

NOTICES OF PUBLIC INFORMATION

Notices of Public Information contain corrections that agencies wish to make to their notices of rulemaking; miscellaneous rule-making information that does not fit into any other category of notice; and other types of information required by statute to be published in the *Register*. Because of the variety of material that is contained in a Notice of Public Information, the Office of the Secretary of State has not established a specific format for these notices.

NOTICE OF PUBLIC INFORMATION

DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

REPEAL OF SUBSTANTIVE POLICY STATEMENT 02-01: LIVESTOCK INSPECTION, ISSUED APRIL 29, 2002

- 1. Title and its heading:** 3, Agriculture
Chapter and its heading: 2, Department of Agriculture
Animal Services Division
Section numbers: R3-2-701, R3-2-702, and R3-2-703
- 2. PURPOSE**
To repeal Substantive Policy Statement 02-01, Livestock Inspection, issued April 29, 2002.
- 3. AUTHORITY**

A.R.S. § 3-1203	General powers and duties; civil penalties
A.R.S. § 3-1236	Collection of additional amounts at time of brand inspection; disbursement
A.R.S. § 3-1291	Bill of sale required in transfer of livestock
A.R.S. § 3-1332	Method, place, and time of inspecting livestock
A.R.S. § 3-1334	Inspection as to ownership of livestock
A.R.S. § 3-1335	Certificate of inspection; delivery
A.R.S. § 3-1336	Inspection of livestock to be slaughtered, sold, or transported; fee; violation; classification
A.R.S. § 3-1337	Service charge and inspection fee; self-inspection; civil penalties
A.R.S. § 3-1346	Seasonal inspection for exhibition livestock; fee
- 4. APPLICABILITY**
This Notice is issued to advise the public that Substantive Policy Statement 02-01, Livestock Inspection, issued April 29, 2002, is repealed as of April 6, 2003. Livestock inspection and self-inspection rules R3-2-701, R3-2-702, and R3-2-703 are effective on April 6, 2003. The Governor's Regulatory Review Council approved the rules on February 4, 2003. The Notice of Final Rulemaking was published in the *Arizona Administrative Register* on February 21, 2003. These rules replace Substantive Policy Statement 02-01, Livestock Inspection, issued April 29, 2002.
- 5. IMPLEMENTATION**
This Notice is effective April 6, 2003.

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DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ADMINISTRATIVE ORDER 03-05: EXOTIC NEWCASTLE DISEASE
CALIFORNIA, NEVADA, AND ARIZONA

- 1. Title and its heading:** 3, Agriculture
Chapter and its heading: 2, Department of Agriculture
Animal Services Division
Section numbers: R3-2-602, R3-2-603, R3-2-605, R3-2-606, R3-2-611, R3-2-617,
and R3-2-618

- 2. PURPOSE**
To prevent the spread of exotic Newcastle disease within the state of Arizona.

- 3. AUTHORITY**
A.R.S. § 3-1203(A) General powers and duties; civil penalties
A.R.S. § 3-1205 Control of animal diseases; violation; classification
9 CFR Part 82 Subpart A Exotic Newcastle Disease (“END”)

- 4. APPLICABILITY**
This Order supplements *Arizona Administrative Code*, Title 3, Chapter 2, Article 6, Health Requirements Governing Admission of Animals, and applies to all avian species, commercial traffic originating from a quarantine area in California, Nevada, or Arizona, and to bird exhibits, shows, auctions, public displays, and competitions in Arizona.

- 5. ORDER**
- A. Area under quarantine. The area under quarantine includes all counties and portions of counties in California, Nevada, and Arizona currently declared or in the future declared to be under quarantine for END by those states or by the U.S. Department of Agriculture (“USDA”), Animal and Plant Health Inspection Service (“APHIS”). As of the date of this Order, the following counties are under quarantine:
1. In California, all of the following counties:
 - a. Imperial County,
 - b. Los Angeles County,
 - c. Orange County,
 - d. Riverside County,
 - e. San Diego County,
 - f. Santa Barbara County,
 - g. San Bernadino, and
 - h. Ventura County.
 2. In Nevada,
 - a. All of Clark County, and
 - b. That portion of Nye County that lies south of US Highway 95 and east of State Highway 373.
 3. In Arizona, all of the following counties:
 - a. La Paz, and
 - b. Yuma County, and
 - c. The portion of Mohave County that lies south and east of the Colorado River.
- B. Items under restriction. Birds, poultry, poultry products, poultry waste, vehicles, and materials that could transmit END.
- C. Items not under restriction. Poultry meat products produced under USDA inspection or equivalent Arizona inspection are exempt from the list of items under restriction. Vehicles transporting any poultry meat products are

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required to be clean of materials that could transport END. Such vehicles exiting California or Nevada may be subject to inspection at an Arizona Port-of-Entry.

