

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 10. LAW

CHAPTER 3. DEPARTMENT OF LAW CIVIL RIGHTS DIVISION

Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1962.)

[R11-147]

PREAMBLE

1. Sections Affected

R10-3-401
R10-3-402
R10-3-403
R10-3-404

Rulemaking Action

Amend
Amend
Amend
Amend

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. §§ 41-192(B)(2), 41-1492.06

Implementing statutes: A.R.S. §§ 41-1492, 41-1492.01, 41-1492.02, 41-1492.03, 41-1492.04, 41-1492.05, 41-1492.06, 41-1492.07, 41-1492.08, 41-1492.09, 41-1492.10, 41-1492.11, 41-1492.12

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 17 A.A.R. 1952, September 30, 2011 (*in this issue*)

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

Name: Ann Hobart, Civil Rights Division, Litigation Section Chief Counsel

Address: 1275 W. Washington St.
Phoenix, AZ 85007-2926

Telephone: (602) 542-8608

Fax: (602) 542-8899

E-mail: ann.hobart@azg.gov

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

In enacting the Arizona Americans with Disabilities Act (AzDA), the Legislature intended to provide "a uniform accessibility code" for Arizona that is "consistent" with the Americans with Disabilities Act (ADA) and its implementing regulations. Laws 1992, Ch. 224, § 1(B)(4) and (C). It thus mandated that compliance with Titles II and III of the ADA and its implementing regulations be deemed compliance with the AzDA. A.R.S. § 41-1492.06(B). The Legislature granted the Attorney General authority to adopt rules to carry out the AzDA. A.R.S. § 41-1492.06(A). It required, however, that such rules not exceed the regulations, guidelines and standards issued by the U.S. Department of Transportation and the U.S. Department of Justice relating to Titles II and III of the ADA. A.R.S. § 41-1492.06(B). It also required the Attorney General to periodically review and amend its rules to achieve consistency with regulations promulgated pursuant to the ADA. A.R.S. § 41-1492.06(C). The Attorney General has general authority to "adopt rules for the orderly conduct of the business" of the Department of Law pursuant to A.R.S. § 41-192(B)(2).

On September 15, 2010, a final rule amending the U.S. Department of Justice's regulations relating to Titles II and III of the ADA was published in the *Federal Register*. The amended regulations, which include changes to 28 CFR 35

Notices of Proposed Rulemaking

and 36 and the 2010 Standards for Accessible Design (2010 Standards), which are comprised of 28 CFR 35.151, 28 CFR 36.401 through 36.406, and appendices B and D to 36 CFR 1191, went into effect on March 15, 2011. Compliance with the 2010 Standards was permitted as of September 15, 2010, and will be required as of March 15, 2012.

In addition, despite two efforts to amend A.A.C. R10-3-402 in 1996 and 1997, the Arizona Attorney General has never adopted the ADA regulations promulgated by the U.S. Department of Transportation. See 3 A.A.R. 1258, May 9, 1997, 2 A.A.R. 4865, December 6, 1996. Because the relevant federal rules were last amended in 2006, it is now necessary for the Attorney General to adopt certain parts of them and incorporate them by reference into the state rules.

To achieve consistency with the revised federal ADA regulations as required by A.R.S. § 41-1492.06(C), the Attorney General must amend A.A.C. R10-3-401, R10-3-402, R10-3-403, and R10-3-404 to reflect the amendments to 28 CFR 35 and 36 and 36 CFR 1191, to incorporate the 2010 Standards, and to incorporate the relevant Department of Transportation regulations.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

The agency did not review or rely on any study relevant to the rules.

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

Not applicable

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

The proposed rules will impact public entities, places of public accommodation, commercial facilities, and private owners and operators of specified public transportation. However, because the proposed amendments simply achieve consistency between state and federal law and create no new legal obligations, the Office of the Attorney General anticipates minimal economic impact as a result of the rule changes. It is also anticipated that the proposed rule changes will provide enhanced clarity for the business community because state and federal regulations regarding accessibility issues will be consistent.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Ann Hobart, Civil Rights Division, Litigation Section Chief Counsel
Address: 1275 W. Washington St.
Phoenix, AZ 85007-2926
Telephone: (602) 542-8608
Fax: (602) 542-8899
E-mail: ann.hobart@azg.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Office of the Attorney General invites and will accept written comments Monday through Friday, 8:00 a.m. to 5:00 p.m., at the address listed in item 4, until October 31, 2011. A public hearing will be held:

Date: November 1, 2011
Time: 1:00 p.m. to 4:00 p.m.
Place: Arizona Attorney General's Office
Capital Center Building
15 S. 15th Ave., Basement Conference Rooms A & B
Phoenix, AZ, 85007

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

Not applicable

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

Appendices B and D to 36 CFR 1191 (2009), as modified by Appendix F to 36 CFR 1191 (2009), 49 CFR 37.5, 37.7(a), 37.9(a) through (c), 37.21(a)(2) through (3), 37.23(b) and (d), 37.25(a), 37.27-37.29, 37.37(a) through (f) and (h), 37.45, 37.49, 37.51(a) through (b), 37.55 through 37.57, 37.101 through 37.107, 37.161, 37.165 through 37.173, 37.187 through 37.189, 37.197, 37.201 through 37.211 and Appendix A to Part 37 (2010), and 49 CFR 38.1, the first sentence of 38.2, 38.3 through 38.4, 38.21 through 38.161, 38.171(a) through (b), 38.173 through 38.175, 38.179, and the Figures to Part 38 (2010) are incorporated in R10-3-402. Appendices B and D to 36 CFR 1191 (2009) and the pro-

visions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.136, 35.137, 35.150, 35.151 and 35.163 (2011) are incorporated in R10-3-403. Appendices B and D to 36 CFR 1191 (2009) and the provisions of 28 CFR 36.101 through 36.104, 36.201 through 36.206, 36.208, 36.211, 36.301 through 36.311, 36.401 through 36.406, and 36.507 (2011) are incorporated in R10-3-404.

13. The full text of the rules follows:

TITLE 10. LAW

**CHAPTER 3. DEPARTMENT OF LAW
CIVIL RIGHTS DIVISION**

ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT

Section

- R10-3-401. Definitions
- R10-3-402. Nondiscrimination on the Basis of Disability by Specified Public Transportation
- R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities
- R10-3-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodation and in Commercial Facilities

ARTICLE 4. THE ARIZONANS WITH DISABILITIES ACT

R10-3-401. Definitions

The following terms used in this Article or in the materials incorporated by reference in this Article have the following meaning:

1. "Act" or "the Act" No change
2. "~~ADAAG~~" means ~~Appendix A to 28 CFR 36, referred to as the "Americans with Disabilities Act Accessibility Guidelines."~~ "2010 Standards" means for public entities "appendices B and D to 36 CFR 1191 (2009) and 28 CFR 35.151 (2011)" and means for places of public accommodation and commercial facilities "appendices B and D to 36 CFR 1191 (2009) and 28 CFR 36.401 through 36.406 (2011)."
3. "Assistant Attorney General" No change
4. "Attorney General" No change
5. "National" No change
6. "Respondent" No change

R10-3-402. Nondiscrimination on the Basis of Disability by Specified Public Transportation

~~Private entities that are Owners owners and operators of specified public transportation shall comply with the provisions of 36 CFR 1191 and accompanying appendix, adopted September 6, 1991 and no further amendments, relating to specified public transportation services by a private entity, which are adopted, incorporated by reference and Appendices B and D to 36 CFR 1191 (2009), as modified by Appendix F to 36 CFR 1191 (2009), 49 CFR 37.3 through 37.5, 37.7(a), 37.9(a) through (c), 37.21(a)(2) through (3), 37.23(b) and (d), 37.25(a), 37.27 through 37.29, 37.37(a) through (f) and (h), 37.45, 37.49, 37.51(a) through (b), 37.55 through 37.57, 37.101 through 37.107, 37.161, 37.165 through 37.173, 37.187 through 37.189, 37.197, 37.201 through 37.211 and Appendix A to Part 37 (2010), and 49 CFR 38.1, the first sentence of 38.2, 38.3 through 38.4, 38.21 through 38.161, 38.171(a) through (b), 38.173 through 38.175, 38.179, and the Figures to Part 38 (2010), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Arizona Attorney General Civil Rights Division, the Office of the Arizona Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035. Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.~~

R10-3-403. Nondiscrimination on the Basis of Disability by Public Entities

- ~~A. Public entities shall comply with the provisions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.150, 35.151, 35.163, and Appendix A to 28 CFR 36, adopted July 26, 1991, and no further amendments, which are adopted, incorporated by reference and the 2010 Standards and the provisions of 28 CFR 35.130(b)(4), 35.133, 35.135, 35.136, 35.137, 35.150, and 35.163 (2011), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Attorney General Civil Rights Division, the Office of the Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035. Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.~~
- ~~B. 28 CFR 35.150(e), as incorporated by this Section, is amended as follows:~~
- ~~1. A public entity shall comply with the obligations of this Section relating to provision of curb ramps or other sloped~~

Notices of Proposed Rulemaking

areas where existing public pedestrian walkways cross curbs at locations serving state and local government offices and facilities, transportation, places of public accommodation, employers, and the residences of individuals with disabilities no later than January 26, 1997, but in any event as expeditiously as possible.

- 2- A public entity shall comply with the obligations of this Section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at areas not subject to subsection (B)(1) no later than January 26, 1997, but in any event as expeditiously as possible.
3- If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a specific schedule for the installation of curb ramps or other sloped areas where pedestrian walkways cross curbs that complies with the requirements of subsections (B)(1) and(2).

R10-3-404. Nondiscrimination on the Basis of Disability by Places of Public Accommodation and in Commercial Facilities

Places of public accommodations and commercial facilities shall comply with the provisions of 28 CFR 36 and accompanying Appendix A (referred to as the "Americans with Disabilities Act Accessibility Guidelines" or "ADAAG"), adopted July 26, 1991, and no further amendments, with the exception of 28 CFR §§ 36.207, 36.209, 36.210 through 36.214, 36.306 through 36.307, 36.501 through 36.506, 36.508, and 36.601 through 36.608, which are adopted, incorporated by reference and 2010 Standards and the provisions of 28 CFR 36.101 through 36.104, 36.201 through 36.206, 36.208, 36.211, 36.301 through 36.311, and 36.507 (2011), and no further amendments, which are adopted and incorporated herein by reference. Copies of the incorporated material are on file with the Office of the Attorney General Civil Rights Division, the Office of the Secretary of State, and the United States Department of Justice Civil Rights Division, P.O. Box 66738, Washington, D.C. 20035. Disability Rights Section - NYA, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION

SUBCHAPTER C. INDIVIDUALS

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1962.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 5, 2011.

[R11-145]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action
R15-2C-503 New Section
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. § 42-1005
Implementing statutes: A.R.S. § 43-1083.02
3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:
Notice of Rulemaking Docket Opening: 17 A.A.R. 1953, September 30, 2011 (in this issue)
4. The agency's contact person who can answer questions about the rulemaking:
Name: Helen Armstrong, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe St., Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6805
Fax: (602) 716-7995

Notices of Proposed Rulemaking

E-mail: harmstrong@azdor.gov
Web site: http://www.azdor.gov/LegalResearch/DraftDocuments.aspx

5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The rules will amend Subchapter C, Article 5 to address issues related to the renewable energy production tax credit. The rules are necessary to administer (1) the application process, (2) certification of the credit cap, and (3) the Credit Authorization List, as required by statute.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

None

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

Not applicable

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

It is expected that the benefits of the new rules will be greater than the costs. Individual taxpayers will benefit by being informed of the approval process and administration of the annual credit cap. Individual taxpayers that apply for the credit are expected to incur minimal costs related to the new rules. These rules only provide guidance in the application of the statute - the statute allows for the credit and limits the amount of the credit. The Department of Revenue, the Governor's Regulatory Review Council, and the Secretary of State's Office will incur costs associated with the rulemaking process.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Helen Armstrong, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe St., Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6805
Fax: (602) 716-7995
E-mail: harmstrong@azdor.gov

10. The time, place, and nature of the proceedings to make, amend, repeal or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: November 8, 2011
Time: 9:00 a.m.
Location: Arizona Department of Revenue
1600 W. Monroe St., Room B1
Phoenix, AZ 85007
Nature: Public hearing on proposed rulemaking

A person may submit written comments regarding the proposed rulemaking action by submitting the comments no later than 5:00 p.m., November 8, 2011, to the person listed in item 4.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

No permit required.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

None

- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

None

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION

SUBCHAPTER C. INDIVIDUALS

ARTICLE 5. CREDITS

Section

R15-2C-503. Renewable Energy Production Tax Credit

ARTICLE 5. CREDITS

R15-2C-503. Renewable Energy Production Tax Credit

- A.** For each year for which an owner of a qualified energy generator plans to claim a renewable energy production tax credit, the owner shall file one of the following applications:
1. An initial application in accordance with subsection (B) for:
 - a. Energy produced in 2011 for which an owner of a qualified energy generator plans to claim a credit on its 2011 tax return filed in 2012; and
 - b. Energy produced after 2011 for which an owner of a qualified energy generator did not have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1083.02.
 2. A renewal application in accordance with subsection (C) for an owner of a qualified energy generator that did have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1083.02.
- B.** An initial application shall include the following information:
1. The information required by A.R.S. § 43-1083.02(F).
 2. The business structure of the applicant.
 3. If the credit will be passed through to shareholders or partners, a list including the name, taxpayer identification number, and ownership percentage of each shareholder or partner. If the tax year end is other than December 31, and the shareholders or partners, or ownership percentages change, the applicant shall update the list for the tax year end by the due date of the applicant's Arizona return, including extensions.
 4. The applicant's tax year end.
 5. The name of the contact person, his or her title, phone number and fax number.
 6. If the applicant has any affiliates or subsidiaries, a list of the affiliates and subsidiaries, including the name, address, taxpayer identification number, and percentage of ownership. The applicant may substitute a federal Form 851, or other federal form with the required information, for this list.
 7. Name or identification number of the qualified energy generator.
 8. Assessor's parcel number(s) of the land on which the qualified energy generator is located or, if not available, the legal description.
 9. The centrally valued property tax identification number for the personal property on the land.
 10. The type of qualified energy resource used to generate electricity. If the qualified energy resource is biomass, the type of biomass.
 11. The generating capacity of the qualified energy generator.
 12. The number of kilowatt-hours of electricity produced for the calendar year.
 13. Printouts for the calendar year from the production meter located at the qualified energy generator that:
 - a. Measures the output from the qualified energy generator, and
 - b. Provides the output information to a grid-tied energy management system.
 14. A signed affidavit in which the applicant states that the information contained in the application is true and correct under penalty of perjury and that the qualified energy generator for which the applicant is claiming the credit did not produce electricity prior to 2011.

