under A.A.C. R18-9-A211(C)(7), (D)(2)(b) through (i), and (D)(2)(k) through (l)</u> <u>\$15,000</u> ▪ <u>Modification under A.A.C. R18-9-A211(D)(2)(a) and (j)</u> <u>\$25,000</u> ▪ <u>Modification under A.A.C. R18-9-A211(B) that is not classified as complex modification under R18-14-101(2)</u> <u>\$25,000</u> | |
| <u>APP</u> | <u>For an APP issued before July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee. The applicable maximum fee for all compliance schedule submissions shall be according to one of the three maximum fee categories listed below. The maximum fee is for the lifetime of the APP unless a new compliance schedule is established in the APP due to a modification that is classified as both a significant amendment under A.A.C. R18-9-A211(B) and a complex modification under R18-14-101(2)</u> <ul style="list-style-type: none"> ▪ <u>For a permit with a compliance schedule where one or more submissions require a permit modification that requires a determination or reevaluation of BADCT, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of:</u> | <u>\$150,000</u> |

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| <u>Program Area</u> | <u>Permit Type</u> | <u>Maximum Fee</u> |
|---------------------|--|---|
| | <ul style="list-style-type: none"> ▪ <u>For a permit with a compliance schedule where one or more submissions require a permit modification, but no determination or reevaluation of BADCT is required, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of:</u> ▪ <u>For a permit with a compliance schedule requiring one or more submissions that require ADEQ review but do not required a permit modification, the maximum fee for the permit's entire compliance schedule is:</u> | <p align="center"><u>\$100,000</u></p> <p align="center"><u>\$100,000</u></p> |
| <u>APP</u> | <u>For an APP issued on or after July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee for the lifetime of the APP</u> | <u>\$100,000</u> |
| <u>APP</u> | <u>Determination of applicability</u> | <u>\$15,000</u> |
| <u>APP</u> | <u>Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E)</u> | <u>\$15,000</u> |
| <u>AZPDES</u> | <u>Individual permit for municipal separate storm sewer system</u> | <u>\$40,000</u> |
| <u>AZPDES</u> | <u>Individual permit for wastewater treatment plant (based on gallons of discharge per day)</u> <ul style="list-style-type: none"> ▪ <u>3,000 to 99,999</u> ▪ <u>100,000 to 999,999</u> ▪ <u>1,000,000 to 9,999,999</u> ▪ <u>10,000,000 or more</u> | <p align="center"><u>\$15,000</u></p> <p align="center"><u>\$20,000</u></p> <p align="center"><u>\$30,000</u></p> <p align="center"><u>\$50,000</u></p> |
| <u>AZPDES</u> | <u>Individual permit for a facility or activity that is not a wastewater treatment plant or a municipal separate storm sewer</u> | <u>\$30,000</u> |
| <u>AZPDES</u> | <u>Amendment to an individual permit</u> | <u>\$12,500</u> |
| <u>AZPDES</u> | <u>Approval of a new or revised pretreatment program under AZPDES</u> | <u>\$10,000</u> |
| <u>AZPDES</u> | <u>Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)</u> | <u>Aggregate of the applicable maximum fees</u> |
| <u>Reclaimed</u> | <u>Reclaimed water individual permit</u> | <u>\$32,000</u> |

R18-14-103. Initial Fees

- A.** Except for annual reclaimed water inspections, an applicant shall submit a \$1000 initial fee for each water quality protection service subject to an hourly rate fee established under R18-14-102(B) at the time an application is submitted to the Department for review. A person shall submit the applicable fee at the time a request for a water quality protection service is submitted to the Department.
- B.** For each water quality protection service subject to an hourly rate fee established under R18-14-102:
 - 1.** An applicant shall submit a \$2,000 initial fee at the time a request is submitted to the Department for review.
 - 2.** If requested by an applicant, the Department may set a lower initial fee when the Department estimates a review fee that is less than the applicable initial fee.
- C.** The Department shall not review a request for a water quality protection service if the applicant or permittee has not paid any fee due under this Article, unless the applicant or permittee has an outstanding water quality protection service bill that is under appeal pursuant to R18-14-106.

R18-14-104. Maximum Annual Fees for Water Quality Protection Services Subject to Hourly Rate Fee

- A.** Maximum fees for Aquifer Protection Permit actions:
 - 1.** Maximum fees for individual Aquifer Protection Permits, complex modifications, standard modifications, clean closures, and denials shall be determined as prescribed under A.R.S. § 49-241.02(A) and the hourly rate specified under R18-14-102(B):
 - a.** The public shall have an opportunity to comment on factors used to obtain the maximum fee.
 - b.** The Department shall list the maximum fees in an Annual Fee Schedule which shall be published in the *Arizona*

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Administrative Register by June 1 of each year, except for FY01 when it will be published by January 1, 2001.