- D. A live bird of any type, including poultry, may not be moved from an area under quarantine into Arizona, or from or within an Arizona area under quarantine unless permission is granted by the Arizona Department of Agriculture and the bird has been tested according to a protocol established by the USDA.
- E. A dead bird of any type, eggs, material, including poultry waste or used appliances that could transmit END may not be moved from an area under quarantine into Arizona, and such movement from or within an Arizona area under quarantine requires prior authorization from the Arizona Department of Agriculture or the USDA. An exemption is made for eggs that have met the requirements of 9 CFR 82.8, including washing, sanitizing, and packing in new material.
- F. Equipment used for processing eggs, or for housing, feeding, watering, entertaining, or otherwise caring for birds of any type may only be moved from an area under quarantine if accompanied by a certificate signed by an official of the USDA, the California Department of Food and Agriculture, the Nevada Department of Agriculture, or the Arizona Department of Agriculture stating that the equipment has been cleaned and disinfected according to a protocol established by the USDA.
- G. A commercial vehicle originating from an area under quarantine in California or Nevada that is transporting feed or eggs must stop at an Arizona Port-of-Entry inspection station located in Yuma (I-8), Ehrenberg (I-10), Parker (SR 95), Topock (I-40), or Kingman (US-93 SR 68) and provide the state inspector proof of the cleaning and disinfection of the vehicle, trailer, and packing material performed immediately prior to the loading of the vehicle. This proof must be provided in writing and demonstrate that the cleaning and disinfection was performed according to a protocol established by the USDA. A copy of a compliance agreement between the USDA and an egg processor or feed manufacturer or distributor will satisfy the proof requirement.
- H. A vehicle of any type transporting a bird from California or Nevada shall stop at an Arizona Port-of-Entry inspection station located in Yuma (I-8), Ehrenberg (I-10), Parker (SR 95), Topock (I-40), or Kingman (US-93 SR 68) and provide the state inspector an original health certificate issued by an accredited veterinarian within thirty days prior to entry stating the birds are healthy and do not originate from a quarantine area. Photocopies of health certificates must have an original veterinarian signature.
- I. Poultry or bird events, such as exhibits, shows, auctions, competitions, or other public displays of birds of any type are prohibited in an Arizona county under quarantine.
- J. A promoter of a poultry or bird event in an Arizona county not under quarantine shall immediately inform the State Veterinarian by mail, fax, or e-mail of a scheduled event. The notification shall include the contact name, mailing address, physical location of the event, and daytime telephone number.
- K. Birds from an area under quarantine are not to be included in an event of any type held in an Arizona county not under quarantine. A promoter of an event in an Arizona county not under quarantine shall inform the event participants in writing of this Order, the current quarantine for exotic Newcastle disease, and the risk of introducing that disease into Arizona. The promoter shall require each event participant to attest in writing that they are not in violation of this Order. The signed document shall be forwarded to the State Veterinarian within one week of the conclusion of the event. If a participant advises the promoter that he or she is in violation of the Order, the promoter shall immediately call the office of the State Veterinarian at (602) 542-4293.

6. IMPLEMENTATION

This Order cancels Director's Administrative Orders 03-01 through 03-04, is effective March 28, 2003, and remains in effect until cancelled.

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DEPARTMENT OF ENVIRONMENTAL QUALITY
AZPDES CONSTRUCTION GENERAL PERMIT

- 1. Name of the agency:** Department of Environmental Quality
2. Title and its heading: 18, Environmental Quality
Chapter and its heading: 9, Department of Environmental Quality
Water Pollution Control
Article and its heading: 9, Arizona Pollutant Discharge Elimination System
Section number: R18-9-A908(E)(2)
3. Notice of final permit determination:

On February 28, 2003, the Arizona Department of Environmental Quality (ADEQ) issued an Arizona Pollutant Discharge Elimination System (AZPDES) general permit authorizing stormwater discharges from construction activities into waters of the United States. The final permit will be effective for a period of five years from the date of signature. This permit also replaces the previous Construction General Permit issued by EPA Region IX, which expired on February 17, 2003. This permit action results from the Phase II Stormwater Regulations issued by EPA in the December 8, 1999 Federal Register. On December 5, 2002, ADEQ became the permitting authority for NPDES in the state of Arizona (excluding Indian country) and responsible for implementation of the Phase II requirements.