- C. A renewal application shall include the information required by subsections (B)(1) through (6) and (12) through (14). In addition, where the information required by subsections (B)(7) through (11) has changed since the prior year's application, the applicant shall provide the new information on the renewal application.
- D. Copies of invoices or receipts from the electricity purchaser verifying kilowatt-hours sold shall be available to the Department upon request.
- E. If an owner owns more than one qualified energy generator, the owner shall submit a separate application for each qualified energy generator.
- F. Each application shall be mailed separately in its own envelope by United States Postal Service Express Mail to: Arizona Department of Revenue, Renewable Energy Production Tax Credit Program, P.O. Box 25248, Phoenix, AZ 85002. Notwithstanding A.R.S. § 1-218(E)(1), the Department will not accept applications through any other delivery method for purposes of this Section and A.R.S. § 43-1083.02.
- G. For each initial application received in accordance with subsections (B) and (F), the Department will assign a priority placement number that reflects the date and time on the Express Mail label, without regard to which time zone mailing took place.
- H. If the Department receives more than one initial application in accordance with subsection (G) that it would assign the same priority placement number based on date and time on the Express Mail label, then the order received shall be determined by a random drawing of affected applications.
- I. If the Department denies an application or approves a smaller amount of credit than the amount requested on the application, the Department's decision is an appealable agency action as defined in A.R.S. § 41-1092(3) and the applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- J. To appeal the Department's decision in subsection (I), the applicant shall file a petition, in accordance with A.A.C. R15-10-105(B) and A.R.S. § 41-1092.03(B), within 30 days of receipt of the Department's decision.
- K. For each Department decision in accordance with subsection (I), the Department shall reserve the portion of the cap that the applicant would have been entitled to if the Department had approved the application in full, up to the generator cap limit, until the applicant waives or exhausts its appeal rights outlined in subsection (J).
- L. For the cap reserved in accordance with subsection (K), once the applicant waives or exhausts its appeal rights in subsection (J), the Department will certify the cap to the next eligible applicant on the Credit Authorization List, until the full cap is certified.
- M. In addition to the definitions provided in A.R.S. § 43-1083.02, unless the context provides otherwise, the following definitions apply to this Section and to A.R.S. § 43-1083.02:
 - 1. "Cap" means the annual tax credit limit of \$20 million in accordance with A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).
 - 2. "Generator cap" means the annual tax credit limit of \$2 million per qualified energy generator in accordance with A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE INCOME AND WITHHOLDING TAX SECTION

SUBCHAPTER D. CORPORATIONS

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1962.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 5, 2011.

[R11-143]

PREAMBLE

- | | |
|--|--------------------------|
| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R15-2D-1002 | New Section |
| <u>2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):</u> | |
| Authorizing statute: A.R.S. § 42-1005 | |
| Implementing statutes: A.R.S. § 43-1164.03 | |

Notices of Proposed Rulemaking

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 17 A.A.R. 1953, September 30, 2011 (*in this issue*)

4. The agency's contact person who can answer questions about the rulemaking:

Name: Helen Armstrong, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe St., Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6805
Fax: (602) 716-7995
E-mail: harmstrong@azdor.gov
Web site: <http://www.azdor.gov/LegalResearch/DraftDocuments.aspx>

5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The rules will amend Subchapter D, Article 10 to address issues related to the renewable energy production tax credit. The rules are necessary to administer (1) the application process, (2) certification of the credit cap, and (3) the Credit Authorization List, as required by statute.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

None

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

Not applicable

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

It is expected that the benefits of the new rules will be greater than the costs. Corporate taxpayers will benefit by being informed of the approval process and administration of the annual credit cap. Corporate taxpayers that apply for the credit are expected to incur minimal costs related to the new rules. These rules only provide guidance in the application of the statute - the statute allows for the credit and limits the amount of the credit. The Department of Revenue, the Governor's Regulatory Review Council, and the Secretary of State's Office will incur costs associated with the rulemaking process.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Helen Armstrong, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe St., Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6805
Fax: (602) 716-7995
E-mail: harmstrong@azdor.gov

10. The time, place, and nature of the proceedings to make, amend, repeal or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: November 8, 2011
Time: 9:00 a.m.
Location: Arizona Department of Revenue
1600 W. Monroe St., Room B1
Phoenix, AZ 85007
Nature: Public hearing on proposed rulemaking

A person may submit written comments regarding the proposed rulemaking action by submitting the comments no later than 5:00 p.m., November 8, 2011, to the person listed in item 4.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

No permit required.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

None

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

None

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 2. DEPARTMENT OF REVENUE
INCOME AND WITHHOLDING TAX SECTION

SUBCHAPTER D. CORPORATIONS

ARTICLE 10. CREDITS

Section

R15-2D-1002. Renewable Energy Production Tax Credit

ARTICLE 10. CREDITS

R15-2D-1002. Renewable Energy Production Tax Credit

A. For each year for which an owner of a qualified energy generator plans to claim a renewable energy production tax credit, the owner shall file one of the following applications:

1. An initial application in accordance with subsection (B) for:

a. Energy produced in 2011 for which an owner of a qualified energy generator plans to claim a credit on its 2011 tax return filed in 2012, and

b. Energy produced after 2011 for which an owner of a qualified energy generator did not have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1164.03.

2. A renewal application in accordance with subsection (C) for an owner of a qualified energy generator that did have a place on the prior year's Credit Authorization List for the renewable energy production tax credit under A.R.S. § 43-1164.03.

B. An initial application shall include the following information:

1. The information required by A.R.S. § 43-1164.03(F).

2. The business structure of the applicant.

3. If the credit will be passed through to shareholders or partners, a list including the name, taxpayer identification number, and ownership percentage of each shareholder or partner. If the tax year end is other than December 31, and the shareholders or partners, or ownership percentages change, the applicant shall update the list for the tax year end by the due date of the applicant's Arizona return, including extensions.

4. The applicant's tax year end.

5. The name of the contact person, his or her title, phone number and fax number.

6. If the applicant has any affiliates or subsidiaries, a list of the affiliates and subsidiaries, including the name, address, taxpayer identification number, and percentage of ownership. The applicant may substitute a federal Form 851, or other federal form with the required information, for this list.

7. Name or identification number of the qualified energy generator.

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8. Assessor's parcel number(s) of the land on which the qualified energy generator is located or, if not available, the legal description.
 9. The centrally valued property tax identification number for the personal property on the land.
 10. The type of qualified energy resource used to generate electricity. If the qualified energy resource is biomass, the type of biomass.
 11. The generating capacity of the qualified energy generator.
 12. The number of kilowatt-hours of electricity produced for the calendar year.
 13. Printouts for the calendar year from the production meter located at the qualified energy generator that:
 - a. Measures the output from the qualified energy generator, and
 - b. Provides the output information to a grid-tied energy management system.
 14. A signed affidavit in which the applicant states that the information contained in the application is true and correct under penalty of perjury and that the qualified energy generator for which the applicant is claiming the credit did not produce electricity prior to 2011.
- C.** A renewal application shall include the information required by subsections (B)(1) through (6) and (12) through (14). In addition, where the information required by subsections (B)(7) through (11) has changed since the prior year's application, the applicant shall provide the new information on the renewal application.
- D.** Copies of invoices or receipts from the electricity purchaser verifying kilowatt-hours sold shall be available to the Department upon request.
- E.** If an owner owns more than one qualified energy generator, the owner shall submit a separate application for each qualified energy generator.
- F.** Each application shall be mailed separately in its own envelope by United States Postal Service Express Mail to: Arizona Department of Revenue, Renewable Energy Production Tax Credit Program, P.O. Box 25248, Phoenix, AZ 85002. Notwithstanding A.R.S. § 1-218(E)(1), the Department will not accept applications through any other delivery method for purposes of this Section and A.R.S. § 43-1164.03.
- G.** For each initial application received in accordance with subsections (B) and (F), the Department will assign a priority placement number that reflects the date and time on the Express Mail label, without regard to which time zone mailing took place.
- H.** If the Department receives more than one initial application in accordance with subsection (G) that it would assign the same priority placement number based on date and time on the Express Mail label, then the order received shall be determined by a random drawing of affected applications.
- I.** If the Department denies an application or approves a smaller amount of credit than the amount requested on the application, the Department's decision is an appealable agency action as defined in A.R.S. § 41-1092(3) and the applicant may appeal the decision in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- J.** To appeal the Department's decision in subsection (I), the applicant shall file a petition, in accordance with A.A.C. R15-10-105(B) and A.R.S. § 41-1092.03(B), within 30 days of receipt of the Department's decision.
- K.** For each Department decision in accordance with subsection (I), the Department shall reserve the portion of the cap that the applicant would have been entitled to if the Department had approved the application in full, up to the generator cap limit, until the applicant waives or exhausts its appeal rights outlined in subsection (J).
- L.** For the cap reserved in accordance with subsection (K), once the applicant waives or exhausts its appeal rights in subsection (J), the Department will certify the cap to the next eligible applicant on the Credit Authorization List, until the full cap is certified.
- M.** In addition to the definitions provided in A.R.S. § 43-1164.03, unless the context provides otherwise, the following definitions apply to this Section and to A.R.S. § 43-1164.03:
1. "Cap" means the annual tax credit limit of \$20 million in accordance with A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).
 2. "Generator cap" means the annual tax credit limit of \$2 million per qualified energy generator in accordance with A.R.S. §§ 43-1164.03(G) and 43-1083.02(G).

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1962.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 23, 2011.

[R11-149]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R18-8-260 | Amend |
| R18-8-270 | Amend |

- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific):**

Authorizing Statutes: Laws 2011, 1st Regular Session, Ch. 220
Implementing Statutes: A.R.S. §§ 49-922 and 49-931

- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:**

Notice of Rulemaking Docket Opening: 17 A.A.R. 1822, September 16, 2011

- 4. The agency's contact persons who can answer questions about the rulemaking:**

Name:	Peggy Guichard-Watters
Address:	Department of Environmental Quality Waste Programs Division 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-4117, or (800) 234-5677, enter 771-4117 (Arizona only)
Fax:	(602) 771-2383
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E-mail:	pgw@azdeq.gov
or	
Name:	Mark Lewandowski
Address:	Department of Environmental Quality Waste Programs Division 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)
Fax:	(602) 771-4246
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- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Summary. This rulemaking is being conducted as required by Laws 2011, 1st regular session, Ch. 220 (hereafter "HB 2705"), which also enacted temporary hazardous waste fees for Fiscal Year (FY) 2012. This rule would increase existing hazardous waste fees to address the direct and indirect costs of the Department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing hazardous waste permits and enforcing the requirements of the regulatory program. The goal is to achieve self sufficiency of the Arizona Department of Environmental Quality's (ADEQ or the

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Department) Hazardous Waste Program and replace General Funds no longer appropriated to the Program. The Department anticipates the new fees from this rule to be effective July 1, 2012.

Background. The Arizona Hazardous Waste Program is required by A.R.S. § 49-922 and consists primarily of a permitting function and an inspection and compliance function. Like other environmental programs, it is based primarily on federal law that “requires” states to adopt and implement federal regulations with a minimum degree of equivalency. As a consequence of Arizona being granted “authorization” to implement the federal regulations in Arizona “in lieu of” the United States Environmental Protection Agency (EPA), ADEQ also receives a regular two-year grant from EPA, known as the RCRA (Resource Conservation and Recovery Act) grant.

Since ADEQ was first granted authorization for the Hazardous Waste Program in 1985, the federal RCRA grant has played a key part in the funding and authorization of the Arizona Hazardous Waste Program. However, the grant was never designed to be the sole source of funding. In 1991, fees from hazardous waste generators, permit processing fees, and fees from civil and criminal penalties were added as revenue sources to the Hazardous Waste Management Fund. Civil and criminal penalties were redirected to the General Fund in 1996. Until recently, there has always been General Fund support for ADEQ’s Hazardous Waste Program.

As a result of the economic downturn in 2007-2008, many states including Arizona began to experience budget shortfalls. Lump sum budget reductions and fund transfers to the General Fund from state agencies, including the ADEQ were undertaken by the legislature. Monies from various ADEQ funds including the Hazardous Waste Management Fund were transferred to the General Fund. In addition, the FY 2011 budget eliminated all of the ADEQ’s General Fund (\$6,247,700) for operations. Special session legislation allowed ADEQ to increase fees through exempt rules for air, water, and waste programs for FY 2011. (Laws 2010, 7th Spec. Sess., Ch. 7, § 5) In 2011, HB 2705 gave ADEQ the authority to continue increased waste program fees for FY 2012. The increased fees in this rule are authorized by HB 2705 and would begin July 1, 2012 for FY 2013.

HB 2705. HB 2705 directed ADEQ to establish fees for two types of hazardous waste entities: hazardous waste generators and facilities that store, treat, or dispose of hazardous waste. The statute directs that the fees are to be set based on hazardous waste generated and disposed, and for the costs of evaluating hazardous waste facility permits. The bill set out a number of further requirements for those fee increases contained in A.R.S. §§ 49-104(B)(17), 49-922, and 49-931. Two principal requirements are: 1) the fees should “be fairly assessed and impose the least burden and cost to the parties subject to the fees”; and 2) the permit fees are to be based on “the direct and indirect costs of the department’s relevant duties” ... “related to issuing licenses” ... “and enforcing the requirements of the applicable regulatory program.” Other requirements also apply and are discussed later.

In the context of this rulemaking, ADEQ has interpreted these two main requirements to mean it should collect an amount necessary to maintain an approvable program and to satisfy the detailed requirements to protect the public and the environment from hazardous wastes that are set out in A.R.S. § 49-922. ADEQ interprets “fairly assessed” to mean that the amount of fees collected from any class of hazardous waste entities should be proportional to the “direct and indirect costs” that can be attributed to that class.

Informal Comment. In 2011, ADEQ promoted extensive informal comment on funding for the Hazardous Waste Program and hosted four public meetings. An e-mail ‘listserv’ was created with hazardous waste related entities and each meeting announced to the listserv and posted on ADEQ’s web site. The meetings were held in Phoenix and ADEQ provided a call-in mechanism to allow participation by phone. Attendance averaged 50-75 people per meeting. Meetings on January 24 and January 31 concentrated on concepts and the design of legislation. The meetings on June 30 and July 28 reviewed draft rule language and responded to comments from the public. Oral comments were recorded at the meetings, and written comments were accepted after each meeting. The hazardous waste listserv currently contains over 450 e-mail addresses for the hazardous waste rule.

Explanation of Proposed Fees

The proposed rules would increase fees in the Hazardous Waste Programs for hazardous waste generation, disposal and permits. The first set of fees to be increased in the proposed rule is the per ton hazardous waste generation fee and the per ton hazardous waste disposal fee at A.R.S. § 49-931. Disposal fees apply only to hazardous waste disposed in Arizona. HB 2705 removed the fees previously established by that statute and authorized ADEQ to establish the fees by rule. The table below shows how the proposed fee amounts compare to previous fee amounts.

Table 1. Hazardous Waste Generation and Disposal Fees

Type of Hazardous Waste “Facility”	FY 2010 and before	FY 2011 and FY 2012	Proposed fee beginning FY 2013	Maximum fee per generator per site beginning FY 2013
A.R.S. § 49-931(A)(1)	\$10/ton	\$70.00/ton	\$67.50/ton	\$200,000
A.R.S. § 49-931(A)(2)	\$40/ton	\$280/ton	\$270/ton	\$5,000,000
A.R.S. § 49-931(A)(3)	\$4/ton	\$28/ton	\$27/ton	\$160,000

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The second set of fees that would be increased are the fees for processing hazardous waste permits, most of which are currently in rule at R18-8-270. The tables below show how the proposed application fees, maximum fees, and hourly rate compare to the current amounts.

**Table 2. Hazardous Waste Permits
Current and Proposed Application and Maximum Fees For Various License Types**

License Type	Application Fee Current/Proposed	Max Fee Current/Proposed
Permit for: Container Storage / Container Treatment	\$10,000/\$20,000	NA/\$250,000
Permit for: Tank Storage / Tank Treatment	\$10,000/\$20,000	NA/\$300,000
Permit for: Surface Impoundment	\$10,000/\$20,000	NA/\$400,000
Permit for: Incinerator / Boiler and Industrial Furnace (BIF) / Landfill / Miscellaneous Unit	\$10,000/\$20,000	NA/\$500,000
Permit for: Waste Pile / Land Treatment / Drip Pad / Containment Building / Research, Development, and Demonstration	\$10,000/\$20,000	NA/\$300,000
Corrective Action Permit / Remedial Action Plan (RAP) Approval	\$10,000/\$20,000	NA/\$300,000
Post-Closure Permit	\$10,000/\$20,000	NA/\$400,000
Closure of Container / Tank / Drip Pad / Containment Building	\$2,500/\$5,000 / unit	NA/\$100,000
Closure of Miscellaneous Unit / Incinerator / BIF / Surface Impoundment / Waste Pile / Land Treatment Unit / Landfill	\$2,500/\$5,000 / unit	NA/\$300,000
Class 1 Modification (requiring Director Approval)	\$1,000/\$1,000	NA/\$50,000
Class 2 Modification	\$2,500/\$5,000	NA/\$250,000
Class 3 Modification (for Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$10,000/\$20,000	NA/\$400,000
Class 3 Modification (except for Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$10,000/\$10,000	NA/\$250,000

Table 3. Hazardous Waste Hourly Rate

Hazardous Waste permits	April 2006 to July 2010	FY 2011 and FY 2012	Proposed beginning FY 2013
Hourly rate	\$95.29	\$95.29	\$136.00

Application fee increases are a result of an increase in the hourly rate. ADEQ needs to obtain sufficient monies up front so that payments do not get too far behind services provided. The maximum fees for hazardous waste permit actions are new and are required by HB 2705. Maximum fees are set to provide predictability to permit applicants while also allowing ADEQ to be reasonably certain that it meets Licensing Time-frames and not expend more resources processing a permit than for which it can be reimbursed. ADEQ is proposing to increase the hourly rate it uses for permit review from \$95.29 to \$136, or approximately 43%.

