
NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the *Arizona Administrative Code*.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY PERMIT AND COMPLIANCE FEES

[R15-159]

PREAMBLE

- 1. Article, Part of Sections Affected (as applicable)**

Article 3	<u>Rulemaking Action</u>
R18-14-301	New Article
R18-14-302	New Section
R18-14-303	New Section

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

Authorizing statutes: A.R.S. §§ 49-202(A), 49-203(A)(8) and (9),
Implementing statute: A.R.S. §§ 49-352(A), 49-361

- 3. The effective date of the rules:**

July 1, 2016

At the request of the Governor's Regulatory Review Council, the Arizona Department of Environmental Quality (ADEQ) requests an effective date more than 60 days in advance in order to coincide with Fiscal Year 2017 and to allow time for ADEQ to seek statutory changes.

- 4. 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: 20 A.A.R. 136, January 17, 2014
Notice of Proposed Rulemaking: 20 A.A.R. 1744, July 11, 2014

- 5. The agency's contact person who can answer question about the rulemaking:**

Name: Wendy LeStarge
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1110 W. Washington St.
Phoenix, AZ 85007
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- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

ADEQ seeks to establish new and reasonable fees for the certification of drinking water and wastewater operators that will allow the Operator Certification Program to become financially self-sustaining in anticipation of reduced and unstable federal funds.

ADEQ'S OPERATOR CERTIFICATION PROGRAM

Operators of drinking water treatment plants and distribution systems, and wastewater collection systems and treatment plants are responsible for all decisions about process control or system integrity that affects public health and the environment. Once a treatment plant or collection/distribution system has been designed and constructed, it is



imperative that the system be operated correctly, as improper operation can result in public health threats and environmental degradation. The operator certification rules (18 A.A.C. 5, Article 1, Classification of Water and Wastewater Facilities and Certification of Operators) classify a drinking water treatment plant, wastewater treatment plant, drinking water distribution system, or wastewater collection system (collectively defined as a facility) into one of four grades: by facility type, size, complexity and population served. The grade corresponds with the level of system complexity, with Grade 1 being the most simple and Grade 4 being the most complex. A facility is required to retain the services of properly (i.e., appropriately) graded certified operators. A.A.C. R18-5-104(A)(1).

The operator certification rules also establish the requirements for operators, as to experience and education, certification and classification, examinations, renewal of certificates, expired certificates, reciprocity for out-of-state applicants, and revocation. Operators are required to maintain their certification through participation in continuing professional education and must renew their certification every three years.

ADEQ's Operator Certification Program has three major components: initial certification, renewal of certification, and training. A potential operator has a couple of options in seeking initial certification:

- An applicant can take and pass a written examination for the applicable class and grade. Contracted third parties provide, administer and grade the operator certification examinations. Currently, Gateway Community College (Gateway) proctors the Association of Boards of Certification (ABC) operator certification exams for all operator classifications and grade levels. Potential applicants contact Gateway directly for exam dates, times, and exam fees. Gateway notifies ADEQ as to the results of applicants who successfully pass the examinations. ADEQ then creates a record of the operator's pertinent information and issues the appropriate certificate. ADEQ maintains a database of certified operators and this information, in part, is linked to and populates ADEQ's primary drinking water database (Safe Drinking Information System – SDWIS/State), and in turn linked to the database maintained by the U.S. Environmental Protection Agency (EPA).
- At an applicant's request, ADEQ evaluates the experience and education of an out-of-state operator to determine if the operator can be certified through reciprocity without taking the Arizona examinations.
- Also at an operator's request, ADEQ determines if an operator has the necessary experience and education required to be admitted for a higher grade certification examination without having the requisite time at a lower grade.

Operator certification is valid for three years. During the three year period, an operator is required to complete at least 30 professional development hours (PDHs), defined as an "organized educational activity related to engineering, biological or chemical sciences, a closely related technical or scientific discipline, or operations management." A.A.C. R18-5-101. An operator must submit a request to renew certification to ADEQ every three years, along with documentation of the required professional development hours. A.A.C. R18-5-107.

Lastly, a function of the Operator Certification Program is to provide training opportunities. ADEQ's training is open to all operators but is particularly geared toward smaller facilities, which may be unable to afford required training for their operators. ADEQ also assists in the coordination of other events sponsored by such groups as the Environmental Finance Center, Texas A&M Engineering Extension Service, Rural Community Assistance Corporation, and the Rural Water Association. These organizations receive grant funding from EPA to conduct outreach to small drinking water systems.

HISTORICAL REQUIREMENTS

The Operator Certification Program is authorized under two separate state statutes. Under A.R.S. § 49-352(A), ADEQ must establish and enforce rules for the classification of systems for potable water and certifying operating personnel according to the skill, knowledge and experience necessary within the classification. Under A.R.S. § 49-361, ADEQ must adopt and enforce rules to classify sewage collection systems and treatment plants and to certify operating personnel according to the skill, knowledge and experience necessary within the classification.

Operator certification is also a requirement under the federal Safe Drinking Water Act (SDWA), for which ADEQ is the designated state agency responsible in Arizona. A.R.S. § 49-202. The SDWA regulates public water systems (PWS), which are defined as providing water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serving an average of at least 25 people for at least 60 days a year. A.A.C. R18-4-103 (incorporating by reference 40 CFR § 141.2, Definitions). The primary purpose of the SDWA is to ensure that:

- Drinking water supplied to consumers by PWSs is safe to drink and does not exceed prescribed maximum contaminant levels;
- Consumers are confident that their water is safe to drink; and
- PWS operators are trained, certified, and knowledgeable regarding the public health reasons for drinking water standards.



Under major amendments to the SDWA in 1996, states were to establish operator certification programs that would meet EPA's minimum standards for certification, taking into account existing State programs, the complexity of the system, and the size of the system. 42 USC §300g-8(a). EPA can withhold 20 percent of a state's Drinking Water State Revolving Fund (DWSRF) capitalization grant unless the state has adopted and is implementing an operator certification program that meets the requirements of the final guidelines, or submits an existing program that is substantially equivalent to the guidelines. 42 USC §300g-8(b). ADEQ's Operator Certification Program predates the 1996 requirements of the SDWA, but in 2000, ADEQ updated its operator certification rules to reflect EPA's operator certification guidelines.

ADEQ previously assessed fees associated with examinations, certification, and renewals, under a regulatory framework where ADEQ administered the operator certification examinations. In 2001, ADEQ repealed the fees as part of larger amendments, which established the current framework of a third party administering the operator certification examinations. Under the prior regulatory framework, the fees assessed for the certification examinations, certification by reciprocity, and certification renewals, ranged from \$10 to \$25. In the 2001 rulemaking, ADEQ estimated that the repeal of fees would result in a revenue loss of not more than \$65,000 annually to the state General Fund.

CURRENT FUNDING SITUATION

Beginning in 2007, ADEQ's portion of general fund was decreased and ultimately eliminated in 2010. ADEQ has been funding the Safe Drinking Water Program, including the Operator Certification Program, through federal grants and federal set-asides from the DWSRF. Since wastewater operator certification is a state requirement only, it must be state funded. The future level of funding through federal sources is uncertain, but will most likely be subject to continuing cuts. Making the Operator Certification Program self-funded through fees will help reduce the drawdown on limited federal funds, which were intended for infrastructure loans to public water systems (under 42. USC § 300j-12; A.R.S. § 49-1243. Other parts of the Safe Drinking Water Program will continue to rely on federal funds, as there is currently no state source of revenue.

Operator certification fees will be deposited in the state General Fund, as required by A.R.S. §§ 49-352(A) and 49-361. ADEQ's goal is to seek a legislative change that operator certification fees will be deposited in the water quality fee fund, established under A.R.S. § 49-210.

In anticipation of this rulemaking, ADEQ met with a broad spectrum of stakeholders to discuss funding issues and fee amounts for the proposed rules. As a result, ADEQ considered stakeholders' comments and was able to incorporate some comments into the proposed rule, such as delaying the effective date to allow stakeholders time for budget planning.

At the time the Notice of Proposed Rulemaking was published, ADEQ distributed a notice to all subscribers of the Drinking Water/Wastewater Operator Certification list serve and established a specific e-mail address folder to receive comments. ADEQ also mailed out a postcard to the approximately 6,500 certified operators in its database, stating:

"ADEQ seeks to establish new and reasonable fees for the certification of water and wastewater operators. ADEQ's proposed fees are directly related to the level of effort expended by the department to administer the operator certification program. The revenue from these fees will be deposited in the State General Fund. The proposed fees are \$65 per new certificate; \$150 per certificate renewal and \$50 for each additional renewal if expiration date is the same; \$150 per early examination request review and \$250 per reciprocity request review.

Failure to establish new fees for the ADEQ State Drinking Water (SDW) program could negatively impact ADEQ's ability to implement the Safe Drinking Water Act requirements and potentially impact the quality and safety of Arizona's drinking water systems. Further, ADEQ's delegated authority could be lost and oversight of the drinking water program could revert to the U.S. EPA.

Please go to <http://azdeq.gov/envirom/water/dw/opcert.html> to link to the Notice of Proposed Rulemaking. The proposed rules will be available for viewing starting on July 14, 2014. All comments may be submitted to proposedopcertfees@azdeq.gov.

To receive continued fee rule updates please subscribe to the drinking water/wastewater operator certification list serve located at <http://azdeq.gov/subscribe.html>."



7. 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:

Not applicable

8. 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

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

A. Brief summary of the information included in the economic, small business and consumer impact statement:

Operators will be responsible for paying any fees and therefore will be most impacted. A certified operator may be required to pay from \$150 to \$300 every three years, depending on the number of certificates. An operator who seeks certification in all four classes, starting with one certification at grade 1 and advancing to grade 4 in each class, would potentially pay \$1040 in new certification fees over the course of time of seeking these certifications.

A facility owner who chooses to pay fees on behalf of its operators will be impacted by the cost of the fees.

B. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Wendy LeStarge

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1110 W. Washington St. (MC 5415B-2)
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C. Identification of persons who will be directly affected by, bear the costs of or directly benefit from the rulemaking:

Water and wastewater operators in Arizona who are certified, who seek to become certified, or seek additional certifications will bear the costs by paying fees for renewals, examinations, reciprocity, or early examination. In Arizona, there are approximately 6,500 certified operators who hold approximately 13,500 certificates. About 3,700 operators hold multiple certifications; about 1,409 operators hold all four certifications.

An operator certified in Arizona can have a maximum of four certificates, meaning they are certified in each of the four classes of facilities: water treatment plants, water distribution systems, wastewater treatment plants, or wastewater collection systems. An operator with four certificates could pay a maximum renewal fee of \$600 every three years (\$150 for each certificate). However, ADEQ has offered an incentive to pay a lesser fee of \$300 every three years. Because the fees are based on covering ADEQ's costs for its workload, the incentive is for an operator to have all certificates due on the same renewal date, so that there is only one renewal submittal every three years, and ADEQ is reviewing PDHs only one time for that operator. In this situation, the operator pays \$150 for the first certificate, and \$50 for each additional certificate. An operator with four certificates with the same renewal dates pays \$300 every three years. Operators holding two certifications would pay on average \$200 in renewal fees every three years.

An operator who seeks additional certifications will pay \$65 after passing the examination. An operator who seeks certification in all four classes, starting with one certification at grade 1 and advancing to grade 4 in each class, would potentially pay \$1040 in new certification fees over the course of time of seeking these certifications.

These rules do not make any changes to current costs for examination or PDHs. An operator will still be responsible for costs or fees paid to the examination contractor or for PDHs. The current cost to sit for an exam at Gateway is \$87, which is paid to Gateway. Generally the fee can be up to \$107 for examinations held off-site from Gateway. The exam fee covers costs for Gateway and ABC operator certification examinations; ADEQ does not receive any part of this examination fee.

If the employer of a water or wastewater certified operator decides to pay the renewal or examination fees for its operators, then the owner of the facility will bear the costs of this rulemaking. There are approximately 1,539 active public water systems and 2,004 active wastewater treatment plants in ADEQ's databases. Public water systems and wastewater treatment plants can be privately or publicly-owned, and can include a variety of entities such as munic-



ipalities, counties, the U.S. government, non-profit organizations, restaurants, RV parks, and subdivisions. The impact to a facility owner will vary depending on its size and the number of certified operators.

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

1) ADEQ'S COSTS

Fees must cover all aspects of administering the Operator Certification Program, not just the specific tasks for which fees are assessed. ADEQ's total costs for the Operator Certification Program are about \$429,000 annually. The Program consists of three and one-half full-time employees (FTEs), which ADEQ believes is the minimum level of staffing necessary to effectively and efficiently implement the Program. No new FTEs are necessary to implement and enforce the proposed rules. The personnel costs for the Operator Certification Program are \$329,000, and are explained below:

	Annual Amount
Salaries =	\$155,500
Employee Related Expenditures (ERE) include: FICA, Retirement, Worker's Compensation, Health, Dental, and Life Insurance, Retiree Accumulated Sick Leave charges, Personnel Division charges and uniforms for certain classes of employees (from the Instruction guide for Arizona's Budget and Development System, June 2014, the Governor's Office of Strategic Planning and Budgeting). ADEQ's ERE rate for FY15 is 44%. Calculation: \$155,500 (Salaries) x 0.44 =	\$68,500
Indirect Cost Pool is for costs that are not readily charged to a specific cost pool at the time the costs are incurred." Indirect costs are general management costs and consist of administrative activities necessary for the general operation of the agency, such as accounting, budgeting, payroll preparation, personnel services, purchasing, rent, utilities, and centralized data processing (from the State of Arizona Accounting Manual Glossary) ADEQ's current Indirect Cost rate is 46.95%. Calculation: (\$155,500 (salaries) + 68,500 (ERE)) x 0.4695 =	\$105,000

Below is an explanation of staff's duties and responsibilities:

- Creating a record of an operator's pertinent information and issuing the appropriate certificate.
- Evaluating the experience and education of an out-of-state operator to determine if the operator can be certified by reciprocity without taking the Arizona examinations.
- Determining if an operator has the necessary experience and education required to be admitted for a higher grade certification examination without having the requisite time at a lower grade.
- Processing renewals and auditing renewal requests for PDH verification purposes.
- Initiating an enforcement action against a PWS:
 - If the facility does not maintain the services of a certified operator,
 - The certified operator does not possess a certificate of the grade and type required for the facility, or
 - The certified operator does not reside within a 200 mile ground travel radius of the facility.
- Providing workshops in various locations throughout Arizona for operators to earn PDHs.
 - FTEs oversee a consultant event coordinator for these events, who is tasked with managing event registration, reservation confirmations, arranging for course materials, workshop reminders for registered attendees, providing event directions, and in some cases reserving the meeting facilities.
 - Staff has begun using online meeting technology to provide remote training, which can increase attendance and facilitate the ability of other ADEQ staff to present at the offsite workshops.
- Establishing and overseeing the contracts with Gateway and ABC to administer certification examinations.
- Maintaining the database of certified operators, including updating operator information, as it changes. Most information is available on ADEQ's website, both for an operator to verify and for the general public to research.
- Answering inquiries via e-mail or telephone about the Operator Certification Program in general, and specific questions an operator may have.
- Generating and sending a 90-day and 30-day notice of upcoming certificate expiration to operators on the list serve.
- Offering and proctoring a practice examination that allows any operator to come to the ADEQ office by appointment to take a free practice examination in order to see how they would score.
- Maintaining electronic communications of webpage and list serve.



