

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 ENVIRONMENTAL QUALITY

1. **A.R.S. Title and its heading:** 49, The Environment
A.R.S. Chapter and its heading: 2, Water Quality Control
A.R.S. Article and its heading: 2.1, Total Maximum Daily Loads
Section: A.R.S. § 49-234, Total maximum daily loads; implementation plans
2. **The public information relating to the listed statute:**

Pursuant to A.R.S. § 49-234, the Arizona Department of Environmental Quality (Department or ADEQ) is required to develop a total maximum daily load (TMDL) for navigable waters that are listed as impaired. The purpose of this notice is to publish the Department's determinations of total pollutant loadings for TMDLs in the Boulder Creek Watershed that the Department intends to submit to the Regional Administrator for Region 9, U.S. Environmental Protection Agency ("EPA") for approval.

The Department previously provided public notice and an opportunity for public comment on the "Draft Boulder Creek TMDL for Arsenic, Beryllium, Copper, Lead, Manganese, and Zinc" in *The Daily Courier*, a newspaper of general circulation in the affected area, on June 2, 2003. While the Department received written comments from Phelps Dodge Bagdad, Inc. (PDBI) on the TMDL outside the public notice period, ADEQ has included a summary of the comments and the Department's responses, in this notice. The purpose of this notice is to satisfy A.R.S. §§ 49-234(D) and 49-234(E), which require the Department to publish in the *Arizona Administrative Register* the determination of total pollutant loadings that will not result in impairment and the proposed allocations among the contributing sources that are sufficient to achieve the total pollutant loadings.

3. **Total Maximum Daily Loads (TMDLs)**
 - A. **Total Maximum Daily Load (TMDL) Process**

A Total Maximum Daily Load (TMDL) represents the total load of a pollutant that can be assimilated by a waterbody on a daily basis and still meet the applicable water quality standard. The TMDL can be expressed as the total mass or quantity of a pollutant that can enter the waterbody within a unit of time. In most cases, the TMDL determines the allowable pounds per day of a pollutant and divides it among the various contributors in the watershed as wasteload (i.e., point source discharge) and load (i.e., nonpoint source) allocations. The TMDL must also account for natural background sources and provide a margin of safety. For nonpoint sources such as accelerated erosion or internal nutrient cycling, it may not be feasible or useful to derive a figure in terms of pounds per day. In such cases, a percent reduction in pollutant loading may be proposed. A load analysis may take the form of a phased TMDL, if source reduction or remediation can be better accomplished through an iterative approach.

In Arizona, as in other states, changes in standards or the establishment of site-specific standards are the result of ongoing science-based investigations or changes in toxicity criteria from EPA. Changes in designated uses and standards are part of the surface water standards triennial review process and are subject to public review. Standards are not changed simply to bring the waterbody into compliance, but are based on sound science that includes evaluation of the risk of impact to humans or aquatic and wildlife. Existing uses of the waterbody and natural conditions are considered when standards for specific water segments are established.

These TMDLs meet or exceed the following EPA Region 9 criteria for approval:

Plan to meet State Surface Water Quality Standards: The TMDLs include a study and a plan for the specific pollutants that must be addressed to ensure that applicable water quality standards are attained.

Describe quantified water quality goals, targets, or endpoints: The TMDL must establish numeric endpoints for the water quality standards, including beneficial uses to be protected, as a result of implementing the TMDLs. This often requires an interpretation that clearly describes the linkage(s) between factors impacting water quality standards.

Analyze/account for all sources of pollutants: All significant pollutant sources are described, including the magnitude and location of sources.

Identify pollution reduction goals: The TMDL plan includes pollutant reduction targets for all point and nonpoint sources of pollution.

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Describe the linkage between water quality endpoints and pollutants of concern: The TMDLs must explain the relationship between the numeric targets and the pollutants of concern. That is, do the recommended pollutant load allocations exceed the loading capacity of the receiving water?

Develop margin of safety that considers uncertainties, seasonal variations, and critical conditions: The TMDLs must describe how any uncertainties regarding the ability of the plan to meet water quality standards that have been addressed. The plan must consider these issues in its recommended pollution reduction targets.

