

# NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

## NOTICE OF PROPOSED RULEMAKING

### TITLE 12. NATURAL RESOURCES

#### CHAPTER 15. DEPARTMENT OF WATER RESOURCES

*Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1292.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 9, 2014.*

[R14-77]

#### PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R12-15-725.01  | Amend                    |
| R12-15-725.02  | Repeal                   |
- 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. §§ 45-105(B)(1) and 45-576(H)  
Implementing statute: A.R.S. § 45-576
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**  
Notice of Rulemaking Docket Opening: 20 A.A.R. 1274, June 6, 2014 (*in this issue*)
- 4. The agency's contact persons who can answer questions about the rulemaking:**
- |            |  |
|------------|--|
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|            |  |
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| Address:   | Arizona Department of Water Resources<br>3550 N. Central Ave.<br>Phoenix, AZ 85012 |
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**5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

Reasons for Initiating the Rulemaking

Developers of new subdivisions within an Active Management Area ("AMA") must either obtain a certificate of assured water supply ("AWS") from the Arizona Department of Water Resources ("Department") or obtain a commitment of water service from a municipal water provider designated by the Department as having an AWS prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a certificate or designation of AWS is to demonstrate that any groundwater use is consistent with the management goal of the AMA. The management goal of the Pinal AMA, where a predominately agricultural economy exists, is to allow development of non-irrigation uses and to preserve existing agricultural economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. A.R.S. § 45-562(B).

One method of demonstrating that groundwater use is consistent with the management goal of the AMA is through a mechanism for the extinguishment of grandfathered groundwater rights in the AMA. Under the Department's AWS Rules, when a grandfathered groundwater right is extinguished, the Department issues credits that can be used by a developer or municipal water provider to demonstrate that a specified volume of groundwater use by the development or water provider will be consistent with the management goal of the AMA.

Prior to 2007, the amount of credits issued for the extinguishment of grandfathered groundwater rights in the Pinal AMA was an annual volume that remained the same each year, regardless of when the right was extinguished. In 2007, the Department amended the rule governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered groundwater rights, depending on when the extinguishment occurs. Under the rule as amended, the first reduction in the allocation factor for calculating extinguishment credits was to take effect on January 1, 2010, with additional reductions each year thereafter until 2054, when no credits would be given for the extinguishment of a grandfathered right.

One of the major reasons for the 2007 amendment was that residential development in the Pinal AMA was increasing rapidly, and the rate of development was projected to continue for the foreseeable future. Some of this development was anticipated to result in the extinguishment of Irrigation Grandfathered Rights ("IGFRs") for extinguishment credits. Extinguishment of IGFRs under the extinguishment credit rule in effect at that time, combined with rapid development, would lead to over-allocation of unreplenished groundwater supplies. The 2007 amendment was designed to preserve sufficient groundwater supplies to meet the demands of agricultural irrigation, assured water supply determinations and possible future assured water supply determinations, consistent with the Pinal AMA's management goal.

Shortly after the 2007 rule amendment, the Arizona real estate market began experiencing a significant downturn, and residential development in the Pinal AMA slowed dramatically. In 2009, landowners and irrigation districts in the Pinal AMA expressed concerns to the Department that implementation of the reduction in extinguishment credits as scheduled could result in owners of farm land in the AMA prematurely extinguishing their irrigation grandfathered rights before the first reduction in credits was to take effect on January 1, 2010. It was feared that this would exacerbate the effects of the economic recession in the area by prematurely taking more lands out of agricultural production and increasing the water and power costs for those lands that continued to be farmed.

Consistent with the Pinal AMA management goal of preserving the agricultural economy for as long as feasible while ensuring water supply availability for future municipal and industrial water uses, the Department amended rule R12-15-725 in 2009 to delay the effective date of the first reduction of the allocation factor for calculating extinguishment credits in the Pinal AMA until 2014. It was felt that by 2014, economic conditions in the AMA would improve sufficiently so that implementation of the reduction in extinguishment credits at that time would not have a significant negative impact on the local economy. Through the 2009 amendment, the allocation factors for calendar years 2010 through 2013 were increased to 100, and the allocation factors for calendar years 2014 through 2016 were increased to 94, 88 and 82, respectively. No changes were made to the allocation factors for calendar years 2017 and thereafter.

In 2013, a number of landowners in the Pinal AMA requested that the Department again delay the reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA because economic conditions in the area had not improved as much as expected when rule R12-15-725 was amended in 2009. In response to this request, the Department again amended the AWS rules to temporarily delay the first reduction in the allocation factor until September 15, 2014. This was accomplished through the adoption of two new rules, R12-15-725.01 and R12-15-725.02.

R12-15-725.01 contains a table with the allocation factor for each year beginning with calendar year 2010. Under that table, the first reduction in the allocation factor occurs in calendar year 2019, with an additional reduction each year thereafter until the allocation factor becomes zero in 2060. R12-15-725.01 contains an "automatic repeal" provision stating that the section shall repeal automatically effective September 15, 2014.