In the Operator Certification Program Annual Reports, ADEQ tracks numbers for some of the FTE’s responsibilities. Below are reported numbers for Fiscal Years 2013, 2014, and 2014:

Responsibility	FY13 Numbers	FY14 Numbers	FY15 Numbers
New certifications issued	955	1140	1371
Requests for reciprocity	283	350	297
Requests for early examination	128 requests with 114 approvals and 14 denials.	161 requests with 150 approvals and 11 denials.	131 requests with 118 approvals and 13 denials.
Certificate renewals and auditing for PDH verification purposes	3,616 certificates renewed. 10 – 15% of all renewal requests were audited.	3,586 certificates renewed. 10 – 15% of all renewal requests were audited.	2,397 certificates renewed. 10 – 15% of all renewal requests were audited.
Initiating an enforcement action against PWSs without an operator of record	<ul style="list-style-type: none"> • 45 notification letters sent to PWSs • Referred nine PWSs to ADEQ’s Water Quality Division Compliance Section for enforcement follow-up, which resulted in issuing Notice of Violation against each 	<ul style="list-style-type: none"> • 44 phone calls made to PWSs • Referred five PWSs to ADEQ’s Water Quality Division Compliance Section for enforcement follow-up, which resulted a Notice of Violation against each 	<ul style="list-style-type: none"> • 28 phone calls made to PWSs • Referred six PWSs to ADEQ’s Water Quality Division Compliance Section for enforcement follow-up, which resulted a Notice of Violation against each
Training and workshops	11 one-day workshops, 6 two-day workshops, 482 operators received training.	3 one-day workshops, 6 two-day workshops, 1 three-day workshop, 442 operators received training.	9 one-day workshops, 7 two-day workshops, 875 operators received training.

In addition to personnel costs, the Operator Certification Program spends about \$100,000 on Program costs, which focuses mainly on training. Costs include: presenter fees, conference room rentals, workbook materials, staff and presenter travel costs, and other miscellaneous supplies for the training workshops.

The fees must cover all aspects of administering the Operator Certification Program, not just the four certification activities for which fees are assessed; therefore the fee amounts include the costs of administering the whole Program.

2) ADEQ'S REVENUES

PROSPECTIVE FUNDING:

ADEQ has established flat rate fees because the certification and renewal tasks have predictable processing times. ADEQ’s fees are proportionately based on the staff review time for performing the designated certification task. Tasks that generally take more time are assessed a higher fee. However all the fees cover other costs of the Operator Certification Program, as described above in the Cost Section.

The initial certification fee of \$65 is the lowest fee because ADEQ staff spends the least amount of time on creating a new certification record since a third party administers the examinations. The renewal fee is set at \$150 because staff spends more time in processing renewals, verifying PDHs, and performing audits. Likewise, as staff expend more time on early examination and reciprocity requests, those fees are higher, set at \$150 and \$250 respectively. Because ADEQ’s amount of increased work is minimal for each additional certification renewal from the same operator, the rule offers a reduced renewal fee for each additional certificate, and consequently does not penalize operators with multiple certificates. ADEQ anticipates that operators will request to have one renewal date and submit all PDHs together.

It was suggested to base the fee amount on the certification grade level, so that higher grade operators would pay more in fees than lower grade operators. ADEQ did not adopt this suggestion. ADEQ’s level of effort remains the



same, regardless of the certification grade level. ADEQ therefore chooses to base the fees on the level of effort, proportional to other fee-related tasks.

In Arizona, there are approximately 6,500 certified operators who hold approximately 13,500 certificates. About 3,700 operators are certified in multiple classes of facilities. Some operators maintain certificates that are not required for their job. ADEQ anticipates that approximately twenty percent of the 13,500 certificates will not be renewed either because the operator is not currently employed as an operator or does not require multiple certificates. The estimated annual revenue from new fees would be \$400,000 to \$475,000 (based on past annual averages of renewals, new certifications, reciprocity reviews and early examination reviews):

Certification or renewal	Fee	Revenue	Revenue (minus 20%)
3,600 certificate renewals per year	Assuming one-half pay \$150 and one-half pay \$50 for additional certificates	\$360,000	\$288,000
1,000 new certifications (from 2,000 proctored examinations with a 50% passing rate),	\$65	\$65,000	\$52,000
250 reciprocity reviews	\$250	\$62,500	\$50,000
100 early examination reviews.	\$150	\$15,000	\$12,000
TOTAL		\$502,500	\$402,000

ADEQ recognizes that this is an estimate. If renewal certifications drop by thirty percent, ADEQ estimates annual revenues of \$357,000.

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

A political subdivision that owns a drinking water treatment plant, wastewater treatment plant, drinking water distribution system, or wastewater collection system (collectively defined as a facility) can be impacted if it chooses to pay the certification fees of its operator. However, the certificate belongs to the operator.

Political subdivisions would mainly be municipalities, but can include counties, sanitary districts, and improvement districts. Smaller communities will likely be affected more than large communities because they have a smaller population base over which to spread the costs. ADEQ does not collect data on whether a facility is publicly-owned so it cannot give an accurate breakdown based on 1,539 active public water systems and 2,004 active wastewater treatment plants. ADEQ’s rough estimate is that approximately twenty-two percent of drinking water systems are publicly-owned.

Every facility is required to ensure at all times that there is an operator in direct responsible charge, who is certified for the class of the facility and at or above the facility’s grade. A.A.C. R18-5-104(A)(1). “Direct responsible charge” means the day-to-day decision making responsibility for a facility or a major portion of a facility. A.A.C. R18-5-102. Larger or more complex facilities, such as a Grade 3 and 4 facility, also must have an onsite operator, which means an operator who visits a facility at least daily to ensure that the facility is operating properly. A.A.C. R18-5-104(E); R18-5-101. However neither the operator in direct responsible charge nor the onsite operator is required to be present at the facility all the time.

The Operator Certification Program ensures that all water systems, from the smallest to the largest, are supervised by operators who have experience and training commensurate with the sophistication of the system.

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

A business can be impacted by this rulemaking if it chooses to pay the certification fees of its operator, and therefore bear the costs of this rulemaking. However, the certificate belongs to the operator. A business would be a privately-owned water or wastewater system, and can include a private utility with numerous employees, or a smaller entity such as an RV park or restaurant. ADEQ does not collect data on whether a public water system or wastewater treatment plant is privately-owned so it cannot give an accurate breakdown based on 1,539 active public water systems and 2,004 active wastewater treatment plants. ADEQ’s rough estimate is that approximately 1,196 drinking water systems are privately-owned.

Every facility is required to ensure at all times that there is an operator in direct responsible charge, who is certified for the class of the facility and at or above the facility’s grade. A.A.C. R18-5-104(A)(1). “Direct responsible charge” means the day-to-day decision making responsibility for a facility or a major portion of a facility. A.A.C. R18-5-102. Larger or more complex facilities, such as a Grade 3 and 4 facility, also must have an onsite operator,



which means an operator who visits a facility at least daily to ensure that the facility is operating properly. A.A.C. R18-5-104(E); R18-5-101. However neither the operator in direct responsible charge nor the onsite operator is required to be present at the facility all the time.

The Operator Certification Program ensures that all water systems, from the smallest to the largest, are supervised by operators who have experience and training commensurate with the sophistication of the system.

G. Probable impact on public and private employment:

ADEQ does not anticipate that private or public employment will be directly affected by these rules since whether a facility chooses to pay for its operators' certifications would not directly impact an operator's employment status.

H. Probable impact on small businesses:

A small business facility can be impacted by this rulemaking if it chooses to pay the certification fees of its operator, and therefore would bear the costs of this rulemaking. A business would be a privately-owned drinking water or wastewater system, and could include entities such as an RV park or restaurant. A smaller business that decides to pay the fees for its certified operator could be affected more than a larger business because of a smaller population base over which to spread the costs. Small systems have unique challenges as they may have limited financial resources compared to larger systems. They often lack full-time staff to manage the system, can be geographically isolated, tend to have limited computer capabilities, and have less technical training. Small businesses tend to have a smaller customer base over which to spread the costs of the increased fees. For drinking water systems, there are about 1,400 systems that serve a population of 3,300 or less. ADEQ's database does not distinguish whether ownership is private or public.

However, a small business may not be responsible for an operator's total certification fees. Generally, a smaller facility is less complex and easier to operate than a larger facility. Other than the operator in direct responsible charge, a Grade 1 and 2 facility may employ a "remote operator", which is an operator who is not an onsite operator. R18-5-104(F); R18-5-101. A Grade 1 or 2 facility employing a remote operator must also have an onsite representative who can reach the remote operator at all times, but the onsite representative does not have to be a certified operator. R18-5-104(F); R18-5-101. Frequency of site visits by the remote operator will vary depending on factors, such as the size of the system. R18-5-104(F)(7). Many Grade 1 and 2 facilities employ the services of a remote operator, who may visit daily, weekly, or monthly, depending on the needs of the facility.

A small business can also be a certified operator providing services. A small business operator may pass on the costs of renewal fees to the underlying drinking water or wastewater customers. Costs to customers could vary depending on how many other clients the small business operator serves. ADEQ is aware of some operators who are remote operators for 50 or more facilities.

1) The administrative and other costs required for compliance with the proposed rule making.

This rulemaking establishes fees for operator certification. These rules do not have separate administrative costs, or other compliance costs for small businesses.

2) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

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

As a fee rule, this rulemaking does not establish any deadlines for compliance or reporting schedules for small businesses.

(ii) Establish less costly compliance requirements, including establishing performance standards to replace design or operational standards in the proposed rule making.

This rulemaking establishes fees. A small utility can choose whether it will pay up to \$300 every three years for its employee operator to maintain certification. As these rules do not contain design or operational standards, ADEQ is unable to substitute performance standards.

(iii) Exempt small businesses from any or all requirements of the proposed rule making.

Methods implementing the statutory objectives of this rulemaking to generate fees necessary to support the costs of the Operator Certification Program that might reduce the impact on small businesses or be less costly or intrusive would not be feasible. The fees are based on ADEQ's costs to maintain the Program and the proportionate level of effort to provide the service.

3) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

Generally, private persons (who are not sole proprietor small businesses) will not be directly affected by operators having to pay certification fees. ADEQ expects a minimal indirect impact to consumers and the general pub-



lic. From the consumer’s perspective, if a utility decides to pay the certification fees of its operators, these entities may or may not pass the costs or savings on to the consumer and the public through products, services or utility rates. There is no way for ADEQ to predict whether these costs or benefits will be passed on or what the actual costs or benefits may be for each drinking water or wastewater facility.

The fees will provide sufficient and sustainable revenues for the Operator Certification Program, allowing ADEQ to continue processing operator certifications and renewals and offering professional development trainings, which protects public health and safety. Adequate staffing levels for the Operator Certification Program ensures that operators are trained, certified, and knowledgeable regarding the public health reasons for drinking water and wastewater standards and operations. The Operator Certification Program ensures that all water systems, from the smallest to the largest, are supervised by operators who have experience and training commensurate with the sophistication of the system, and allows citizens to obtain drinking water from a variety of public water systems with confidence that the drinking water is safe regardless of the location or size of the water system.

I. Probable effect on state revenues:

Operator certification fees will be deposited in the state General Fund, as required by A.R.S. §§ 49-352(A) and 49-361. ADEQ estimates that fees from this rulemaking will directly affect state revenues by increasing revenues to the General Fund by \$400,000 to \$475,000 annually. ADEQ’s goal is to seek a legislative change that operator certification fees will be deposited in the water quality fee fund, established under A.R.S. § 49-210.

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

Other methods implementing the statutory objectives that might be less costly or intrusive would not be feasible. ADEQ’s ability to raise revenue is limited by the powers and duties granted it through statute, specifically A.R.S. §§ 49-352(A) and 49-361.

ADEQ’s Safe Drinking Water Program consists of the following sub-programs:

- Monitoring and protection, responsible for managing monitoring data and providing compliance assistance to PWSs;
- Engineering Review for new or changed water systems and treatment facilities;
- Operator Certification;
- Data entry;
- Monitoring Assistance Program (MAP), Arizona’s unique program, which requires all small PWSs to pay required fees for an ADEQ contractor to collect, transport, analyze and report on most listed contaminants in water samples. The MAP allows small PWSs to achieve economies of scale for water quality sampling that larger PWSs can achieve; and
- Inspections and enforcement.

Historically, the Safe Drinking Water programs were supported by the General Fund. Beginning in 2007, ADEQ’s portion of general fund was decreased and ultimately eliminated in 2010. ADEQ has been funding the Safe Drinking Water Program, including the Operator Certification Program, through federal grants and federal set-asides from the DWSRF. Since Fiscal Year 2011, Arizona has seen a nearly sixteen percent decrease in the DWSRF. Expectations for future years are for continued dramatic/significant federal budget cuts across all agencies and programs which will include the capitalization grant programs that currently support the drinking water program.

ADEQ already is authorized to assess fees to provide a variety of water quality protection services which must be deposited in the Water Quality Fee Fund pursuant to A.R.S. § 49-210. These services include the Aquifer Protection Permit Program, the Arizona Pollutant Discharge Elimination System Permit Program, and the Drinking Water Engineering Review. ADEQ assesses fees for MAP, which must be deposited in the MAP fund according to A.R.S. § 49-360(G). Without legislative authorization, ADEQ cannot use other state funds, such as through the Water Quality Fee Fund, to fund the Safe Drinking Water programs, including the Operator Certification Program. A.R.S. § 49-210 lists the purposes for which monies can be used and the drinking water program is not included.

In 2008, ADEQ established fees for the Drinking Water Engineering Review Program but the balance of the Safe Drinking Water programs (other than MAP) are supported by federal set-aside dollars. With this rulemaking, ADEQ is seeking to establish fees for water protection services for which no fees are currently charged.

HISTORICAL FEDERAL FUNDING

Historically ADEQ has relied on federal funding to administer its Drinking Water Program, including the Operator Certification Program. But federal funds have been decreasing since the recession and ADEQ anticipates further



decreases in the near future.

The 1996 amendments to the SDWA established the DWSRF, and authorized EPA to award capitalization grants to fund the DWSRF to States. States can in turn provide low-cost loans and other types of assistance to public water systems to finance the costs of infrastructure projects needed to achieve or maintain compliance with SDWA requirements, and to further the public health objectives of the SDWA. 42 USC §300j-12. In Arizona, the DWSRF is administered by the Water Infrastructure Finance Authority of Arizona (WIFA). WIFA was created by state statutes (Title 49, Chapter 8) to administer the clean water revolving fund and the drinking water revolving fund. A.R.S. § 49-1203(B)(1)(a).

To date, Arizona has received over \$330 million in DWSRF. For the period FY2011 – FY2014, Arizona received the following amounts in DWSRF:

FISCAL YEAR	DWSRF
FY11	\$18,915,000
FY12	\$18,026,000
FY13	\$16,913,000
FY14	\$15,969,000

States are authorized to use a portion of their capitalization grants to fund a range of Safe Drinking Water activities (“set-aside activities”). 42 USC §300j-12 (g), (k). The authorized uses of capitalization grants set-aside activities includes:

- 4% - WIFA Program administration;
- 2% - Technical Assistance Activities to PWSs serving less than 10,000 persons;
- 10% - State Public Water System Program Management (state must provide one to one match, including program administration and implementation of capacity development and operator certification);
- 15% - For Wellhead/Source Water protection activities (not to exceed ten percent on any one activity).

EPA published guidance in 2000 on allowable operator certification program activities that can be funded by the PWSS set-asides, including:

- Providing assistance to third parties to provide operator training;
- Organizing and conducting training course for individuals to become certified, achieve a higher level of certification or renew an existing certification;
- Developing, validating, processing and grading certification examinations;
- Tracking and monitoring the status of certified operators; and
- Conducting enforcement activities (e.g. preparing administrative orders, revoking certificates).

In recent years, ADEQ has used up to \$100,000 annually of the 2% allocated for Technical Assistance Activities to fund operator certification training. ADEQ has used the allowable allocations for State Public Water System Program Management and Wellhead/Source Water protection activities to fund the balance of the \$4 million budgeted Safe Drinking Water Program in Arizona. These costs include employee salaries and benefits, travel, overhead, and equipment. These staff provide one-on-one assistance to PWSs to address issues, provide guidance, rule interpretation, ensure system capacity, conduct inspections and provide consumer confidence reports on system performance.