Explanation of hourly rate.

ADEQ estimated the hourly rate of \$136 per hour for hazardous waste permitting staff (project management and technical review) based on the permitting work of a full-time employee (FTE) and made 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 315 hours.
 - hours lost due to employee turnover – assuming a rate of 10 percent - 208 hours.

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- TOTAL NON-PROGRAM HOURS estimated at 843 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 hours of specific applications (i.e. non-billable). Some of the Program Hours are therefore not billable.
 - TOTAL PROGRAM HOURS = 2080 - 843 = 1237 hours/year.
 - NON-BILLABLE PROGRAM HOURS includes, among other duties, customer service time, inter-division and inter-agency coordination, permit administration, and program development (rules and policies). This is estimated at 403 hours annually.
 - BILLABLE PROGRAM HOURS = 1237 - 425 = 834 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 568 hours/year (67.4 percent of total Non-Program Hours).
 - Program staff includes Project Managers, Engineers, and Hydrologists at an average hourly rate of \$27.40.

Cost = (834 + 568 hours) X \$27.40/hour X 1.42 = \$54,549

- Management/ Supervisory hours in support of the program staff work are included in costs, and are estimated at 300 hours/year. This includes unit and section managers at an average hourly rate of \$33.96.

Cost = (300 hours) X \$33.96/hour X 1.42 = \$14,467

- 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 \$15.73.

Cost = (200 hours) X \$15.73/hour X 1.42 = \$4,467

- Subtotal of personnel services and ERE for the project manager, management staff, and administrative support staff (\$54,549 + \$14,467 + \$4,467 = \$73,483).
- Add Indirect expenses (49.53 percent of personal services and ERE by federal formula) for rent, utilities, etc., estimated at \$36,396 (\$73,483 X 0.4953 = \$36,396).
- Add Other Expenses such as per diem travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at \$3,500.
- Total Costs Related to Permit Process for one FTE= \$113,379 (\$73,483 + \$36,396 + \$3,500 = \$113,379).

Hourly Rate

Dividing the total costs of an FTE (\$113,379) by Billable Program Hours (834) yields the hourly rate for permit processing of \$136/hour ($\$113,379 \div 834 \text{ billable program hours} = \$136/\text{hour}$).

- The remaining 678 hours of an FTE's work year are not directly billable to permit processing (e.g., non-billable program hours and balance of the non-program hours (403 + 32.6 percent X 843 = 678)) and must be supported through the RCRA grant and annual generator fees.

The rate of \$136 per hour is comparable to private sector rates and 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 average private sector consultant rate for similar work activities charged in ADEQ's hazardous waste permit program typically ranges from \$135 to \$145 per hour. Using this same hourly rate calculation methodology, the Air Quality Division currently charges \$141.50 per hour, and the Water Quality Division currently charges \$122 per hour. The Arizona Department of Water Resources, using the same hourly rate calculation methodology, currently charges \$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.

Billing Details. During the informal public participation process, stakeholders asked ADEQ for a rule requirement to put more detail on the periodic and final bills they get from ADEQ. ADEQ has added this requirement at R18-8-270(G)(5). Although ADEQ's proposal to provide a detailed hours breakdown on every bill [See R18-8-270(G)(5)(b)] is currently not practicable due to the lack of an automated software system, ADEQ is developing an automated tracking system to facilitate this and believes the system will be in place at the time this rule is effective or soon thereafter.

Hazardous Waste Generation Fees: Maximums. ADEQ is proposing to increase hazardous waste generation fees from the amounts they were before FY 2011. As can be seen from Table 1, the proposed new permanent rates would be slightly lower than they have been for the past two fiscal years.

The previous hazardous waste generation fees were set in statute at A.R.S. § 49-931, but the statute did not establish maximum fees. ADEQ has proposed maximum fees for hazardous waste generators in units of dollars per generator site per year because it believes that generators with multiple sites are able to treat each of their sites as separate fiscal units. This provides predictability on a per site basis. The maximum fees are set to provide assurance to ADEQ that it will continue to collect about the same revenues if generation rates remain approximately the same, while providing certainty to generators that changes in operations or regulations will not drive their fees over a specified amount.

ADEQ analyzed different combinations of per ton fees and generator site maximums using various factors including proportionality and impacts on small businesses. Since federal regulations have definitions for large quantity generator (LQG) and small quantity generator (SQG), these categories allow assessment of both the proportionality and the small business impact of various hazardous waste generation fee and cap combinations.

Although other criteria can apply, under federal regulations, an entity that generates more than 2,200 pounds of hazardous waste in any month is an LQG, while one that generates more than 220 pounds but less than 2,200 pounds in any month is normally a SQG. When these categories are matched against ADEQ's database of generators, the per ton fee and fee caps in the proposed rule, will result in a large percent (approximately 85%) of the hazardous waste generation fees paid by LQGs of hazardous waste and a small percent (approximately 15%) paid by SQGs. ADEQ estimates that in 2009-2010 it expended approximately 60% of its hazardous waste resources on LQGs and approximately 40% on SQGs. These figures are subject to change based on ADEQ compliance initiatives, RCRA grant workplan requirements and EPA inspection and compliance initiatives that are established on a year to year basis. The preponderance of ADEQ resources expended on LQGs is partially accounted for by the fact that there are more requirements that apply to LQGs. Not only do inspections of LQGs take more time, but ADEQ also inspects LQGs more frequently.

Finally, ADEQ seeks to minimize the impact of these fees on small businesses. ADEQ believes that SQGs are more likely to be small businesses than LQGs. (The most hazardous waste an SQG can generate in a year is about 12 tons.) ADEQ believes that under this fee and fee cap arrangement, it has both fairly assessed the fees and minimized the impact on small business.

Under A.R.S. § 49-104(B)(17)(b), (c), and (d), ADEQ must also consider the availability of other funds, the impact of the fees on the parties subject to the fees, and the fees charged for similar duties performed by the Department, other agencies, and the private sector.

ADEQ has already discussed the availability, regular use, and conditions required for using the federal RCRA grant and ADEQ is using the grant to the maximum extent. It was noted earlier that civil and criminal penalties that result from hazardous waste enforcement go to the General Fund and no longer to the Hazardous Waste Management Fund, so that these funds are not available to mitigate the proposed fee increases. The same is true of hazardous waste fuel penalties under A.R.S. § 49-932. Finally, under A.R.S. § 49-929, all hazardous waste entities pay small registration fees into the Water Quality Assurance Revolving Fund (WQARF) established under A.R.S. § 49-282, but the WQARF statute does not allow funds to be used for either hazardous waste permitting or inspections.

As discussed earlier, ADEQ has considered the impact of the fees on the parties subject to the fees through its collection of the least amount of fees necessary to sustain an approvable program, and a fair, proportional assessment of those fees.

In considering the fees charged for similar duties performed by the Department, other agencies, and the private sector, ADEQ notes that it has already compared hourly rates for the most similar duties. Many agencies are not required to recover their full processing costs with fees, and in that case, it is more difficult to make a direct comparison. For example in Nevada, the hourly rate for hazardous waste permit processing is \$50 per hour, (NAC 444.8446) but the purpose of Nevada's fee is merely to "offset the cost to process and review the application." (emphasis added) In Arizona, the hourly rate has to cover both the direct and indirect costs. In addition, Nevada charges a significant annual operating fee as well as miscellaneous "[a]dditional fees to offset cost of inspection and other regulation." Similar scenarios exist for hazardous waste generation fees, where states charge lower fees but where the fees are not designed to sustain so much of program costs.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

None

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

Not applicable

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

Identification of the proposed rulemaking: 18 A.A.C. 8, Article 2, amending R18-8-260 and R18-8-270. (For further information, see Part 5 of this preamble.) These rules are not designed to change the conduct of any regulated hazardous waste entities. The rules are designed to collect increased fees for some hazardous waste entities. The per ton fees

for generation of hazardous waste are increased in R18-8-260. Maximum fees are set and the application fees and hourly rate are increased for processing hazardous waste permits in R18-8-270.

Program Description

Under A.R.S. § 49-922 and federal law, Arizona's Hazardous Waste Program is responsible for ensuring that all regulated hazardous waste in Arizona is stored, transported, and disposed of properly, and is largely a preventative program to keep hazardous waste from entering the environment. The program maintains an inventory of hazardous waste generators, transporters and treatment, storage, and disposal (TSD) facilities in Arizona. Permits are issued, managed, and maintained for TSD facilities; this activity includes permit modifications, renewal, closure plan, and financial assurance reviews. Generators, transporters and TSD facilities are periodically inspected. Hazardous waste complaints are investigated. Compliance data is collected and stored. Hazardous waste is tracked from generation to disposal. Compliance assistance is provided, enforcement actions are pursued against significant violators, and oversight is provided for the remediation of contaminated sites.

Regulatory Universe. ADEQ's Hazardous Waste Program regulates a universe of over 1500 facilities, including metal platers, chemical manufacturers, laboratories, explosive and munition manufacturers, pesticide manufacturers, hazardous waste TSDs, and military installations. There are currently 13 permitted TSD facilities, 181 to 265 large quantity generators, 901 to 1,513 small quantity generators, and 217 to 340 transporters. An EPA listing of Arizona's 50 largest hazardous waste generators and other related information can be found at <http://www.epa.gov/osw/infore-sources/data/br09/state09.pdf>.

Proposed Hazardous Waste Staff. Due to the elimination of the General Fund appropriation, the transfer of funds from the Hazardous Waste Management Fund to the General Fund and other budget reductions, the Hazardous Waste Program experienced a reduction in staffing levels over the past few years. Some positions were eliminated entirely and others have not been filled following staff lay-offs or voluntary departures. In FY 2008, the Hazardous Waste Program had five permit writers and 11 inspections and compliance officers. The minimum staffing needed to operate the Hazardous Waste Program consists of seven inspectors and 2.8 permit writers. An additional 13 full-time-equivalent positions (FTEs) consisting of support staff include a full-time RCRA attorney from the Attorney General's Office, a hydrologist, pollution prevention staff, records management staff, budget, database and clerical staff, and management. ADEQ believes these staffing levels represent the minimum necessary to process the existing and future 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.

Budget. The budget necessary to operate the Hazardous Waste Program with the proposed staffing is approximately \$3.1 million. In FY 2010, hazardous waste permitting and generation fees only generated approximately \$357,000. In addition, the portion of a federal grant known as the RCRA grant that was allocated for FY 2010 was \$1.4 million. This proposed rule is designed to address the additional \$1.4 million revenue shortfall.

Implemented Efficiencies

The Hazardous Waste Program has changed its operation in recent years to accomplish required work with fewer resources. Permitting program efficiencies include: using contractors for permit application reviews when necessary for technical support or schedule concerns; working to improve web site resources to provide better information to the regulated community; utilizing EPA resources to review new permits; and utilizing EPA resources to review some financial assurance mechanisms.

Compliance program efficiencies include: using boilerplate language for inspection reports and enforcement documents to increase overall productivity, efficiency and timeliness for completing inspection related documents; scheduling field work to reduce travel dollars and increase productivity; taking advantage of no-cost training opportunities from outside entities, and cross-training within ADEQ; developing standardized presentations for the general public and for in-house training; using new data search tools to increase proficiency for understanding regulations and searching for EPA and ADEQ regulatory guidance documents; working to improve web site resources to provide better information and increase outreach efforts.

Resource Reduction Impacts

Failure to adequately staff and fund the program may cause the loss of the EPA-delegated program and approximately \$1.4 million in state matched federal dollars. If the program reverts back to EPA, Arizona will lose control over enforcement and permitting decisions. If the program continues to receive federal dollars, but is not adequately funded by the state, efforts will be focused on the EPA grant required performance measures. Continuation of some services, such as outreach, technical assistance, timely complaint response, and inspections of small quantity generators, conditionally exempt small quantity generators, and transporters will cease.

Least burden and cost. A.R.S. § 41-1052(D)(3) requires ADEQ to demonstrate it has selected the alternative with the least burden and cost necessary to achieve the underlying regulatory objective. A nearly identical issue was discussed in part 5 of the preamble with regard to A.R.S. § 49-104(B)(17), which requires that the fees should "be fairly assessed and impose the least burden and cost to the parties subject to the fees"; and that the fees are to be based on "the direct and indirect costs of the department's relevant duties" ... "related to issuing licenses" ... "and enforcing the requirements of the applicable regulatory program."

In the context of this hazardous waste rule, ADEQ has interpreted these two main requirements to mean collecting an amount necessary to maintain an approvable program and satisfy the detailed requirements to protect the environment from hazardous wastes that are specified in A.R.S. § 49-922. ADEQ considers “fairly assessed” to mean that the amount of fees collected from any class of hazardous waste entities should be proportional to the “direct and indirect costs” that can be attributed to that class.

Discussion and Demonstration: The Regulatory Objective

A.R.S. § 49-922 requires that ADEQ establish and implement a hazardous waste management program “equivalent to and consistent with” the federal hazardous waste program. EPA likewise requires states to adopt a program at least as stringent as the federal program in order to be authorized to implement the federal program in lieu of EPA. As a result of being authorized, ADEQ receives RCRA grant funding from EPA to partially offset the cost of running the program. Through the grant and delegation process, EPA maintains close scrutiny of the Arizona program and requires it to achieve certain benchmarks.

Based on stakeholder comments, most in the regulated community agree that ADEQ should implement the federal program rather than EPA, and that ADEQ should continue to meet the criteria and benchmarks for program authorization in order to implement the program and receive the federal RCRA grant. The grant provides approximately \$1.4 million to ADEQ per year and must be spent according to grant priorities. Fifty percent of the overall grant must be spent for enforcement, 35% for permitting and corrective action, and 15% for pollution prevention, while \$200,000 is earmarked specifically for program activities at the Mexico border. In addition, Arizona must match the RCRA grant with 25% additional state funds (approximately \$375,000). In FY 2010, hazardous waste permit and generation fees totaled only \$357,000. Those fees require an additional \$1.4 million in order to replace the General Funds and other funding removed in FY 2010 and make the program more self-sufficient.

Cost/Benefit. The probable costs for this rule are the \$1.4 million in estimated increased fees proposed for the program described above. This amount would replace the General Funds and other sources that partially funded the Hazardous Waste Program in the past without cost to the regulated community.

