

NOTICES OF EXEMPT RULEMAKING

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

NOTICE OF EXEMPT RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

Editor's Note: The following Notice of Exempt Rulemaking is exempt from Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 855.)

[R10-57]

PREAMBLE

- | | |
|--|--|
| <u>1. Sections Affected</u>
R18-2-326.01 | <u>Rulemaking Action</u>
New Section |
|--|--|
- 2. The statutory authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:**
Authorizing Statutes: Laws 2010, 7th Spec. Sess., Ch. 7, § 5
Implementing Statutes: A.R.S. § 49-426(E)(1)
- 3. The effective date of the rules:**
July 1, 2010
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**
Notice of Public Information: 16 A.A.R. 742, May 7, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking.**
Name: Danielle M. Dancho
Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
E-mail: dmd@azdeq.gov
Telephone: (602) 771-4210 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)
Fax: (602) 771-2366
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**
In Laws 2010, 7th Spec. Sess., Ch. 7, § 5, the Arizona Department of Environmental Quality (ADEQ) was granted authority to increase fees in fiscal year 2010-2011 for services in fiscal year 2010-2011. As stated in Laws 2010, 7th Spec. Sess., Ch. 7, § 5, the legislative intent is that the additional revenue generated by the fee increases for the entire agency not exceed \$5,779,100. ADEQ has complied with Section 5, paragraph (B) of the session law and submitted a specific fee plan for legislative consideration by April 1, 2010, which resulted in several rulemakings including this one. Laws 2010, 7th Spec. Sess., Ch. 7, § 5, states that ADEQ is "exempt from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this section until July 1, 2011."
ADEQ examined multiple fees across its three divisions that generate fees, Air Quality, Waste Programs, and Water Quality. ADEQ considered the stability of the funding resource, impact on stakeholders, and the revenue shortfall projected for fiscal year 2011. In light of those considerations, ADEQ is adding rule R18-2-326.01, which will increase emissions fees for fiscal year 2011 paid by Class I Title V sources that have undergone initial startup by January 1, 2009. The addition of rule R18-2-326.01 will increase fees for every Class I Title V facility within the state. Every facility will be required to pay an additional \$20.82 per ton of emissions and will pay the same emissions fee.

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The increase in emissions fees is anticipated to generate approximately \$1,294,300 in additional revenue that will be used to fund the services of ADEQ in fiscal year 2011.

- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The April 1, 2010 plan, as required by Laws 2010, 7th Spec. Sess., Ch. 7, § 5.

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

Not applicable

- 9. The summary of the economic, small business, and consumer impact:**

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Not applicable

- 11. A summary of the comments made regarding the rule and the agency response to them:**

ADEQ is providing public notice and an opportunity for public comment on these rules. See ADEQ's web site, <http://www.azdeq.gov>, for further information. Written comments on the exempt rules must be received by close of business June 7, 2010.

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As an exempt rulemaking, this rule will not need to be approved by the Governor's Regulatory Review Council, and no hearing will be held.

- 12. Any other matters prescribed by statutes that are applicable to the specific agency or any specific rule or class of rules:**

None

- 13. Incorporations by reference and their location in the rules:**

None

- 14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:**

No

- 15. The full text of the rule follows:**

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section

R18-2-326.01. Emissions-Based Fee Increase Related to Individual Permits for Fiscal Year 2011

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-326.01. Emissions-Based Fee Increase Related to Individual Permits for Fiscal Year 2011

In addition to the emissions-based fees required under R18-2-326(C) for Class I Title V sources for Calendar Year 2008, a one-time emissions-based fee of \$20.82 per ton of actual emissions of all regulated pollutants emitted during Calendar Year 2008 shall be due within 30 days of the invoice postmark date for the increased fee.

NOTICE OF EXEMPT RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

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

Editor's Note: The following Notice of Exempt Rulemaking is exempt from Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 855.)