While using the federal DWSRF set-asides to fund a state’s drinking water program is a means to promote the health protection objectives of the 1996 amendments to the SDWA, there are consequences. The Association of State Drinking Water Administrators in its 2013 State Drinking Water Resource Needs Report: Analysis, explains that a state must balance setting aside funds for programs with the need to fund infrastructure. Any dollars set aside by the state programs are not spent directly on construction for repairing or replacing water system infrastructure (the main purpose of the DWSRF) and will not be paid back into the state’s DWSRF (meaning less funds available for future uses).

Additionally, the DWSRF was never intended to be a permanent source of state funding. It was envisioned that states would use the funds to establish revolving loan funds that would be self-sustaining based on the interest of the loans. Congress is required to reauthorize the DWSRF, but the last authorization from the 1996 SDWA amendments ended in Fiscal Year 2003; Congress continues to appropriate funds for the program but on an interim basis.

Between Fiscal Years 2011 and 2014, Arizona realized a sixteen percent decrease in its DWSRF capitalization grant and a proportional reduction in the set-aside activities available to administer the Safe Drinking Water Program. WIFA’s funding for FY15 was reduced by \$105,395.40 from the FY 2014 amount.



The SDWA 1996 amendments also established the Expense Reimbursement Grant (ERG) program to promote operator certification. 42 USC §300g-8(d). The ERG program provided grants to states so that operators of systems serving 3,300 or fewer persons can be reimbursed the costs of training and certification, including per diem for eligible operators. The ERG was an additional fund that Arizona received and relied on as a one-time allotment of \$1.86 million for a six year period (FY2006-FY2012). Most of ADEQ’s training budget for operator certification during this period of time was using ERG funds, which paid for presenters, equipment, event coordinator, lodging, training materials and examination fees. During a time of recession, ADEQ was able to offer even more training because of the ERG funds, but these funds are no longer available.

Any federal funds ADEQ lawfully uses to fund the Operator Certification Program reduces funds available for making infrastructure loans, which is the intended purpose. Technical Assistance funds are meant to pay for services such as an engineering evaluation for a PWS, in response to repeated violations of maximum contaminant levels. Other programs were intended to assist PWSs especially as to larger infrastructure investments, which tend to be beyond the financial capacity of many smaller PWSs.

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

ADEQ’s database of certified operators is linked to and populates ADEQ’s primary drinking water database (Safe Drinking Information System – SDWIS/State). There are some limitations with the data that ADEQ collects. Data on the drinking water side, which must be reported to EPA, is much more robust than for wastewater. ADEQ does not track system the size of a wastewater system, either as to population served or amount of discharge, in the SDWIS. ADEQ also does not track whether a drinking water or wastewater system is publicly or privately-owned.

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

L. Conclusion

A certification program provides testing and training requirements for persons who will be responsible for the operation of drinking water and wastewater systems. Through the certification program, persons obtain and demonstrate their ability to safely operate drinking water and wastewater systems. ADEQ believes the benefits to the public health and environment of ensuring the Operator Certification Program outweigh the cost of implementing these fees.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

ADEQ originally requested an effective date to coincide with the beginning of Fiscal Year 2016, July 1, 2015. With changes in administration, ADEQ received approval on its request for exception on Executive Order 2015-01: Internal Review of Administrative Rules; Moratorium to Promote Job Creation and Customer-Service-Oriented Agencies on July 10, 2015. At the request of the Governor’s Regulatory Review Council, ADEQ changed the effective date to July 1, 2016 to coincide with Fiscal Year 2017 and to allow time for ADEQ to seek statutory changes. A non-substantive technical change was made at the request of GRRC staff.
July 1, 2016

11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comments are reproduced in this Notice of Final Rulemaking as submitted, with some minor editing, including grouping similar comments together.

General Fund:

Ted Bailey: As previous commenters have observed, this money is going to go to the general fund and if ADEQ under its purview of being required to have operators, cannot convince, in the past, the state of Arizona to continue its funding through the state government, there’s no guarantee that it will be able to do so in the future.

James Taylor: I feel that this would place an undue burden on water & wastewater professionals. That clearly the Arizona statutes state that the funding should be provided by the general fund and that the funding should be made available from that general fund to adequately provide the resources necessary for ADEQ to do the job that they’ve been doing.

Allen Lohn: I’m just wondering how are funds going into the general fund going to turn around and stay with ADEQ. I’m worried about paying DEQ to renew my certifications and the money going elsewhere. That’s one of my major concerns.

Don Ascoli: There needs to be a short term goal for ADEQ to put this money in the budget of ADEQ not the general fund. I think the sooner that’s accomplished the better everyone will be. I think that people who are being asked to pay this will feel more secure and comfortable knowing that the money is going where the actions is, where they’re having to report their activities.

I really think ADEQ, as part of this package, if they’re going to do the fee thing, that whatever political way you can, insist that that fund or what is collected go to ADEQ. I really think it would be a travesty for the people



who contribute to the fund to find that's it's going for dog catching or whatever other programs you got. If the state is partly behind you having a fee, then they should at least support the fact that it is almost like a lock box. It's money for ADEQ to support the manpower that it needs to support us. That's what you're here for. And we work together, it's a team thing.

If you can't get the commitment, a promise, whatever from the state government, the general fund folks, then I don't think you should have a fee. Because there's too much doubt among operators. They might be much more willing to pay if they knew it stayed here. I understand you have statutes. But you have leverage too. If you can tell the state we're going to cover our own so you don't have to steal as much general fund money to keep us operating, at least protect and give us the commitment that you'll reroute that money back to ADEQ. I would strongly recommend that you do that as part of your package.

Gary Boileau: I'm disappointed that the proposed fees would go into the general funds as required by statutes. Why is it that the long term goal of the state would be to set up the WQFF instead of the short-term goal? If the purpose of the fees is to ensure the survival of ADEQ, how is giving \$400,000 plus to the General Fund going to ensure ADEQ's survival. My concern is that if and when the state legislature sees that there is an additional \$400,000 in the general fund, there could be a feeding frenzy on how to spend it.

A question – I don't know how it was first established that the fees would go into the general fund. But the long-term goal is to go into a dedicated fund. Why is that a long-term goal instead of something you want to jump on now?

Jennifer Hetherington, City of Mesa: If ADEQ cannot prevent current funding from being swept to other programs, there is no assurance that new fees will not be subject to similar action. As long as the fees are deposited into the General Fund, they can be used for other purposes and therefore the City cannot support a fee that not only is not required but will also not resolve any ADEQ funding issue.

Notwithstanding the above, the City does support ADEQ's long term goal as stated in AAC R18-14-89(5) "ADEQ's long-term goal is to seek a legislative change that operator certification fees will be deposited in the water quality fee fund, established under A.R.S. § 49-210." This goal should be the main focus currently, as opposed to the short term goal of collecting "fees" which will also be deposited in the General fund. As discussed above; the short term goal is unlikely to yield any revenue applied to the OpCert program.

Dale Oviedo: I don't have a problem with ADEQ charging a reasonable fee for obtaining or renewing a certificate. What I do have a problem with is the AZ State Legislature diverting revenue from ADEQ programs. Also, these new fees will go into the General Fund- not to the ADEQ. That's not right. The legislature has taken revenues from other government programs and offices in the past with no regard whatsoever for the ramifications of that action. I believe they'll do it again in the future. These fees will increase when that happens.

Donald R. Baker: I am a resident of Arizona and a longtime certified water, wastewater, distribution and collection system operator. I have no issue with the proposed certification and renewal fees provided that are placed directly into the operator certification program. However, I am vehemently opposed to the collected fees being channeled into the State General Fund. I have no confidence whatsoever that the placement of the fees into the general fund will do much to help "implement the Safe Drinking Water Act requirements" or help protect the quality and safety of Arizona drinking water and wastewater systems. Contrarily, I do have supreme confidence that the collected fees will be subject to raids by the Arizona legislators to be used for every whim and legislative boondoggle that they may conjure up. I have seen our legislature in action. Their history precedes them.

Collect the fees and place them where they belong; in the operator certification program. Anything else make the fees an open ended tax, subject to confiscation by the Arizona legislature.

James Manning: From the way I see it, this is just a special state tax specifically aimed at operators, since the fees are going into the general fund. I have already discussed these fees with other operators and most of them have stated that they will simply drop any certifications that they are not currently using, so they do not have to pay hundreds of dollars extra. We don't need operators with fewer certifications... holding certifications should not be punished.

Chris Smith, City of Goodyear: "The revenue from these fees will be deposited in the State General Fund..." yet you fear-monger by stating, "Failure to establish new fees for the ADEQ State Drinking Water (SDW) program could negatively impact ADEQ's ability to implement the Safe Drinking Water Act requirements and potentially impact the quality and safety of Arizona's drinking water systems. Further, ADEQ's delegated authority could be lost and oversight of the drinking water program could revert to the U.S. EPA." If that's the case, why wouldn't that money go directly into ADEQ's budget? Shame on you

Brian Smith, City of Scottsdale: I am against the fees going to the general fund, if this is truly to continual the ADEQ program the money should go directly to ADEQ.

Lou Buranich, City of Peoria: I am very disappointed regarding the proposed fees for certification. I have been an certificated operator since 1989, and I believe this is extreme for the starting of new fees. Why would the "received fees" from certification of the WATER INDUSTRY, go to the General Fund for everything? The monies should stay in the related field (similar to the gasoline tax for roads).

Lee Williams, City of Flagstaff: In addition, it is rumored that the revenue generated by the new fees will go to



the general fund. As it says on the information card sent to us, “proposed fees are directly related to the level of effort expended by the department (ADEQ) to administer the operator certification program.” If this is true, then shouldn’t the revenue go directly to ADEQ rather than creating more paperwork, legwork and headaches for those that will be using the funds. Or, is this just a way for the legislature to siphon money from a functioning department under the guise of trying to recoup costs? I would not be in opposition if the proposed fees were more reasonable and went to the department that they are supposedly being created to fund.

William T. Cox (Bill), W/WW Treatment Plant Superintendent, City of Yuma: The proposed operator certification and renewal fees is un-warranted this fee will not be for operator training and certification programs as long as it is going into the General Fund.

Martin Jones: Any monies that are received through certification renewal should go directly to ADEQ, which maintains the operator certification program, not the General Fund.

Leanne Nieukirk, Tucson Water Quality Laboratory: In addition, any money generated through operator certification should go to ADEQ, not the General Fund. These fees allow ADEQ to oversee the operator certification program, provide required training, and regulate the various water/wastewater programs, all of which are essential functions of the department.

Brian Huntzinger, Flagstaff Municipal Water System, Flagstaff, AZ: I would be more supportive of the proposed fees if they went directly to support the program rather than into the general fund of the state.

Ward Seibel, Treatment Plant Superintendent, City of Yuma: Any fees generated should not go into the general fund but to ADEQ programs for operator training.

Doug Cameron, City of Mesa: I don’t understand why fees are going to the state’s general fund.

Arlen C Ritter, Chief Operator WPCF, City of Yuma: If fees are going to be added to the Certificates then all money should be directed to ADEQ and not the general fund. Using the lottery as an example, all profits were suppose to go to helping with the parks and schools but started to be diverted to other miscellaneous items that we are not even aware of.

Kurt Novy, Flagstaff Municipal Water System, Flagstaff, AZ: Any fees generated should not go into the general fund but to ADEQ programs for operator training. Trained operators are essential for the public health.

Brad Shattuck, Saguaro National Park: I'm not a fan of it going into a general fund ... this should go into a water/wastewater management fund so the fees help pay for the costs of administering the program.

Dennis Price, Manager, Ehrenberg Improvement Association: Our organization is opposed to the proposed fees. We oppose it primarily due to the fact that the fees will go into the General Fund and will not be used for the purposes for which they are levied, i.e drinking water related activities.

Gary Boileau, T.H.Enterprises: While I do not believe that this rule should go into effect, I do not like the possibility of the State's primacy be replaced by the EPA. But, should the fees go into effect, I strongly oppose the fees going into the general account. They should be allocated strictly to the ADEQ department (if one exists). We all know to well that the politicians love to raid or “borrow” from the general fund.

Scott McClinton, City of Prescott: Why are the fees that would be generated for a specific need (administration of the program) potentially be going to the general fund where they will be used for things other than the program they would be generating them for? Everyone knows this is a true statement. This appears to all like a generation of funds for something other than expressed.

Randy Baldauf, City of Prescott: I think that if you are going to raise them (cause you’re going to do what you want anyway) the fees/taxes should go to the ADEQ instead of the State General Fund where it will do absolutely no good.

Christopher C. Grant, Pima County, RWRD: It would seem that monies raised from the new fees will not be used for improvements to Operator Certification Program but rather to infuse the general fund.

Gerry Morgan, Software Mechanics: Finally, I understand that the revenue that would be generated from this proposed scheme will go into the general fund, rather than being used to cover the administration of wastewater plant operator licenses. I think it is inappropriate for ADEQ to be levying fees from low-paid workers to support the general fund.

Betsy M Bowman, Laboratory Director, City of Yuma: Any money from the fees for operator certification should NOT go into the general fund, but should go into a separate fund in order to be used for the statewide training workshops and testing costs for water and wastewater operators.

John Mussulman: With regards to the proposed fees, I have a few questions: these fees would go into the state general fund, and ADEQ would then only receive a portion of each fee. What is the estimated turn around time for these fees to be explicitly for ADEQ? It seems like a process like that could take a few years to legislate out.

Thomas Bolyen: I find that there are many unanswered questions concerning the current fee proposal for ADEQ Operator Certifications? Where will this new fee go? What will be done with the money? How will it benefit ADEQ? Will it benefit the ADEQ Operator Certification Program at all? How will it benefit the citizens of Arizona? This has not been made clear to me.

David D. Klingensmith, Plant Operator: If failure to establish new fees for the ADEQ State Drinking Water program could negatively impact ADEQ’s ability to implement the Safe Drinking Water Act requirements and



impact water quality then why will the fees be deposited in the State General Fund. ADEQ doesn't even administer the certification exams it is contracted out through Gateway Collage with a large fee for testing.

RESPONSE: Operator certification fees will be deposited in the state General Fund, as required by A.R.S. §§ 49-352(A) and 49-361. ADEQ does not receive General Fund monies, but has conveyed to members of the Legislature that the Operator Certification Program is not general or fee-funded and requires a source of steady, permanent funding. In the last legislative session, the Legislature did authorize ADEQ to use other agency funds to partially fund the Safe Drinking Water Program.

In the Notice of Proposed Rulemaking, ADEQ stated "ADEQ's long-term goal is to seek a legislative change that operator certification fees will be deposited in the water quality fee fund . . ." ADEQ's goal is to seek a legislative change that operator certification fees will be deposited in the water quality fee fund, established under A.R.S. § 49-210

Federal Funding Alternatives:

Jason Bobko: "ADEQ's proposed fees are directly related to the level of effort expended by the department to administer the operator certification program." "ADEQ's delegated authority could be lost and oversight of the drinking water program could revert to the U.S. EPA.": Public Water System Supervision (PWSS) Grant Program is a program established under the Safe Drinking water act that allots federal funds for state agencies who have been granted primacy to fund their individual program. According to the Federal Register, see link below, the 2014 allotment for Arizona from the Drinking Water State Revolving Fund (DWSRF) is \$14,419,000. Where is this money going if not to support the primacy agency and who is accountable for this? <https://www.federalregister.gov/articles/2013/06/17/2013-14333/state-allotment-percentages-for-the-drinking-water-state-revolving-fund-program#page-36185>

"ADEQ seeks to establish new and reasonable fees" - With an allocation of over \$14 million dollars in federal money placing this financial burden on individual certified operators is not reasonable. "The revenue from these fees will be deposited in the State General Fund." This is unacceptable.

Jennifer Hetherington, City of Mesa: This letter hereby serves as our formal response to the above referenced Public Notice. The City of Mesa Water Resources Department employs 161 Certified Operators. However the funding in the general fund still exists but has been used for other purposes. In addition; speculation of future cuts are part of the justification to create fees, as opposed to actual cuts. "ADEQ's Operator Certification Program has been funded by state general fund, federal grants and federal set-asides through the Water Infrastructure Finance Authority. Beginning in 2007, ADEQ's portion of general fund was decreased and ultimately eliminated in 2010. The future level of funding through federal sources is uncertain, but will most likely be subject to continuing cuts." The city contends the funding still exists to run the OpCert program.

