

## NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. § 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

### TITLE 18. ENVIRONMENTAL QUALITY CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY SOLID WASTE MANAGEMENT

#### PREAMBLE

- | <u>Sections Affected</u> | <u>Rulemaking Action</u> |
|--------------------------|--------------------------|
| R18-3-701                | New Section              |
| R18-3-702                | New Section              |
| R18-3-703                | New Section              |
- The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statute: A.R.S. § 49-104(B)(4)  
Implementing statute: A.R.S. §§ 49-762 and 49-857
- The effective date of the rules:  
30 days from the date of publication of the adopted rules in the *Register*. (June 4, 1995)
- A list of all previous notices published in the *Register* addressing the exempt rule:  
None published.
- The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
Name: Martha L. Seaman  
Address: Arizona Department of Environmental Quality  
3033 North Central Avenue  
Phoenix, Arizona 85012  
Telephone: (602) 207-2222  
Fax: (602) 207-2251
- An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:  
In 1983 the legislature mandated that the Department conduct plan review and approve or disapprove plans for solid waste facilities operating within the state. Since that time, the Department has conducted review of solid waste facility plans but, until recently, has been unable to recoup any of the costs associated with the reviews. Solid waste plans are generally quite extensive and time consuming for the Department.  
  
In 1992 the legislature authorized the Director to collect reasonable fees for review of those plans. A.R.S. § 49-762(K) mandates that the Director collect a reasonable fee for review of a solid waste plan and authorizes an exempt rulemaking to establish criteria for those costs. A.R.S. § 49-857 mandates that the Director collect a reasonable fee for processing an application for approval of a particular type of solid facility plan, known as a special waste facility plan.  
  
In preparation for establishing the fees to be charged, the Department contracted with the independent accounting firm of Arthur Andersen & Co., to conduct a fee study to be used by the Department in establishing the hourly rate and fee schedule. The fee study was completed in November 1994 and is the basis for the rates and fees established by the Department in these rules.  
  
The Arizona Department of Environmental Quality (the Department) proposes adoption of this exempt rulemaking to establish these rules which set forth fee schedules and the hourly billing rate for review by the Department of solid waste facility and special waste facility plans. The rules clarify for the public what departmental costs are included in the hourly rate and for what labor hours an applicant will be charged. The rules set forth requirements for billing by the Department, payment by the applicant, and the consequences of failure to pay the bill. The rules also contain definitions and provide for review of a final bill by the Director in the case of a dispute involving the bill.  
  
The legislature provided separate statutory authority for solid waste and special waste fee rulemakings. Authority for the solid waste fee rulemaking is found at A.R.S. § 49-762(K). Authority for the special waste fee rulemaking is found at A.R.S. § 49-857(C). Special waste, by definition found at A.R.S. § 49-851(9), is solid waste. A.R.S. § 49-857, which sets forth the requirements for special waste facility plan review, mandates that a facility seeking approval complete a solid waste facility plan pursuant to A.R.S. § 49-762. Since the special waste facility plan review requirements are inextricably connected to the solid waste facility plan review requirements, the Department determined that it is reasonable, expeditious, and serves the statutory

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purpose to combine the fees rulemakings. A single rulemaking also allows the public to find the requirements for solid waste facility and special waste facility plan review fees in one place.

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 summary of the economic, small business, and consumer impact:  
The Department contracted with Arthur Andersen & Co. to conduct a fee study which was completed in November 1994. The fee study establishes the basis for the fees set forth in the rules and is available for review at the Department. No further economic impact statement will be conducted for this rulemaking.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):  
Not applicable.
10. A summary of the principal comments and the agency response to them:  
Not applicable.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Pursuant to A.R.S. § 49-762(K), this rulemaking shall provide for a public hearing. The time, place, and location of the hearings are as follows:

Date: June 5, 1995  
Time: 1 p.m.  
Location: Arizona Department of Environmental Quality  
3033 North Central Avenue  
Public Meeting Room  
Phoenix, Arizona

Date: June 6, 1995  
Time: 1 p.m.  
Location: Police Department Building  
2360 McCulloch Boulevard  
Lake Havasu City, Arizona

Date: June 8, 1995  
Time: 10 a.m.  
Location: Mayor and City Council Chambers  
255 West Alameda  
Tucson, Arizona

Date: June 13, 1995  
Time: 1 p.m.  
Location: City Council Chambers  
200 West Cooley  
Show Low, Arizona

The Department will accept oral or written comments which are received by 5 p.m. on June 16, 1995, or postmarked no later than June 16, 1995.