[R10-55]

PREAMBLE

- | | |
|---|--|
| <u>1. Sections Affected</u>
R18-8-201 | <u>Rulemaking Action</u>
New Section |
|---|--|
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: Laws 2010, 7th Spec. Sess., Ch. 7, § 5
Implementing statute: A.R.S. § 49-931
- 3. The effective date of the rule:**
July 1, 2010
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**
Notice of Public Information: 16 A.A.R. 742, May 7, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Mark Lewandowski
Address:	Department of Environmental Quality 1110 W. Washington St. Phoenix AZ 85007
E-mail:	msl@azdeq.gov
Telephone:	(602) 771-2230 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)
Fax:	(602) 771-4138
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, and the statutory citation to the exemption from regular rulemaking procedures:**

In Laws 2010, 7th Spec. Sess., Ch. 7, § 5, the Arizona Department of Environmental Quality (ADEQ) was granted authority to increase fees in fiscal year 2010-2011 for services in fiscal year 2010-2011. As stated in Laws 2010, 7th Spec. Sess., Ch. 7, § 5, the legislative intent is that the additional revenue generated by the fee increases for the entire agency not exceed \$5,779,100. ADEQ has complied with Section 5, paragraph (B) of the session law and submitted a specific fee plan for legislative consideration by April 1, 2010, which resulted in several rulemakings including this one.

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, states that ADEQ is "exempt from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this section until July 1, 2011."

ADEQ examined multiple fees across its three divisions, Air Quality, Waste Programs, and Water Quality. ADEQ considered the stability of the funding resource, impact on stakeholders, and the revenue shortfall projected for fiscal year 2011. In this rulemaking, ADEQ is increasing the hazardous waste generation and disposal fees set forth in A.R.S. § 49-931 by a factor of seven. These fee increases are expected to raise an additional \$974,400 that will be used to fund the services of ADEQ in fiscal year 2011. These fees haven't been increased since they were originally established by the legislature in 1992. The approximate annual cost to the state to run ADEQ's Hazardous Waste Program is \$1,388,500.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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:**
April 1, 2010 plan, as required by Laws 2010, 7th Spec. Sess., Ch. 7, § 5.

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

Not applicable

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

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

ADEQ is providing public notice and an opportunity for public comment on these rules. See ADEQ's web site, <http://www.azdeq.gov>, for further information. Written comments on the exempt rules must be received by close of business June 7, 2010.

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As an exempt rulemaking, this rule will not need to be approved by the Governor's Regulatory Review Council, and no hearing will be held.

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

None

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANGAGEMENT

ARTICLE 2. HAZARDOUS WASTES

Section

R18-8-201. ~~Reserved~~ Hazardous Waste Fees for Fiscal Year 2011

ARTICLE 2. HAZARDOUS WASTES

R18-8-201. ~~Reserved~~ Hazardous Waste Fees for Fiscal Year 2011

A. For large-quantity generators, beginning on July 1, 2010 and until June 30, 2011, the fees listed in A.R.S. § 49-931(A) are increased and superseded as follows:

1. In A.R.S. § 49-931(A)(1), \$10.00 per ton is replaced by \$70.00 per ton;
2. In A.R.S. § 49-931(A)(2), \$40.00 per ton is replaced by \$280.00 per ton;
3. In A.R.S. § 49-931(A)(3), \$4.00 per ton is replaced by \$28.00.

B. For small-quantity generators, in addition to the annual hazardous waste fee required under A.R.S. § 49-931(A) and R18-8-260 for Calendar Year 2010, a one-time hazardous waste fee shall be due within 30 days of the invoice postmark date for the increased fee as follows:

1. For activities described in A.R.S. § 49-931(A)(1), \$60.00 per ton;
2. For activities described in A.R.S. § 49-931(A)(2), \$240.00 per ton;
3. For activities described in A.R.S. § 49-931(A)(3), \$24.00 per ton.

C. In implementing the fees in subsections (A) and (B), the discount for compliance with pollution prevention planning requirements in A.R.S. § 49-931(A)(4) shall remain in effect.

NOTICE OF EXEMPT RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

Editor's Note: The following Notice of Exempt Rulemaking is exempt from Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 855.)