Provide implementation recommendations for pollutant reduction actions and a monitoring plan: The TMDLs should provide a specific process and schedule for achieving pollutant reduction targets. A monitoring plan should also be included, especially where management actions will be phased in over time and to assess the validity of the pollutant reduction goals.

Include an appropriate level of public involvement in the TMDL process: This is usually met by publishing public notice of the TMDLs in a newspaper of general circulation in the area affected by the study, circulating the TMDLs for public comment, and holding public meetings in local communities. Public involvement must be documented in the state's TMDL submittal to EPA Region 9.

In addition, these TMDLs comply with the public notification requirements of A.R.S. Title 49, Chapter 2, Article 2.1: Publication of these TMDLs in the *Arizona Administrative Register* is required per Arizona Revised Statute, Title 49, Chapter 2, Article 2.1 prior to submission of the TMDL to EPA. The Department shall:

1. Prepare a draft estimate of the total amount of each pollutant that causes impairment from all sources that may be added to a navigable water while still allowing the navigable water to achieve and maintain applicable surface water quality standards, and provide public notice and an opportunity for comment in a newspaper of general circulation in the affected area;
2. Publish a notice in the *Arizona Administrative Register* (this notice) of the determination of total pollutant loadings that will not result in impairment, a summary of comments received to the initial TMDL public notice, and the Department's responses to the comments;
3. Make reasonable and equitable allocations among TMDL sources, and provide public notice and an opportunity for comment in a newspaper of general circulation in the affected area;
4. Publish a notice in the *Arizona Administrative Register* (this notice) of the allocations among contributing sources, along with responses to any comments received on the draft allocations in a newspaper of general circulation.

Federal law only requires the submittal of the pollutant loadings to EPA for approval. However, the Department considers the pollutant loadings and the draft allocations to be integrally related and should be presented together to afford the public a complete understanding of the issues, outcomes and recommendations of the TMDL analysis. For that reason, the Department has combined the loadings and allocations in both the public notice in the local newspaper as well as in this publication in the *Arizona Administrative Register*.

B. Total Maximum Daily Load for Boulder Creek

EXECUTIVE SUMMARY

Section 303(d) of the Clean Water Act requires each state to develop Total Maximum Daily Loads (TMDLs) for surface waters that do not meet and maintain applicable water quality standards. A TMDL establishes the amount of a given pollutant that the waterbody can withstand without creating an impairment of that surface water's designated use. The TMDL by definition (40 Code of Federal Regulations Part 130) is the sum of all point and non-point sources with the inclusion of a margin of safety and natural background considerations.

Boulder Creek, from Wilder to Burro Creek, located near Bagdad, AZ, in west central Yavapai County, appeared on the Arizona Department of Environmental Quality's 1998 List of Water Quality Limited Waters for exceedances of surface water quality standards for arsenic, beryllium, copper, lead, manganese, and zinc. Specific surface water quality standards for these parameters are listed in Title 18, Chapter 11 of the Arizona Administrative Code. For this TMDL investigation, samples were collected to discern pollutant sources, the extent of impairment, and allow for the calculation of pollutant loads and allocations. Sample results supported delisting beryllium, lead, and manganese for the entire reach; copper and zinc from Butte Creek to Burro Creek and arsenic from Copper Creek to Burro Creek. The TMDLs for copper and zinc from Wilder Creek to Butte Creek and for arsenic from Wilder Creek to Copper Creek can be found in the table below, titled Boulder Creek TMDLs.

The sources of pollutants are three tailings piles, the upper tailings pile, the middle tailings pile, and the lower tailings pile, and an adit discharge from the abandoned Hillside Mine. The tailings piles are located on land owned by three different entities: Bureau of Land Management (BLM), private, and State of Arizona, respectively. In October 1999, BLM hired a contractor to conduct a site characterization of the tailings piles in preparation for remediation efforts. BLM and its contractors drafted a remediation/reclamation plan for the upper and middle tailings piles. In early 2001, the U.S. Environmental Protection Agency (EPA) became involved in remediation by offering financial assistance and by offering to manage the project under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Currently, the Hillside Mine is not on the National Priorities List (NPL) and its non-NPL status is considered a "removal only" site. In late summer 2001, EPA entered discussions with the private landowner to review the landowner's proposal to reprocess and remediate the upper and middle tailings piles. Since then, the owners of the

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middle tailings pile have rescinded their offer to reprocess the tailings piles. BLM is moving forward on their plans to remediate the upper tailings pile. The ADEQ is assisting both the private entity and the Arizona State Land Department (ASLD) in applying for federal 319(h) grants to coordinate remediation of the middle and lower tailings piles, respectively, with BLM's effort.