2. When an application is deemed administratively complete, the Department shall notify the applicant of the applicable maximum fee for review of the application. The maximum fee will be the lesser of the effective maximum fee determined under subsection (A)(1) or the applicable maximum fee specified under A.R.S. § 49-241.02(B).
3. Unless the applicant has been previously notified, the Department shall issue a supplemental notice specifying the maximum fee for a pending project deemed administratively complete before January 1, 2001.

B. Maximum fees for Reclaimed Water Individual Permits. The Department shall charge no more than \$16,000 for review of each reclaimed water individual permit application.

A. Annual Registration Fees. The annual registration fee required under A.R.S. § 49-242 is in Table 2:

Table 2. APP Annual Registration Fees

| <u>Discharge or Influent per Day under the Individual APP or Notice of Disposal (in Gallons)</u> | <u>Annual Registration Fee</u> | <u>Annual Registration Fee if New Facility Under New APP Not Yet Constructed</u> |
|--|--------------------------------|--|
| <u>3,000 to 9,999</u> | <u>\$500</u> | <u>\$250</u> |
| <u>10,000 to 99,999</u> | <u>\$1,000</u> | <u>\$250</u> |
| <u>100,000 to 999,999</u> | <u>\$2,500</u> | <u>\$500</u> |
| <u>1,000,000 to 9,999,999</u> | <u>\$6,000</u> | <u>\$625</u> |
| <u>10,000,000 or more</u> | <u>\$8,500</u> | <u>\$750</u> |

B. The Department shall assess an annual fee for an AZPDES-related water quality protection service subject to an hourly rate fee as listed in Table 3:

Table 3. AZPDES Annual Fees

| <u>Permit Type</u> | <u>Annual Fee</u> | <u>Annual Fee if New Facility Under New AZPDES Not Yet Constructed</u> |
|--|--|--|
| <u>Municipal separate storm sewer system</u> | <u>\$10,000</u> | <u>N/A</u> |
| <u>Wastewater treatment plant (based on gallons of discharge per day):</u> | | |
| ▪ <u>Less than 99,999</u> | <u>\$250</u> | <u>\$250</u> |
| ▪ <u>100,000 to 999,999</u> | <u>\$500</u> | <u>\$500</u> |
| ▪ <u>1,000,000 to 9,999,999</u> | <u>\$2,500</u> | <u>\$625</u> |
| ▪ <u>10,000,000 or more</u> | <u>\$4,000</u> | <u>\$750</u> |
| <u>Facility or activity that is not a wastewater treatment plant or municipal separate storm sewer and designated in the permit as either:</u> | | |
| <u>Major</u> | <u>\$2,500</u> | <u>\$625</u> |
| <u>Minor</u> | <u>\$500</u> | <u>\$500</u> |
| <u>Pretreatment program</u> | <u>\$3,000</u> | <u>N/A</u> |
| <u>Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)</u> | <u>Aggregate of the applicable annual fees of each individual permit</u> | <u>Aggregate of the applicable annual fees of each individual permit</u> |

C. The Department shall assess an annual fee of \$500 for an individual reclaimed water permit.

R18-14-105. Fee Assessment and Collection

A. Billing. The Department shall bill an applicant for water quality protection services subject to an hourly rate no more than monthly, but at least quarterly. The following information shall be included in each bill:

1. The dates of the billing period;

2. The date and number of review hours of the review (excluding hours for travel time and the first 60 minutes of pre-application consultation time) accrued itemized by employee name, position type by activity and subactivity code during the billing period, and the effective hourly rate for all activities and specifically describing:

- a. Each water quality protection service performed;
- b. Each facility involved and program component, and
- c. The hourly rate for each water quality protection service performed;

3. A description and amount of each review-related cost incurred for the project;

4. The total fees due and paid to date, the total fees due for the billing period, the date when the fees are due, which shall

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be at least 35 days after the date on the bill, and the maximum fee for the project; and

4. A description, by date, of each water quality protection service performed.

B. Annual reclaimed water inspection. If the Department conducts an annual reclaimed water inspection, the owner or operator shall pay the final itemized bill within 30 days from the date on which the final inspection report and final itemized bill are mailed to the owner or operator.