Robin Merchant, City of Kokomo: Find other sources of revenue other than the general fund. Since most of the ADEQ's requirements are mandated by the Federal EPA why is there not Federal Funding available for the operator certification program and the educational requirements of current and future operators.

Tom Sherman: I strongly recommend NOT increasing fees. As both a licensed wastewater and distribution system operator, I already pay for my education and testing in order to comply with the regulations set forth by the state of Arizona and the federal EPA. Placing an additional financial burden on operators trying to made a livable wage I feel is unjustified. I'm sure that the financial burden of checking on the validity of licensing by the state, can be recovered from federal funding which is already received.

RESPONSE: ADEQ explains how it has used the authorized set-asides from the DWSRF in Section J "Description of less intrusive or less costly alternative methods of achieving the proposed rulemaking" in the Economic Impact Statement. ADEQ is proactively reducing its reliance on funding the drinking water programs through the DWSRF, where possible. ADEQ has statutory authority to assess fees for services of the Operator Certification Program. A self-supporting Operator Certification Program means less drain on federal funds that ADEQ continues to use in order to fund the remaining and largest part of its Safe Drinking Water Program, which includes activities for which the agency cannot charge a fee.

Of the available set-asides, a state agency can only use DWSRF funds for the operator certification program. According to EPA guidance, ADEQ has used monies under the ten percent allowed of the State Public Water System Program Management to fund employee cost and used up to two percent of the Technical Assistance Activities' to fund training.



Tiered Fee Amounts:

Eric Brennan, Water Operations Manager City of Brentwood, Public Works Department: A tiered rate per grade level may be an option also. Fee example

Grade	Renewal Fee	Discount Fee (currently certified in both water distribution and treatment)	First Late Fee	Second Late Fee
1	\$70.00	\$55.00	plus \$50.00	plus \$100.00
2	\$80.00	\$60.00	plus \$50.00	plus \$100.00
3	\$120.00	\$90.00	plus \$50.00	plus \$100.00
4	\$140.00	\$105.00	plus \$50.00	plus \$100.00

Dave Rath, City of Mesa, NWWRP Operations Supervisor: I have a few comments relating to the proposed fees for certification: I think a tiered fee schedule makes more sense instead of a flat across the board, i.e. Grade 1 would be the lowest fee to Grade 4 being the most. Most people who have obtained a grade 4 would likely be making more money compared to a grade 1 operator. I currently have grade 4 in WW treatment and collections and would be willing to pay more.

Roger Biggs, City of Cottonwood (total 19 signators): please accept this signed petition as presented by the Operations Staff for City of Cottonwood Water and Wastewater Utilities. While we agree changes need to be made, we strongly disagree on the proposed process. We believe the ideas expressed offer a compromise that best serves all interested parties.

We the undersigned water and wastewater system operators and administrators for the City of Cottonwood having found grievance with the Arizona Department of Environmental Quality’s proposed rulemaking seeking to establish “new and reasonable fees for the certification of water and wastewater operators do affix our signatures to this petition as a sign of protest against the aforementioned proposal.

We believe that the proposed flat rate structure places an unreasonable burden on younger, less experience, lower paid operators. A tiered system based on certification level would provide the same income to the department without causing undue hardship on operators. It is our wish that these concerns be addressed and included in any future proposed rulemaking policy affecting fees and charges related to the operator certification program.

RESPONSE:

In anticipation of this rulemaking, ADEQ met with a broad spectrum of stakeholders to discuss funding issues and fee amounts for the proposed rules. As a result, ADEQ considered stakeholders’ comments and was able to incorporate some comments into the proposed rule, such as delaying the effective date to allow stakeholders time for budget planning. Some stakeholders suggested basing the fee amount on the certification grade level, so that higher grade operators would pay more in fees than lower grade operators. Although ADEQ considered the idea and reason behind it of not burdening newer operators, ADEQ ultimately rejected the idea. The fee amounts are based on the proportionate level of staff effort to perform a certification task, which remains the same, regardless of the grade level.

Alternatives for Renewal Term:

Adam Bliven: I do understand the financial pressures ADEQ operates under, so I propose an alternative solution. If the cost to maintain the operator's licenses and renew them every year is so expensive, then why not make the operator's license valid for 3 or 5 years? This would actually reduce the ADEQ labor necessary for managing the licenses which would free staff time for other SDW program activities.

Norm Clark: Or another options is to stagger the increases over a course of five years to minimize the impact on renewals and new certification applicants.

Rus Medlock, Brown Road Water Treatment Plant, City of Mesa: I believe that once we have already paid for the test... we should not have to pay for re certification since it is ADEQ that requires us to recertify. If a payment is required to recertify then the renewal time frame should be extended out to 10 years or when someone changes to a new job. Or just do 10 year certifications. Then in 10 years everyone on that anniversary must pay the fee and retest.

RESPONSE: Under A.A.C. R18-5-107(A) a certificate is renewed for three years unless the operator requests a shorter renewal period. Three years is the maximum amount of time allowed under EPA’s 1999 “Final guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems”. 64 FR 5916- 5921, February 5, 1999. Under the Final guidelines, States must have a fixed cycle of renewal not to exceed three years. 64 FR at 5920. EPA can withhold 20 percent of a state’s DWSRF capitalization



grant unless the state is implementing an operator certification program that meets the requirements of the final guidelines. 42 USC §300g-8(b).

Alternative Fee Amounts:

John Mussulman: I also disagree with the three layers of fee structure that you guys have proposed, with \$75 for the initial certificate, is that right? \$65 for a new certificate and then \$150 for the first renewal certificate and then \$50 for every one after that, but not to exceed \$250, if I'm reading that correctly. Anyways, if I have to spend that long on it, its too complicated.

I agree with you guys charging fees if you can have a streamline way to get that money back out of the general fund and back into DEQ. My main concern is simplification of the fee structure – I shouldn't have to think this hard. I think you could break the \$300 down if you have all four certificates. I think you could break it down a little more efficiently so you're not thinking you're going to renew this one for \$150 and the other ones are going to cost me \$50 each. If you could streamline those numbers a little bit better, I would be less opposed to it.

Don Ascoli: I work up in the Payson area and work with several small water systems up there. I do actually support the fee structure you're talking about; I think there should be something involved that goes behind the responsibility of being a water operator.

I'd suggest looking at a lower number; instead of \$150 and \$50 for each renewal, I might suggest \$125 to help the burden of small folks, as the previous speaker talked about, so we could have a fairer balance, so they can afford to do this and continue on.

Michael Moraga, Locating Supervisor, Maintenance Division: I understand a need to charge for renewals to offset the costs of administration work but going from zero to several hundred dollars is absurd. I think \$150 total would be a reasonable request. Maybe even \$35-\$50 per certification is understandable. I think \$300 is going to have a negative impact on the amount of people who decide to maintain these certifications, especially when they are not required in many positions throughout various water and waste water departments.

Ernest Jay Garlick: To me a cross trained operator in all four areas the fee's seem very excessive. My cost would be \$300.00 per cycle. I am sure due to the current economic times my employer would be unwilling to pay these fee's. For most operators these fees would be passed down to the operator thereby making them less likely to maintain multiple licenses. It is my opinion that the fee for additional licenses should be much lower than the proposed \$50 each because it requires little effort to print the information on the same card. Taxation for the sake of taxation without improvement is foolishness. Each license makes for a better operator and to make it that expensive you'll end up limiting the knowledge base of those who protect the public health. A more reasonable fee for multiple certification would be \$10.00 per additional certification.

John Mussulman: \$150 seems high for a renewed certificate. What about making a new or upgraded certification \$100, renewed certifications \$75 and lapsed certifications \$125? Then the incentive is to stay current on our certificates.

David Tingué, APS: I am in opposition of installing fees on operators- The term "reasonable" is anything but. The proposed fees are way out of proportion- if you want operator buy in- I suggest the fees be 25.00 per cert.

Betsy M Bowman, Laboratory Director, City of Yuma: The renewal fee should be \$125 for the first certificate (and not \$150) as based on your \$122/hour cost basis with \$50 for each additional certificate renewal.

Joel Johnston, Navajo County: So that's \$300.00 for people with 4 certificates from \$00, that's a little steep don't ya think? How about \$150.00 regardless of the number of certificates, I don't think the extra ink for multiple certificates is justified,

Rus Medlock, Brown Road Water Treatment Plant, City of Mesa: The other viable option is to charge a minimal fee of \$10.00 for each variant of certification each person has. This would be an affordable amount that most could afford. Water Treatment is not a very lucrative line of work.

Gerry Vawter, Pima Utility & Picacho Water, Sun Lakes: I have been looking over these proposed ADEQ fees, it is my understanding that this money would be used to cover your processing costs and provide operators with training? The fact is that this state needs licensed operators and obviously the state also needs more money to maintain the operator certification program. I assume most companies will pay these new operator fees (if passed) for its employees, but going from zero \$ in fees to \$150 per certificate renewal plus \$50 for each additional is sticker shock. My suggestion would be to cut your initial proposed \$ amount in half, \$75 per certificate renewal plus \$25 for each additional certification. I don't know exactly how many certified operators there are in AZ but \$150 or \$75 per operator is going to generate a large new revenue that will need to be properly managed and only used in the drinking water program, is that something that can be guaranteed that the money will stay in the drinking water program?

Paul Burris: I truly feel that ADEQ should be able to staff appropriately to assist operators with licensing. Then most operators have more than one license. I have 4 so it would be \$300 to renew all of my license once every 3 years. If this fee goes into effect it might be wise to extend the period between licenses to 5 years. Or decrease fees of 1st renewal to \$50 and \$25 for others. It seems that the burden is being placed on currently licenses holders over new people attempting to get licenses. Maybe increase fees for those coming in to test or those seeking reciprocity.



Putting \$100 a year fee on an operator who in some cases already is paying for those 30 CEU's that are required gets burdensome.

Mohd Hasan: Even after all objections and if at all the fees must be raised it should be more reasonable and justified. The fees should not be more than listed below:

- Initial certification fee -- \$ 25
- Renewal fee (first certificate) -- \$ 50
- Fee for any additional certificate renewal -- \$ 5 (each)
- Reciprocity review fee -- \$ 100

Brian Day, Integration Project Manager: I am concerned with the proposed increase in operator renewal fees. I believe the proposed fees are excessive and unreasonable. I currently have 3 certificates in Water and Wastewater and I believe I haven't had to pay for renewals at all in the past. Going from \$0 to \$150 per certificate is a huge jump in costs!

The proposal cites that the funding for the certification program has been cut so it is obvious some means does need to put into place to cover the state's costs for administering this program. However, most operators will have to pay for the renewal fees out of pocket since most employers have also cut their funding for re-paying employees to gaining their certifications and maintaining their certifications. I believe a more reasonable cost is needed. For myself I'm going to have to spend \$250 for renewal of my 3 certifications. That is a significant cost to cover for me. Many operators, particularly outside the state's major cities aren't making a lot of money for their positions and they will have an even more difficult time covering these costs.

My recommendation would be for the renewal costs to at \$25 per certification renewal and the costs for taking a certification test be \$50 per test. The reciprocity costs could be kept the same. I feel this is a more reasonable and affordable rate structure than is being currently proposed.

Jay Tom, City of Glendale: If you are going to charge for certificates why not charge \$75.00 per 3 year renewal. ADEQ use to charge 25.00 per year for renewal back in the early 90's. Do it for 3 years otherwise if charge \$150.00 for 6 years renewal. That would be fair.

Michael R. MacKenzie: I am shocked at the proposed cost of future Certificate Renewal. The cost would be \$200.00 for my 2 Water Certificate Renewals. I would suggest a higher cost of \$150.00 ea for a New Certificate and a reduced cost of \$50.00 for Renewals.

Bradley Smith (RWRD), Pima County: Please reconsider your proposed fee schedule 4 licenses should not cost an hourly employee \$600. At most the \$150 should cover all 4. If additional income is required consider raising the fees for plant permits.

Edward Ellyatt, Lee County, Florida: In the case of reciprocity licensure \$100.00 fee would be more in line and affordable to much needed out of State Arizona Wastewater licenses to maintain the pools of potential candidates as more Arizona baby boomers continue to retire.

Edward Urias, City of Prescott: Bad idea, fees too high and the general fund gets raided for other uses. Come up with some other ideas. How about out of state reciprocity fee increase?

Dana R. Trompke, P.E., Carollo Engineers, Inc.: You must also consider that there is an exam fee of \$89 in order to take the test. Therefore, for an operator to advance in certification, he would have to pay both the \$89 exam fee and a \$65 certificate fee for a total of \$154 per certification. In order to achieve reach a grade 4 in all four categories, that is 16 tests and 16 certificates, totally \$2424. That is beyond reasonable. I would support an initial certificate fee of \$65 to begin at a grade 1. A reduced fee of \$25-\$30 could be charged to advance a level.

I would not support a renewal fee higher than the original certification fee. That does not make sense. I would support a renewal fee of \$25-30 per certificate, regardless of common or dissimilar expiration dates. A three year renewal of a total of 4 certificates would be no more than \$120.

Damon S. Williams, PE, BCEE, Managing Member, DSW Water Strategies, LLC: The proposed fee structure seems way out of whack. I have not seen the figures, but it would seem to me that the State would get many more new certification applications annually than renewal applications. Further, a lot of existing applicants will not renew. Hence, it would seem that to make more sense to charge the new applicants more than the existing certified operators to renew. So the proper fee structure should be reversed from that which is shown, i.e.- \$150 for new applicants \$65 for renewals. If you charge so much to renew, I think you will find that a lot of old timers won't bother to renew, so the State loses that competency. Furthermore, the \$250 for reciprocity review is really outlandish, and will discourage competent operators from other states to move to Arizona. The net result of all of this is to deplete an already diminished stable of competent operators in the State of Arizona at a time when they are really needed the most.

RESPONSE: Based on the underlying operator certification rules in 18 A.A.C. Chapter 5, Article 1, ADEQ established fees for four certification tasks: new certification, early examination certification, request for reciprocity, and renewal. The fee amounts are based on the proportionate level of work required for FTEs to accomplish the specified certification responsibilities. The renewal process takes ADEQ staff more time than a new certification so the renewal fee is higher. The level of effort is in line with how ADEQ has evaluated fees necessary to cover program



costs in other areas of the agency. With the \$50 renewal fee for an additional certificate with the same expiration date, ADEQ is seeking to offer flexibility and incentive for operators with multiple certificates.

The fees must cover all costs for the Operator Certification Program, not just the costs of the four certification activities for which fees are assessed. As detailed in the EIS, the fee amounts include other costs of administering the whole Program, such as all personnel costs and training. An operator would pay \$1040 in fees to ADEQ to begin at grade 1 and advance to grade 4 in all four classifications. Separate from the certification fees, an operator would pay \$87 to Gateway for each examination in all four grades and all four classifications, totaling \$1,392.

Prior to this rulemaking, ADEQ met with stakeholders to discuss fee amounts; ADEQ originally presented an initial certification fee of \$75 and a certificate based on reciprocity review fee of \$300. ADEQ reconsidered its costs and stakeholders' concerns about burdening new applicants, who usually enter at the lower end of the pay scale. The proposed rules reduced the initial certification fee to \$65 and the reciprocity review fee to \$250. ADEQ has set the fee amounts, that based on past numbers and with an anticipated drop off of 20 percent of all renewals and certifications, will generate revenues sufficient to cover the Operator Certification Program costs. Fee amounts any lower than proposed will not cover the costs of the program.