[R10-56]

PREAMBLE

1. Sections Affected

Article 27
R18-13-2701
R18-13-2702
R18-13-2703

Rulemaking Action

New Article
New Section
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: Laws 2010, 7th Spec. Sess., Ch. 7, § 5
Implementing statutes: A.R.S. §§ 49-747, 49-762.03, 49-855 and 49-863

3. The effective date of the rules:

July 1, 2010

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Public Information: 16 A.A.R. 742, May 7, 2010

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

Name: Peggy J. Guichard-Watters
Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix AZ 85007
E-mail: pgw@azdeq.gov
Telephone: (602) 771-4117 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)
Fax: (602) 771-4138

6. An explanation of the rule, including the agency's reasons for initiating the rule, and the statutory citation to the exemption from regular rulemaking procedures:

In Laws 2010, 7th Spec. Sess., Ch. 7, § 5, the Arizona Department of Environmental Quality (ADEQ) was granted authority to increase fees in fiscal year 2010-2011 for services in fiscal year 2010-2011. As stated in Laws 2010, 7th Spec. Sess., Ch. 7, § 5, the legislative intent is that the additional revenue generated by the fee increases for the entire agency not exceed \$5,779,100. ADEQ has complied with Section 5, paragraph (B) of the session law and submitted a specific fee plan for legislative consideration by April 1, 2010 which resulted in several rulemakings, including this one.

Laws 2010, 7th Spec. Sess., Ch. 7, § 5 states that ADEQ is "exempt from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this section until July 1, 2011."

ADEQ examined multiple fees across its three divisions, Air Quality, Waste Programs, and Water Quality. ADEQ considered the stability of the funding resource, impact on stakeholders, and the revenue shortfall projected for fiscal year 2011. The Waste Programs Division's Solid Waste Program will generate additional fee revenue of approximately \$1.3 million that will be used to fund the services of ADEQ in fiscal year 2011. This will be accomplished by adjusting three Solid Waste Program fees: the Special Waste Management Fee, the Landfill Registration Fees, and the hourly Plan Review Fee to fund ADEQ services in fiscal year 2011. The approximate annual cost of operating ADEQ's Solid Waste Program is \$1,624,900.

ADEQ is adjusting the Special Waste Management Fee from \$2.00 per ton to \$10.00 per ton and raising the maximum of \$20,000 per generator site per year to \$100,000 for special waste that is transported to a facility for treatment, storage or disposal. The \$2.00 per ton fee was initially established in statute in 1993, with the \$20,000 maximum added in 1994. Until this rulemaking, the fee has remained as initially established, except for a nine-month period of

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time in FY 2008 when the fee was temporarily increased to assist in reconciling the agency's budget. ADEQ is creating a new Article 27 and a new Section, R18-13-2701, which establishes the fee to be charged for fiscal year 2011. This fee supersedes any lesser Special Waste Management Fee listed in Articles 13 and 16 or in A.R.S. Title 49, Chapter 4, Article 9.

ADEQ is increasing the Landfill Registration Fees from a range of \$500.00 through \$5000.00 to a range of \$2,500.00 through \$25,000.00. This will be accomplished through charging the current fees established in statute plus one-time fees. The Landfill Registration Fees were established in statute in 1990. Until this rulemaking, the fees have remained as initially established, except for a nine-month period of time in FY 2008 when the fees were temporarily increased to assist in reconciling the agency's budget. ADEQ is creating a new Section, R18-13-2702, which establishes the increased fees to be charged for fiscal year 2011. These one-time fees are in addition to the Landfill Registration Fees listed in A.R.S. Title 49, Chapter 4, Article 3, specifically A.R.S. § 49-747.