The probable benefits are:

- *Ability of Arizona to implement the federal hazardous waste program.* EPA currently does not have the staff to perform hazardous waste inspections and permitting activities in Arizona; therefore, there could be a significant period of time during which there would be no hazardous waste oversight in Arizona, including responding to citizens’ complaints regarding hazardous waste issues. In terms of permitting activities, ADEQ is held to specific licensing time-frames to issue hazardous waste permits in a timely manner; EPA would not be bound by Arizona’s rules on licensing time-frames. EPA administration of the hazardous waste program would most certainly result in a delay of statutorily mandated permit processing, causing Arizona businesses to delay start-up, expansion or modification.
- *Local control over enforcement and permitting decisions:* Hazardous waste enforcement and permitting are inexact processes. ADEQ engages heavily with the regulated community during these processes. Arizona businesses could suffer from the inability to engage with the regulators in a timely manner at a convenient location since they would have to engage with EPA staff in San Francisco. Furthermore, the regulated community could no longer take advantage of ADEQ’s efforts to educate regulated entities about enforcement policies. ADEQ developed the Compliance and Enforcement Handbook, which is available to the public, with the purpose of promoting appropriate, consistent, and timely enforcement of Arizona’s environmental statutes and rules in a manner that is transparent to all who are affected, including the regulated community. EPA does not have a similar guidance document that is tailored to the needs of Arizona businesses.
- *Control over other hazardous waste activities:* RCRA has numerous reporting requirements for generators of hazardous waste. Because Arizona has the authority to implement the hazardous waste program, the business community in Arizona submits documentation to and requests required information (e.g., EPA identification numbers) from ADEQ. Absent an Arizona-specific hazardous waste program, Arizona businesses will be forced to submit reports to and request needed information from EPA in San Francisco. ADEQ receives hundreds of calls each month from Arizona businesses handling hazardous waste, requesting compliance assistance. This service to Arizona businesses would no longer be available.
- *Arizona businesses will be subject to Arizona’s Penalty Authority rather than EPA’s Administrative Penalty Authority:* ADEQ must file a civil complaint in order to seek penalties for violations of the Arizona Hazardous Waste Management Act. Section 3008(a) of RCRA, 42 U.S.C. 6928(a), gives the Administrator of EPA the authority to issue an order assessing a civil penalty. EPA’s administrative penalty authority places the burden on the responsible party to contest EPA’s alleged violations.
- *Rulemaking oversight:* A.R.S. § 49-922 requires the Director to adopt rules to establish a hazardous waste program. Hazardous waste rules adopted by ADEQ currently go through the Governor’s Regulatory Review Council and stakeholder review processes. When EPA adopts a new regulation, Arizona currently has the authority to review the regulation and decide whether to propose it for adoption. If the Hazardous Waste Program is reverted

Notices of Proposed Rulemaking

to EPA, Arizona would lose the ability to decide whether to adopt federal regulations; future EPA regulations would become effective in Arizona at the same time they became effective nationwide.

- *Compliance assistance outreach to regulated community:* Throughout the year, ADEQ staff participates in numerous conferences and training seminars with the goal of educating the regulated community about ADEQ hazardous waste requirements and policies. It is unlikely that EPA would schedule trips to Arizona for staff to participate in short-term outreach events.

In addition to these benefits, there is a general benefit to the state budget due to the Hazardous Waste Program moving toward a fee-based revenue system without the need for General Fund support. At the same time, the proposed rule is fair and equitable, in that more of the costs of the Hazardous Waste Program would be borne by those who need it.

ADEQ believes that the benefits exceed the cost.

Rules More Stringent than Corresponding Federal Law. [A.R.S. § 41-1052(D)(9)] There is no corresponding federal law that deals with hazardous waste fees.

Probable Impact on Small Businesses. [A.R.S. § 41-1055(B)(5)]

ADEQ has looked at its database of hazardous waste generators and permittees and tried to determine which ones are likely to be small businesses. An example would be dry cleaners. Dry cleaners are often independently owned and operated and not likely to exceed the revenue and employee limits in the statutory definition of small business. Most dry cleaners are also SQGs, so that the impact of the increased generation fees will be based on generation of 12 tons or less. It is likely that most small businesses that generate hazardous waste will be small quantity generators and that the proposed increased generation fees will have limited to moderate impact on them.

9. The agency's contact persons who can answer questions about the economic, small business and consumer impact statement:

Name: Peggy Guichard-Watters
Address: Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-4117, or (800) 234-5677, enter 771-4117 (Arizona only)
Fax: (602) 771-2383
TTD: (602) 771-4829
E-mail: pgw@azdeq.gov

or

Name: Mark Lewandowski
Address: Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)
Fax: (602) 771-4246
TTD: (602) 771-4829
E-mail: lewandowski.mark@azdeq.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: November 2, 2011
Time: 3:00 p.m.
Location: Department of Environmental Quality
1110 W. Washington St., Suite 250
Phoenix, AZ 85007
Nature: Public hearing on the proposed rules, with opportunity for formal comments on the record. Please call (602) 771-4795 for special accommodations pursuant to the Americans with Disabilities Act.

Notices of Proposed Rulemaking

The close of the written comment period will be 5:00 p.m., November 4, 2011. Submit comments to the individuals identified in item 4.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

These rules do not require permits. This rulemaking is for the purpose of setting fees for the Hazardous Waste Program only. The rules do not establish or amend program permits, except as they pertain to fees.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

These rules are not more stringent than corresponding federal laws. There is no corresponding federal law that deals with hazardous waste fees.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No person has submitted a competitiveness analysis under A.R.S. § 41-1055(G).

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT**

ARTICLE 2. HAZARDOUS WASTES

Section

R18-8-260. Hazardous Waste Management System: General

R18-8-270. Hazardous Waste Permit Program

ARTICLE 2. HAZARDOUS WASTES

R18-8-260. Hazardous Waste Management System: General

- A. No change
- B. No change
- C. No change
- D. No change
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- G. No change
- H. No change
- I. No change
- J. No change
- K. No change
- L. No change
- M. As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and submit the appropriate registration fee, prescribed below, with their registration:
 - 1. A hazardous waste transporter that picks up or delivers hazardous waste in Arizona shall pay \$200 by March 1 of the year following the date of the pick-up or delivery;
 - 2. A large-quantity generator that generated 1,000 kilograms or more of hazardous waste in any month of the previous calendar year shall pay \$300; or
 - 3. A small-quantity generator that generated 100 kilograms or more but less than 1,000 kilograms of hazardous waste in any month of the previous year shall pay \$100.
- N. A person shall pay hazardous waste generation and disposal fees as required under A.R.S. § 49-931. The DEQ shall send an invoice to large-quantity generators quarterly and small-quantity generators annually. The person shall pay an invoice within 30 days of the postmark on the invoice. The following hazardous waste fees shall apply:
 - 1. A person who generates hazardous waste that is shipped off site shall pay \$67.50 per ton but not more than \$200,000.00 per generator site per year of hazardous waste generated;
 - 2. An owner or operator of a facility that disposes of hazardous waste shall pay \$270 per ton but not more than \$5,000,000.00 per disposal site per year of hazardous waste disposed; and
 - 3. A person who generates hazardous waste that is retained onsite for disposal or that is shipped off site for disposal to a facility that is owned and operated by that generator shall pay \$27.00 per ton but not more than \$160,000.00 per generator site per year of hazardous waste disposed.

R18-8-270. Hazardous Waste Permit Program

- A. No change
- B. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - 2. No change
 - a. No change
 - b. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. § 270.10, titled "General application requirements," is amended by adding the following:
 - 1. When submitting an application for any of the following applications license types in the Table below, an applicant shall remit to the DEQ ~~a permit~~ an application fee of \$10,000 as shown in the Table.

Notices of Proposed Rulemaking

**Table - Hazardous Waste Permitting
Application and Maximum Fees For Various License Types**

<u>License Type</u>	<u>Application Fee</u>	<u>Max Fee</u>
<u>Permit for: Container Storage / Container Treatment</u>	<u>\$20,000</u>	<u>\$250,000</u>
<u>Permit for: Tank Storage / Tank Treatment</u>	<u>\$20,000</u>	<u>\$300,000</u>
<u>Permit for: Surface Impoundment</u>	<u>\$20,000</u>	<u>\$400,000</u>
<u>Permit for: Incinerator / Boiler and Industrial Furnace (BIF) / Landfill / Miscellaneous Unit</u>	<u>\$20,000</u>	<u>\$500,000</u>
<u>Permit for: Waste Pile / Land Treatment / Drip Pad / Containment Building / Research, Development, and Demonstration</u>	<u>\$20,000</u>	<u>\$300,000</u>
<u>Corrective Action Permit / Remedial Action Plan (RAP) Approval</u>	<u>\$20,000</u>	<u>\$300,000</u>
<u>Post-Closure Permit</u>	<u>\$20,000</u>	<u>\$400,000</u>
<u>Closure of Container / Tank / Drip Pad / Containment Building</u>	<u>\$5,000 / unit</u>	<u>\$100,000</u>
<u>Closure of Miscellaneous Unit / Incinerator / BIF / Surface Impoundment / Waste Pile / Land Treatment Unit / Landfill</u>	<u>\$5,000 / unit</u>	<u>\$300,000</u>
<u>Class 1 Modification (requiring Director Approval)</u>	<u>\$1,000</u>	<u>\$50,000</u>
<u>Class 2 Modification</u>	<u>\$5,000</u>	<u>\$250,000</u>
<u>Class 3 Modification (for a permit with an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)</u>	<u>\$20,000</u>	<u>\$400,000</u>
<u>Class 3 Modification (for a permit without an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)</u>	<u>\$10,000</u>	<u>\$250,000</u>

- a- Initial Part B application submitted pursuant to §§ 270.10 and 270.51(a)(1) (as incorporated by R18-8-270);
 - b- Part B permit renewal application submitted pursuant to § 270.10(h) (as incorporated by R18-8-270);
 - e- Application for a Class 3 Modification according to §§ 270.42 (as incorporated by R18-8-270); and
 - d- Application for a research, development, and demonstration permit.
2. If the reasonable total cost of processing the application identified in subsection (G)(1) the Table is less than \$10,000 the application fee listed in the Table, the DEQ shall refund the difference between the reasonable total cost and \$10,000 the amount listed in the Table to the applicant.
- a. Permits and permit actions other than post-closure. If the reasonable total cost of processing the application is greater than \$10,000 the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit approval, and the applicant shall pay the difference in full before the DEQ issues the permit.
 - b. Post-closure permits. If the reasonable total cost of processing the application is greater than \$10,000 the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit issuance. The applicant shall pay the difference in full within 45 days of the date of the bill.
 - c. Withdrawals. In the event of a valid withdrawal of the permit application by the applicant, if the total costs of processing the application are less than the amount paid, the DEQ shall refund the difference. If the total costs are greater than the amount paid, the DEQ shall bill the applicant for the difference, and the applicant shall pay the difference within 45 days of the date of the bill.
- 3- When submitting an application for any one of the permit-related activities described in this subsection, the applicant shall remit to the DEQ \$2,500. If the reasonable cost of processing the application is greater than \$2,500, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application. A refund shall be paid by the DEQ if the reasonable cost is less than the \$2,500 fee, either within 45 days of a valid withdrawal of the permit application or upon permit issuance. This subsection applies to all the following:
- a- An application for a modification of a Part B permit pursuant to § 270.41 (as incorporated by R18-8-270);
 - b- An application for a Class 2 modification of a permit submitted after permit issuance, according to § 270.42 (as incorporated by R18-8-270);
 - e- An application for approval of a final closure plan that is not submitted as part of a Part B application, including the review and approval of the closure report; and
 - d- An application for a remedial action plan (RAP) submitted pursuant to 40 CFR 270, Subpart H (as incorporated

- by R18-8-270).
- 4-3. With an application for a ~~partial~~ closure plan for a facility, the applicant shall remit to the DEQ a ~~an application~~ fee of ~~\$2,500~~ \$5,000 for each hazardous waste management unit involved in the ~~partial~~ closure plan or ~~\$10,000~~ \$20,000, whichever is less. If the ~~reasonable total~~ cost of processing the application, including review and approval of the closure report, is more than the ~~initial application~~ fee paid, the applicant shall be billed for the difference, and the difference shall be paid in full ~~at the time after~~ DEQ completes review and approval of the closure report ~~associated with the permit within 30 days of notification by the Director~~. If the reasonable cost is less than the fee paid by the applicant, DEQ shall refund the difference within ~~45~~ 30 days of the closure report review and approval ~~associated with the permit~~. The maximum fee for a closure plan is shown in the Table.
- 5-4. The fee for a land treatment demonstration permit issued under § 270.63 (as incorporated by R18-8-270) for hazardous waste applies toward the ~~\$10,000~~ \$20,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration (as incorporated by R18-8-270).
6. An applicant shall remit to the DEQ a permit application fee of \$1,000 for any one of the following:
- a. An application for a transfer of a Part B permit to a different owner or operator pursuant to § 270.40 (as incorporated by R18-8-270), or
 - b. An application for a Class 1 permit modification according to § 270.42 (as incorporated by R18-8-270) that is required as a consequence of mitigating hazardous waste compliance violations. If the reasonable cost of processing the transfer application or modification is greater than \$1,000, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application.
- 7-5. The DEQ shall provide the applicant itemized ~~billings~~ bills at least semiannually for individual costs of the DEQ employees involved in the processing of applications and all other costs to the DEQ pursuant to the following factors ~~when determining the reasonable cost under R18-8-270(G): the expenses associated with evaluating the application and approving or denying the permit action~~. The following information shall be included in each bill:
- a. The dates of the billing period;
 - b. The date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
 - i. Each review task performed;
 - ii. The facility and operational unit involved;
 - iii. The hourly rate;
 - c. A description and amount of review-related costs as described in subsection (G)(6)(b); and
 - d. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.
6. Fees shall consist of processing charges and review-related costs as follows:
- a. Processing charges. The DEQ shall calculate the processing charges using a rate of \$136 per hour, multiplied by the number of review hours used to evaluate and approve or deny the permit action.
 - b. Review-related costs means any of the following costs applicable to a specific application:
 - a- ~~Hourly salary and personnel benefit costs;~~
 - b-i. ~~Per diem expenses;~~
 - e-ii. ~~Transportation costs;~~
 - d-iii. ~~Reproduction costs;~~
 - e-iv. ~~Laboratory analysis charges performed during the review of the permit action;~~
 - f-v. ~~Public notice advertising and mailing costs;~~
 - g-vi. ~~Presiding officer expenses for public hearings on a permitting decision;~~
 - h-vii. ~~Court reporter expenses for public hearings on a permitting decision;~~
 - i-viii. ~~Facility rentals for public hearings on a permitting decision;~~
 - j-ix. ~~Other reasonable, direct, permit-related and necessary review-related expenses documented in writing by the DEQ and agreed to by the applicant.~~
 - c. Total itemized billings for an application shall not exceed the maximum amounts listed in the Table in this Section.
- 8-7. Any person who receives a final bill from the DEQ for the processing and issuance or denial of a permit action under this Article may request an informal review of all billing items and may pay the bill under protest. If the bill is paid under protest, the DEQ shall issue the permit action if it would be otherwise issuable after normal payment. Such a request shall specify each area of dispute, and it shall be made in writing, within 30 days of the date of receipt of the final bill, to the division director of the DEQ for the Office of Waste Programs. The final bill shall be sent by certified mail, return receipt requested. The informal review shall take place within 30 days of the DEQ's receipt of the request unless agreed otherwise by the DEQ and the applicant. ~~Notice of the time and place of informal review shall be mailed to the requester at least 10 working days prior to the informal review.~~ The division director of the DEQ shall review whether or not the amounts of time billed are correct and reasonable for the tasks involved. Disposition of the

Notices of Proposed Rulemaking

informal review shall be mailed to the requester within 10 working days after the informal review.

9-8. The DEQ's division director's decision after the informal review shall become final within 30 days after receipt of the decision, unless the applicant requests in writing a hearing pursuant to R18-1-202.

9. For the purposes of subsection (G), "review hours" means the hours or portions of hours that the DEQ's staff spends on a permit or permit action. 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.

- H. No change
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NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1962.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 23, 2011.

[R11-148]

PREAMBLE

Table with 2 columns: Article, Part, or Section Affected (as applicable) and Rulemaking Action. Lists various rule numbers and their corresponding actions like New Article, Amend, Repeal, etc.