Some of the suggested fee amounts are similar to what ADEQ previously assessed under the rules repealed in 2001, ranging from \$10 to \$25. Fee amounts included ADEQ administering the certification examination, which was set at \$25 for the Grades 3 and 4 applications for examination, a function ADEQ no longer performs. ADEQ anticipated that revenue loss in repealing the fees would be \$65,000 annually. As detailed in the EIS, ADEQ's personnel and training costs for administering the Operator Certification Program are \$429,000. The low Operator Certification fees from before 2001, and as suggested by comments, will not support the Program in 2015.

Comparing Fee amounts to Fees for Other Professions or in Other States:

John Mussulman: I'm a certified operator. I don't object in principle to paying ADEQ to maintain licenses. ADEQ requires us to have them and it's a good public safety thing for us to have them. I like it. I don't think the scale of what you're wanting to charge us for the certificates is commensurate with what we do. Lawyers have to get recertified every two years, and its like a \$500 certificate for them, but lawyers also make more typically than a water or wastewater operator does. We'd have to pay for ours on a tighter timeframe. It wouldn't be the 3 or 5 years or whatever lawyers have, ours is every 2 years.

Steve Cottrell, Enco Southwest, Inc. Boulder City, Nevada: I am an Arizona certified operator in all categories. I served as chairman of the AWWA Certification Committee and on the Nevada Board of Certification for Wastewater Operators. I was on the Nevada Board for over twenty-five years and was chairman for twelve of those years.

I feel that the renewal fees are exorbitant and that the initial certification fees are too low. Nevada charges \$30 for a two-year renewal for wastewater. California charges \$75.00 for a two-year renewal of a Grade III water certificate.

From experience, I know that the main burden of work is the initial certification and examination process. A renewal fee of \$75.00 for three years seems to be a reasonable cost. That puts it at more than Nevada, but less than California. It is mentioned in the proposal that the fees should be reasonable and directly related to the level of effort expended by the department. The level of effort for a renewal is less than thirty minutes, and more likely less than 15 minutes. In essence, the department is proposing to charge \$300 to \$600 per hour for processing renewals. This is not reasonable. I firmly believe that the fee basis needs to be reviewed and brought more in line with reasonableness.

Gerry Morgan, Software Mechanics: I also believe that, if a fee were to be introduced, the amount you are proposing is too high. A person with several types of license might end up paying \$600 every three years, so \$200 per year on average. Compare this with renewal fees for the Arizona State Bar, which charges lawyers \$465 per year to renew their license. But lawyers earn many times more per hour than a wastewater plant operator. For senior lawyers, it might take only one hour of their time to pay for the annual license. If the same criterion were applied to wastewater plant operators, a renewal fee of approximately \$20 per year would be more appropriate.

Christopher C. Grant, Pima County: The renewal fees for a CPA in Arizona are \$300 dollars every two years while the proposed renewal fees for wastewater workers could be as high as 600 dollars every three years depending on the number of certifications and the renewal dates.

Dana R. Trompke, P.E., Carollo Engineers, Inc.: I do understand the need to charge a small fee to cover the administrative costs of issuing certifications. However, the proposed fees are too high and I would not considered them reasonable. I would support the fees, if they were lowered to a more reasonable level.

It is not uncommon for someone to work toward obtaining 4 certificates, a Grade 4 in all four categories. At the proposed fee schedule, one would pay \$300 every renewal period if the expiration dates are the same, and \$600 if they are different! That is not a reasonable fee. In fact it is lower than many of the professional registrations required, such as for professional engineers. The proposed fees do not seem to be proportional to the lower pay



range operators are often paid. Please review the fees charged for other professional licensure (building inspectors, professional engineers, lawyers, etc.) and consider the average annual salary across the professions.

Jackson Jenkins, Director, Pima County Regional Wastewater Reclamation Dept. Alan Forrest, Director, Tucson Water Department: The City of Tucson Water Department and Pima County Regional Wastewater Reclamation Department are the largest employers to Southern Arizona of water and wastewater operators. We consider the proposed fees to be excessive. A quick search of other similar renewal fees charged by other states indicates that this newly proposed Arizona licensure fee to be significantly higher than others such as Florida, Oklahoma. We hope you will implement a more reasonable fee structure, one that is more gradual and that is more cost effective for the operators.

Adam Bliven: I am opposed to raising the annual fees for the operators to the extent proposed. The annual fee for one license (\$150) makes it more expensive than the license for professional engineers (\$250/3 years). In general the professional engineers have higher incomes than w/ww operators, so charging the operator's a higher fee than professional engineers does not make sense.

Paul Burris: In most states there is a fee for renewal. Most fees range from \$10 to \$50 a license. The \$150 for 1 certificate renewal would be one of the highest in the U.S. that I know of.

RESPONSE: The fees are necessary and sufficient to cover all costs for ADEQ's Operator Certification Program. As detailed in the EIS, the fee amounts include other costs of administering the whole Program, such as all personnel costs and training. The fee amounts are based on the proportionate level of work required for FTEs to accomplish the specified certification responsibilities. The renewal process takes ADEQ staff more time to verify PDHs and audits than a new certification so the renewal fee is higher. The level of effort is in line with how ADEQ has evaluated fees necessary to cover Program costs in other areas of the agency.

There are a number of unknowns in comparing ADEQ's fees to other professional fees or other states' operation certification fees. Lower fees for other regulatory agencies or other states could mean that other funding sources are available to help support their programs because the fees do not recover the full cost of program administration. Additional factors also include:

- The number of regulated entities is different,
- Extent of regulation is different,
- The number of staff at the regulatory agency is different.

Reduced Fees for Retirees or Outside of Industry

Keith F. Greenberg: I think this is fine for people who work for companies that will pay these fees for them. Many of us are now retired and are more than willing to continue to spend the necessary money to obtain PDFs to keep our certificates valid but these renewal fees can have a negative impact on retired people on fixed incomes. I would recommend a greatly reduced fee for retirees.

Harold Schroyer: I have 4 certs. I have 4s in water and 3s in wastewater. Currently I am not employed due to a disability. The new costs to renew will cause me to lose my certs because I will not be able to afford to pay for renewals. I would like to request that an exception be made for operators that are not employed. I think allowing operators that are not employed to have their certs put on hold and then pay to have them renewed when they feel they will need them to gain employment is fair. Operators that are employed will most likely have their costs to renew their licenses paid by their employer. There should be no hard ship for them but in my case living on disability is already a hard ship. I hope to someday be able to go back to work.

Michael R. MacKenzie: Please take into account some AZ Certificate holders are retired and the high cost of Renewal would force some Retired Operators to Not Renew due to the high cost. That would be a negative impact on the Certificate Program and to the State which would lose Qualified Operators.

Shawneen Michaud, Pima County: Currently I have all of the water/wastewater certifications because they were required where I used to work. Now that I'm working in a wastewater lab only, I am not required to keep up these certifications. If these proposed fees are approved and my current employer is not able to pay for the renewals, then I will have to let them expire. Therefore, I'd like to propose that a for a much smaller fee, certifications may be put on hold for a period of time so that they are not lost entirely and can be renewed in the future.

Norm Clark: Another concern of mine is that my current certifications are valid until 02/2016 and although I'm retired there is a possibility that at sometime in the future I may return to water treatment but would not likely to renew my certifications with the new fee structure unless I'm already employed in the industry (my understanding is that for the four certifications would cost me \$300. \$150 for the first and \$150 for the additional three). My suggestion is to lower the initial cost for non-employed operations certificate holders and possibly charge the higher renewal fees to those employed in the industry where the employer subsidizes the renewals to insure certification.

Dave Rath, City of Mesa, NWWRP Operations Supervisor: 2. I think people who still maintain licensure but are not currently employed with a utility should pay more. 3. I think people who are employed in a capacity other



than direct operations of a system or plant i.e. consultants, engineers should pay more. This group of individuals are for the most part compensated well and can burden a larger fee.

RESPONSE: As detailed in the EIS, the fee amounts include other costs of administering the whole Program, such as all personnel costs and training. The fee amounts are based on the proportionate level of staff effort to perform a certification task. ADEQ's level of effort remains the same regardless of whether the operator is employed in the drinking water or wastewater industry, retired, or disabled. ADEQ anticipates there will be a drop of in the number of certified operators, as operators who do not need the certification for their employment will not pay for renewing that certification. However ADEQ incurs its costs of administering the Operator Certification Program, and as a fee for service agency, is seeking to recover those costs through the assessed fees. Reducing fee amounts based on an operator's employment status would require ADEQ to recoup the needed revenue in some other manner, such as increasing fees for other operators.

Impacts on the Profession:

Ted Bailey: I have 4 certifications in all 4 disciplines. I have concerns with what's been happening in the past 30 years in Arizona with regards to certification of operators and operator availability. When I first started there were many operators close to my age. Now they're still close to my age which is significantly older. But there's many fewer operators applying for jobs in AZ. And the organizations that help train operators have been reduced significantly. For example Rio Salado Community College and Pima Community College both have had their environmental programs reduced significantly if not totally eliminated. That has left Gateway College as the only college where you can get training and of course they're the only ones you can get exams as well.

So the idea of fees may create a serious barrier to getting more young operators.

Gerry Vawter, Pima Utility & Picacho Water, Sun Lakes: My other concern is will these proposed fees could discourage new AZ operators, especially if companies don't step up and pay them for their employees.

Gary Boileau: I'm opposed to fees being assessed for certification renewal. As well as create hardship for some operators. For some small operators they would be required to pay the operator fees for recertification themselves. This could force some operators out of the business at a time in our profession when certified operators are becoming a scarce commodity.

I wouldn't want the certification department to close shop if ADEQ were dependent on these fees for its survival. I'd much rather deal with ADEQ than the department of EPA.

Michael Moraga, Locating Supervisor, Maintenance Division: I currently work at Tucson Water and hold Grade 4 certifications in Water Distribution and Water Treatment and Grade 2 certifications in Waste Water Treatment and Collections. I feel these cost proposals are ridiculous! Many of my certifications are not needed for my current position. I have acquired these certifications for personal interest of being more educated in the water and waste water industries as a whole. They also keep potential job opportunities open within these industries however, I would let many of my certification expire if these rules are put in place. I feel many other workers would do the same, given these cost. I have worked for the government for 15 years and have not received a raise in nearly 8 years to budget problems during the last decade. If you intend to impose Certification Fees, at least make them reasonable.

Norm Clark: Although I understand the need for ADEQ to enhance the financial viability of the Operator Certification Program it seems that the proposed fees are going to deter current certifications holders and potential new certification holders from obtaining new certification in the hope that it may enhance their employability. It's my understanding that in the municipal sector which I recently retired from already is having difficulty in recruiting qualified applicants. Having less qualified applicants will not help the situation. One other consideration is that there would be a significant negative impact to the industry with the loss of experienced, qualified plant operators not renewing based on the cost.

Mohd Hasan: In my view ADEQ is going to raise certification fees at the cost of losing a large number of certified operators by creating financial pressure on them (existing certified operators and interested to be operators).

James Donnelley, City of Glendale: This is in response to the proposed fees. I believe the amount being proposed is extremely high. We are talking about filing paperwork. Hard to believe that one needs to move the cost to such a substantial amount after not having fees associated with such. Sadly I am led to believe it's a way for the State to take more money into their coffers on the backs of professionals. Every time in the last four years I have attended any functions where the ADEQ has been involved it has been preached about the shortfall that is projected for licensed operators. This would be a way to cause even fewer licensed operators because of the cost associated with such.

Keith R. Edwards, Public Works Department, City Of Goodyear: As a certified operator, holding 4 certifications, I find this fee proposal unrealistic. Having to pay \$300.00 to renew the certifications is unaffordable, unrealistic and unjustifiable. As a field worker I know that myself and many others who will be facing financial burdens in order to try keeping their operators licensing. Working for a Municipality I can't see them paying for everyone's certifications either. It is my personal belief, that if this fee program is implemented it will greatly hurt the number



of certified operators and discourage others who wish to make a career in the Water and Waste Water industries.

Geoff Caron, Sahuarita Water: Additionally, please keep in mind that many operators are under compensated and some small water providers may not have the financial resources to pay for certifications either. This additional cost burden on certified operators will only discourage individuals and detour them from the operator certification program. Using ADEQ terminology, Exorbitant “new fees for the ADEQ State Drinking Water (SDW) program could negatively impact ADEQ’s ability to implement the Safe Drinking Water Act requirements and potentially impact the quality and safety of Arizona’s drinking water systems”

Our State needs quality, educated water operators to ensure water systems are operating in a safe effective and efficient manner. I urge you to consider drastically lowering ADEQ’s proposed certifications fees.

Timothy Brown, City of Goodyear: I think the fees will be counter productive. The fees you are looking to implement are going to discourage new certifications from being obtained. As it sits right now, I hold multiple certificates. However, other than in company policy, my certificates are unnecessary. If I were to drop all of my certificates and continue in my current position, nothing would change. Proposing such high rates will encourage many people to drop their certifications since they operate under their director, superintendent, or supervisor's certificates at the plant anyhow. Also, most companies already have to pay for the 30 pdhs required to renew, so these are potentially fees that will be passed on directly to the certificate holder, which many of us are struggling in the economic downturn already.

Dana R. Trompke, P.E., Carollo Engineers, Inc.: Many operators strive to achieve the highest level of certification in all 4 categories to further their proficiency in water and wastewater treatment, increase their overall knowledge of both systems, and continually improve in their profession. The fees as proposed are burdensome and not reasonable and will only stifle the desire to advance in one’s profession.

Jeremiah D Loyd: I feel these proposed fees are excessive, especially when one considers that the exam fees are already near \$100 per exam of which takes little effort on the part of ADEQ since the examinations are written by ABC. The burden of these proposed fees could potentially be shifted to operators therefore discouraging them from renewing their certificates & thereby compromising the integrity of the states water systems when new & inexperienced individuals take there place.

Leanne Nieukirk, Tucson Water Quality Laboratory: I feel that the proposed operator certification renewal fee of \$150, plus \$50 for each additional certification is too high. This places a financial burden on the certified operator, and may prevent an operator from continuing training or maintaining certification in any classification that is not directly required for his job.

Dennis Price, Manager, Ehrenberg Improvement Association: In addition, they will cause unnecessary hardship on what is an underpaid occupation.

Christopher C. Grant, Pima County: I am opposed to these fees as it targets those individuals who can ill afford it. People certified in the operations and maintenance of wastewater, collection, water treatment, and distribution systems do not make a lot of money.

Gerry Morgan, Software Mechanics: I am a software contractor and am currently working with Pima County Regional Wastewater Reclamation Department. I understand that you are considering introducing fees for the renewal of wastewater plant operator licenses. I am opposed to this idea because the people whom it will affect are not highly paid and can ill afford the proposed license fee.

Robin Merchant, City of Kokomo: I have reviewed the ADEQ’s proposal for helping subsidize the State Drinking Water Program by charging the licensed operators & new operators fees. I understand the cost associated with administering the operator certification program, but I feel it is unfair to make the current and future operators pay fees for this. Most of us in the public drinking water & wastewater industry have seen our wages continue to shrink in respect to the cost of living, with many operator salaries actually being reduced and job responsibilities broadened. In many cases, because of municipal and corporate belt tightening, operators have had to go several years without any wage increase while at the same time seeing benefits reduced or benefit cost increased.

Many operators already are paying significant amounts of money to attend seminars & classes each year for continuing education units (CEUs) to maintain their license. This would be yet another required expense that has no direct impact on increase revenue for the operator, but simply allows them to keep his or her job. Many of us at best have been living on a fixed income as companies and municipalities try to cut operating cost by reducing work forces and overtime. I think it is unfair to ask the operators to incurred yet another cost of trying to earn a living for themselves and their families.

The water & wastewater industry is facing an operator shortage and over the next several years a majority of the certified operators will be retiring, many are already eligible for retirement, but cannot afford to financially. To me, we should be finding ways to bring more people into the operator program not putting up barriers like new & additional fees to become an operator or additional costs to maintain licenses.

James Manning: Also, these proposed fees will dissuade potential new operators from becoming certified. I would understand if the fees were simply for covering administrative processing costs, but it does not appear that this is the case. Please do not tax the people who keep our state's water clean.