ADEQ also is increasing the hourly fee for solid waste plan review, including the review of new facility plans, the review of modifications to approved plans, and the review of financial assurance plans and mechanisms. ADEQ began charging for solid waste plan review in 1996. The fee has been increased several times since then. The current hourly review rate of \$58.81 was set in 2002; ADEQ is increasing this to \$127.49 per hour. Because the hourly rate is increasing, the maximum fees charged for the various reviews also must increase. ADEQ is creating a new section, R18-13-2703, which lists the hourly fee rate and the initial and maximum fees for fiscal year 2011. These fees supersede plan review fees listed in R18-13-702.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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:

April 1, 2010 plan, as required by Laws 2010, 7th Spec. Sess., Ch. 7, § 5.

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

Not applicable

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

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

ADEQ is providing public notice and an opportunity for public comment on these rules. See ADEQ's web site, <http://www.adeq.gov>, for further information. Written comments on the exempt rules must be received by close of business June 7, 2010.

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As an exempt rulemaking, this rule will not need to be approved by the Governor's Regulatory Review Council, and no oral proceeding will be held.

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

None

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

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

ARTICLE 27. SOLID WASTE FEES FOR FY 2011

Arizona Administrative Register / Secretary of State
Notices of Exempt Rulemaking

Section

- R18-13-2701. Special Waste Management Fees for Fiscal Year 2011
R18-13-2702. Increased Landfill Registration Fees for Fiscal Year 2011
R18-13-2703. Solid Waste Facility Plan Review Fees for Fiscal Year 2011

ARTICLE 27. SOLID WASTE FEES FOR FY 2011

R18-13-2701. Special Waste Management Fees for Fiscal Year 2011

Beginning on July 1, 2010 and until June 30, 2011, the director shall collect a fee of \$10 per ton, not more than \$100,000 per generator site per year, for special waste that is transported to a facility in this state for treatment, storage, or disposal. This fee increases and supersedes the per ton fee listed in A.R.S. § 49-855, R18-13-1307(F), and R18-13-1606 and the maximum fee listed in A.R.S. § 49-855 for the period of July 1, 2010 through June 30, 2011. The payor shall remit the fee in accordance with A.R.S. § 49-863. For special waste that is shredder residue, the owner or operator of a special waste facility may pay a special waste management fee of \$3.30 per cubic yard of uncompacted shredder residue or \$7.50 per cubic yard of compacted shredder residue received in lieu of the \$10 per ton fee.

R18-13-2702. Increased Landfill Registration Fees for Fiscal Year 2011

In addition to the landfill registration fees required under A.R.S. § 49-747 for Calendar Year 2010, a one-time landfill registration fee shall be due within 30 days of the invoice postmark date for the increased fee as follows:

1. For solid waste landfills that serve fewer than 10,000 people, \$2,000;
2. For solid waste landfills that serve at least 10,000 people but less than 25,000 people, \$3,000;
3. For solid waste landfills that serve at least 25,000 people but less than 50,000 people, \$4,000;
4. For solid waste landfills that serve at least 50,000 people but less than 100,000 people, \$8,000;
5. For solid waste landfills that serve at least 100,000 people but less than 200,000 people, \$12,000;
6. For solid waste landfills that serve 200,000 people or more, \$20,000;
7. For solid waste landfills that are open to the public and that accept demolition waste, \$6,000; and
8. For solid waste landfills that are closed to the public and that accept nonhazardous waste, \$6,000.

R18-13-2703. Solid Waste Facility Plan Review Fees for Fiscal Year 2011

A. Beginning July 1, 2010 and until June 30, 2011, the initial and maximum fees for the review of a solid waste facility plan, a modification of an approved facility plan, and a financial assurance plan are listed in the following table. These fees increase and supersede the initial and maximum fees listed in R18-13-702(A) for the period of July 1, 2010 through June 2011. The applicant shall remit the fees in accordance with R18-13-702.