12. Incorporations by reference and their location in the rules:  
Not applicable.
13. Was this rule previously adopted as an emergency rule?  
No.
14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOLID WASTE MANAGEMENT

ARTICLE 7. SOLID WASTE FACILITY AND  
SPECIAL WASTE FACILITY PLAN REVIEW FEES

Section  
R18-13-701. Definitions

R18-13-702. Solid Waste Facility and Special Waste Facility Plan Review Fees  
R18-13-703. Review of Bill

**ARTICLE 7. SOLID WASTE FACILITY AND  
SPECIAL WASTE FACILITY PLAN REVIEW FEES**

**R18-13-701. Definitions**

In addition to the definitions in A.R.S. §§ 49-701, 49-772, and 49-851, and A.A.C. Title 18, Chapters 13 and 14, the terms used in this Article shall have the following meanings:

1. "APP" means an Aquifer Protection Permit that is required pursuant to A.R.S. § 49-241.
2. "Asbestos" means asbestos or asbestos-containing materials as defined in A.R.S. § 49-851(1) and regulated pursuant to A.A.C. R18-8-306.
3. "C & D landfill" means a landfill that accepts construction or demolition waste as defined in A.R.S. § 49-701.
4. "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.
  - c. A solid waste facility plan that includes a special waste management plan or an application for an Aquifer Protection Permit.
5. "Fiscal year" means the 12-month period which begins on July 1 and is dated for the next calendar year and ends on the following June 30.
6. "MSWLF" means a municipal solid waste landfill as defined in A.R.S. § 49-701.
7. "Major modifications" means a change to an approved plan which is a substantial change as defined in subsection (17)(a), (b), or (c).
8. "Medical waste facility" means a solid waste facility which stores, collects, treats, or disposes of biohazardous medical waste as defined in medical waste rules adopted by the Department pursuant to A.R.S. § 49-761.
9. "Minor modifications" means a change to an approved plan that is either a substantial change, as defined in subsection (17)(d) or (e), or a demonstration of financial responsibility, in accordance with A.R.S. § 49-770.
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(23).
  - 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-MSWLF" means a landfill that is not a municipal solid waste landfill.
12. "PCS treatment facility" means a treatment facility as defined in A.A.C. R18-8-1602(19).
13. "Shredder residue" means waste from the shredding of motor vehicles.
14. "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.

15. "Special waste management plan" means a 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.
16. "Storage facility" means a solid waste facility that is designed, constructed, and operated for the purpose of holding solid waste under any of the following conditions:
  - a. The solid waste remains on the site of generation and is not stored in a container or tank, unless specifically authorized by law.
  - b. Is stored in a container or tank for a period that is longer than 90 days.
  - c. The solid waste remains on the site of generation and meets all of the following:
    - i. The solid waste is containerized and non-putrescible.
    - ii. The solid waste is generated at the rate of 1,000 kilograms or less per month.
    - iii. The solid waste is stored for a period of time that is longer than 180 days.
  - d. The solid waste is taken to an off-site facility that holds the solid waste for a period of time that is longer than 90 days.
17. "Substantial change" means any of the following:
  - a. The addition of a major piece of equipment or a structural component as defined in A.R.S. § 49-772(H)(14) which is directly used for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste that is not described in the approved plan, and either of the following:
    - i. Results in a discharge as defined in A.R.S. § 49-201(10).
    - ii. Requires a state or federal environmental permit.
  - b. The addition of a new solid waste operation, which is not described in the approved plan, and which is described by either of the following:
    - i. Results in a discharge as defined in A.R.S. § 49-201(10).
    - ii. Requires a state or federal environmental permit.
  - c. A change or deletions in the structural component, pollution control device, or environmental-monitoring device of a solid waste landfill.
  - d. An increase in volume of the solid waste landfill design capacity not indicated in the approved plan.
  - e. A decrease in personnel or equipment below the minimum required to operate the public solid waste facility as established in the approved plan.

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

- A. With each solid waste facility plan submitted for approval pursuant to A.R.S. § 49-762, the applicant shall remit an initial fee in accordance with one of the schedules in this subsection, unless otherwise provided in subsection (B) or (E). This Section also lists the maximum fees for which the owner or applicant will be billed for a plan submitted to the Department for

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approval. All fees paid shall be payable to the state of Arizona. Fees paid to the Department shall be deposited into the state General Fund or, if otherwise authorized or required by law, in a fund administered by the Department.

<b>Schedule A</b> <b>New- Solid Waste Facility Plan Reviews</b>		
	Initial	Maximum
<b>Solid Waste Facilities Plans:</b>		
MSWLF	\$6,155	\$38,442
C & D Landfill	\$3,098	\$23,669
Storage Facility	\$1,668	\$11,676
Medical Waste Facility	\$2,502	\$16,044
Transfer Facility	\$2,502	\$16,044
<b>Special Waste Management Plans:</b>		
PCS Treatment Sites	\$556	\$2,462
Shredder Residue	\$556	\$2,383
Asbestos	\$556	\$2,542

<b>Schedule B</b> <b>Major Modifications- Solid Waste Facility Plan Reviews</b>		
	Initial	Maximum
<b>Solid Waste Facilities Plans:</b>		
MSWLF	\$3,078	\$19,221
C & D Landfill	\$1,549	\$11,834
Storage Facility	\$834	\$5,838
Medical Waste Facility	\$1,251	\$8,022
Transfer Facility	\$1,251	\$8,022
<b>Special Waste Management Plans:</b>		
PCS Treatment Sites	\$278	\$1,231
Shredder Residue	\$278	\$1,191
Asbestos	\$278	\$1,271