WATERSHED OVERVIEW

Waterbody:	Boulder Creek Watershed
Drainage:	138 square miles
Designated Uses:	Aquatic & Wildlife, warm water; Fish consumption; Full body contact;
	Agriculture, irrigation; Agriculture, livestock watering
Communities:	Bagdad
County:	Yavapai
Land Ownership:	State trust, private, BLM
Land Use:	Open rangeland, ranching, mining
Principal Geology:	Pre-Cambrian to Tertiary igneous and metamorphic rocks
Potential Sources:	Tailings piles and adit discharge from the abandoned Hillside Mine

LOADS AND ALLOCATIONS

A wide range of data and information was used to develop these TMDLs, including physiographic data that describes the physical conditions of the watershed; environmental data that identify potential pollutant sources and their contributions; and, in stream water quality monitoring data. The in-stream monitoring data used to determine impairment for the 303(d) listing were collected on October 22, 1992 in support of the goals of other programs. These results were insufficient to isolate sources or to characterize the impacts of weather, physical conditions or seasonal variation on the stream water quality. As part of this project, the ADEQ TMDL Program collected data specific to the goals of source identification and TMDL calculation. Water quality samples were collected on a monthly basis from October 2000 until August 2001 at 11 sites to systematically monitor conditions along the listed reach to determine the extent, frequency and conditions under which impairment occurs as well as identify background water quality. Sites were established at the beginning and end of the reach; upstream and downstream of potential point and nonpoint sources; and at several other accessible monitoring locations.

Flow data from the USGS gage on Burro Creek at the US Highway 93 Bridge was used in estimating seasonal flow variations and the response to precipitation within the Boulder Creek Watershed. Additional USGS flow estimates made during monthly sampling events between 1977 and 1979 for locations on and near Boulder Creek were used. ADEQ flow measurements from the early 1990's (two locations on Boulder Creek) and flow measurements or estimates made by ADEQ during 2000 and 2001 sampling events on Boulder Creek were also used. (Tetra Tech, 2002)

Monitoring data from four sources, Bureau of Land Management (BLM) study of Burro Creek in 1982-83, ADEQ sampling near Hillside Mine in 1992-93, USGS sampling in Boulder Creek in 1977-79, and samples collected by BLM in 2000 at and near the Hillside Mine tailing piles were used to support water quality analysis for the Boulder Creek watershed. (Tetra Tech, 2002)

Segmenting Boulder Creek

Sample results show that portions of the listed reach were not impaired at the times sampling occurred. The model used in this investigation, corroborated the identification of non-impaired stretches. The model took into account historic sample results as well as the sample results generated through this investigation.

Based on recent sampling results and modeling, ADEQ supports removing certain pollutants ("delisting") from specific segments of the stream. Specifically, ADEQ supports delisting beryllium, lead, and manganese from Wilder Creek to Burro Creek; copper and zinc from Butte Creek to Burro Creek; and, arsenic from Copper Creek to Burro Creek. Segmentation at these locations was chosen based on the location of sampling points and it is supported through modeling. These delist decisions are based on the WQS standards approved by EPA on November 13, 2002.