2. Citations to the agency's statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific):

Authorizing Statutes: Laws 2011, 1st Regular Session, Ch. 220

Implementing Statutes: A.R.S. §§ 44-1303, 44-1304.01, 49-104(B)(14), 49-706(B), 49-747(C), 49-761(D), 49-762.03(F), 49-762.05(H), and 49-855(C)

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:

Notice of Rulemaking Docket Opening: 17 A.A.R. 1822, September 16, 2011

4. The agency's contact persons who can answer questions about the rulemaking:

Name: Peggy Guichard-Watters

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

Telephone: (602) 771-4117, or (800) 234-5677, enter 771-4117 (Arizona only)

Fax: (602) 771-2383

TTD: (602) 771-4829

E-mail: pgw@azdeq.gov

or

Name: Mark Lewandowski

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

Telephone: (602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)

Fax: (602) 771-4246

TTD: (602) 771-4829

E-mail: lewandowski.mark@azdeq.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Summary. This rulemaking is being conducted as required by Laws 2011, 1st regular session, Ch. 220 (hereafter "HB 2705"), which also enacted temporary solid waste fees for Fiscal Year (FY) 2012. These rules would increase existing solid waste fees and establish new ones to address the direct and indirect costs of the Department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing solid waste management licenses and permits and enforcing the requirements of the applicable regulatory program. The goal is to achieve self sufficiency of the Arizona Department of Environmental Quality's (ADEQ or the Department) Solid Waste Program and replace General Funds no longer appropriated to the Program. The Department anticipates the new fees from this rule to be effective July 1, 2012.

Background. The Arizona solid waste regulatory program is primarily located at 18 A.A.C. 13 and is authorized by A.R.S. Title 49, Chapter 4. It consists of a permitting function, an inspection and compliance function, and a number of registration and licensing functions. It is based in part on federal law that "requires" states to adopt and implement federal regulations with a minimum degree of equivalency. For example, if the United States Environmental Protection Agency (EPA) determines that a state solid waste landfill program is inadequate, EPA can enforce the federal program on certain facilities under the state's jurisdiction. (See 40 CFR 239.2(a)(3)) EPA approved Arizona's municipal solid waste landfill permitting program in 1994. There is no federal funding associated with the program being approved. ADEQ has recently applied for approval of a modification that includes research, development, and demonstration permits for municipal solid waste landfills.

ADEQ's solid waste programs have historically been funded largely by the General Fund and limited fees from solid waste facilities. Fees from civil and criminal penalties in the Solid Waste Program are directed to the General Fund.

As a result of the economic downturn in 2007-2008, many states including Arizona began to experience budget shortfalls. Lump sum budget reductions and fund transfers to the General Fund from state agencies, including the ADEQ were undertaken by the legislature. In 2008, ADEQ was authorized and adopted a one-year increase in three solid waste fees for FY 2009. Those increases ended on June 30, 2009. In addition, the FY 2011 budget eliminated all of the ADEQ's General Fund (\$6,247,700) for operations. Special session legislation allowed ADEQ to increase fees through exempt rules for air, water, and waste programs for FY 2011. (Laws 2010, 7th Spec. Sess., Ch. 7, § 5) In 2011, HB 2705 gave ADEQ the authority to continue increased waste program fees for FY 2012. The increased fees in this rule are authorized by HB 2705 and would begin July 1, 2012 for FY 2013.

HB 2705. HB 2705, effective July 20, 2011, authorized ADEQ to establish fees for the solid waste entities shown in the table below. The fees proposed by ADEQ in this rule either revise existing fees, or are new fees.

Notices of Proposed Rulemaking

Solid Waste Fees Authorized by HB 2705

Solid Waste Entity	Implementing statute in HB 2705	Revised Fee or New Fee
New Waste Tire Collection Sites	A.R.S. § 44-1303(B)	New Fee
Used Tire Storage Sites	A.R.S. § 44-1304.01(A)(8)	New Fee
Septage Hauler Vehicles	A.R.S. § 49-104(B)(14)(b)	New Fee
Solid Waste General Permits	A.R.S. § 49-706(B)	New Fee
Solid Waste Landfills	A.R.S. § 49-747(C)	Revised Fee
Biohazardous Medical Waste Transporters	A.R.S. § 49-761(D)(2)	New Fee
Facilities Needing Solid Waste Plan Approval	A.R.S. § 49-762.03(F)	Revised Fee
Facilities Requiring Self-Certification	A.R.S. § 49-762.05(H)	Revised Fee
Special Waste Generators	A.R.S. § 49-855(C)(2)	Revised Fee

HB 2705 authorizes registration fees, licensing fees, special waste generation fees, and, in the case of facilities requiring solid waste facility plans, fees based on the direct and indirect costs of reviewing the plan. The bill also amended A.R.S. § 49-837 to allow monies in the Recycling Fund to be used for ADEQ’s Solid Waste Program activities.

HB 2705 sets out a number of further requirements for the new fees and fee increases that are contained in A.R.S. §§ 49-104(B)(17) and the various implementing statutes. Two principal requirements are: 1) the fees should “be fairly assessed and impose the least burden and cost to the parties subject to the fees”; and 2) the fees are to be based on “[t]he direct and indirect costs of the department’s relevant duties” ... “related to issuing licenses” ... “and enforcing the requirements of the applicable regulatory program.” Other requirements also apply and are discussed later.

In the context of this solid waste rulemaking, ADEQ has interpreted the second requirement to mean it should collect an amount necessary to maintain an effective and adequate solid waste program by satisfying the requirements to protect the public and the environment from solid waste that are set out in A.R.S. Title 49, Chapter 4 and federal law. In determining the lowest amount necessary, ADEQ had to make certain assumptions about the amount of funding that would be available from the Recycling Fund. Under A.R.S. § 49-837 as amended by HB 2705, ADEQ is authorized to use Recycling Fund monies to supplement solid waste control program activities. ADEQ has built about \$1.2 million from the Recycling Fund into the calculations of the fees that it needs for the Solid Waste Program. This issue is discussed further in the discussion of other funds.

ADEQ interprets “fairly assessed” to mean that the amount of fees collected from any class of solid waste entities should be proportional to the “direct and indirect costs” that can be attributed to that class. ADEQ demonstrates how it has met this requirement after the Explanation of Proposed Fees in this part.

Informal Comment. In 2011, ADEQ promoted extensive informal comment on funding for the Solid Waste Program and hosted four public meetings. An e-mail ‘listserv’ was created with relevant solid waste related entities and each meeting was announced to the listserv and posted on ADEQ’s web site. The meetings were held in Phoenix and ADEQ provided a call-in mechanism to allow participation by phone. Attendance averaged 50-75 people per meeting. Meetings on January 24 and January 31 concentrated on concepts and the design of legislation. The meetings on June 30 and July 28 reviewed draft rule language and responded to comments from the public. Oral comments were recorded at the meetings, and written comments were accepted after each meeting. The solid waste listserv currently contains over 450 e-mail addresses for the solid waste rule.

Explanation of Proposed Fees

1. New Waste Tire Collection Site Registration Fee. In R18-13-1211, ADEQ is proposing to establish a registration fee for new waste tire collection sites as authorized by A.R.S. § 44-1303. The initial registration fee is \$500 followed by \$75 for each annual registration after that. The increased initial registration fee will allow for improved oversight of tire collection sites. The fee will fund the creation of a new ADEQ tire collection site database and fund ADEQ inspectors to pay an initial visit to become familiar with the facility and for compliance assistance.

2. Used Tire Storage Site Registration Fee. ADEQ is proposing to establish a registration fee for used tire collection sites in R18-13-1212 as authorized by A.R.S. § 44-1304.01. The registration requirement has been in existence since 2008. The initial fee is \$500 followed by \$75 for each annual registration after that. As with the tire collection site registration fee, the increased initial registration fee will allow for improved oversight of used tire storage sites. The fee will fund the creation of a new ADEQ used tire storage site database and fund ADEQ inspectors to pay an initial visit to become familiar with the facility and for compliance assistance.

3. Septage Hauler Vehicle License Fee. ADEQ is proposing to establish a license fee for septage hauler vehicles at R18-13-1103 as authorized by A.R.S. § 49-104(B)(14). ADEQ currently provides these licenses at no charge. The proposed initial fee for each new vehicle is \$250 followed by \$75 for each annual license after that. Currently licensed vehicles will start paying \$75 per year. ADEQ has a database of the vehicles it has licensed, but it is not up to

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date since there is no mechanism for verifying that a licensed vehicle is still operating. ADEQ will use the annual registration to fund verification that licensed vehicles are still operating and keep the database up to date.

ADEQ maintains six Sections of state rule in 18 A.A.C. 13, Article 11, "Collection, Transportation and Disposal of Human Excreta." Some of ADEQ's duties under this Article are delegated to counties but responsibilities exist under the delegation agreements such as monitoring county performance and reports, and assistance and coordination in compliance and enforcement efforts. Currently, 14 of the 15 counties have agreed to handle inspection of septage vehicles under R18-13-1106 for the purpose of ADEQ licensing. Having counties conduct lawful local inspections saves ADEQ or the licensee time, but coordination is required. Allowing funds to be collected for this program will allow ADEQ to establish a system for tracking septage vehicles statewide and to provide support to the delegated counties, among other functions.

4. Solid Waste General Permit Fees. In R18-13-801, ADEQ is proposing to establish initial and annual fees for operation under a general permit as authorized under A.R.S. § 49-706(B). The use of general permits is new to the Solid Waste Program and was authorized in HB 2705. The legislation allows the Department to establish a general permit for any license issued pursuant to A.R.S. Title 49, Chapter 4. ADEQ may issue by rule a general permit for a defined class of facilities, activities, or practices under specific conditions. In addition, the legislation requires ADEQ to establish by rule fees for general permits. In this rulemaking, ADEQ is establishing the fees for general permits. Currently, no general permits have been developed or are in use in the Solid Waste Program. The general permits themselves would be developed in the future and established in a subsequent rulemaking.

ADEQ is proposing to establish general permit fees based on categories of solid waste facilities: collection, storage and/or transfer facilities; treatment facilities; and disposal facilities. The fees for the first two categories vary for standard general permits and complex general permits, with lesser rates being applied to standard general permits. General permit fees for solid waste disposal facilities (landfills) are established at one flat rate, as the Department determined that all of these facilities have multiple components associated with them and are therefore complex.

The initial fees for operation under a general permit are based on the Department's total anticipated staff hours divided by an estimate of the number of permittees in the category. Total anticipated staff hours include projected time expended for permit development, rule development, review of the notice of intent, data review and input, and customer service.

The annual fees for general permits are based on the Department's estimated staff hours for the average facility. Estimated staff hours for the annual fees include projected time expended for inspections, complaint response, date review and input, enforcement activities, and customer service. No annual fee is established for the disposal category as those facilities are subject to annual landfill registration fees which are intended to cover the costs of these Department activities.

The Department does not intend to consider establishing a general permit for a specific type of facility unless there are at least 10 facilities that meet the requirements of A.R.S. § 49-706(A)(1). The development of a general permit for a fewer number of facilities is not cost effective. Additionally, in calculating the initial general permit fees, the Department did not consider types of facilities for which there is a known inventory of less than 10 such facilities.

5. Solid Waste Landfill Registration Fee. ADEQ is proposing to increase solid waste landfill registration fees in R18-13-2101 through R18-13-2103 as authorized by A.R.S. § 49-747(C). HB 2705 removed the landfill categories and the fees for each category previously contained in that statute and directed ADEQ to establish the fees by rule. ADEQ is proposing to reduce the previous number of size categories from six to four and set the fees as follows. Under R18-13-2103(C), existing landfills that cease accepting waste will pay the \$1,250 annual registration fee. The table below shows how the proposed fees compare to previous fees.

Landfill Registration Fees

Landfill size	Proposed Beginning FY 2013	During FY 2011 and FY 2012*	FY 2010*	10/20/08 to 6/30/09*	Prior to 10/20/08*
Less than 12,000 tons	\$1,250	\$2,000 to \$20,000	\$500 to \$5,000	\$1,000 to \$10,000	\$500 to \$5,000
12,000 - 60,000 tons	\$2,500				
60,000 - 225,000 tons	\$7,500				
More than 225,000 tons	\$12,500				
NMSWLFs	\$3,750	\$6,000	\$1,500	\$3,000	\$1,500
SWLFs closed to public, nonhazardous only	\$3,750	\$6,000	\$1,500	\$3,000	\$1,500

* Registration fees were based on the population served by the landfill rather than the number of tons received per year.

6. Biohazardous Medical Waste Transporter License Fee. In R18-13-1409, ADEQ is proposing an annual license fee for biohazardous medical waste transporters as authorized by A.R.S. § 49-761(D)(2). Instead of an initial fee, the

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annual fee is higher the year the license is first issued and when it is renewed at the end of five years. These years are defined as “licensing years.” In a licensing year, a vehicle inspection and plan review charge is added to the annual license fee of \$750. The charge is based on the solid waste plan review hourly rate and covers ADEQ inspection of vehicles and review of the transportation management plan and other required information.

7. Solid Waste Plan Review Fee. At R18-13-701 through 703, ADEQ is proposing a new plan review hourly rate, along with new initial and maximum fees, as authorized by A.R.S. § 49-762.03(F). The proposed hourly rate is compared to recent hourly rates in the table below.

Solid Waste Plan Review Hourly Rate

Solid Waste Plan Review	Sept 2002 to 10/20/08	10/20/08 to 6/30/09	FY 2010	FY 2011 and FY 2012	Proposed Beginning FY 2013
Hourly rate	\$58.81	\$105.00	\$58.81	\$127.49	\$122.00

Explanation of hourly rate.

ADEQ estimated the hourly rate of \$122 per hour for solid waste permitting staff (project management and technical review) based on the permitting work of a full-time employee (FTE) and made 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 315 hours.
 - hours lost due to employee turnover – assuming a rate of 10 percent - 208 hours.
 - TOTAL NON-PROGRAM HOURS estimated at 843 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 hours of specific applications (i.e. non-billable). Some of the Program Hours are therefore not billable.
 - TOTAL PROGRAM HOURS = 2080 - 843 = 1237 hours/year.
 - NON-BILLABLE PROGRAM HOURS includes, among other duties, customer service time, inter-division and inter-agency coordination, permit administration, and program development (rules and policies). This is estimated at 373 hours annually.
 - BILLABLE PROGRAM HOURS = 1237 - 373 = 864 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 588 hours/year (69.8 percent of total Non-Program Hours).
 - Program staff includes Project Managers, Engineers, and Hydrologists at an average hourly rate of \$25.07.

Cost = (864 + 588 hours) X \$25.07/hour X 1.42 = \$51,690

- 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 \$32.23.

Cost = (200 hours) X \$32.23/hour X 1.42 = \$9,153

- Administration Support hours in support of the program staff and management’s and supervisors’ work are included in costs, estimated at 300 hours/year at an average hourly rate of \$17.60.

Cost = (300 hours) X \$17.60/hour X 1.42 = \$7,498

- Subtotal of personnel services and ERE for the project manager, management staff, and administrative support staff (\$51,690 + \$9,153 + \$7,498 = \$68,341).
- Add Indirect expenses (49.53 percent of personal services and ERE by federal formula) for rent, utilities, etc., estimated at \$33,849 (\$68,341 X 0.4953 = \$33,849).
- Add Other Expenses such as per diem travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at \$3,500.
- Total Costs Related to Permit Process for one FTE= \$105,690. (\$68,341 + \$33,849 + \$3,500 = \$105,690)

Hourly Rate

Dividing the total costs of an FTE (\$105,690) by Billable Program Hours (864) yields the hourly rate for permit processing of \$122/hour ($\$105,690 \div 864 \text{ billable program hours} = \$122/\text{hour}$).