Brian Huntzinger, Flagstaff Municipal Water System, Flagstaff, AZ: I also believe the proposed fees will place



an undue burden on those operators in the state of smaller locals with smaller budgets. I believe the proposed funds will not result in an increase but a decrease in trained operators and public health.

Roger Biggs, City of Cottonwood (total 19 signators): While we understand the department's operator certification program's requirement, need and desire to be self-supporting, we strongly object to this approach. We believe that the proposed rulemaking will have a chilling effect on an industry that is already suffering from a high rate of loss due to an aging workforce and difficulty in hiring and retaining new, younger employees.

Ward Seibel, Treatment Plant Superintendent, City of Yuma: The proposed fees of \$150 per renewal plus \$50 for each certification are too high and will place an undue burden on operators and water/wastewater systems.

Thomas Bolyen: Operator certification is an important part of any community commitment to ensure qualified and capable personnel work for the public good. Certified operators are getting harder and harder to recruit in many areas. Why this unnecessary burden placed on a few, for the good of the many? We have currently accepted operator certification as the mandated requirement placed on all of our agencies and operators for our betterment.

Our own state statute stipulates: The facility owner shall ensure that at all times: A facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility; Should all agencies now request a variance from this requirement in the future due to the potential loss of individuals from the labor pool? Do you have any information as to whether or not fees will decrease participation in the Operator Certification Program? We cannot afford to have less certified operators in the Arizona employment base.

Why so much for entry level certifications, if we are trying to encourage participation and adherence to the state statutes? It would be prudent to have a graduated fee schedule, allowing first time workers opportunity to participate. The cost of the first round of new fees is a troublesome burden. \$150.00 is an operator's daily average wage nationally, based on the information available from the Bureau of Labor Statistics for 2012. With the downturn in the economy and the slow recovery, many of our Arizona Certified Operators do not make this average national wage of \$20.56 per hour, how did you come up with this proposed fee of \$150.00 to charge each certified operator? Historically fees have never been that great. Fees have been as much as \$25.00 here in Arizona. Current costs are at \$0.00 and this very low fee has been offered for a great while.

Jackson Jenkins, Director, Pima County Regional Wastewater Reclamation Dept. Alan Forrest, Director, Tucson Water Department: The new proposed rate increase is a significant increase. Many of our water and wastewater operators will bear the burden of this increase and newly established fees. This will create a hardship for many of our employees.

Additional, several of our operators hold multiple certifications with various grade levels. Many of these operators only require a single certification and grade level for their current position. Traditionally as they advance in their career they require only a higher grade level in the same classification. Bottom line, they do not require multiple certifications for their current job. Given the significant increase in the cost of the renewals for each additional certification from no charge to \$50 per each additional certification they voluntarily hold we believe many will potentially let their multiple certifications lapse. Should this happen, your anticipated revenue figures are skewed. Additionally, we have no clear understanding of what the funds from the increased fees are being used for or if they are being returned to the ADEQ education system. Many of our operators need the continuous training opportunities to stay current in their field.

Jennifer Hetherington, City of Mesa: In the last 10 years it has been increasingly difficult for Cities to obtain and retain good qualified operators. These positions require applicants to have the certification before the job is accepted and the City is very concerned that adding fees could further deplete the applicant pool. Increased fees could deter future applicants from seeking certification. Even employees already in an operator job may acquire other certifications in order to move up in the organization. The hardest hit will be the small systems that may require operators to pay for the certifications themselves. These are jobs that have already taken pay cuts, gone without raises and in some cases had layoffs due to the economy. While it may not seem that \$150-\$300 every three years is a lot, it can be to these very important positions. The result of a reduction in the number of qualified persons is counter to the program and the best interests of the public.

RESPONSE: ADEQ no longer receives General Fund monies. Over the past few years, the Arizona legislature has determined that regulated entities must bear the costs of the regulation. Based on the underlying operator certification rules in 18 A.A.C. Chapter 5, Article 1, ADEQ established fees for four certification tasks: new certification, early examination certification, request for reciprocity, and renewal. The fee amounts are based on the proportionate level of work required for FTEs to accomplish the specified certification responsibilities. The fees are designed to cover all costs for the Operator Certification Program, not just the costs of the four certification activities for which fees are assessed. As detailed in the EIS, the fee amounts include other costs of administering the whole Program, including all personnel costs and providing continuing education opportunities for operators.

ADEQ has set the fee amounts, based on past numbers and with an anticipated drop off of 20 percent of all renewals and certifications, to generate revenues sufficient to cover the Operator Certification Program costs. Fee amounts any lower than proposed will not cover the costs of the Program.



ADEQ anticipates there will be a drop in the number of certified operators, as operators who do not need the certification for their employment will likely not pay for renewing that certification. A maximum renewal fee of \$300 every three years does not impede operators from seeking employment in Arizona.

Impacts to Facilities

Gary Boileau: I believe this would create an undue hardship for small Mom & Pop operations in our state. As well as for small communities that operate on a break-even budget.

William T. Cox, W/WW Treatment Plant Superintendent, City of Yuma: This also puts a bigger burden on the small rural operations i.e. water treatment plants, waste water treatment plants, and distribution / collection systems etc/etc. These small rural systems which run on a very tight budget sometimes don't have the funds to do repairs and routine maintenance or replace parts they can't afford any additional cost to maintain their certifications. They are already required to pay in order to maintain their certifications they have to by acquiring the 30 PDH's every time their license comes up for renewal every 3 years (Per ADEQ) this cost them the small rural employee or their company roughly \$1,000+ (per employee) for additional training, registration (for conventions), hotel rooms, per diem, rental vehicles, gas and time off work.

Unlike larger systems (big Cities) who can absorb these additional cost, smaller rural system are often strapped for funds, I do know that some larger Cities are already experiencing problems with not being able to find qualified operators, I believe that adding this additional cost for the Operator Certification and Renewal Fee as I said in the beginning is un-warranted.

Brian Huntzinger, Flagstaff Municipal Water System, Flagstaff: I also believe the proposed fees will place an undue burden on those operators in the state of smaller locals with smaller budgets. I believe the proposed funds will not result in an increase but a decrease in trained operators and public health.

Ward Seibel, Treatment Plant Superintendent, City of Yuma: The proposed fees of \$150 per renewal plus \$50 for each certification are too high and will place an undue burden on operators and water/wastewater systems.

Kurt Novy, Flagstaff Municipal Water System Flagstaff, AZ: The proposed fees of \$150 per renewal plus \$50 for each certification are too high and will place a burden on operators and water systems.

Lee Williams, City of Flagstaff: I am against the implementation of the proposed large fees for operator certification. In many cases the municipality or water system will pay for their operators to be certified, so this new fee system would be unloading the financial burden from the state to place it on the water system. You might argue that the water system is the one benefitting from licensed operators and thus should shoulder the financial responsibility, but when viewed from a broader perspective this is a state-wide issue. If you've heard the saying that, "We all live downstream." Then you know that inexperienced or under trained operators that live upstream can have a huge impact on the water quality of the towns and cities that reside below them in the watershed

Barbara Stockwell: I think that the fees are a good idea to cover some of the expenses of AZDEQ. However, some of the water operators are very "small time". For instance, I serve two clients. They are so distant from other operators that no one "wants" them! You have programs for very small systems. This might make having two levels of fees easier by using size of systems.

Wendy Gort: I completely understand that the operator certification program needs to be self-funding, but \$400,000/yr seems like an unreasonably high cost to run the program. As an independent operator of small water and wastewater plants, and a holder of all 4 certifications, it seems like the certificate renewal fees will penalize other small operators like myself. For the large municipalities and systems, the certification and renewal fees will be part of the budget and therefore will be paid for by the rate payers/taxpayers (of which I am one). Independent operators of small systems will have to foot the bill themselves as we mostly work at plants on shoestring budgets that do not generate a profit for the owners.

I hope the ADEQ will consider the situation of small, independent operators who work for small systems that have very limited funds.

Thomas Bolyen: How does this new fee demonstrate a commitment to keeping Arizona water affordable? Was it your intention to pass this proposed new fee on to my employer and invariably my community? Was it your design that operators coerce employers into reimbursements due to the current requirement utility and system owners have to maintain certified employees? This is a significant cost to any agencies with a large complement of operators. This cost will require a different allocation of their resources, this cost will be reflected in their rates, and ultimately this cost will be paid by their customers. I would argue this is not an essential cost for our state to require of its constituency. Would it not be more appropriate to give the citizens a say in this additional expense when it comes to their clean water?

RESPONSE: ADEQ no longer receives General Fund monies; over the past few years, the Arizona legislature has determined that regulated entities must bear the costs of the regulation. Based on the underlying operator certification rules in 18 A.A.C. Chapter 5, Article 1, ADEQ established fees for four certification tasks: new certification, early examination certification, request for reciprocity, and renewal. The fee amounts are based on the proportion-



ate level of work required for FTEs to accomplish the specified certification responsibilities. The fees must cover all costs for the Operator Certification Program, not just the costs of the four certification activities for which fees are assessed. As detailed in the EIS, the fee amounts include other costs of administering the whole Program, such as all personnel costs and training. Fee amounts any lower than proposed will not cover the costs of administering the Program.

Under A.A.C. R18-5-104(A)(1), a facility owner must ensure that a facility has a certified operator in direct responsible charge. Neither the Operator Certification rules nor these proposed fee rules require that the facility pay the fees of its operator. It will be the facility owner's choice.

ADEQ understands that operator certification fees can have a larger impact on smaller systems. As part of the larger picture, a disproportionate number of small and very small facilities face violations with ADEQ. Many of these non-compliant water systems do not have adequate managerial, technical and financial capabilities and may not manage the systems sufficiently to maintain baseline maintenance and operation costs to undertake needed infrastructure repairs and upgrades. However ADEQ incurs its costs of administering the Operator Certification Program, and as a fee for service agency, is seeking to recover those costs through the assessed fees. Reducing fee amounts based on the size of a drinking water or wastewater facility would require ADEQ to recoup the needed revenue in some other manner, such as increasing fees for operators that serve larger facilities.

Other Alternatives:

Renewals:

Eric Brennan, Water Operations Manager City of Brentwood, Public Works Department: I recommend a discount for holding dual certifications that are renewed at the same time, not an additional charge.

D.Rodriguez: The renewal fee is set at \$150 as staff expends more time in processing renewals. However, because ADEQ's amount of work does not increase much with each additional certification renewal from the same operator, the proposed rule penalize operators with multiple certificates. I will not pay the additional cost for multiple certificate. ADEQ will loose operator (*NOTE: comment reproduced as received through e-mail*)

RESPONSE: The renewal fee as proposed is "discounted" for those operators with multiple certificates that have the same expiration date.

Fees for Other Entities:

Scott: I would think these should be put on the end users as an impact fee to all water users bill.

Bruce Warwick, WWTP Quality Control Coordinator, Winslow: I understand the need to generate revenue to support the certification program, however, I believe that increasing the permit fees for each employer would be a more constant method. For those employers who pay for the operators certifications it would be an obvious additional expense and the likelihood of reducing the number of certified operators for each plant would increase. It is to everyone's benefit to have certified operators available to run and maintain each plant, as opposed to having laborers without certifications and the requisite knowledge trying to effectively operate a plant.

Employers are only required to have one certified operator at the level of the plant to make operational changes, but when this person quits, retires, etc. they would not, necessarily, have anyone available to step up and keep the plant operational. ADEQ's goals and objectives would be jeopardized by such a failure and there could be adverse effects to public health and safety as well as environmental concerns.

If ADEQ were to incorporate the proposed fees in the current permitting fees, the employer would be more likely to continue to encourage its employees to become certified and remain current with the rules and regulations. The amount of fees could be computed on the number of plants, size (MGD, etc.), and number of employees. Rather than having a sharp reduction in the number of certified operators and a corresponding reduction of fees collected, ADEQ would have a consistent revenue flow and would be able to maintain all of their current programs regardless of the total number of operators.

Bradley Smith (RWRD), Pima County: If additional income is required consider raising the fees for plant permits.

Robin Merchant, City of Kokomo: Revenue to help run the program could be raised from other sources such as:

1). Usage fees paid through utility water & wastewater bills since having required certified operators is part of the cost of doing business like chemical and equipment costs.

2). These new fees could be paid by the individual companies / cities that employ the operator: again, these companies/cities are required by law to have licensed operators and are requiring their employees to be licensed and qualified. Some of these organizations in other states pay the certification fees or license fees for their employees or reimburse them, but some do not.

Edward Urias, City of Prescott: How about taxing water that is imported by users to generate funds for op



certs. ?

RESPONSE: As a state agency, ADEQ must have specific statutory authority to charge a fee. A.R.S. § 41-1008(A). ADEQ's ability to raise revenue for this Program is limited by the powers and duties granted it through statute, specifically A.R.S. §§ 49-352(A) and 49-361, which limits ADEQ to assess and collect reasonable certification fees to reimburse the cost of certification services.

ADEQ already is authorized to assess fees to provide a variety of water quality protection services which must be deposited in the Water Quality Fee Fund pursuant to A.R.S. § 49-210. These services include the Aquifer Protection Permit Program, the Arizona Pollutant Discharge Elimination System Permit Program, and the Drinking Water Engineering Review. A.R.S. § 49-210 lists the purposes for which monies can be used and the Safe Drinking Water Program is not included. Without legislative authorization, ADEQ cannot use other state funds, such as through the Water Quality Fee Fund, to fund the Safe Drinking Water Programs, including the Operator Certification Program.

For the Safe Drinking Water Programs, ADEQ assesses fees for MAP, which must be deposited in the MAP fund according to A.R.S. § 49-360(G); funds must be used for the MAP Program. Arizona PWSs, although highly regulated, do not have permits for their operation and maintenance and do not pay fees to ADEQ. Major parts of the Safe Drinking Water Program for enforcement and day-to-day administration rely solely on federal grants, which are diminishing annually. ADEQ does not have statutory authority to charge fees to PWSs. With the fees in this rulemaking, MAP fees, and the design review fees for PWS construction or other improvements, ADEQ will be charging fees for the only three areas of the Safe Drinking Water Program for which it has authority to charge fees.

Testing:

Greg Homol Utility Services Department Town of Queen Creek: This has huge implications for costs to Town's and cities with a lot of operators with certifications, and even bigger for those that find themselves temporarily out of the field or out of work that want to keep their certs. Is there any chance that with the addition of this fee, that testing could be made available at the state instead of having to go through Gateway, which is a very cumbersome process? I would much rather pay the testing fee to the state to add some convenience to the testing process.

Robin Merchant, City of Kokomo: I would suggest that the ADEQ find ways to reduce cost by: Streamlining where possible by reducing such things as frequency of testing and reducing testing locations.

Betsy M Bowman, Laboratory Director, City of Yuma: I understand the justification for proposing and implementing the fees for certification of water and wastewater operators. Consider increasing the cost of the test with the difference between the test fee and Gateway's cost going to ADEQ and funding the operators' training workshops.

John Mussulman: The \$65 new certification fee would be in addition to the fees that ABC and GWCC charge for the testing/facilities, right? I think they charge \$87 or \$107, depending on where the test is held. That means that a passed test would cost a new operator either \$152 or \$172 (depending on where the test is taken.) What if you just made the test for a new certificate \$175 all the time, checks payable to ADEQ. Then you guys cut the checks for the difference to ABC and GWCC. Re-certifications would cost \$75, maybe? ADEQ keeps the difference from all the tests, and gets that re-cert fee without paying for the ABC/GWCC tests.