C.B. Final bill. After the Department makes a final determination whether to grant or deny a request for a permit or an approval water quality protection services subject to an hourly rate fee, or when an applicant withdraws or closes the application request, the Department shall prepare a final itemized bill for an application of its review.

1. If the total fee exceeds the amount of the initial fee plus all invoicing, the Department shall issue a final itemized bill for the cost of the water quality protection services up to the applicable maximum fee established under ~~R18-14-104~~ R18-14-102.

2. If the total fee is less than the initial fee and all paid invoicing charges, the Department shall refund the difference to the applicant.

3. Fees for water quality protection services shall be paid in U.S. dollar dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.

4. The Department shall not release the final permit or approval until the final itemized bill is paid in full.

R18-14-108. APP Water Quality Protection Services Flat Fees for Fiscal Year 2011

A. Beginning on July 1, 2010 until June 30, 2011, the fees listed in Table 2 increase and supersede any fee listed otherwise in this Article or in A.R.S. Title 49, Chapter 2, Article 3.

B. In addition to the annual registration fee required under A.R.S. § 49-242 for Calendar Year 2010, a one-time increased annual registration fee as listed in Table 2 shall be due within 30 days of the invoice postmark date for the increased fee.

C. This Section and Table 2 will repeal automatically, effective July 1, 2011.

Table 2.

| Water Quality Protection Service | Applicable Fee |
|--|---|
| Individual Permits | |
| Individual or Area-wide Aquifer Protection Permit | \$122 per hour up to maximum of \$200,000 |
| Complex Modification to Individual or Area-wide Aquifer Protection Permit | \$122 per hour up to maximum of \$200,000 |
| Clean closure of facility without Aquifer Protection Permit | \$122 per hour up to maximum of \$70,000 |
| Standard Modification to Individual or Area-wide Aquifer Protection Permit | \$122 per hour up to maximum of \$50,000 |
| Reclaimed Water Individual Permit | \$122 per hour up to maximum of \$32,000 |
| Increased Fee Required for Annual Registration per A.R.S. § 49-242 of Discharge or Influent per Day Under the Permit or Notice of Disposal (in Gallons) | |
| Gallons of Permitted Discharge or Influent per Day | |
| 3000 to 9999 | \$25 |
| 10,000 to 99,999 | \$150 |
| 100,000 to 999,999 | \$1500 |
| 1,000,000 to 9,999,999 | \$2500 |
| 10,000,000 or more | \$4000 |
| General Permits | |
| All Type 2 General Permits | \$600 |
| All Type 2 General Permits Renewals | \$200 |
| All Type 3 General Permits | \$3000 |
| All Type 3 General Permits Renewals | \$1000 |
| Type 4.01 General Permit Sewer Collections Systems | |

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|--|---|
| Gravity Sewer Only with Manholes | |
| - Serving less than or equal to 50 connections | \$1000 |
| - Serving 51 to 300 connections | \$2000 |
| - Serving 301 or more Connections | \$3000 |
| Force Mains Including Gravity Sewer Components | |
| - Serving less than or equal to 50 connections | \$1600 |
| - Serving 51 to 300 connections | \$2600 |
| - Serving 301 or more connections | \$3600 |
| Type 4 Onsite Wastewater Treatment Facilities | |
| Type 4.02 Septic tank/conventional disposal, less than 3000 gallons per day | \$800 |
| Type 4.03 Composting toilet, less than 3000 gallons per day | \$800 |
| Type 4.04 Pressure distribution system, less than 3000 gallons per day | \$1000 |
| Type 4.05 Gravelless trench, less than 3000 gallons per day | \$1000 |
| Type 4.06 Natural seal evapotranspiration bed, less than 3000 gallons per day | \$1200 |
| Type 4.07 Lined evapotranspiration bed, less than 3000 gallons per day | \$1200 |
| Type 4.08 Wiseonsin mound, less than 3000 gallons per day | \$1000 |
| Type 4.09 Engineered pad system, less than 3000 gallons per day | \$1200 |
| Type 4.10 Intermittent sand filter, less than 3000 gallons per day | \$1200 |
| Type 4.11 Peat filter, less than 3000 gallons per day | \$1200 |
| Type 4.12 Textile filter, less than 3000 gallons per day | \$1200 |
| Type 4.13 Ruck® system, less than 3000 gallons per day | \$1200 |
| Type 4.14 Sewage vault, less than 3000 gallons per day | \$800 |
| Type 4.15 Aerobic system/subsurface disposal, less than 3000 gallons per day | \$1600 |
| Type 4.16 Aerobic system/surface disposal, less than 3000 gallons per day | \$2000 |
| Type 4.17 Cap system, less than 3000 gallons per day | \$800 |
| Type 4.18 Constructed wetlands, less than 3000 gallons per day | \$1200 |
| Type 4.19 Sand lined trench, less than 3000 gallons per day | \$1000 |
| Type 4.20 Disinfection device, less than 3000 gallons per day | \$1000 |
| Type 4.21 Sequencing batch reactor, less than 3000 gallons per day | \$1200 |
| Type 4.22 Subsurface drip irrigation, less than 3000 gallons per day | \$1000 |
| Type 4.23 Onsite wastewater treatment facility, flow from 3000 to less than 24,000 gallons per day | \$3600 |
| Each additional general permit for multiple design elements from more than one Type 4 General Permit, as stated in R18-14-102(C)(7)(b) | \$500 |
| Other Services | |
| Dry well registration | \$100 |
| Determination of Applicability | \$1000 |
| Subdivision approval with sewage treatment and disposal provided outside the boundaries of individual lots | \$600 per 150 lots |
| Subdivision approval with sewage treatment and disposal located within the boundary of lot | \$1000 for 40 lots or less \$2000 for 41 to 150 lots \$2000 per additional 150 lots |