ADEQ made a public notice of the permit action available in the January 10, 2003 *Arizona Administrative Register* and accepted public comments until February 13, 2003. ADEQ amended the draft permit, where appropriate, to address a number of comments received during the comment period. ADEQ made significant changes from the draft to the final permit as a response to comments. These changes include:

- “Grandfathering in” existing construction sites such that they are not subject to the delay in authorization that might occur due to the location of the site next to impaired or unique waters or in areas of endangered species and critical habitat concerns.
- Removal of the provision that excluded sites located in a Total Maximum Daily Load (TMDL) area where a waste load allocation exists from coverage under this permit.
- Specifying that applicants with a delay in coverage have a presumption of coverage after 32 business days from the date of submittal of their NOI documents if ADEQ has not otherwise notified them.
- Addition of three more allowable nonstormwater discharges. ADEQ also included a provision that specifies that operators are to minimize all non-stormwater discharges and implement appropriate Best Management Practices to minimize pollutants from such discharges.
- Addition of a provision that if the site is located within an MS4 area, the NOI and other forms are also to be submitted to the operator at the time of submittal to ADEQ.
- Deletion of language that might imply other agencies have the ability to deny coverage under this permit.
- Deletion of the requirement that the applicant supply the Township, Range, and Section of the project location, and the distance to receiving waters, as this information will be accessible to ADEQ by other means. Changes to the NOI requirements also provide that linear projects must state if any portion of the site is located within 1/4 mile of impaired or unique waterbodies; information regarding subdivisions.
- A clarification was added to the allowance for small construction sites to obtain a permit waiver, specifying if water quality concerns arise ADEQ may require permit coverage.
- Deletion of the requirement that the stormwater pollution prevention plan (SWPPP) include authorization numbers for all operators.
- Addition of the requirement that the SWPPP map be ‘to-scale.’
- Removal of a requirement that the permittee must modify inappropriate controls within 24 hours as it contradicted another section of the permit.
- Addition of a provision for operators doing only monthly inspections, to inspect before predicted rainfall events, as well as after events of 0.5”.
- Deletion of the option for the operator, in response to notice of water quality problems from ADEQ, to submit data indicating the receiving water is meeting standards.
- Deletion of the definition of “discharge related activities.”

Other clarifying changes to the permit, fact sheet and forms were made as a result of comments.

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4. The final general permit:

A complete itemization of the comments and ADEQ's responses, a copy of the final fact sheet, and the final permit is available on the ADEQ web site at: <http://www.adeq.state.az.us/environ/water/permits/download/constcom.pdf> or contact ADEQ at (602) 771-4665.

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DEPARTMENT OF ENVIRONMENTAL QUALITY

AZPDES SMALL MS4 GENERAL PERMIT

1. Name of the agency:

Department of Environmental Quality

2. Title and its heading:

18, Environmental Quality

Chapter and its heading:

9, Department of Environmental Quality

Water Pollution Control

Article and its heading:

9, Arizona Pollutant Discharge Elimination System

Section number:

R18-9-A908(E)(2)

3. Notice of final permit determination:

On December 19, 2002, the Arizona Department of Environmental Quality (ADEQ) issued an Arizona Pollutant Discharge Elimination System (AZPDES) general permit authorizing discharges from small municipal separate storm sewer systems (MS4s) into waters of the United States. The final permit will be effective for a period of five years from the date of signature. This permit action results from the Phase II Stormwater Regulations issued by EPA in the December 8, 1999 Federal Register. On December 5, 2002, ADEQ became the permitting authority for NPDES in the state of Arizona (excluding Indian country) and responsible for implementation of the Phase II requirements.

The Phase II regulations required permitting authorities to make a permit available to MS4 applicants by December 9, 2002. ADEQ made a public notice of the permit action available in the September 27, 2002 *Arizona Administrative Register*. ADEQ accepted public comments until October 30, 2002 and also participated in a public meeting held by EPA Region IX on October 16, 2002.

Seventeen parties including regulated municipalities and county associations of government submitted comments on the draft MS4 permit. ADEQ changed the final permit in response to these comments. The main comments focused on ADEQ's ability to make guidance from the Federal Register into enforceable requirements and the requirement in the draft permit that permittees meet water quality standards. ADEQ's response to these comments is included below. For a complete itemization of the comments and ADEQ's responses, as well as a copy of the final fact sheet and final permit, please review the link available on ADEQ's web site at: <http://www.adeq.state.az.us/environ/water/permits/download/responses.pdf>. The Small MS4 file is available from ADEQ's Phoenix office and may be viewed by contacting the Records Management Center at (602) 771-4378.