I understand that the \$65 proposed is supposed to be making it easier for newer/younger operators to break in to the industry, but honestly adding a fee on top of the testing fee isn't helpful. I think streamlining the process for new operators might be the way to go, even if that means raising the price. As it is now, we have to schedule the facility time with GWCC, have them host ABC testing and grading, and then they report testing to you. The way I'm imagining it, new operators still schedule the facilities and tests through those other companies (through your site, and you charge them a small fee for guiding them business, natch) but we cut you the check. It's a steep buy-in for a new certificate, but only barely more so than what are proposing now. And testing at GWCC makes ADEQ about 12% more than off-site testing, that makes a big difference. ADEQ makes money coming and going, our fees are simplified and everyone makes a little bit. There's the extra layer of ADEQ paying out the test fees to GWCC, and probably some other problems with my idea that I'm not experienced enough to foresee, but I think those offset ADEQ requiring us operators to pay for something we previously didn't have to.

RESPONSE: Under the current Operator Certification rules, contracted third parties provide, administer and grade the operator certification examinations. Currently, Gateway proctors the ABC operator certification exams for all operator classifications and grade levels. Potential applicants contact Gateway directly for exam dates, times, and exam fees. Gateway notifies ADEQ as to the results of applicants who successfully pass the examinations. Gateway offers the exam about 70 times in the Phoenix metropolitan area and 36 times around the state per fiscal year. Gateway pays ABC for the examination. ADEQ annually pays \$1800 for the ABC membership and \$2000 for the examination reports to ABC.



The applicant operator pays the examination cost of \$87 to Gateway. ADEQ does not receive any of this amount. An applicant operator will pay ADEQ the \$65 new certification fee only after passing an examination. The certification fee will help support ADEQ's costs for administering the Operator Certification Program.

ADEQ previously assessed fees associated with exams, certification, and renewals, under a regulatory framework where ADEQ administered the operator certification examinations. Under the prior regulatory framework, ADEQ offered examinations on a quarterly basis. ADEQ believes that operators are better served by the current framework for providing examinations. Without doing a cost analysis, ADEQ believes that if it were to administer examinations again, costs to operator applicants would be much greater than \$87 per examination and would likely require ADEQ to add additional FTEs.

Robin Merchant, City of Kokomo: Many cities are trying to become more efficient and one way of doing so is to combine many of their services and departments. An ever increasing number are combining their water and wastewater operations and requiring their operators and managers to be licensed for both. The income of these operators does not necessarily increase. But their responsibilities do. The cost under the current proposal would mean that an employee that was required or wanted to be able to operate or manage both water & wastewater utilities would have to pay \$300 each renewal cycle, more if the renewal dates were not the same? If an individual from another state wanted to move to Arizona to fill a vacancy that an employer could not find a candidate they preferred within the state then that individual would be required to pay \$1,000. This would essentially be a tariff and a restriction of free enterprise and basic human rights. Because of the increasing operator shortage I think the State may be shooting itself in the foot by either directly or indirectly obstructing the ability for it to recruit experienced and qualified professionals from relocating to Arizona for their careers without being required to pay more than a state resident has to do. I would suggest that the ADEQ find ways to reduce cost by: Some of the program work activities could be performed by volunteers from an Operators Association or by the employers of the operator with oversight by the ADEQ.

RESPONSE: ADEQ is not aware of any operator associations in Arizona and has not received any inquiries for volunteers from other water-related associations. ADEQ has received some inquiries from operators who are not certified that seek to volunteer with a facility in order to obtain experience. ADEQ no longer receives General Fund monies; over the past few years, the Arizona legislature has determined that regulated entities must bear the costs of the regulation. Based on the underlying operator certification rules in 18 A.A.C. Chapter 5, Article 1, ADEQ established fees for four certification tasks: new certification, early examination certification, request for reciprocity, and renewal. The fee amounts are based on the proportionate level of work required for FTEs to accomplish the specified certification responsibilities. The fees must cover all costs for the Operator Certification Program, not just the costs of the four certification activities for which fees are assessed. As detailed in the EIS, the fee amounts include other costs of administering the whole Program, such as all personnel costs and training.

The Operator Certification Program has been working on improvements such as:

- Electronic submittal of renewal, submittal, reciprocity and early exam requests to the general azopcert email box for quicker processing.
- Training videos to be developed and added to ADEQ's website that would contain testing and a certificate of completion to document professional development hours.

Betsy M Bowman, Laboratory Director, City of Yuma: Each person who obtains additional certifications will automatically have all certifications contain the same expiration date.

Jennifer Hetherington, City of Mesa: The City recommends having a way to allow streamlining of pdh approvals that would result in reduced ADEQ staff time during renewals. There are a variety of ways this could be accomplished; preapproval by ADEQ of the class with an approval number issued; ADEQ training of a designee at each City to be sure the classes meet ADEQ's expectation, with an approval number issued or electronic submittal of pdhs that are then directly applied to the operators pdh count. These are just a few suggestions that would speed up the determination of approved pdhs during renewal.

RESPONSE: Suggested changes are outside the scope of this rulemaking as it would require that ADEQ change the underlying Operator Certification rules, most likely in A.A.C. R18-5-107. ADEQ will consider these suggestions for future rule amendments.

Reasonableness of Fee Amounts:

William Turner: All 4 ADEQ certificates have the same expiration date. If I understand the proposed fee structure correctly, to renew my certificate I will be paying \$150 for the first certificate and \$50 for the following three, totaling \$300!! In the proposal it states, "ADEQ's proposed fees are directly related to the level of effort expended



by the department to administer the operator certification program". \$300, seems quite excessive considering it would only require an update in the ADEQ database and a single printed certificate. I do agree that ADEQ should require a renewal fee to cover its costs, but please make the fees a little more reasonable.

Doug Cameron, City of Mesa: How is \$150 justified for the renewal of a license? I do not believe this is reasonable since the licensed operator is paying for the continuing education. What is ADEQ's part that requires \$150 for the renewal?

Geoff Caron, Sahuarita Water: While I am not opposed to ADEQ charging fees to renew certifications, the fees proposed are exorbitant. I also understand the need to make up for the cost of proxy services to administer testing however; it is not possible that the cost to review, reprint and mail a certificate costs ADEQ \$150 or that it costs \$50 to add additional lines of text for other certifications to a certificate. For a certified operator in all classes (such as myself) we will now have the burden of \$300 every three years or \$100 a year to maintain our certification.

Jeff S. Johnson, Pima County: What ever happened to the little guy being able to make a living, this is highly inappropriate for this heavy of an increase. Cost if leaving gives maybe a 3% if we're lucky every 2 or 3 years. This is ludicrous and should never reach the deciding person's desk.

Juan Mancha: I have been a certified operator in AZ for over 20 years. I know that this is good and bad it will cost system more money to run their systems and it will make the operator ask for more now that they have to pay. I would think that you could ask for half of what you are so it does not impact the public so much.

Jim: I think the fees are too much. for a state with such high unemployment, and such low wages this is stupid. 160.00 for a required cert is too much. some operators are barely making it after paying ASRS.

Adrian De La Tres Rios WRF (Ina O&M), Tucson: I believe that the proposed fees are a bit high for an introductory program. It seems that during these most difficult economic times that more and more people/governments and agencies are looking to take more monies from families and from people who are struggling more than ever. I know that it sounds one sided, and it is not just this proposal. Entities are seemingly devising ways to affect the public because the Government is affecting them. Please do not take this unfortunate situation and put it on the little people.

P.S. I would like to point out that previously it was a free service for me to stay re-certified. But saying that; I have to pay my money and my time to obtain my CEUs and PDHs. Is this really what the cost of being a certified professional is coming to. Someone who serves the environment, government and public 24/7/365.

Sherman McCutcheon, City of Tempe: You state that the proposed fees will generate \$400,000 to \$470,000 per year. You only have a staff of two people and @ \$100,000 per year that is costs of \$200,000 Not sure where you got an hourly cost of \$112 per hour, that would be \$232,960 on an annual basis. The proposed fees are excessive. With costs of \$200,000 a year why do you need to generate \$400,000 to \$470,000?

Tyler Brown, City of Glendale: These are not reasonable fees.

Donald Lane: The question that I have for the ADEQ is why should operators pay for any fees. ADEQ is already funded with our tax dollars and enough is enough. Should police have to pay to do their service? Should fireman have to pay to provide their service? How about the border patrol, should they pay? This fee is uncalled for in any amount. ADEQ should be required to live within their budget the same way that I have to live within my budget. My pockets already have to pay for my required training and hotel costs, and now ADEQ wants me to pay more. My response to this is NO NO NO. I look at this as my way of "retiring" and I'm sure other operators will do the same since many of us are at or over retirement age.

David Campos, OCC Operator, Tres Rios RWRD: First of all I would like to know how these fees will keep the Clean Water Act in effect? I don't know who came up with these fees, but Please be aware that money does not grow in trees and contrary to popular believe, I do not have so much money it is coming out of my Wazoo. I would rather drop 3 of my certificates and only keep the one I need for my job description, Rather than pay these exorbitant fees!! You need to re- think this over and come up with a better idea!

Brad Hirter: These fees would be the most expensive operators certification fees in the US. I understand establishing a fee to cover ADEQ operations, but consider the public best interests, not filling some CEO's pocket!! Crooks. You should be ashamed of yourselves.

Stephen A. Flood, Lake Mary WTP, Flagstaff: I can understand a nominal processing fee for new and updated Operator certifications but these fees seem extremely excessive to me.

Troy Dagenhart, City of Flagstaff: I do not believe an increase of this size should be implemented this soon. To go from 0 to 150 dollars in one day is excessive! A lower amount should be considered.

Don Mudd, City of Flagstaff: The proposed fees for operator renewal seem to be very excessive to me.

Chris Smith, City of Goodyear: This is pretty sad. I understand state and local government is always trying to figure out what other ways they can hustle up some more revenue, but to directly do it this way off the backs of hard working people is sickening. For starters, for a renewal, to charge nearly \$100 more than a new certification is sad. ADEQ and the state of Arizona are shoving the quality people out of this line of work. There is no logical reason for your proposed fees.

Brian Smith, City of Scottsdale: The second concern is the fee amount the renewal fee should be \$25.00 per certificate the cost for a person with four certificates would be \$300.00 and that is too big of a hit for operators on a



budget.

Martin Jones: The proposed operator certification renewal fee is too high. \$150 to renew a certification, plus \$50 for each certification held, will place a large burden on an individual operator as well as the associated water or wastewater system.

Scott McClinton, City of Prescott: This is a bad proposal, first of all the fees that are being proposed are too high.

Nelson: These proposed fees are NOT reasonable. The fact that they are targeted for the General Fund is equally unacceptable. If you really believe it costs \$150 worth of your staff's time to do an early exam review then you are either totally out of touch wit...(NOTE: comment reproduced as received through e-mail)

Jennifer Hetherington, City of Mesa: The pdhs can apply to the renewal of one certification or up to all four certifications. In addition, \$50 per certification after the first certification renewal appears unreasonable considering all the research was generally completed for the first certification. The Notice of Proposed Rulemaking does not contain a complete breakdown of current and future costs of the program. The City would like ADEQ to list data on how much time was spent on each new certificate and renewals to show how the fees were calculated. The "certification and renewal reviews have predictable average times."; yet there is no documentation provided the stakeholders to support that statement. In addition the estimate of annual revenue appears to be flawed and the amounts listed are a minimum of the revenue the fees will provide "the estimated annual revenue from the new fees would be \$400,000 to \$475,000 based on the following:

- 3,600 certificate renewals per year = *See Below
- 2,000 exams with a 50% passing rate = 1,000 new certificates = \$65/cert = \$65,000/yr
- 250 reciprocity reviews = \$250/review = \$62,500/yr
- 100 early exam reviews = \$150/review = \$15,000/yr

Randall Sanders, Town of Gilbert: The fee schedule appears to be expensive and I would question the justification for such high fees? With the fees going into the general account what provisions are there that the money would not be used for something else. I believe a good Excel Computer Program would help keep costs down. I would also suggest lowering the fees and see how much money is actually needed. Fees rarely are reduced but are increased more often than not.

Randy Baldauf, City of Prescott: I think your proposed fees are too high.

David D. Klingensmith Plant Operator: The proposed new so called reasonable fees would cost me \$300.00 each renewal, added to the cost of the current required continuing education to maintain my certifications at each renewal of anywhere from \$50 to \$200.00 makes this rulemaking very unreasonable.

The way I look at it, it's a TAX on Water Plant Operators. Operators who work very hard to provide the public with safe drinking water and treat your wastewater at a reasonable cost. So when was the last time you got up at 02:00 AM and turned on the tap and or flushed the toilet and thought hay there's someone on the other end making it happen, I bet not! Most just take it for granted. Operators know it's a thankless job but we still take pride in the trade.

So let me be strait I'm not opposed to reasonable fees. I am opposed to being TAXED for being an Operator. All my certifications are on one piece of paper sent every three years after I fill out a renewal form with my continuing education information. So how much does it cost to print that one paper certificate and mail? Remember the certification exams already are contracted out with large fees. \$350.00 for striving to be the best at your craft for rate payers is very unreasonable.

RESPONSE: Based on the underlying operator certification rules in 18 A.A.C. Chapter 5, Article 1, ADEQ established fees for four certification tasks: new certification, early examination certification, request for reciprocity, and renewal. The fee amounts are based on the proportionate level of work required for FTEs to accomplish the specified certification responsibilities. The renewal process takes ADEQ staff more time than a new certification so the renewal fee is higher. The level of effort is in line with how ADEQ has evaluated fees necessary to cover Program costs in other areas of the agency

The fees must cover all costs for the Operator Certification Program, not just the costs of the four certification activities for which fees are assessed. As detailed in the EIS, the fee amounts include other costs of administering the whole Program, such as all personnel costs and training. ADEQ would note that an operator would pay \$1040 in fees to ADEQ to begin at grade 1 and advance to grade 4 in all four classifications. Separate from these proposed fees, an operator would pay \$87 for each examination in all four grades and all four classifications, totaling \$1,392.

Prior to this rulemaking, ADEQ met with stakeholders to discuss fee amounts; ADEQ originally presented an initial certification fee of \$75 and a certificate based on reciprocity review fee of \$300. ADEQ reconsidered its costs and stakeholders' concerns about burdening new applicants, who usually enter at the lower end of the pay scale. The proposed rules reduced the initial certification fee to \$65 and the reciprocity review fee to \$250. ADEQ has set the fee amounts based on past numbers and with an anticipated drop off of 20 percent of all renewals and certifications,



in order to generate revenues sufficient to cover the Operator Certification Program costs. Fee amounts any lower than proposed will not cover the costs of the Program.

Under the rules repealed in 2001, ADEQ assessed fees, which ranged from \$10 to \$25. Fee amounts included ADEQ administering the certification examination, which was set at \$25 for the Grades 3 and 4 applications for examination, a function ADEQ no longer performs. ADEQ anticipated that revenue loss in repealing the fees would be \$65,000 annually. As detailed in the EIS, ADEQ's personnel and training costs for administering the Operator Certification Program are \$429,000. The low Operator Certification fees from before 2001, and as suggested by comments, will not support the Program in 2015.

Other comments:

Mohd Hasan: This program must be subsidized by the state to encourage more certified operators in Arizona who will keep the water and waste water programs running smoothly.

Jon Cunliffe, City of Goodyear: It should not be up to the operators to fund the SWDA. I disagree with this proposal

RESPONSE: Historically, the state General Fund has been used to fund the entire cost of the Operator Certification Program, at no direct cost to the regulated community. ADEQ no longer receives General Fund monies and the state legislature has determined that the entities that must be regulated must bear the costs of the regulation. ADEQ's goal in this rulemaking is to establish fees that will sustain the Operator Certification Program while avoiding disproportionate impact on any one group of operators.

Frederick Tack: My opinion is that ADEQ has the right and need to acquire the funding to continue the certification process. One thing that we would like to ask for consideration is that some direction is provided on where we can go and where we can post comments on how to try to recover that funding. We understand that funding has been reduced. Water & wastewater workers are key safety workers in the community, as important as policeman and fireman, who do not need certification fees to renew their badges every year. We would like to ask for the consideration to provide the direction for where we can go to try to help recover those funds rather than have to make a rule to provide adequate funding to continue the certification program.