<b>Schedule C</b> <b>Minor Modifications- Solid Waste Facility Plan Reviews</b>		
	Initial	Maximum
<b>Solid Waste Facilities Plans:</b>		
MSWLF	\$1,231	\$7,688
C & D Landfill	\$620	\$4,734
Storage Facility	\$334	\$2,335
Medical Waste Facility	\$500	\$3,209
Transfer Facility	\$500	\$3,209
<b>Special Waste Management Plans:</b>		
PCS Treatment Facility	\$111	\$492
Shredder Residue	\$111	\$477
Asbestos	\$111	\$508

<b>Schedule D</b> <b>Closure- Solid Waste Facility Plan Reviews</b>		
	Initial	Maximum
<b>Solid Waste Facilities Plans:</b>		
MSWLF	\$1,231	\$7,688
C & D Landfill	\$620	\$4,734
Storage Facility	\$334	\$2,335
Medical Waste Facility	\$500	\$3,209
Transfer Facility	\$500	\$3,209
<b>Special Waste Management Plans:</b>		
PCS Treatment Facility	\$111	\$492
Shredder Residue	\$111	\$477
Asbestos	\$111	\$508

- 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 highest initial fee as set forth in schedules in subsection (A).
  2. The maximum fee shall be in the sum total of the maximum fee for each individual component as set forth in schedules in subsection (A) and shall be paid in accordance with subsections (C) and (D).
- C. For each plan being reviewed, the Department shall issue an itemized interim bill to the applicant within 90 days after the application is administratively complete and every 90 days thereafter until the application is approved. The applicant shall pay the interim bill within 30 days of receipt of the bill. If the interim bill is not paid within 30 days, the Department shall cease review of the plan.
- D. The Department shall issue a final itemized bill at the same time the Department issues the approval to operate or informs the applicant of denial of approval. If the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the difference between the actual cost and the amount listed and paid shall be returned to the applicant with a final itemized bill within 30 days of the issuance of the approval to operate, or denial of the approval. If the actual cost of plan review is greater than the corresponding amount listed, the Department shall send the applicant a final itemized bill for the difference between the initial fee and any interim fees paid and the actual cost of reviewing the plan, except that the final bill shall not exceed the applicable maximum fee specified in subsection (A) or (B). Such difference shall be paid in full within 30 days of receipt of the bill.
- E. The Department shall keep a record of all fees due, including the costs associated with denial of approval. Any amount due the Department shall be paid to the Department within 30 days of issuance of the approval. Failure to pay the amount due shall result in the automatic suspension of the permit on the 30th day and the suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days, the permit shall be revoked. The Department shall review no

- further plans for an entity which has not paid all fees due for a previous approval or denial of approval.
- F. When determining actual cost under subsection (D), the Department shall use an hourly billing rate for all direct labor hours spent working on the review of the plan, plus any direct cost specified in subsection (I), which were incurred but are not included in the hourly billing rate. The hourly billing rate shall be based on an annual sum of the following solid waste facility plan review program-related costs divided by the total number of direct labor hours allocated for solid waste facility plan review for the same year:
1. Salary and personnel benefit cost of the plan review technical employees directly involved in the review of solid waste facility plans.
  2. Salary and personnel benefit cost of the plan review support employees such as supervisory and clerical personnel.
  3. Overhead and other operating expenses attributable to all solid waste facility plan review employees.
  4. Per diem expenses.
  5. Transportation cost.
  6. Reproduction cost.
- G. Billable labor hours spent working on the review of solid waste facility plans shall consist of time spent by solid waste plan review technical staff on tasks specifically related to the processing, approval, or denial of a particular solid waste facility plan, including time at the facility or proposed site inspecting the facility or site, time at a public hearing, time at meetings with the public, or time at meetings with the applicant or the applicant's representatives including the time at a pre-application conference.
- H. Direct labor hours shall not include any of the following:
1. Training.
  2. Travel to or from any facility, meetings, or hearings.
  3. Time by clerical or supervisory staff, unless the supervisory staff is filling in for a particular technical staff member in that person's absence.
- I. Other allowable direct costs that the Department shall include in the plan review fee, if applicable, are any of the following:
1. Laboratory analysis charges.
  2. Public notice advertising.
  3. Presiding officer expenses.
  4. Court reporter expenses.
  5. Facility rentals.
  6. Contract services.
  7. Other reasonable, direct, plan review-related expenses documented in writing by the Department.
- J. From the effective date of these rules, the hourly rate shall be \$38.30. If the fee schedule or hourly rate is not changed, the current fee schedule and hourly rate shall remain in effect for the following fiscal year.
- K. This Article shall become effective 30 days from the date of publication of the adopted rules in the *Arizona Administrative Register*. An applicant who has submitted an administratively complete plan before the effective date of the rules shall not be required to remit an initial fee and shall be billed only for those direct labor hours and other direct costs incurred by the Department on or after the effective date of the rules. If a plan is administratively incomplete on the effective date of these rules, an initial fee for that type of plan shall be paid at the time of resubmission.

**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 ten 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 ten 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 ten working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.