The rate of \$122 per hour is comparable to private sector rates and 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 average private sector consultant rate for similar work activities charged in ADEQ's solid waste permit program typically ranges from \$121 to \$156.67 per hour. Using this same hourly rate calculation methodology, the Air Quality Division currently charges \$141.50 per hour, and the Water Quality Division currently charges \$122 per hour. The Arizona Department of Water Resources, using the same hourly rate calculation methodology, currently charges \$118 per hour. The 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.

Billing Details. During the informal public participation process, stakeholders asked ADEQ for a requirement in rule to put more detail on the periodic and final bills they get from ADEQ. ADEQ has added this requirement at R18-13-702(B). Although ADEQ's proposal to provide a detailed hours breakdown on every bill is currently not practicable due to the lack of an automated software system, ADEQ is developing an tracking system to facilitate this and believes the system will be in place at the time this rule is effective or soon thereafter.

Solid Waste Plan Review Initial and Maximum Fees. The table below summarizes some of the changes.

Solid Waste Plan Review Hourly Rate; Initial and Maximum Fees

Solid Waste Plan Review Category	Sept 2002 to 10/20/08	10/20/08 to 6/30/09	FY 2010	FY 2011 and FY 2012	Proposed Beginning FY 2013
Hourly rate	\$58.81	\$105.00	\$58.81	\$127.49	\$122.00
MSWLF Initial Fee Max. Fee	\$5936 \$56,900	\$11,872 \$170,700	\$5936 \$56,900	\$15,000 \$150,000	\$20,000 \$200,000
Other SWF Initial Fee Max. Fee	\$1,609 \$23,800	\$3,218 \$71,400	\$1609 \$23,800	\$10,000 \$100,000	\$10,000 \$100,000
Financial Responsibility Review Initial Fee Max. Fee	\$278 \$1,800	\$556 \$5,400	\$278 \$1,800	\$500 \$5,000	\$600 flat* or \$200 \$5,000

*The \$600 flat fee is for solid waste landfills. Other solid waste facilities would be billed hourly.

Initial (application) fee increases are a result of both an increase in the hourly rate and the fact that there will be no General Funds available to cover gaps in cash flow when billing may occur only quarterly and payments are normally due 30 days after billing. ADEQ must obtain sufficient monies up front so that payments do not get too far behind services provided. Maximum fees are set to provide predictability to permit applicants while also allowing ADEQ to be reasonably certain that it meet Licensing Time-frames and not expend more resources processing a permit than it can be reimbursed for. Other reasonable and necessary review related expenses count toward the fee cap.

8. Self-Certification Fees. ADEQ is proposing new registration fees in R18-13-501 to replace the \$500 and \$200 fees that were in statute at A.R.S. § 49-762.03. ADEQ has defined three major categories of self-certification facilities and is proposing to establish initial and annual registration fees for these facilities. The higher initial registration fee will allow ADEQ to create a database and ADEQ inspectors to pay an initial visit to get familiar with the facility and its compliance before the annual registration fees begin.

For transfer facilities, the proposed self-certification registration fee is \$1,000 for the initial registration, and \$500 annually after that. For the waste tire facilities defined in the rule, the fee is \$1,000 for the initial registration and \$250 annually after that. ADEQ has proposed an additional Section R18-13-1213 in Article 12 to ensure that a tire facility required to pay registration fees as a self-certification facility under Article 5 will not have to pay an additional fee under Article 12.

9. Special Waste Management/Handling Fee. ADEQ is proposing to increase special waste management and maximum fees at R18-13-1307 and R18-13-1606 as authorized by A.R.S. § 49-855(C). HB 2705 removed the fee set by statute and directed ADEQ to establish the fees by rule. The proposed fees are compared to previous special waste fees in the table below.

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Special Waste Handling and Maximum* Fees

Prior to 10/20/08	10/20/08 to 6/30/09	FY 2010	FY 2011 and FY 2012	Proposed Beginning FY 2013
\$2/ton \$20,000 Max.	\$4/ton \$40,000 Max.	\$2 per ton \$20,000 Max.	\$5 per ton \$50,000 Max.	\$4.50 per ton \$45,000 Max.

* Per generator site per year

Fees are Fairly Assessed and Impose the Least Burden and Cost

The table below illustrates the proportionality of the fees to the “direct and indirect costs” that can be attributed to the specific program activity. Estimated Employee Time Allocation was based on 2009-2010 records, and is subject to change year to year.

Estimated Annual Solid Waste Fee Revenue

Solid Waste Program Activity	Estimated Employee Time Allocation	Estimated Annual Fee Revenue	% of Total Solid Waste Program Cost
Landfills	29.0%	\$409,000	17.8%
Special Waste	21.0%	\$198,000	8.6%
Tire Facilities	13.0%	\$287,700	12.5%
BMW Transporter & Treatment, Storage and Disposal Facilities	13.0%	\$135,250	5.9%
Transfer Facilities	5.0%	\$50,000	2.2%
Septage Haulers	3.0%	\$45,000	2.0%
General Solid Waste Activities (e.g., complaints, illegal dumping)	16.0%	\$0	0%
Recycling Fund	N/A	N/A	51%
Total	100%		100%
TOTAL ESTIMATED FEE REVENUE: \$1,124,950			
TOTAL ESTIMATED RECYCLING FUND CONTRIBUTION: \$1,174,950			
TOTAL ESTIMATED SOLID WASTE PROGRAM COST \$2,299,900			

The table also helps illustrate other important points about the fairness of the fees.

First, every category, regardless of whether they incurred any of the recent temporary fee increases, receives the benefit of the 51% contribution from the Recycling Fund. Landfill owners and operators as well as special waste generators have always had to pay fees and have had substantial fee increases during the periods 10/20/08 to 6/30/09, FY 2011 and FY 2012. As such, these entities have contributed to the Solid Waste Program funding over the years while other entities have not had to pay fees for services received.

Under A.R.S. § 49-104(B)(17)(b), (c), and (d), ADEQ must also consider the availability of other funds, the impact of the fees on the parties subject to the fees, and the fees charged for similar duties performed by the Department, other agencies, and the private sector.

Availability of other funds. Under A.R.S. § 49-837 as amended by HB 2705, ADEQ is authorized to use Recycling Fund monies to fund solid waste control program activities. ADEQ has built \$1.2 million from the Recycling Fund

into the calculations of the fees that it needs for the Solid Waste Program. In the past several years, the Recycling Fund balance has been transferred to the General Fund. If the Recycling Fund becomes unavailable while this rulemaking is pending, ADEQ intends to terminate this rulemaking and re-propose the rule with higher fees. ADEQ expects that most fees will at least double. If the Recycling Fund becomes unavailable after this rule is final, ADEQ will immediately begin a rulemaking process to establish solid waste fees that do not include a contribution from the Recycling Fund. In the meantime, ADEQ will seek continuing authority from the legislature to collect fees at FY 2011 levels until the time that the new permanent solid waste fees are effective.

Civil and criminal penalties that result from solid waste enforcement go to the General Fund and are not available to fund solid waste control program activities. ADEQ is not aware of any other source of funds that could be used for these activities under current law.

Impact. As discussed earlier, ADEQ has considered the impact of the fees on the parties subject to the fees through its collection of the least amount of fees necessary to sustain the Solid Waste Program, and a fair, proportional assessment of those fees.

Fees for similar duties. In considering the fees charged for similar duties performed by the Department, other agencies, and the private sector, ADEQ notes that it has already compared hourly rates for the most similar duties. With respect to registration and licensing, many agencies are not required to fund their full costs with just fees. It is therefore somewhat more difficult to make a direct comparison.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

None

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

Not applicable

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

Identification of the proposed rulemaking: 18 A.A.C. 13, Articles 5, 7, 11, 12, 14, 16, 21. Proposed amendments to R18-13-501, R18-13-701 through R18-13-706, R18-13-1103, R18-13-1211 through 1213, R18-13-1307, R18-13-1409, R18-13-1606, R18-13-2101 through R18-13-2103 (For further information, see Part 5 of this preamble.) These rules are not designed to change the conduct of any regulated solid waste entities. The rules are designed to collect fees from some solid waste entities.

Program Description.

ADEQ's Solid Waste Program reviews and approves design and operation plans for landfills, special waste facilities, and medical waste facilities, and issues licenses and permits to other solid waste facilities and transporters. Facilities are periodically inspected and compliance data is maintained for each facility. Solid waste complaints are investigated. Compliance assistance is provided, and appropriate enforcement actions are pursued for significant noncompliance. The program also advocates for solid waste reduction, reuse, and recycling.

Regulatory Universe.

The Solid Waste Program regulates over 460 facilities and over 1600 activities and entities in Arizona. Regulated facilities include: operating solid waste landfills; biohazardous medical waste transfer, storage, treatment and/or disposal facilities; solid waste transfer stations; waste tire collection facilities; used oil marketers, processors, and burners, and special waste generators, treatment and/or disposal facilities. Regulated activities include: septage haulers, used oil transporters, registered alternative medical waste treatment technologies, registered biohazardous medical waste transporters, special waste transporters, and used oil collection centers.

Implemented Efficiencies.

The Program has changed its operation in recent years to accomplish required work with fewer resources. Permitting program efficiencies include: development and use of templates for solid waste facility master plans and Aquifer Protection Permits; use of contractors for permit application reviews when necessary for technical support or schedule concerns; and improvements of web site resources to provide better information to the regulated community.

Compliance program efficiencies include: reducing employee travel time and expense by referring to local authorities where possible, scheduling travel by grouping routine and complaint inspections into regions across the state; streamlining procedures to reduce paperwork; arranging work schedules to ensure prompt response to customer inquiries; improving database tracking; developing boilerplate documents; utilizing available scholarships for applicable training opportunities; and developing standardized fact sheets and presentations for outreach.

Resource Reduction Impacts.

Due to reduction in resources, it has become necessary to decrease routine inspection frequencies for lower-risk facilities and limit ADEQ's role in facilitating clean-up of illegal dump sites. Additionally, the program is no longer

maintaining commonly requested solid waste data such as landfill tonnage reports and recycling rate data. Courtesy reminder notices for annual financial assurance updates have also been halted.

Failure to adequately staff and fund the program may result in a substantial threat to public health and the environment because the duration of non-compliance at a facility is increased due to reduced inspection frequencies. Failure to regulate biohazardous medical waste handlers puts human health, including solid waste workers, at risk because untreated or inadequately treated biohazardous medical waste, such as contaminated needles, could enter the general solid waste stream. Without oversight, solid waste facilities may fail to implement waste screening programs to exclude unpermitted wastes, such as biohazardous medical waste, hazardous wastes, and other dangerous substances from being disposed in solid waste landfills.

Additionally, the regulated community may be negatively impacted because ADEQ may not be able to provide timely response to requests for new permit processing, permit modifications, and registrations for special waste facilities, battery collection sites, waste tire collection site, and used oil collection sites.

Staffing Levels.

Due to the elimination of general fund appropriations, the Solid Waste Program has experienced a reduction in staffing levels over the past few years. Some positions were eliminated entirely and others have not been filled following staff lay-offs and voluntary departures. In FY 2008, the Solid Waste Program had three plan reviewers and 10 inspections and compliance officers. Today, in FY 2011, the program has two plan reviewers and four inspections and compliance officers. Support staff for the program has been greatly reduced as well. ADEQ does not anticipate the programs or associated staffing levels to expand over FY 2011 levels as a result of this rulemaking with the exception of the number of solid waste inspectors. The estimated cost of the Solid Waste Program includes three additional solid waste inspectors for a total of seven inspectors who will be responsible for regulation of over 460 facilities and 1600 activities and entities statewide.

Budget. The budget necessary to operate the Solid Waste Program with the proposed staffing is approximately \$2,299,900. Based on the new language in A.R.S. § 49-837 enacted in HB 2705, ADEQ has assumed a Recycling Fund contribution of \$1,174,950. The total estimated fee revenue necessary to reach \$2.3 million is \$1,124,950. In FY 2011, base fees from solid waste entities only generated \$648,000. Given that no other funds are available, this means that the increased fees and funding necessary to reach \$2.3 million is approximately \$1,651,900, which includes the assumed Recycling Fund contribution.

Least burden and cost. A.R.S. § 41-1052(D)(3) requires ADEQ to demonstrate it has selected the alternative with the least burden and cost necessary to achieve the underlying regulatory objective. A similar requirement exists in A.R.S. § 49-104(B)(17), which requires that the fees should “be fairly assessed and impose the least burden and cost to the parties subject to the fees”; and that the fees are to be based on “the direct and indirect costs of the Department’s relevant duties” ... “related to issuing licenses” ... “and enforcing the requirements of the applicable regulatory program.”

In the context of this solid waste rule, ADEQ has interpreted this requirement to mean collecting an amount necessary to maintain an effective and adequate program and satisfy the detailed requirements to protect the public and the environment from solid wastes that are specified in A.R.S. Title 49, Chapter 4.

A.R.S. § 49-761 requires ADEQ to adopt rules for various categories and activities related to solid waste and to consider applicable federal laws. In addition to 40 CFR 257 and 40 CFR 258, which apply to landfills, 40 CFR 239, “Requirements for State Permit Program Determination of Adequacy” is also relevant. For example, if EPA determines that a state solid waste landfill program is inadequate, EPA can enforce the federal program on certain facilities under the state’s jurisdiction. (See 40 CFR 239.2(a)(3))

Based on stakeholder comments, most in the regulated community agree that ADEQ should enforce the federal program rather than EPA, and that ADEQ should continue to meet the criteria and benchmarks for program adequacy in order to implement the program. ADEQ has estimated the cost of the Solid Waste Program to be approximately \$2.3 million dollars.

ADEQ’s emphasis on inspections and enforcement is reflected in the organizational structure ADEQ has proposed as the minimum necessary to keep the Arizona Solid Waste Program adequate and effective. The proposed structure consists of seven inspectors and two permit writers for the nine technical positions. Support staff includes a portion of a hydrologist, records management staff, budget, database and clerical staff, and management.

Cost/Benefit. The probable cost for this rule is approximately \$477,400, which is the estimated total amount of increased fees proposed for the program described above. This amount would replace the General Funds that partially funded the Solid Waste Program in the past without cost to the regulated community.

The probable benefits are: 1) Solid waste would be adequately regulated and managed in Arizona; 2) Confidence that ADEQ and not EPA will run the solid waste landfill program; 3) Benefits to the state budget due to the Solid Waste Program moving toward a fee-based revenue system without the need for General Fund support; and 4) Increased fairness and equity, in that more of the costs of the Solid Waste program are being borne by those who receive services from the Department.

ADEQ believes that the benefits exceed the cost.

Rules More Stringent than Corresponding Federal Law. [A.R.S. § 41-1052(D)(9)] There is no corresponding federal law that deals with solid waste fees.

Probable Impact on Small Businesses. [A.R.S. § 41-1055(B)(5)]

ADEQ has looked at its records of solid waste sites and facilities affected by this rule and tried to determine which ones are small businesses. An important criterion is that they must be independently owned and operated. A look at the list of septage haulers located at <http://www.azdeq.gov/environ/water/permits/download/haulers-num.pdf> shows that most of these are probably independently owned and operated and not likely to exceed the revenue and employee limits in the statutory definition of small business. Using the same process, it appears likely that a number of used tire storage sites and biohazardous medical waste transporters are also small businesses. ADEQ expects that the proposed fees will have limited to moderate impact on them.

9. The agency's contact persons who can answer questions about the economic, small business and consumer impact statement:

Name: Peggy Guichard-Watters
Address: Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-4117, or (800) 234-5677, enter 771-4117 (Arizona only)
Fax: (602) 771-2383
TTD: (602) 771-4829
E-mail: pgw@azdeq.gov

or

Name: Mark Lewandowski
Address: Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)
Fax: (602) 771-4246
TTD: (602) 771-4829
E-mail: lewandowski.mark@azdeq.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: November 2, 2011
Time: 1:00 p.m.
Location: Department of Environmental Quality
1110 W. Washington St., Suite 250
Phoenix, AZ 85007
Nature: Public hearing on the proposed rules, with opportunity for formal comments on the record. Please call (602) 771-4795 for special accommodations pursuant to the Americans with Disabilities Act.