Fee Table

<u>Fees for Plan Review of New Solid Waste Facilities</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Solid Waste Landfills</u>	<u>\$15,000</u>	<u>\$150,000</u>
<u>Other Solid Waste Facilities Subject to Plan Approval</u>	<u>\$10,000</u>	<u>\$100,000</u>

<u>Fees for Modifications to Solid Waste Facility Plans</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Solid Waste Landfills - Type IV</u>	<u>\$15,000</u>	<u>\$150,000</u>
<u>Solid Waste Landfills - Type III</u>	<u>\$2,000</u>	<u>\$75,000</u>
<u>Other Solid Waste Facilities Subject to Plan Approval - Type IV</u>	<u>\$10,000</u>	<u>\$100,000</u>
<u>Other Solid Waste Facilities Subject to Plan Approval - Type III</u>	<u>\$500</u>	<u>\$50,000</u>

<u>Fees for Review of Financial Responsibility Plans for Solid Waste Facilities</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Annual Review for Solid Waste Landfills</u>	<u>\$500</u>	<u>\$5,000</u>

B. Beginning July 1, 2010 and until June 30, 2011, when determining reasonable cost under A.R.S. § 49-762.03, the Department shall use an hourly billing rate of \$127.49 for all direct labor spent working on the review of a solid waste facility plan, a modification of an approved facility plan, and a financial assurance plan. This fee increases and supersedes the hourly billing rate listed in R18-13-702(F) for the period of July 1, 2010 through June 30, 2011. The applicant shall remit the fees in accordance with R18-13-702.

NOTICE OF EXEMPT RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITS AND COMPLIANCE FEES

Editor's Note: The following Notice of Exempt Rulemaking is exempt from Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 855.)

[R10-58]

PREAMBLE

- 1. Sections Affected**
R18-14-108
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: Laws 2010, 7th Spec. Sess., Ch. 7, § 5
Implementing statute: A.R.S. §§ 49-104(B)(13); 49-203(A)(8)
- 3. The effective date of these rules:**
July 1, 2010
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**
Notice of Public Information: 16 A.A.R. 742, May 7, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Wendy LeStarge
Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
E-mail: wll@azdeq.gov
Telephone: (602) 771-4836 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)
Fax: (602) 771-4834
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**

In Laws 2010, 7th Spec. Sess., Ch. 7, § 5, the Arizona Department of Environmental Quality (ADEQ) was granted authority to increase fees in fiscal year 2010-2011 for services in fiscal year 2010-2011. As stated in Laws 2010, 7th Spec. Sess., Ch. 7, § 5, the legislative intent is that the additional revenue generated by the fee increases for the entire agency not exceed \$5,779,100. ADEQ has complied with Section 5, paragraph (B) of the session law and submitted a specific fee plan for legislative consideration by April 1, 2010, which resulted in several rulemakings including this one.

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, states that ADEQ is "exempt from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this section until July 1, 2011."

ADEQ examined multiple fees across its three divisions, Air Quality, Waste Programs, and Water Quality. ADEQ considered the stability of the funding resource, impact on stakeholders, and the revenue shortfall projected for fiscal year 2011. The Water Quality Division collects fees for only two types of reviews or permits: Aquifer Protection Permits (APP) and design review of drinking water systems. Because the fees for design review of drinking water systems were newly established in December 2008, ADEQ believes it is premature to consider a fee increase at this time.

The current APP fee structure was established in January 2001. ADEQ has been reviewing its APP fee structure since the Auditor General's 2004 report. In the report, the Auditor General recommended that ADEQ regularly recalculate APP fees based on actual direct costs and current estimates of direct costs and billable hours, and include travel in direct costs. Also in 2004, A.R.S. § 49-241.02 was amended, establishing the current maximum fees, and requiring ADEQ to evaluate and report on the adequacy of the maximum fee caps. In 2005, ADEQ contracted with a consultant to review and determine the adequacy of the fee structure, including its revenues derived from and expenses incurred for processing APPs. ADEQ submitted the report mandated in A.R.S. § 49-241.02(E) to the Legislature by the required August 31, 2009 deadline. All of ADEQ's reviews of the fees for the APP Program have shown that the current APP fees are not sufficient to fully support the program.