Comment concerning the requirement to meet water quality standards

Many commenters objected to the proposed provisions in the permit which would require compliance with applicable water quality standards. These commenters recommended that the permit only require stormwater pollution controls consistent with the "maximum extent practicable" (MEP) standard in the Clean Water Act (CWA). Concerns with the draft permit language included difficulties in achieving compliance with standards, the potential costs of compliance and potential third party lawsuits stemming from noncompliance. Several commenters also pointed out that in the final Phase II stormwater regulations at 40 CFR 122.34(e), EPA had recommended that no additional controls beyond MEP be required for small MS4s (except where needed based on a total maximum daily load (TMDL) analysis), until after the evaluation of the small MS4 program which is due after 2012.

Response: In response to the commenters, ADEQ has substantially changed the language from the proposal. While ADEQ has the legal authority to establish the requirements in the draft permit, changes were made in response to some of the policy concerns raised.

The 1987 WQA specifies a new technology-related level of control for pollutants in the discharges-control to the maximum extent practicable (MEP). Because of a dispute over whether MS4 discharges were also required to meet state water quality standards, the initial issuance of the 1997 Phase I permit for the City of Phoenix was challenged in the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit concluded that CWA section 402(p)(3)(B) did not require strict compliance with CWA section 301(b)(1)(C) state water quality standards. Defenders of Wildlife v. Browner, 191 F.3d 1159 (Sept. 15, 1999). At the same time the court made clear that EPA has the discretionary authority under CWA section 402(p) to determine that "ensuring strict compliance with state water-quality standards is necessary" or "to require less than strict compliance..." Specifically, CWA section 402(p)(3)(B)(iii) requires MS4s to "reduce the discharge of pollutants to MEP, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator...determines appropriate for the control of such pollutants" (emphasis added).

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And, in fact, the Ninth Circuit upheld EPA's authority under section 402(p) to require compliance with water quality standards for the Phase I permits. Accordingly, ADEQ disagrees with the various commenters who challenged the legal basis for the proposed language.

Nonetheless, ADEQ has used its discretion and determined that a different standard is appropriate for this permit, one which primarily relies on the MEP standard. First, while ADEQ believes all MS4s must make progress toward attainment of water quality standards, it was not our intent to impose effluent limitations reflecting numeric water quality standards at this time. Rather, as reflected in the preamble to, and text of, 40 CFR 122.34(a) (incorporated by reference in A.A.C. R18-9-A905), for small MS4s, EPA believes that narrative effluent limitations requiring implementation of BMPs are "generally the most appropriate form of effluent limitations...to satisfy technology requirements and to protect water quality." Particularly in the first round of MS4 Phase II permits, ADEQ considers it appropriate to focus on design and implementation of the minimum control measures to achieve progress toward meeting water quality goals.

Comment concerning the basis for using federal guidance as a requirement

A number of commenters objected to many of the requirements for a stormwater management program (SWMP) which were included in the proposed permit based on recommendations in the Phase II regulations. The commenters contended that the flexibility which was intended by the regulations is lost by doing this.

Response: For each of the six minimum measures set forth at 40 CFR 122.34(b) for a SWMP, the regulations specify certain requirements and also include guidance concerning the minimum measure. ADEQ believes it is not practical or appropriate to include recommendations in an AZPDES permit as it leads to confusion to both the permittee and the regulators as to what the actual requirements are. ADEQ considers that by specifying expectations, the permittee will have a clearer direction in preparing and implementing an acceptable SWMP, and will be better able to comply with the permit. The guidance, on which the permit conditions were based, provides useful clarification concerning the types of activities which are appropriate to effectively implement each of the six minimum measures. The guidance was developed with scientific and stakeholder input and it addresses the specific contaminant sources that the ADEQ believes contribute to pollution of runoff. By addressing these sources and related issues, ADEQ believes permittees will be closer to achieving reduction of pollutants to the maximum extent practicable. Future permit requirements may be adjusted on the basis of how successfully these issues are addressed.

In response to comments, however, ADEQ reviewed Part V.B. of the permit and removed some requirements which we believe are non-essential to fulfilling the goal of pollutant reduction to the MEP.

4. The final general permit:

A complete itemization of the comments and ADEQ's responses, a copy of the final fact sheet, and the final permit is available on the ADEQ web site at: <http://www.adeq.state.az.us/environ/water/permits/stormwater.html#ms4> or contact ADEQ at (602) 771-4665.