Existing Loads

Existing Loadings from Adit Discharge (g/day)

As	Cu	Zn
164.17	0.40	57.59

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Existing Loadings from Natural Background (g/day)

	As	Cu	Zn
Upstream Boundary Conditions	7.9	23.7	31.6
Butte Creek Watershed	1.7	N/A	N/A

Existing Loadings from Tailings Piles (g/day)

	As	Cu	Zn
Upper Tailings Pile	43.2	61.4	605.8
Middle Tailings Pile	<1	<1	2.8
Lower Tailings Pile	<1	<1	217.1

Load Allocations

The following allocations are for arsenic from Wilder Creek to Copper Creek and for copper and zinc from Wilder Creek to Butte Creek. These allocations were based on the model results which looked at reductions of all the pollutants simultaneously in order to meet the appropriate surface water quality standards. To conduct a strict arithmetic exercise, on a per-pollutant basis, to try and meet surface water quality standards may result in slightly different reduction values. It should also be noted that remediation strategies for the sources (i.e., moving and/or capping the tailings piles) will likely address all pollutants simultaneously rather than on a pollutant specific basis. Applying the reduction values to all pollutants at each source will assure that all parameters will meet the appropriate water quality standards.

WLAs (g/day)-Adit Discharge

As	Cu	Zn	Reduction (%) from Existing Loadings
24.6	0.1	8.6	85

Load Allocations (g/day) for Tailings Piles

	As	Cu	Zn	Average Reduction (%) from Existing Loadings
Upper Tailings Pile	9.5	13.5	133.3	78
Middle Tailings Pile	*	*	1.7	40
Lower Tailings Pile	*	*	97.7	55

* Allocations are not necessary.

TMDLs

A TMDL is the total amount of a pollutant that can be assimilated by the receiving water while still achieving water quality standards. TMDLs can be expressed in terms of mass per time or by other appropriate measures. TMDLs are comprised of the sum of individual wasteload allocations (WLAs) for point sources, and load allocations (LAs) for nonpoint sources and natural background levels. In addition, the TMDL contains a 5% explicit MOS to account for differences between modeled and monitored data. Conceptually, this definition is denoted by the equation:

$$TMDL = \sum WLA + \sum LA + MOS$$

The TMDLs for Boulder Creek identify the total amount of pollutant that can be assimilated by the receiving system while still achieving water quality standards. These TMDLs are for copper and zinc from Wilder Creek to Butte Creek and for arsenic from Wilder Creek to Copper Creek (Tetra Tech, 2003).

Boulder Creek TMDLs

	Wilder Creek to Butte Creek		Wilder Creek to Copper Creek
	Cu (g/day)	Zn (g/day)	As (g/day)
LA	37.2	264.3	19.1
WLA	0.1	8.6	24.6
MOS	1.8	13.6	2.2
TMDL	39.1	286.5	45.9

IMPLEMENTATION

In September 1999, AMEC Earth & Environmental (AMEC), in cooperation with the BLM, conducted a site characterization of the mine tailings and adit seep (AGRA, 2000). BLM used the data obtained from the site characterization to prepare an Engineering Evaluation/Cost Analysis (EE/CA) of the upper site (BLM, 2000). Due to the proximity of the middle tailings pile to the upper site, BLM included the middle tailings pole in their initial remediation plans. The lower pile was not considered, at the time, due to accessibility issues. The EE/CA provided an alternatives analysis for remedial actions at the sites.

During a meeting in February, 2001, representatives from EPA's Emergency Response Office clarified their intent to assist BLM with the project. EPA was willing to provide financial assistance to manage the project under CERLA, if necessary, and take enforcement action against the private owners of the middle tailings pile. By September, 2001, the EE/CA was finalized and the chosen remedial action was to leave both the upper and middle tailings piles in place, re-grade them and cap in place (AMEC, 2001b). Although there are site accessibility issues, the remedy for the lower tailings pile would be similar – re-grade and cap the pile and install runoff controls to prevent degradation of the capping material through subsequent erosion.

About this time, KFX, owners of the middle tailings pile, submitted to EPA a mining and remediation proposal for their site. KFX proposed to excavate the tailings, process them, redeposit the materials and cap them. EPA stipulated that KFX would have to enter a three party agreement with EPA and BLM, post adequate financial surety and complete the process within 15 months. BLM put its project on hold pending resolution of the KFX proposal. KFX has since rescinded the proposal to reprocess the tailings piles.

In September, 2003, staff from BLM, ADEQ, ASLD, and AMEC visited all three sites to discuss the remediation strategies for the piles as well as the adit. The best strategy for all three tailings piles remains to re-grade and cap the piles and stabilize the slopes. The adit discharge could be addressed with an evaporation pond equipped with a solar powered lift station. Access to the lower pile is currently by foot. In order to bring in the heavy equipment needed, either a road would have to be cut in from the mesa above the stream or equipment could be airlifted in by helicopter.