RESPONSE: The Arizona State Legislature authorizes ADEQ's appropriations from its various funds in order to meet its budget obligations. The U.S. House of Representatives decides the amounts budgeted to federal agencies, including EPA, and also allocates amounts to specific funds such as the DWSRF. Individuals are free to contact their state legislator or U.S. representative to discuss funding priorities.

Roy Van Leeuwen: We have a hard enough time finding qualified operators and these ridiculous fees will only make it that much more difficult, because of the added expense. If State officials thought this agency was important they would find funding somewhere. The feder...(NOTE: comment reproduced as received through e-mail)

Jim Muylle: I believe ADEQ/EPA should be paying operators for getting certified to enforce some of these ridiculous policies they come up with, instead of us paying for you to write new and more stringent rules. We have enough, let us catch our breath and enforce the ones we have!

I am totally against raising anymore fees for an already over regulated industry and country! Furthermore a common everyday small facility operator cannot afford what you call "reasonable fees" under the Oblama Obamaconomy! Thank you!

James Rhodes: I disapprove of ADEQ raising their fees. I suggest they fire the worthless people they have running the operator certification program and hire people who will be competent, approachable, and answer their e-mails. Waiting months to receive a certificat...(NOTE: comment reproduced as received through e-mail)

RESPONSE: Comments noted

Dale Oviedo: I have four certifications. If I understand the proposal correctly, when I renew in 2017, I'll pay \$300.00. Is that correct?

Manual E. Salazar, Arizona Envirocomp, LLC, Glendale: I have 4 certificates, Water Treatment Plant Operator, Water Distribution Systems Operator, Wastewater Treatment Plant Operator, and Wastewater Collection System Operator. They all expire on the same date. Does this change mean that to renew my licenses, it will cost me \$600 plus another \$200 because they expire at the same time? That's \$800 every three years. That seems to me to be an exorbitant price for one person.

RESPONSE: If the expiration date for each certificate is the same, then the renewal fee would be \$300 every three years. Under A.A.C. R18-5-107(A) a certificate is renewed for three years unless the operator requests a shorter



renewal period. An operator can request that multiple certificates have the same expiration date as long as none of the certificate terms exceeds three years.

Starla Newsom: Will our PDHS still cover the renewal fee?

Steven Petit: I recently received a notice that I would have to pay \$150.00 to renew my ADEQ License for water treatment. As of now I am paying \$100 dollars for 8 credit hours toward the 30 I need to collect for renewal. I think the fee is excessive.

RESPONSE: The rule requirement to pay a renewal fee is separate than the requirement under A.A.C. R18-5-107 to complete at least 30 professional development hours. An operator will need to comply with both rule requirements in order to renew a certificate.

Miki Zmolek, City of Mesa, Water Resources Department: I am just wondering if ADEQ is planning to be able to take credit cards/procurement cards as payment for certification fees? I send in most of our employees re-certifications and I was just thinking of ways to pay them.

RESPONSE: ADEQ has not determined the details on how operator certification fees can be paid. ADEQ will continue to provide updates related to implementing these fees by notifying subscribers to the drinking water/wastewater operator certification list serve located at: <https://public.govdelivery.com/accounts/AZDEQ/subscriber/new>

Distcs@aol.com: Please provide a link for all so that we may view the comments sent in by fellow operators regarding the proposed fee rate hike. I can't imagine how this could be embraced by any operator so why not let us all see how "well received" it is?

RESPONSE: The comments are reproduced in this Notice of Final Rulemaking as submitted, with some minor editing and grouping of similar topics. To view or obtain copies of the comments, a public records request can be submitted to ADEQ's Records Center. Information for submitting a public records request, including the Request Form, is available at: <http://www.azdeq.gov/function/assistance/records.html>

Brad Shattuck, Saguaro National Park: My only comment / question relates to the cost for a re-cert versus a new cert ... I would think the costs for a new cert would be more expensive than a renew ... yet the costs are cheaper for new versus a re-certification ... why is that?

RESPONSE: Based on the underlying operator certification rules in 18 A.A.C. Chapter 5, Article 1, ADEQ established fees for four certification tasks: new certification, early examination certification, request for reciprocity, and renewal. The fee amounts are based on the proportionate level of work required for FTEs to accomplish the specified certification responsibilities. The renewal process takes ADEQ staff more time than a new certification so the renewal fee is higher. The level of effort is in line with how ADEQ has evaluated fees necessary to cover Program costs in other areas of the agency. With the \$50 renewal fee for an additional certificate with the same expiration date, ADEQ is seeking to offer flexibility and incentive for operators with multiple certificates.

Dave Tingué, APS: I have been an operator in Arizona for a long time-I have seen the program go from a half decent program where the testing was supported by AZ DEQ employees whom could be reached for questions and issues- they also were on hand during testing for issues- The testing was free and the renewals were free- study guides were given out for free- the exam reviews were available for an operator to view his/her missed questions- This was all under John Bolinoswki (sp) Today, the tests are given by the college- they are expensive- no study material is available UNLESS WE PAY for it.

The staff at the college are not readily available for questions and when we do talk to them, they are not helpful... as they have no real knowledge of the operator issues.

Now. You are proposing a fee for renewal? This is an outrage that is shared by most operators in Arizona- You may not hear from all of those people, but I assure you that this is another step in the wrong direction. Especially if the fees go to the state's General Fund. I would seriously reconsider your proposed rule change as I will be contacting my representatives and other operators on this matter as we feel that for the proposed fees, we are not getting any better service or materials-

Donald Lane: This is the worst idea of a way to fund the ADEQ anyone could come up with! Small water co. operators seldom walk into a new job with paid holidays, health care, paid vacations and many other perks that state and federal employees receive? Are ADEQ employees paying these fees also, of course not. Many small water co operators do a good amount of their work voluntarily, do EPA /ADEQ or whoever the proposers of these fees do this? Hats off to you, if you do. All are aware of the increased regulations, responsibilities, duties put upon the water co./operators through the years with no regard as how these are paid for. So, please find another way to fund



your budget concerns other than ‘Shooting fish in the barrel’, “eating your own” approach that is being proposed directly the people that protect the safe drinking water act.

Based upon your second sentence, I would like to also address this issue. When I got into this business my educational costs were covered by grants and pre-testing could be done at these educational events. This has all changed and all of my PDH now cost me directly out of my own pocket. This is already a cost out of my pocket and ADEQ is saving this money directly because I'm now paying for my required PDH's.

I strongly disagree with these proposed costs. As an operator I have already absorbed the additional costs of my PDH's, I have already absorbed the additional fuel costs to service my customers, and I have already absorbed the additional costs that all of these regulations are requiring of me. I have to live within my budget and I expect ADEQ to also live within your budget. Your sentence states these fees are directly related to the level of effort expended by the department to administer the operator certification program, I find this statement laughable. You want more money to do your job, well follow the example of the operators who are out their in the field daily, and do more with less money. That's what your operators are having to do and it's time for government to be reined in. My pockets are already empty and I do not agree that this is necessary in order for ADEQ to do their jobs.

I feel that once operators have to pay to do their jobs they will retire and this vicious circle will continue. My answer is no.

Distcs@aol.com: The proposed fees are just another TAX on the very people who work daily to keep Arizona's water clean and fit to drink. Isn't it enough that operators do this AND pay in both time and gas to attend training (PDH's) to stay up on rules and safety procedures?

The threat of ADEQ losing its' ability for oversight of the SDWA in Arizona is a poor excuse for these proposed outrageous fees. Since I hold 4 licenses, this would require me to pay \$300 for renewal (\$150 plus \$50 for each additional). I can't see how printing out a new license with 4 licenses on it could cost any more than one! Where do your people come up with these figures?

Everyone is having to cut back these days in order to make ends meet. Suggest the ADEQ do the same in order to survive the current economic conditions. This is not a recovering economy and squeezing the poor operators, most of whom have not seen any real wage increase that keeps up with inflation in 20 years, is not the way to pad the State General Fund!

RESPONSE: Historically, the state General Fund has been used to fund the entire cost of the Operator Certification Program, at no direct cost to the regulated community. ADEQ no longer receives General Fund monies and the state legislature has determined that the entities that must be regulated must bear the costs of the regulation. ADEQ's goal in this rulemaking is to establish fees that will sustain the Operator Certification Program while avoiding disproportionate impact on any one group of operators.

Thomas Bolyen: The increase from \$0.00 to \$150.00 for any ADEQ license is a great deal of money for a single individual to ensure the safety of all water for Arizonans. This seems as if this proposal is a surcharge for the privilege of complying with our own state law. If the program isn't in the best interest of the state then let us disband Operator Certification completely. If there are at least 6000 certified operators in the Arizona State System, these new fees could generate revenue in excess of \$1.8 million over the 3 year life of all operator renewals regularly. Are you suggesting the certification program is truly costing \$600,000 annually for administration of the program? If so, we need to revisit the need for our current Operator Certification Program.

How have you demonstrated you have done everything in your power to reduce your own internal cost, as we have all done during this economic down turn to justify this new fee? What if anything, will the money contribute to? Do we as operators realize a real positive benefit for this program for that additional price? Shouldn't the cost of testing be offset by these mandatory fees? If an operator pays for the understanding, pays for the examination, and pays renewal fees will the licenses be more professional? Can you guarantee any additional value for instance, automatic reciprocity nationwide, for this additional charge?

Certified Operators have already demonstrated a commitment to the public good and our states valuable water resources. Through licensure and examination testing combined with continued training they remain a viable contributor to the State of Arizona's safe water supply. Rational choice theory suggests we all behave in our own self-interest, and ADEQ's current proposal to exact such a radical change in fees is evidence of that. Let's hope operators do not also act in their own self-interest and leave the industry because of it.

I would like to propose you revisit your costs and any future requirements of Certified Operators, before moving forward with this proposal. This is not a sustainable approach to your problem and will do more harm than good. I thank you for the opportunity to express my thoughts.

Donald Lane: ADEQ has already taken away our “free” PDH and this has caused us to now pay for our own education hours which are required in order to keep our certification updated and current. Arizona is in need of certified water operators and it is my opinion that this change will cause retirement of qualified water operators.

As you are aware money is very tight. Arizona is experiencing shortages in their budget as well as the individ-



ual water operators. Just by having to pay for our PDH education this has caused us to each set aside hundreds of dollars per year. By the time we renew our certifications we have spent up to a thousand dollars just in order to continue to work.

Most small operators travel to small water systems in order to keep them in the safe water drinking act qualifications. Some are only part time operators because the water systems can not pay for full time help. The ADEQ makes no reference to full or part time operators, just listing all as being equally able to bear this financial burden.

Please bear in mind that every water operator now has additional paperwork and duties that are required in order “just” to meet ADEQ, AWWR, ACC, EPA, etc. the list goes on and on.

As you are aware under this current administration (Obama) regulations are rampant and this is hurting all individuals that just want to provide for our families.

I am asking that this request be denied because our individual budgets can not take any additional hits, we are hurting financially and this (I believe) will cause me as well as many other operators who are at or over retirement age to simply say “I’ve had enough” and simply walk away. Losing qualified water operators would hurt Arizona and possibly cause a shortage of qualified personnel who actually are out in the field daily trying our best to satisfy our customer’s needs and to provide safe drinking water to all. I respectfully ask that this be reconsidered due to the financial hardship it will cause.

Jennifer Hetherington, City of Mesa: The majority of the funding for the fee proposal is coming from renewals; therefore it is important that ADEQ is doing everything possible to be sure there is an efficient process. It is unclear as to the cost of the certificate renewals because there is not enough information available in the estimated revenue amount. The justification states there are 6500 certified operators with approximately 13,500 certificates for an average of 2 certifications per operator. Each year approximately 2160 operators would renew their certifications. If each operator had one certification it would cost \$324,000/year for total revenue of \$66,500/year for the program. The justification however shows that each operator on average has two certifications raising the annual cost for renewal to \$432,000 and total revenues of \$574,500/year for the program; almost \$100,000 more than what is listed in the justification. The City is concerned that this is a large discrepancy in revenue and either figure is in excess for the service provided.

RESPONSE: The Water Quality Division, like many programs within ADEQ, has been working on continuous process improvements using Lean philosophy to improve the effectiveness, efficiency, and transparency of programs and services by identifying waste. The Water Quality Division has already implemented improvements in its processing of individual permits, such as in the Aquifer Protection Program. The Operator Certification Program has been working on improvements such as:

- Electronic submittal of renewal, submittal, reciprocity and early exam requests to the general azopcert email box for quicker processing.
- Training videos to be developed and added to ADEQ’s website that would contain testing and a certificate of completion to document professional development hours.

ADEQ is committed to evaluating all its programs to minimize waste and to provide the best customer service as efficiently as possible.

ADEQ is required to implement the Operator Certification Program, as authorized under two separate state statutes. A.R.S. §§ 49-352(A), 49-361. Operator certification is also a requirement under the SDWA, for which ADEQ is the designated state agency responsible in Arizona. A.R.S. § 49-202. EPA can withhold 20 percent of a state’s DWSRF capitalization grant unless is implementing an operator certification program that meets the requirements of the final guidelines. 42 USC §300g-8(b).

As detailed in the EIS, ADEQ’s personnel and training costs for the Operator Certification Program are \$429,000, which includes an anticipated drop off of 20 percent of all renewals and certifications. Based on the underlying operator certification rules in 18 A.A.C. Chapter 5, Article 1, ADEQ established fees for four certification tasks: new certification, early examination certification, request for reciprocity, and renewal. The fee amounts are based on the proportionate level of work required for FTEs to accomplish the specified certification responsibilities. The level of effort is in line with how ADEQ has evaluated fees necessary to cover Program costs in other areas of the agency. The fees must cover all costs for the Operator Certification Program, not just the costs of the four certification activities for which fees are assessed. Fee amounts any lower than proposed will not cover the costs of the Program.

12. 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:

There are no matters prescribed by statute applicable to the agency or to any specific rule or class or rules.

- 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:

The proposed rules require a new fee for a certification. A.R.S. §§ 49-352 and 49-361 require ADEQ to certify operating personnel according to their skill, knowledge and experience. However, the operator certification rules are similar to the definition of a general permit; the applicant is issued the certification if the applicant meets the applicable requirements of the certification, there is no individual or traditional certification, and no public hearing is 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:

There is no federal law applicable to fees for certified operators.

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 an analysis to the agency that compares the rule’s impact on the competitiveness of business in this state to the impact on business in other states.

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

Not applicable

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

ARTICLE 3. CERTIFIED OPERATOR FEES

Section

- R18-14-301. Certified Operator Fees
- R18-14-302. Fee Assessment and Collection
- R18-14-303. Implementation

ARTICLE 3. CERTIFIED OPERATOR FEES

R18-14-301. Certified Operator Fees

- A.** Definition terms from A.A.C. R18-5-101 apply to this Article.
- B.** The Department shall assess and collect a flat rate fee for a certification or renewal under the operator certification program.
- C.** A person shall submit the applicable fee when requesting a certification or renewal under 18 A.A.C. 5, Article 1, as described below:
 - 1.** An applicant that seeks new certification shall submit a \$65 fee per certification.
 - 2.** An operator that has not held a lower grade level for the required amount of time requests the Department's determination on experience and education in order to be admitted to a higher grade certification examination shall submit a fee of \$150 per application.
 - 3.** An applicant that requests a certificate based on reciprocity with another jurisdiction shall submit a fee of \$250 per application.
 - 4.** An operator submitting a certificate renewal shall submit a \$150 fee for each certificate. If the operator has multiple certificates, the first certificate is \$150, and each additional certificate with the same expiration date is \$50.

R18-14-302. Fee Assessment and Collection

- A.** Fees for certification or renewal shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.
- B.** The Department shall not accept a request for a certification or renewal without the appropriate fee.
- C.** If the Department does not accept an operator certificate renewal form, required according to A.A.C. R18-5-107(B), the certificate expires for failure to renew according to A.A.C. R18-5-108.

R18-14-303. Implementation

The fees in this Article apply to any application for a certification or renewal that is submitted on or after July 1, 2016.