- A.** The Department shall assess a flat fee for an APP water quality protection service listed in this Section.
- B.** Type 1 General Permits. No fee is required, except as stated in A.A.C. R18-9-A304(A)(2).
- C.** Fees for Type 2 and Type 3 General Permits and related water quality protection services are listed in Table 4. For purposes of this Section, “complex” is defined in A.A.C. R18-1-501(9). “Standard” means any permit that does not meet the definition of complex.

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| <u>Water Quality Protection Service</u> | <u>Description</u> | <u>Permit Fee</u> |
|--|---|---|
| | <ul style="list-style-type: none"> ▪ <u>Each additional treatment technology or disposal method consisting of technologies or designs that are covered under other Type 4 general permits on same Notice of Intent to Discharge up to maximum fee</u> | <u>\$500</u> |
| <u>4.23 General Permit annual report</u> | <u>Annual report required under A.A.C. R18-9-E323(G)</u> | <u>\$200</u> |
| <u>Type 4 General Permits (4.02 through 4.22)</u> | <ul style="list-style-type: none"> ▪ <u>Maximum fee</u> ▪ <u>First Type 4 general permit</u> ▪ <u>Each additional Type 4 general permit on same Notice of Intent to Discharge</u> | <u>\$3,700</u> <u>\$1,200</u> <u>\$500</u> |
| <u>Alternative Design under A.A.C. R18-9-A312(G)</u> | <u>A request for an alternative design, installation, or operational feature, per alternative design:</u> <ul style="list-style-type: none"> ▪ <u>Type 4.01 general permit</u> ▪ <u>All other Type 4 general permits</u> | <u>\$750</u> <u>\$250</u> |
| <u>Interceptor under A.A.C. R18-9-A315</u> | <u>A design requiring an interceptor (per interceptor)</u> | <u>\$100</u> |
| <u>Transfer</u> | <u>Transfer of discharge authorization</u> | <u>\$50</u> |
| <u>Priority Review</u> | <u>If an applicant requests priority review, the Department shall approve or deny the request. When determining whether to approve a priority review request, the Department shall consider the complexity of the project and the Department's current work load.</u> | <u>Double the Applicable Fee (including any applicable maximum fee)</u> |

R18-14-109. AZPDES Water Quality Protection Services Flat Fees

- A.** The Department shall assess a flat fee for an AZPDES water quality protection service, as described in Table 6.
- B.** In addition to the requirements in A.A.C. R18-9-A907(B), a draft permit will state the category and fee assigned to the permit and the factors for establishing the fee, according to Table 6. Any person may comment on the fee category assignment as part of the public comment period described in A.A.C. R18-9-A908.
- C.** Annual Fee. The Department shall bill an annual fee to permittees who have not filed a notice of termination for an applicable general permit.