In November, 2003, BLM offered to fund complete engineering design for the middle and lower tailing piles in exchange for a coordinated cleanup by all parties. ADEQ is committed to providing 319 funding to assist in the cleanup and is working closely with ASLD to develop the necessary match using state resources and private contributions. ADEQ continues to try and work with KFX by exploring match opportunities for remediation of the middle tailings pile and by encouraging KFX to pursue an AZPDES permit for the adit discharge. ADEQ may pursue an enforcement action if a permit is not acquired and the discharge remains in violation of surface water quality standards.

PUBLIC PARTICIPATION

Stakeholder and public participation was encouraged and received throughout the development of this TMDL. Numerous meetings have been held during this process. Involved parties include EPA, BLM, US Army Corps of Engineers, ADEQ, ASLD, Arizona Game and Fish Department, KFX, Phelps Dodge, and representatives from contractors involved with all levels of the projects mentioned previously. The draft TMDL report was made available for a 30-day public comment period starting July 12, 2002. Public notice of the availability of the draft document was made via a posting in a newspaper of general circulation *The Daily Courier*; via e-mail notifications; via phone calls; and via web page postings. The draft Boulder Creek TMDL was presented in a public meeting in Bagdad, AZ, on July 23, 2002. Comments received during the public notice period were addresses in a public notice posted in the Arizona Administrative Register (A.A.R.) on October 25, 2002. After the 45-day public comment period following the A.A.R. notice was completed, the EPA encouraged ADEQ to re-model the loads and allocations based on the new water quality standards which were approved by the EPA on November 13, 2002. This report presents the findings of the re-modeled loads and allocations. A 30-day public comment period for the re-drafted report began on June 2, 2003 and was completed July 1, 2003. This draft will now be submitted to the A.A.R. and a 45-day public comment period will follow the notice. After completion of the 45-day public comment period, this report will submitted to the EPA for final approval. Responses to questions and comments received during the public notice phase will be submitted to the EPA with this report.

4. The following are comments submitted by PDBI on 07/10/03

COMMENT: "Many of the requested revisions discussed below to the revised draft Boulder Creek TMDL are based on the concern that the list/delist decisions already made by ADEQ and approved by EPA Region IX as part of Arizona's 2002 303(d) list are being reopened or revisited through the draft TMDL. These decisions, however, are final and it is inappropriate to reopen the decisions in the Boulder Creek TMDL. The TMDL should simply reconfirm the decisions and establish appropriate load allocations based on these current listing and delisting decisions for Boulder Creek. Another significant concern is the suggestion that listing/delisting decisions can be made on modeling results. The use of modeling results to support listing or delisting decisions is directly contrary to the Arizona law (*see* A.R.S. § 49-232.B) and with ADEQ's impaired water identification rule in A.A.C. Title 18, Chapter 11, Article 6." (Please note, the numerous requested revisions referenced at the beginning of this statement will not be explicitly listed here; however, the following response addresses the impetus for the requested revisions.)

RESPONSE: This investigation began in 2000 based on the 1998 303(d) List. While a subsequent list was developed in 2002, modeling and other aspects of this TMDL were far enough along to preclude modifying the project. ADEQ has followed the processes outlined in A.R.S. 49-232A and the Impaired Water Identification Rule (A.A.C. Title 18, Chapter 11, Article 6) (IWIR). No attempt to expand the 2002 303(d) listing has been made. Per EPA suggestion, the model was re-run using the new water quality standards. Because the copper standard became more stringent, the impacted area was extended from Butte Creek to Copper Creek. Zinc was accidentally extended to Copper Creek and arsenic was accidentally extended to an unnamed tributary to Boulder, above Zana Canyon. ADEQ has corrected these errors. Since this comment was received, PDBI has furnished ADEQ with information that shows a retention basin and two subsurface cut-off walls have been installed in Copper Creek therefore eliminating regular discharges to Boulder Creek. Because of this, the report has been updated to show the TMDLs for copper and zinc apply to the segment from Wilder Creek to Butte Creek and the TMDL for arsenic applies to the segment from Wilder Creek to Copper Creek. The delistings proposed in this TMDL report confirm the 2002 decision which delisted beryllium, lead, and manganese from Wilder Creek to Burro Creek. Additionally, the 2002 decision which delisted copper and zinc from Butte Creek to Burro Creek and arsenic from Copper Creek to Burro Creek is confirmed through this TMDL report.