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ADEQ will increase individual and general APP fees, annual registration fees, and fees for certain other services as shown on Table 2. For a period of one year, these fees will increase and supersede any lesser fee listed elsewhere in Article 1 or in A.R.S. Title 49, Chapter 2, Article 3. R18-14-108 and Table 2 will repeal automatically, effective July 1, 2011. Additional revenues generated by fee increases to the Water Quality Division's Permit fees under this exempt rulemaking will be approximately \$2,200,000, and will be used to fund the services of ADEQ in fiscal year 2011.

ADEQ will raise the hourly rate for permitting services from \$61 to \$122. This hourly rate is required to fully fund the total costs (salary and benefits) of ADEQ staff necessary to develop and issue an APP. ADEQ will also raise the maximum allowable fees for individual APPs to account for the increase in the hourly rate.

ADEQ will also double most of the fees associated with general APPs and subdivision approval. The fees for the general APPs, set in 2001, were developed based on the existing \$61 hourly rate and the time spent reviewing general permit documentation. As many of the general APPs were newly created in 2001, review time was approximate. ADEQ has found that the review time for many general APPs was underestimated.

ADEQ will also increase fees for dry well registration, determinations of applicability, and the annual registration for discharge. ADEQ has found that existing fees for dry well registration and determinations of applicability are inadequate to fully cover costs of ADEQ's review.

Revenues derived from the fee increases will provide for the continued ADEQ support of environmental permitting requirements for FY 2011. Affected parties include businesses, individuals, political subdivisions, federal agencies, and non-profit organizations that are applying for an APP or an amendment to an existing APP. ADEQ fairly and equally assesses fees to all parties for services rendered. The Water Quality Division assesses fees in a nondiscriminatory manner against both public and private parties, except as mandated by A.R.S. § 49-203(A)(8) to exempt state agencies from all water quality fees.

At the date of filing, ADEQ has approximately 200 individual APP applications that will be pending after July 1, 2010. These applications and any new applications received after July 1, 2010, will pay the increased hourly rate for any water quality protection services rendered July 1, 2010 until June 30, 2011.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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:

April 1, 2010 plan as required by Laws 2010, 7th Spec. Sess., Ch. 7, § 5. Arizona Department of Environmental Quality

Information submitted to the Legislature as required under A.R.S. § 49-241.02(E). Arizona Department of Environmental Quality, Water Quality Division (2009)

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

Not applicable

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

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

ADEQ is providing public notice and an opportunity for public comment on these rules. See ADEQ's web site, <http://www.azdeq.gov>, for further information. Written comments on the exempt rule must be received by close of business June 7, 2010.

Laws 2010, 7th Spec. Sess., Ch. 7, § 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As an exempt rulemaking, this rule will not need to be approved by the Governor's Regulatory Review Council, and no hearing will be held.

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

None

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

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

Arizona Administrative Register / Secretary of State
Notices of Exempt Rulemaking

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

ARTICLE 1. WATER QUALITY PROTECTION FEES

Section

R18-14-108. ~~Repealed~~ Water Quality Protection Fees for Fiscal Year 2011

ARTICLE 1. WATER QUALITY PROTECTION FEES

R18-14-108. ~~Repealed~~ Water Quality Protection Fees for Fiscal Year 2011

- A.** Beginning on July 1, 2010 until June 30, 2011, the fees listed in Table 2 increase and supersede any fee listed otherwise in this Article or in A.R.S. Title 49, Chapter 2, Article 3.
- B.** In addition to the annual registration fee required under A.R.S. § 49-242 for Calendar Year 2010, a one-time increased annual registration fee as listed in Table 2 shall be due within 30 days of the invoice postmark date for the increased fee.
- C.** This Section and Table 2 will repeal automatically, effective July 1, 2011.

Table 2.