Table 6. AZPDES Water Quality Protection Services Flat Fees

| <u>Category</u> | <u>Factors for Establishing Fees</u> | <u>Initial Fee</u> | <u>Annual Fee</u> |
|---|--|--------------------|-------------------|
| <u>Municipal Separate Storm Sewer System General Permit</u> | <u>The fee is based on the population of the permitted area:</u> | | |
| | <ul style="list-style-type: none"> ▪ <u>Less than or equal to 10,000</u> | <u>\$2,500</u> | <u>\$2,500</u> |
| | <ul style="list-style-type: none"> ▪ <u>Greater than 10,000 but less than or equal to 100,000</u> | <u>\$5,000</u> | <u>\$5,000</u> |
| | <ul style="list-style-type: none"> ▪ <u>Greater than 100,000</u> | <u>\$7,500</u> | <u>\$7,500</u> |
| | <u>The fee for a non-traditional municipal separate storm sewer system, such as a hospital, college or military facility</u> | <u>\$5,000</u> | <u>\$5,000</u> |
| <u>Construction General Permit</u> | <u>The fee is based on the amount of acreage identified in the Notice of Intent:</u> | | |
| | <ul style="list-style-type: none"> ▪ <u>Less than or equal to 1 acre</u> | <u>\$250</u> | <u>\$250</u> |
| | <ul style="list-style-type: none"> ▪ <u>Greater than 1 acre but less than or equal to 50 acres</u> | <u>\$350</u> | <u>\$350</u> |
| | <ul style="list-style-type: none"> ▪ <u>Greater than 50 acres</u> | <u>\$500</u> | <u>\$500</u> |
| | <u>Pollution prevention plan review</u> | <u>\$1,000</u> | <u>N/A</u> |
| | <ul style="list-style-type: none"> ▪ <u>Each additional submittal due to deficiency</u> | <u>\$500</u> | <u>N/A</u> |
| <u>Waiver</u> | | <u>\$750</u> | <u>N/A</u> |

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| <u>Category</u> | <u>Factors for Establishing Fees</u> | <u>Initial Fee</u> | <u>Annual Fee</u> |
|--|--|--|--|
| | <u>If more than one person must apply for general permit coverage of the same facility or discharge activity, each person pays:</u> | <u>Fee applicable to the amount of acreage each person controls</u> | <u>Fee applicable to the amount of acreage each person controls</u> |
| <u>Multi-Sector General Permit</u> | <p><u>The fee is based on the amount of acreage identified in the Notice of Intent:</u></p> <ul style="list-style-type: none"> ▪ <u>Less than or equal to 1 acre</u> ▪ <u>Greater than 1 acre but less than or equal to 40 acres</u> ▪ <u>Greater than 40 acres</u> <p><u>Pollution prevention plan review</u></p> <ul style="list-style-type: none"> ▪ <u>Each additional submittal due to deficiency</u> <p><u>Certificate of No Exposure</u></p> <p><u>If more than one person must apply for general permit coverage of the same facility or discharge activity, each person pays:</u></p> | <p><u>\$350</u></p> <p><u>\$500</u></p> <p><u>\$1,000</u></p> <p><u>\$1,000</u></p> <p><u>\$500</u></p> <p><u>\$1,250</u></p> <p><u>Fee applicable to the amount of acreage each person controls</u></p> | <p><u>\$350</u></p> <p><u>\$500</u></p> <p><u>\$1,000</u></p> <p><u>N/A</u></p> <p><u>N/A</u></p> <p><u>N/A</u></p> <p><u>Fee applicable to the amount of acreage each person controls</u></p> |
| <u>General Permits for Non-Stormwater Discharges</u> | <p><u>The fee is based on the Department's total anticipated staff hours (including permit development, customer service, review of the notice of intent, and annual data review and inspections) divided by the total number of potential permittees over a five-year period:</u></p> <ul style="list-style-type: none"> ▪ <u>Level 1A</u> <ul style="list-style-type: none"> • <u>Staff hours:</u> <u>1,500</u> • <u>Number of potential permittees:</u> <u>750</u> ▪ <u>Level 1B</u> <ul style="list-style-type: none"> • <u>Staff hours:</u> <u>1,500</u> • <u>Number of potential permittees:</u> <u>375</u> ▪ <u>Level 2</u> <ul style="list-style-type: none"> • <u>Staff hours:</u> <u>1,000</u> • <u>Number of potential permittees:</u> <u>100</u> ▪ <u>Level 3</u> <ul style="list-style-type: none"> • <u>Staff hours:</u> <u>1,300</u> • <u>Number of potential permittees:</u> <u>100</u> ▪ <u>Level 4A</u> <ul style="list-style-type: none"> • <u>Staff hours:</u> <u>1,600</u> • <u>Number of potential permittees:</u> <u>100</u> ▪ <u>Level 4B</u> <ul style="list-style-type: none"> • <u>Staff hours:</u> <u>1,900</u> • <u>Number of potential permittees:</u> <u>100</u> <p><u>Pollution prevention plan review</u></p> | <p><u>\$250</u></p> <p><u>\$500</u></p> <p><u>\$1,250</u></p> <p><u>\$1,500</u></p> <p><u>\$2,000</u></p> <p><u>\$2,500</u></p> <p><u>\$1,000</u></p> | <p><u>\$250</u></p> <p><u>\$500</u></p> <p><u>\$1,250</u></p> <p><u>\$1,500</u></p> <p><u>\$2,000</u></p> <p><u>\$2,500</u></p> <p><u>N/A</u></p> |