The close of the written comment period will be 5:00 p.m., November 4, 2011. Submit comments to the individuals identified in item 4.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

These rules do not require permits. This rulemaking is for the purpose of setting fees for the Solid Waste Program only. The rules do not establish or amend program permits, except as they pertain to fees.

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As required by the legislature in HB 2705, this rule establishes fees for general permits. HB 2705 also states that ADEQ may issue by rule a general permit for a defined class of facilities, activities, or practices under specific conditions. Although the fees have been established with this rulemaking, no general permits have been developed for the Solid Waste Program. The general permits may be developed in a subsequent rulemaking.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

These rules are not more stringent than corresponding federal laws. There is no corresponding federal law that deals with solid waste fees.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No person has submitted a competitiveness analysis under A.R.S. § 41-1055(G).

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

**ARTICLE 5. ~~RESERVED~~ REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO
SELF-CERTIFICATION**

Section

R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

Section

R18-13-701. Definitions

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

R18-13-703. Review of Bill

R18-13-704. ~~Number of Billable Hours~~ Repealed

R18-13-705. ~~Determining the Average Cost Per Employee~~ Repealed

R18-13-706. ~~Determining the Hourly Billing Rate~~ Repealed

ARTICLE 8. ~~RESERVED~~ GENERAL PERMITS

Section

R18-13-801. General Permit Fees

ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA

Section

R18-13-1103. General Requirements; License Fees

ARTICLE 12. WASTE TIRES

Section

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

ARTICLE 13. SPECIAL WASTE

Section

R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

Section

R18-13-1409. Transportation; Transporter License; Annual Fee

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

Section

R18-13-1606. Fees

ARTICLE 21. ~~MUNICIPAL SOLID WASTE LANDFILLS~~ LANDFILL REGISTRATION FEES

Section

R18-13-2101. Definitions

R18-13-2102. ~~Formula for Calculating~~ Annual Registration Fee for an Existing Municipal Solid Waste Landfill

R18-13-2103. Annual Landfill Registration: Due Date and Fees

ARTICLE 5. ~~RESERVED~~ REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION

R18-13-501. Solid Waste Facilities Requiring Self-Certification: Registration Fees

- A.** The following solid waste facilities requiring self-certification under A.R.S. § 49-762.01 shall register with the Department and pay registration fees as provided in this Section by September 30, 2012 and annually thereafter by September 30th:
1. A transfer facility with a daily throughput of more than 180 cubic yards, including a material recovery facility, but not including:
 - a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
 - b. Community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, and/or governmental recyclable solid waste.
 2. A facility storing 5,000 or more waste tires on any one day and not required to obtain plan approval.
 3. A waste tire shredding and processing facility.
- B.** Initial registration for a new facility. The owner or operator of a planned new facility identified in subsection (A) shall submit the following information to the Department before beginning construction:
1. The name of the solid waste facility.
 2. The name, mailing address and telephone number of each owner and operator of the solid waste facility.
 3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
 4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
 5. A diagram of the property showing its approximate size and the planned location of the solid waste facility or facilities.
 6. Documentation that the facility will comply with local zoning laws or, if the owner is an agency or political subdivision of this state, with A.R.S. § 49-767.
 7. Documentation that the facility has any other environmental permit that is required by statute.
 8. A copy of the public notice in a newspaper of general circulation in the area where the facility will be located stating the intent to construct and operate a new solid waste facility pursuant to A.R.S. § 49-762.05.
- C.** Initial and annual registration for an existing facility. The owner or operator of an existing facility shall submit the following information to the Department annually on a form approved by the Department and note any changes since the last registration:
1. The name of the solid waste facility.
 2. The name, address and telephone number of each owner and operator of the solid waste facility.
 3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
 4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
 5. A diagram of the property showing its approximate size and the location of the solid waste facility or facilities.
 6. Documentation that the facility remains in compliance with the most current local zoning laws or with A.R.S. § 49-767, as applicable.
 7. Documentation that the facility continues to hold any other environmental permit that is required by statute.
- D.** Self-certification. With each registration under subsection (B) or (C), the owner or operator shall certify that the information submitted is true, accurate, and complete to the best of the person's knowledge and belief.
- E.** Registration fees. The owner or operator of a transfer facility under subsection (A)(1) shall pay ADEQ \$1,000 for the initial registration of a new or existing facility, and \$500 for each annual registration thereafter. The owner or operator of a tire facility under subsection (A)(2) or (3) shall pay ADEQ \$1,000 for the initial registration of a new or existing facility, and \$250 for each annual registration thereafter.
- F.** As used in this Section:

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1. “Department” means the Arizona Department of Environmental Quality.
2. “Material recovery facility” means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated off site for the purpose of recycling and transport, or where source separated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.
3. “Recyclable solid waste” means a product or material described in subsection (F)(3)(a) or (b), and for which subsection (F)(3)(c) is true:
 - a. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
 - b. A material that is a result of a process or activity whose purpose was to produce something else.
 - c. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-701. Definitions

In addition to the definitions provided in A.R.S. §§ 49-701, 49-701.01, and 49-851, and 18 A.A.C. 13, the following definitions apply in this Article:

1. “Aquifer Protection Permit,” or “APP,” means the permit that is required pursuant to A.R.S. § 49-241.
2. “Application” means the solid waste facility plan that an operator submits to the Department for approval.
3. “C & D landfill” means a Non-MSWLF that only accepts construction or demolition waste as defined in A.R.S. § 49-701.
4. “Change” means either a Type III or a Type IV change to an approved solid waste facility plan which the director has determined requires the submission of an amended facility plan in accordance with either A.R.S. § 49-762.06 or the design and operation rules adopted under A.R.S. §§ 49-761 and 49-762.06.
5. “Complex plan” means any of the following:
 - a. A solid waste facility plan that contains two or more different types of waste storage, treatment, or disposal components.
 - b. A solid waste plan for multiple solid waste facilities.
 - e. A solid waste facility plan that includes a special waste management plan component or an application for an Aquifer Protection Permit.
6. “Direct cost” means the costs to the Department to maintain a plan review program, excluding indirect costs, but consisting of programmatic cost, non-billable administrative cost, and non-billable programmatic cost.
7. “Direct labor cost” means time spent by a plan reviewer in: the actual review of a facility plan; data input for licensing time frames tracking; developing the facility file; time at the facility or proposed site; time at a public hearing; and time at meetings with the applicant or the applicant’s representatives.
8. “Indirect cost” means the cost that the Department charges all of its non-general fund programs. Examples of indirect cost are: rent; utilities; and the Department’s administrative support programs such as human resources, payroll, time keeping, etc.
- 9-2. “MSWLF” means a municipal solid waste landfill as defined in A.R.S. § 49-701.
10. “New solid waste facility plan” means either of the following:
 - a. A plan submitted for review by the operator of a new solid waste facility, as defined in A.R.S. § 49-701.
 - b. The plan submitted by an operator of an existing solid waste facility as defined in A.R.S. § 49-701, that is operating without prior Department plan approval.
11. “Non-billable administrative cost or time” means time spent by a plan reviewer doing activities that are not directly related to a plan review project. Examples of non-billable administrative time are: holidays and leave time; time spent by a plan reviewer in training, attending staff meetings, answering phones, preparing reports, etc.
12. “Non-billable programmatic cost or time” means time spent by a plan reviewer doing activities directly related to a plan review project, but that are outside the applicant’s control. Examples of non-billable programmatic time are: answering inquires from the public and attending public meetings about the plan review project; writing progress reports and briefings for supervisors; and traveling to the facility site or to public meetings and hearings.
3. “Non-APP requirements for Non-MSWLFs” means 40 CFR 257 requirements and the restrictive covenant and location restrictions required in A.R.S. Title 49, Chapter 4.
- 13-4. “Non-MSWLF” means a landfill that is not a municipal solid waste landfill as defined in A.R.S. § 49-701.
14. “Other reasonable direct cost” means costs documented in writing by the Department relating to plan review. Examples of other reasonable direct cost are laboratory analysis charges, public notice advertising, presiding officer expenses, court reporter expenses, facility rentals, and contract services.
15. “Programmatic cost or time” means those costs that are directly associated with a plan review project, consisting of

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- both direct labor cost and other reasonable direct cost.
5. “RD&D” means research, development, and demonstration.
 6. “Review hours” means the hours or portions of hours that the Department’s staff spends on a request for a plan review. 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.
 7. “Review-related costs” means any of the following costs applicable to a specific plan review:
 - a. Presiding officer services for public hearings on a plan review decision.
 - b. Court reporter services for public hearings on a plan review decision.
 - c. Facility rentals for public hearings on a plan review decision.
 - d. Charges for laboratory analyses performed during the plan review.
 - e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
 - 16.8. “Solid waste facility plan” means a plan or the individual components of a plan, such as the design, operational, closure, or post-closure plan, or the demonstration of financial responsibility as required by A.R.S. § 49-770, submitted to the Department for review and plan approval.
 17. “Special waste management plan component” means a portion of a solid waste facility plan that is prepared and submitted to the Department in accordance with A.R.S. § 49-857 for approval pursuant to A.R.S. §§ 49-857.01 and 49-762.

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

- A. With each application submitted for approval pursuant to A.R.S. § 49-762.03, the applicant shall remit an initial fee in accordance with one of the ~~schedules~~ fee tables in this subsection, unless otherwise provided in subsection (B). This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

Schedule A New – Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Solid Waste Facilities Plans:		
MSWLF	\$5,936	\$56,900
C & D Landfill and Other		
Non-MSWLF	\$2,987	\$35,000
Other Solid Waste Facilities	\$1,609	\$23,800
Special Waste Management Plan Component	\$556	\$3,700

Schedule B Change and Update of Demonstration of Financial Responsibility – Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Change to Solid Waste Facilities Plans:		
MSWLF		
C & D Landfill and Other	\$766	\$28,400
Non-MSWLF		
Other Solid Waste Facilities	\$597	\$17,500
	\$322	\$11,900
Change to Special Waste Management Plan Component	\$278	\$1,800
Update of Demonstration of Financial Responsibility	\$278	\$1,800

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Schedule C Closure – Solid Waste Facility Plan Review Fees		
	Initial	Maximum
Solid Waste Facilities Plans: -MSWLF	\$1,379	\$15,000
-C & D Landfill and Other -Non-MSWLF	\$1,532	\$16,000
-Other Solid Waste Facilities	\$1,226	\$18,300
Special Waste Management Plan Component	\$111	\$700

Fee Tables

<u>Fees for Plan Review of New Solid Waste Facilities</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Solid Waste Landfills</u>	<u>\$20,000</u>	<u>\$200,000</u>
<u>Non-APP requirements for Non-MSWLFs operating under an APP</u>	<u>\$2,000</u>	<u>\$50,000</u>
<u>Other Solid Waste Facilities Subject to Plan Approval</u>	<u>\$10,000</u>	<u>\$100,000</u>

<u>Fees for Modifications to Solid Waste Facility Plans</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Solid Waste Landfills – Type IV</u>	<u>\$1,500</u>	<u>\$150,000</u>
<u>Solid Waste Landfills – Type IV - RD&D</u>	<u>\$15,000</u>	<u>\$150,000</u>
<u>Solid Waste Landfills – Type III</u>	<u>\$750</u>	<u>\$75,000</u>
<u>Other Solid Waste Facilities Subject to Plan Approval – Type IV</u>	<u>\$750</u>	<u>\$75,000</u>
<u>Other Solid Waste Facilities Subject to Plan Approval – Type III</u>	<u>\$500</u>	<u>\$50,000</u>

<u>Fees for Review of Financial Responsibility Plans for Solid Waste Facilities</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Annual Review for Solid Waste Landfills</u>	<u>\$600 Flat Fee</u>	<u>N/A</u>
<u>Other Solid Waste Facilities</u>	<u>\$200</u>	<u>\$5,000</u>

- B.** For a complex plan, fees shall be determined as follows:
1. The initial fee submitted with the plan shall be equal to the initial fee for the single component with the highest initial fee as set forth in schedules in subsection (A).
 2. The maximum fee shall be the sum total of the maximum fee for each individual component as set forth in schedules in subsection (A).
- ~~**C.B.** The Department shall bill an applicant for plan review services, subject to an hourly rate, no more than monthly, but at least semi-annually. The following information shall be included in each bill:~~
1. The dates of the billing period;
 2. The date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
 - a. Each review task performed;
 - b. The facility and operational unit involved, and
 - c. The hourly rate;
 3. A description and amount of any other reasonable direct cost; and
 4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.
- C.** Within 30 days after the Department makes a final determination whether to approve or disapprove of the facility plan, or when an applicant withdraws or closes the application for review, the Department shall prepare and issue a final itemized bill of its review. The Department shall issue to the applicant a final itemized bill within 30 days after the Department issues the approval or disapproval of the application. If the Department determines that the actual cost of reviewing the

plan is less than the initial fee and any interim fees paid, the Department shall refund the difference to the applicant within 30 days after the issuance of the approval or disapproval of the application. If the Department determines that the actual cost of plan review is greater than the corresponding amount listed, the Department shall list the amount that the applicant owes on the final itemized bill, except that the final itemized bill shall not exceed the applicable maximum fee specified in subsection (A) ~~or (B)~~. The applicant shall pay in full the amount due within 30 days of receipt of the final itemized bill.

- D. If the final bill is not paid within the 30 days, the Department shall mail a second notice to the applicant. Failure to pay the amount due within 60 days of receipt of the notice shall result in the Department initiation of proceedings for suspension of the approval, in accordance with A.R.S. § ~~41-782~~ 49-782. The suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § ~~41-782~~ 49-782. The Department shall not review any further plans for an entity which has not paid all fees due for a previous review of a solid waste facility plan.
- E. When determining actual cost under subsection (C), the Department shall use an hourly billing rate for all ~~direct labor~~ review hours spent working on the review of a plan, ~~plus any other reasonable direct cost and add review-related costs~~ which were incurred but are not included in the hourly billing rate.
- F. The hourly rate is ~~\$58.81~~ \$122.00, beginning ~~September 1, 2002~~ July 1, 2012, and shall remain in effect until it is either changed or repealed.

R18-13-703. Review of Bill

- A. An applicant who disagrees with the final bill received from the Department for plan review and issuance or denial of a solid waste facility plan approval under this Article may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. ~~Notice of the time and place of review shall be mailed to the requester at least 10 working days prior to the review.~~ The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.

R18-13-704. Number of Billable Hours Repealed

~~The Department shall determine the number of billable hours by subtracting from the number of hours in a work year, both the non-billable administrative hours and the non-billable programmatic hours.~~

R18-13-705. Determining the Average Cost Per Employee Repealed

~~The Department shall determine the average cost per employee by dividing the Department's total direct cost for maintaining the plan review program equally between the plan reviewers as outlined in the following steps:~~

- ~~1. By calculating the average salary of the plan reviewers.~~
- ~~2. By calculating an average employee related cost and adding the average employee related cost to the average plan reviewer's salary from subsection (1).~~
- ~~3. By prorating the section's management cost, to which the plan reviewers are assigned, on a per section employee basis, and adding the section management prorated cost to the total cost from subsection (2).~~
- ~~4. By prorating the unit's management costs, to which the plan reviewers are assigned, on a per unit employee basis, and adding the prorated unit management cost to the total cost from subsection (3).~~
- ~~5. By prorating the section's operating, travel and equipment cost, to which the plan reviewers are assigned per section employee, and adding the prorated operating, travel and equipment cost to the total cost from subsection (4).~~

R18-13-706. Determining the Hourly Billing Rate Repealed

~~The Department shall determine the hourly billing rate by dividing the average cost per employee from R18-13-705(5) by the number of billable hours from R18-13-704.~~

ARTICLE 8. RESERVED GENERAL PERMITS

R18-13-801. General Permit Fees

- A. The Department shall assess annual fees for operation under a general permit established in rule as described in the Table below.
- B. In addition to the technical requirements proposed for any general permit to be included in this Article, the Department shall propose the category to be assigned to the permit according to the Table below.
- C. An applicant shall pay the initial fee when approval to operate is requested. The Department shall bill an annual fee to facilities who have not notified the Department that they are no longer operating and have met the closure requirements of this Chapter.
- D. For the purpose of this Article, "complex" has the same meaning as R18-13-501. "Standard" is any facility that is not complex.