<u>Water Quality Protection Service</u>	<u>Applicable Fee</u>
<u>Individual Permits</u>	
<u>Individual or Area-wide Aquifer Protection Permit</u>	<u>\$122 per hour up to maximum of \$200,000</u>
<u>Complex Modification to Individual or Area-wide Aquifer Protection Permit</u>	<u>\$122 per hour up to maximum of \$200,000</u>
<u>Clean closure of facility without Aquifer Protection Permit</u>	<u>\$122 per hour up to maximum of \$70,000</u>
<u>Standard Modification to Individual or Area-wide Aquifer Protection Permit</u>	<u>\$122 per hour up to maximum of \$50,000</u>
<u>Reclaimed Water Individual Permit</u>	<u>\$122 per hour up to maximum of \$32,000</u>
<u>Increased Fee Required for Annual Registration per A.R.S. § 49-242 of Discharge or Influent per Day Under the Permit or Notice of Disposal (in Gallons)</u>	
<u>Gallons of Permitted Discharge or Influent per Day</u>	
<u>3000 to 9999</u>	<u>\$25</u>
<u>10,000 to 99,999</u>	<u>\$150</u>
<u>100,000 to 999,999</u>	<u>\$1500</u>
<u>1,000,000 to 9,999,999</u>	<u>\$2500</u>
<u>10,000,000 or more</u>	<u>\$4000</u>
<u>General Permits</u>	
<u>All Type 2 General Permits</u>	<u>\$600</u>
<u>All Type 2 General Permits Renewals</u>	<u>\$200</u>
<u>All Type 3 General Permits</u>	<u>\$3000</u>
<u>All Type 3 General Permits Renewals</u>	<u>\$1000</u>
<u>Type 4.01 General Permit Sewer Collections Systems</u>	

Notices of Exempt Rulemaking

<u>Gravity Sewer Only with Manholes</u>	
· <u>Serving less than or equal to 50 connections</u>	<u>\$1000</u>
· <u>Serving 51 to 300 connections</u>	<u>\$2000</u>
· <u>Serving 301 or more Connections</u>	<u>\$1000</u>
<u>Force Mains Including Gravity Sewer Components</u>	
· <u>Serving less than or equal to 50 connections</u>	<u>\$1600</u>
· <u>Serving 51 to 300 connections</u>	<u>\$2600</u>
· <u>Serving 301 or more connections</u>	<u>\$1000</u>
<u>Type 4 Onsite Wastewater Treatment Facilities</u>	
<u>Type 4.02 Septic tank/conventional disposal, less than 3000 gallons per day</u>	<u>\$800</u>
<u>Type 4.03 Composting toilet, less than 3000 gallons per day</u>	<u>\$800</u>
<u>Type 4.04 Pressure distribution system, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.05 Gravelless trench, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.06 Natural seal evapotranspiration bed, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.07 Lined evapotranspiration bed, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.08 Wisconsin mound, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.09 Engineered pad system, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.10 Intermittent sand filter, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.11 Peat filter, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.12 Textile filter, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.13 Ruck[®] system, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.14 Sewage vault, less than 3000 gallons per day</u>	<u>\$800</u>
<u>Type 4.15 Aerobic system/subsurface disposal, less than 3000 gallons per day</u>	<u>\$1600</u>
<u>Type 4.16 Aerobic system/surface disposal, less than 3000 gallons per day</u>	<u>\$2000</u>
<u>Type 4.17 Cap system, less than 3000 gallons per day</u>	<u>\$800</u>
<u>Type 4.18 Constructed wetlands, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.19 Sand-lined trench, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.20 Disinfection device, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.21 Sequencing batch reactor, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.22 Subsurface drip irrigation, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.23 Onsite wastewater treatment facility, flow from 3000 to less than 24,000 gallons per day</u>	<u>\$3600</u>
<u>Each additional general permit for multiple design elements from more than one Type 4 General Permit, as stated in R18-14-102(C)(7)(b)</u>	<u>\$500</u>
<u>Other Services</u>	
<u>Dry well registration</u>	<u>\$100</u>
<u>Determination of Applicability</u>	<u>\$1000</u>
<u>Subdivision approval with sewage treatment and disposal provided outside the boundaries of individual lots</u>	<u>\$600 per 150 lots</u>
<u>Subdivision approval with sewage treatment and disposal located within the boundary of lot</u>	<u>\$1000 for 40 lots or less</u> <u>\$2000 for 41 to 150 lots</u> <u>\$2000 per additional 150 lots</u>