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| <u>Category</u> | <u>Factors for Establishing Fees</u> | <u>Initial Fee</u> | <u>Annual Fee</u> |
|---|--|--|--|
| | <ul style="list-style-type: none"> ▪ <u>Each additional submittal due to deficiency</u> | <u>\$500</u> | <u>N/A</u> |
| <u>Emergency Discharge General Permit</u> | <u>Authorization for emergency discharge</u> | <u>\$10,000</u> | <u>N/A</u> |
| <u>Transfer</u> | <u>Authorization for permit transfer as allowed under A.A.C. R18-9-B905</u> | <u>\$50</u> | <u>N/A</u> |
| <u>Biosolids Land Applicators</u> | <u>Initial registration</u> | <u>\$500</u> | <u>N/A</u> |
| | <u>Registration amendment</u> | <u>\$250</u> | <u>N/A</u> |
| | <u>Annual report based on amount of dry metric tons applied</u> | | |
| | <ul style="list-style-type: none"> ▪ <u>Less than or equal to 7,500 dry metric tons</u> ▪ <u>Greater than 7,500 dry metric tons but less than or equal to 15,000 dry metric tons</u> ▪ <u>Greater than 15,000 dry metric tons</u> | <u>N/A</u> <u>N/A</u> <u>N/A</u> | <u>\$2,500</u> <u>\$3,000</u> <u>\$4,500</u> |

R18-14-110. Reclaimed Water Flat Fees

The Department shall assess a flat fee for a reclaimed water quality protection service as listed in Table 7. For purposes of this Section, “complex” is defined in A.A.C. R18-1-501(9). “Standard” means any permit that does not meet the definition of complex.

Table 7. Reclaimed Water General Permit Fees

| <u>Permit Description</u> | <u>Permit Fee</u> | <u>Renewal Fee</u> |
|---|---------------------------------------|--------------------|
| <u>Standard Type 2</u> | <u>\$600</u> | <u>\$450</u> |
| <u>Complex Type 2</u> | <u>\$750</u> | <u>\$575</u> |
| <u>Standard Type 3</u> | <u>\$1,500</u> | <u>\$1,250</u> |
| <u>Complex Type 3</u> | <u>\$2,000</u> | <u>\$1,500</u> |
| <u>Amendment to Notice of Intent</u> | <u>Same as applicable renewal fee</u> | <u>N/A</u> |
| <u>Transfer of permit authorization</u> | <u>\$50</u> | <u>N/A</u> |

R18-14-111. Other Flat Fees

Flat fees. The Department shall assess a flat fee for the following water quality protection services:

1. Dry well registration, \$100 per dry well;
2. Dry well transfer of registration, \$50 per transfer;
3. Certificate of Approval for Sanitary Facilities for Subdivisions.
 - a. Subdivision with public sewerage system: \$800 for every increment of 150 lots or less;
 - b. Subdivision with individual sewerage system:
 - i. \$500 for less than 10 lots;
 - ii. \$1,000 for greater than 10 lots but less than 50 lots;
 - iii. \$1,000 for each additional increment of 50 lots or less.
 - c. If water from a central system is not provided to the lot, the fee is one and one-half the applicable fee stated in subsection (3)(a) or (b).
 - d. Condominium subdivision: \$1,000 for every increment of 150 units or less.

R18-14-112. Implementation

The fees in this Article apply on July 1, 2011. For fees related to the AZPDES program:

1. A person shall submit the applicable fee when requesting a water quality protection service as specified in an AZPDES General Permit or in 18 A.A.C. 9, Article 9; and
2. A person is responsible for paying the annual fee for an AZPDES general permit, even if the person filed for coverage before the effective date of these rules.

R18-14-113. Annual Report

By December 1 of each year, the Department shall publish an accounting of Water Quality Fee Fund revenue and expenditure activity for the prior fiscal year.