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Solid Waste General Permits

<u>Category</u>	<u>Initial Fee</u>	<u>Annual Fee</u>
<u>Collection, Storage and Transfer – Standard</u>	<u>\$750</u>	<u>\$100</u>
<u>Collection, Storage and Transfer – Complex</u>	<u>\$7,500</u>	<u>\$1,000</u>
<u>Treatment – Standard</u>	<u>\$1,000</u>	<u>\$100</u>
<u>Treatment – Complex</u>	<u>\$10,000</u>	<u>\$1,000</u>
<u>Disposal</u>	<u>\$15,000</u>	<u>N/A</u>

ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA

R18-13-1103. General Requirements; License Fees

- A. Any person owning or operating a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other ~~on-site~~ onsite wastewater treatment facility; earth pit privy, pail or can type privy, or other type of privy; sewage vault; or fixed or transportable chemical toilet shall obtain a license for each vehicle from the Department. The person shall apply, in writing, on forms furnished by the Department and shall demonstrate that each vehicle is designed and constructed to meet the requirements of this Article.
- B. A person shall operate and maintain the vehicle and equipment so that a health hazard, environmental nuisance, or violation of a water quality standard established under 18 A.A.C. 11 is not created.
- C. License terms.
 - 1. For each new vehicle licensed after June 30, 2012, the initial license fee shall be \$250 and shall be submitted with the license application. After initial licensure of a new vehicle, the Department will renew the license annually after payment of a \$75 fee. The licensee shall submit the Department approved renewal form to the Department no later than 30 days before expiration.
 - 2. For those vehicles licensed before July 1, 2012, the initial license fee shall be \$75 and shall be paid within 30 days of receipt of an invoice from the Department. The license shall be valid for one year. The licensee shall submit the Department approved renewal form and the annual license fee of \$75 to the Department no later than 30 days before expiration.
 - ~~3.~~ Each vehicle license is valid may be renewed so long as if:
 - a. The annual license fee is paid.
 - b. The owner or operator is in compliance with subsection (D).
 - c. ~~the~~ The vehicle is operated by the same person for the same purpose, and
 - d. The vehicle is maintained according to this Article.
 - ~~2.~~ The license is not transferable either from person to person or from vehicle to vehicle.
 - ~~3.~~ The license holder shall ensure that the license number is plainly and durably inscribed in contrasting colors on the side door panels of the vehicle and the rear face of the tank in figures not less than 3 inches high, and that the numbers are legible at all times.
- D. Any person owning or operating a vehicle or appurtenant equipment used to collect, store, transport, or dispose of sewage or human excreta shall obtain a any required permit from the local ~~health Department~~ county authority in each county in which the person proposes to operate.

ARTICLE 12. WASTE TIRES

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

- A. A new waste tire collection site shall not begin operation after July 19, 2011 until the owner or operator registers with the Department. The owner or operator shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable. The owner or operator of a new waste tire collection site that begins operation after July 19, 2011 shall pay an initial registration fee of \$500 within 30 days of invoice receipt. For purposes of this Section, “new waste tire collection site” means a waste tire collection site as defined in A.R.S. § 44-1301 that did not operate as a collection site before July 19, 2011.
- B. The owner or operator shall pay a \$75 registration fee annually thereafter within 30 days of invoice receipt.

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

- A. A person shall not store 100 or more used tires outdoors until the person registers with the Department. A person that stores 100 or more used tires outdoors after July 19, 2011 shall pay an initial registration fee of \$500. The person shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable.
- B. A \$75 registration fee shall be due annually thereafter within 30 days of invoice receipt.

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C. For the purposes of this Section:

1. “Used tire” means any tire which has been used for more than one day on a motor vehicle.
2. “Outdoors” means other than inside a building with a weatherproof roof.

R18-13-1213. Facilities Subject to More Than One Tire Site Registration: Single Fee

A person who is required to register a tire facility under more than one of the following Sections shall register and follow procedures under each Section, but is only required to pay the registration fees under the Section with the highest fees.

1. R18-13-1211.
2. R18-13-1212.
3. R18-13-501.

ARTICLE 13. SPECIAL WASTE

R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles

A. No change

1. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - i. No change
 - ii. No change
2. No change
3. No change
4. No change
 - a. No change
 - b. No change
 - c. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change

B. No change

C. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change

D. No change

E. No change

F. The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ ~~49-855(H)~~ 49-855(C)(2) and 49-863 as follows:

1. in the amount of ~~66¢~~ \$1.49 per cubic yard of uncompacted shredder residue; or
2. of ~~\$1.50~~ \$3.38 per cubic yard of compacted shredder residue received; or
3. ~~\$2.00~~ \$4.50 per ton; and
4. Not more than \$45,000 per generator site per year for shredder residue that is transported to a facility regulated by the Department for treatment, storage or disposal.

G. Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in ~~R18-8-510~~ R18-13-310.

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

R18-13-1409. Transportation; Transporter License; Annual Fee

A. A transporter shall ~~register with~~ obtain a transporter license from the Department as provided under subsection (B), (C), and (D) below in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.

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- B.** Beginning on July 1, 2012, a transporter shall pay an annual fee of \$750 for every calendar year according to the following schedule, except that no transporter shall pay more than one annual fee in any calendar year:
1. Transporters registered with the Department before July 1, 2012 shall pay by December 31st of each year until their registration expires and shall apply for a license according to subsections (C) and (D) of this Section no more than 60 days before their registration expires.
 2. Transporters who have been issued a license or renewal of a license under this Section and have paid the licensing year fee as provided in subsection (D) shall pay the annual fee by Dec. 31st of each year thereafter.
 3. A transporter that has not been registered with the Department shall apply and obtain a license according to subsections (C) and (D) of this Section and pay an annual fee by December 31st of each year thereafter.
- ~~**B-C.** Upon receiving all of the following information from a transporter, the Department shall issue the registration after assigning a registration number to the transporter: To apply for or to renew a transporter license, an applicant shall submit all of the following on a form approved by the Department:~~
1. The name, address, and telephone number of the transportation company or entity.
 2. All owners' names, addresses, and telephone numbers.
 3. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.
 4. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.
 5. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
 6. A copy of the transportation management plan ~~required~~ that meets the requirements in subsection ~~(C)~~ (I).
 7. A list identifying each dedicated vehicle.
 8. An application fee of \$2,000 which shall apply toward the licensing year fee in subsection (D)(3).
- D.** The Department may only issue a transporter license, including a renewal, after all of the following:
1. All of the items in subsection (C) have been received and determined to be correct and complete.
 2. A Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article; and
 3. The applicant has paid a licensing year fee consisting of:
 - a. An amount based on the expenses associated with inspecting each transporting vehicle, evaluating the application, and approving the license, minus the application fee. The amount shall be calculated using a rate of \$122 per hour, multiplied by the number of personnel hours used in these duties.
 - b. The annual fee of \$750 for the year as provided for in subsection (B).
 - c. The maximum fee for both subsections (D)(3)(a) and (b) shall be \$20,000.
- E.** A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application under subsection (C) no later than 60 days before expiration. Renewals shall be issued after payment of a licensing year fee as provided in subsection (D)(3).
- F.** Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsection (C) within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments to the transportation management plan or amendments adding vehicles shall be processed after payment of inspection fees and other expenses at the rate listed in subsection (D)(3), except that the application fee shall be \$100 and the maximum fee \$5,000.
- G.** An applicant who disagrees with the final bill received from the Department for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- H.** Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.
- ~~**E-I.** A person who transports biohazardous medical waste shall maintain in each transporting vehicle at all times a transportation management plan consisting of both of the following:~~
1. Routine procedures used to minimize the exposure of employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
 2. Emergency procedures used for handling spills or accidents.
- ~~**D-J.** A transporter who accepts biohazardous medical waste from a generator shall leave a copy of the tracking document described in R18-13-1406(B) with the person from whom the waste is accepted. A transporter shall ensure that a copy of the tracking document accompanies the person who has physical possession of the biohazardous medical waste. Upon delivery to a Department-approved transfer, storage, treatment, or disposal facility, the transporter shall obtain a copy of the tracking document, signed by a person representing the receiving facility, signifying acceptance of the biohazardous medical waste.~~
- ~~**E-K.** A transporter who transports biohazardous medical waste in a vehicle dedicated to the transportation of biohazardous~~

medical waste shall ensure that the cargo compartment can be secured to limit access to authorized persons at all times except during loading and unloading. In addition, the cargo compartment shall be constructed in compliance with one of the following:

1. Have a fully enclosed, leak-proof cargo compartment consisting of a floor, sides, and a roof that are made of a non-porous material impervious to biohazardous medical waste and physically separated from the driver's compartment.
2. Haul a fully enclosed, leak-proof cargo box made of a non-porous material impervious to biohazardous medical waste.
3. Tow a fully enclosed leak-proof trailer made of a non-porous material impervious to biohazardous medical waste.

~~F.L.~~ A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used longer than 30 consecutive days, shall comply with the following:

1. Subsections (A) and ~~(C)~~ (I) through ~~(G)~~ (M).
2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.

~~G.M.~~ A person who transports biohazardous medical waste shall comply with all of the following:

1. Accept only biohazardous medical waste packaged as prescribed in R18-13-1407.
2. Accept biohazardous medical waste only after providing the generator with a signed tracking form as prescribed in R18-13-1406(B), and keep a copy of the tracking document for one year.
3. Deliver biohazardous medical waste to a Department-approved biohazardous medical waste storage, transfer, treatment, or disposal facility within 24 hours of collection or refrigerate the waste for not more than 90 days at 40° F or less until delivery.
4. Not hold biohazardous medical waste longer than 96 hours in a refrigerated vehicle unless the vehicle is parked at a Department-approved facility.
5. Not unload, reload, or transfer the biohazardous medical waste to another vehicle in any location other than a Department-approved facility, except in emergency situations. Combination vehicles or trailers may be uncoupled and coupled to another cargo vehicle or truck trailer as long as the biohazardous medical waste is not removed from the cargo compartment.

N. As used in this Section, "licensing year" means the calendar year in which the Department issues a license or a renewal of a license under this Section.

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

R18-13-1606. Fees

In accordance with A.R.S. §§ 49-855(C)(2) and 49-863, the treatment, storage, or disposal facility in this state that first receives a shipment of PCS shall remit to the Department a fee of \$2.00 \$4.50 per ton in accordance with A.R.S. § 49-863 but not more than \$45,000 per generator site per year for PCS that is transported to the facility.

~~ARTICLE 21. MUNICIPAL SOLID WASTE LANDFILLS~~ LANDFILL REGISTRATION FEES

R18-13-2101. Definitions

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Article, the terms used in this Article have the following meanings:

1. "Defined time period" means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. "Disposal fee invoice" means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. "Full quarter" means any of the standard fiscal quarters of the defined time period for which a municipal solid waste landfill accepted waste on or before the first day of the quarter and on or after the last day of that quarter.
4. ~~"Waste disposal rate" means the average amount of waste disposed in this state by a person daily, which the Department has calculated to be 6.17 pounds per person per day.~~

R18-13-2102. ~~Formula for Calculating Annual Registration Fee for an Existing Municipal Solid Waste Landfill~~

~~A. For an An existing municipal solid waste landfill, except those described in subsection (C), the Department shall calculate the shall pay an annual registration fee within 30 days of receipt of an invoice from the Department under A.R.S. § 49-747 after calculating the population served by that municipal solid waste landfill, as follows according to the following:~~

- ~~1. Multiply the waste disposal rate by the number of days in the defined time period, and~~
- ~~2. Divide the total number of pounds of waste received by the municipal solid waste landfill by the product from subsection (A)(1).~~
 1. For municipal solid waste landfills that received less than 12,000 tons during the defined time period, \$1,250.
 2. For municipal solid waste landfills that received at least 12,000 tons but less than 60,000 tons during the defined time period, \$2,500.
 3. For municipal solid waste landfills that received at least 60,000 tons but less than 225,000 tons during the defined

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time period, \$7,500.

4. For municipal solid waste landfills that received 225,000 tons or more during the defined time period, \$12,500.

5. Non-municipal solid waste landfills shall pay a flat fee of \$3,750.

6. Solid waste landfills that are closed to the public and that accept nonhazardous waste only shall pay a flat fee of \$3,750.

- B. The Department shall determine the ~~number of pounds~~ amount of waste received by a municipal solid waste landfill by one of the following methods:
1. For a municipal solid waste landfill that accepted waste over the entire defined time period ~~and:~~
 - a. ~~Reported As the reported~~ tons of solid waste received on the disposal fee invoice, ~~multiply the number of reported tons by 2,000,~~ or
 - b. ~~Reported As the reported~~ units of compacted or uncompacted solid waste received on the disposal fee invoice, ~~multiply the volume of solid waste and reported under A.R.S. § 49-836(A)(1) by 2,000;~~ or
 2. For a municipal solid waste landfill that accepted waste for only a portion of the defined time period, but no less than a full quarter, the Department shall project the total amount of waste that would have been received by the landfill over the entire defined time period, using one of the following methods:
 - a. For a municipal solid waste landfill that reported receiving waste for at least a full three quarters but less than the entire defined period, the amount of waste for the remaining quarter is the total amount of the waste reported for the full three quarters divided by three;
 - b. For a municipal solid waste landfill that reported receiving waste for at least a full two quarters but less than three quarters, the amount of waste for the remaining two quarters is the same as the total amount of waste reported for the two full quarters; or
 - c. For a municipal solid waste landfill that reported receiving waste for at least one full quarter but less than two quarters, the amount of waste for the remaining three quarters is the total of the amount of the waste reported for the full quarter multiplied by three.
 - C. For a municipal solid waste landfill that accepted waste for less than a full quarter, the annual landfill registration fee is ~~the minimum fee specified in A.R.S. § 49-747(C)~~ \$1,250.

R18-13-2103. Annual Landfill Registration: Due Date and Fees

- A. An operator of a new ~~municipal~~ solid waste landfill shall register the ~~municipal~~ solid waste landfill and pay the landfill registration fee as follows:
1. The operator shall pay the initial landfill registration fee within 30 days of the date that the Department approves the facility plan. The initial landfill registration fee is ~~the minimum fee specified in A.R.S. § 49-747(C)~~ \$1,250.
 2. Registration is valid for one year, except if the landfill is initially registered during October, November, or December of a calendar year, the next landfill registration due date is December 31 of the following calendar year and each calendar year thereafter unless released from the annual landfill registration requirement as specified in subsection (C).
 3. The annual registration fee remains ~~the minimum fee rate under A.R.S. § 49-747(C)~~ \$1,250 until the first annual registration period after the first full quarter of the defined time period.
- B. After the first full quarter, the Department shall calculate the annual registration fee according to R18-13-2102, and specify the fee on the Department's annual landfill registration invoice for the ~~municipal~~ solid waste landfill. The Department shall calculate and the ~~municipal~~ solid waste landfill shall pay the annual landfill registration fee until the first registration period after the ~~municipal~~ solid waste landfill stops accepting waste during a fiscal quarter of the defined time period.
- C. From the time a ~~municipal~~ solid waste landfill stops accepting waste as specified in subsection (B), until the owner or operator of the ~~municipal~~ solid waste landfill is released from its obligation to provide financial assurance for closure as required by A.R.S. §§ 49-761 or 49-770, the annual registration fee is ~~the minimum fee specified in A.R.S. § 49-747(C)~~ \$1,250.