ADEQ disagrees with PDBI's interpretation of the IWIR. Section 603D of IWIR allows the employment of modeling, "when evaluating a surface water or segment for impairment or in making a TMDL decision, if the model is appropriate for the waterbody and the quantity and quality of available data meet the requirements of R18-11-602." The rule lists several acceptable modeling methods, including HSPF which is the foundation of the model used to calculate the Boulder Creek TMDLs. (The MDAS model is the HSPF model modified with C⁺⁺.)

COMMENT: "Table 2-1, page 11: This table should be amended as follows for accuracy purposes..."

RESPONSE: Thank you for pointing out the errors in Table 2-1; they have been corrected in the final document.

COMMENT: "... Table 3-2 should be revised as follows to add back in the delisting information for copper and zinc from Butte Creek to Copper Creek ..." AND "... Table 3-3 should be revised as follows to add back in the delisting information for arsenic from Copper Creek to Burro Creek ..."

RESPONSE: The investigation supports the delisting of copper and zinc from Butte Creek to Copper Creek and arsenic from Copper Creek to Burro Creek. Data supporting these delistings has been added to Tables 3-2 and 3-3, respectively.

COMMENT: "Table 3-5, page 22: The last row in this table regarding existing loadings from natural background for Zana Canyon below Copper Creek should be deleted."

RESPONSE: The report has been updated to reflect that the TMDL and allocations do not apply below Copper Creek.

COMMENT: "Section 3.3.2.2, page 22: This section should be revised ... to clarify that discharges of stormwater are consistent with the TMDL..."

RESPONSE: Section 3.3.2.2 has been updated to show that a retention basin and two subsurface cut-off walls in Copper Creek eliminate regular discharges to Boulder Creek. Because of this, natural background contributions from Copper Creek are eliminated and were not considered in the final TMDL calculations. Additionally, the suggested wording related to permitting has been added to the final document.

COMMENT: "Table 4-4, page 28: The note at the bottom of this table should be deleted as it is no longer necessary because of the allocation of 0.1 g/day for copper."

RESPONSE: The footnote associated with Table 4-4 has been deleted from the final document.

COMMENT: "Table 4-6, page 29: Consistent with the above comments and discussions, this table should be revised..."

RESPONSE: Table 4-6 has been updated to show the final TMDLs (based on the 2003 re-modeling) for copper and zinc from Wilder Creek to Butte Creek and for arsenic from Wilder Creek to Copper Creek.

The following is a comment submitted by PDBI on 07/15/03

COMMENT: "Pursuant to 49-234(D), ADEQ is required to publish in the Arizona Administrative Register, at least 45 days prior to submission of the Boulder Creek TMDL to EPA, the determinations of total pollutant loadings and a

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summary of the responses to comments on the estimated loadings that it intends to submit to EPA. The comments submitted by PDBI dated July 10th and 15th should be considered written comments on the estimated loadings pursuant to 49-234(D). PDBI believes that ADEQ must comply with the aforementioned public notice requirement entitling PDBI the opportunity to appeal the proposed loadings.”

RESPONSE: Throughout the project’s history, ADEQ has and will continue to follow the process outlined in A.R.S. 49-234D.

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

There is no public comment period associated with this notice; the Department previously provided an opportunity for comment on the proposed TMDLs.

6. The name and address of agency personnel with whom persons may communicate regarding the public information:

Name: C. Nancy La Mascus
Address: Arizona Department of Environmental Quality
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-4468 (in Arizona: 1-800-234-5677; ask for four-digit extension)
E-mail: lamascus.nancy@ev.state.az.us

Copies of the revised draft TMDL may be obtained from the Department by contacting the numbers above. The revised draft TMDL may also be downloaded from the Department’s web site at: <http://www.adeq.state.az.us/environment/water/assessment/status.html>.