R12-15-725.02 contains a table of allocation factors that become effective on September 15, 2014. Under that table, the first reduction in the allocation factor occurs on September 15, 2014, with additional reductions occurring each year thereafter until the allocation factor becomes zero in 2055.

Notices of Proposed Rulemaking

The combined effect of the adoption of R12-15-725.01 and R12-15-725.02 is that the first reduction in the allocation factor is delayed until September 15, 2014, when the reduction schedule adopted in 2009 becomes effective again. The temporary delay in the reduction schedule was designed to allow water users and other interested parties in the Pinal AMA to work together to examine conditions within the AMA and offer alternatives for meeting the Pinal AMA's management goal.

In late 2013 the Pinal Local Water Group (Water Group) was formed by Arizona State Representatives T.J. Shope and Frank Pratt to examine the AWS extinguishment credit rules in the Pinal AMA, explore alternatives to the existing rules, and make recommendations to the Department. The group is comprised of AMA water users including farmers, local elected officials, municipalities, developers, and real estate investors. On March 12, 2014, the Water Group requested that the Department delay, for a third time, implementation of the extinguishment credit reductions in the Pinal AMA to allow the Water Group additional time to explore alternative solutions to extinguishment credit reductions in the AMA and make recommendations before the first extinguishment credit reduction becomes effective. The Water Group explained that more time is needed to fully explore alternatives to the allocation factor reductions and make informed recommendations to the Department.

Specifically, the Water Group asked the Department to make the allocation factor reduction schedule contained in R12-15-725.01 permanent. After considering this request, the Department agrees that the reduction schedule in R12-15-725.01 should be made permanent. This will delay the first allocation factor reduction until January 1, 2019. The delay will allow the Water Group and any other interested water users in the AMA ample time to fully explore alternative long-term solutions and make suggestions to the Department.

Explanation of the Rules

The Department is proposing to amend rule R12-15-725.01 by deleting subsection (B), which states “[t]his section shall repeal automatically effective September 15, 2014.” The Department also proposes to repeal R12-15-725.02, the rule containing the allocation factor reduction table scheduled to become effective on September 15, 2014. This will make the allocation factor reduction schedule in R12-15-725.01 permanent, thereby delaying the first reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA until January 1, 2019.

The Department will request that the Governor's Regulatory Review Council approve the R12-15-725.01 amendment and R12-15-725.02 repeal with an immediate effective date so that they become effective immediately upon filing with the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A)(4), which provides that a rule may be effective immediately if the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. Delaying the first allocation factor reduction until January 1, 2019, will provide a benefit to the public by giving irrigation grandfathered rightholders time to work with other interested parties in the Pinal AMA to offer alternatives for meeting the Pinal AMA's management goal. Additionally, no penalty is associated with a violation of the rule. Lastly, the Department is requesting an immediate effective date in order to allow the rule amendment and repeal to take effect before September 15, 2014, when the first allocation factor reduction is scheduled to occur under R12-15-725.01 and R12-15-725.02.

**6. 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:**

None

**7. 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

**8. The preliminary summary of the economic, small business, and consumer impact:**

The rule amendment will have potential positive short-term economic impacts on IGFR holders who would have prematurely extinguished their IGFRs under the existing rules, but who will retain their IGFRs during the period from September 15, 2014 until January 1, 2019 under the rule modification. These IGFR holders may benefit in the following ways during this period: 1) by continuing farming operations so that they can receive an income from the land, and 2) by maintaining the lower tax rates applicable to agricultural land uses. The rule amendment will likely have positive economic impacts on businesses within the Pinal AMA that sell farming materials, such as seed and equipment.

Lastly, the rule changes may have a positive economic impact on land developers and new homeowners within the Pinal AMA who develop or purchase homes in subdivisions with AWS determinations based wholly or in part on extinguishment credits created between September 15, 2014 and December 31, 2059. Because this rulemaking delays the first extinguishment credit allocation factor reduction from September 15, 2014 to January 1, 2019 and also extends the period in which extinguishment credits can be issued from December 31, 2053 to December 31, 2058, the rulemaking may increase the total number of extinguishment credits than will be created. This will potentially reduce some of the costs associated with Central Arizona Groundwater Replenishment District membership for developers and new homeowners because it will likely allow more groundwater to be used without a replenishment obligation.

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The rule amendment may have a negative short-term economic impact on governmental entities that receive tax revenues from the real estate taxes assessed on lands within the Pinal AMA, such as Pinal County and Maricopa County. Some lands within the AMA that otherwise would have been taken out of agricultural production may remain in agricultural production during the September 15, 2014 to January 1, 2019 delay period. These lands would retain their lower agricultural tax status during that period. However, the loss in real estate tax revenue may be offset by more revenues from other taxes paid by the persons farming the lands, such as income taxes and sales taxes.

The rule amendment will likely result in more unreplenished groundwater withdrawals within the Pinal AMA, as some IGFR holders will likely continue irrigating their lands with groundwater during the period from September 15, 2014 to January 1, 2019. Additionally, some IGFR holders will receive more extinguishment credits than they would receive without the rule amendment. These additional unreplenished groundwater withdrawals could have a slight negative economic impact on groundwater users and landowners within the general areas of the withdrawals by reducing the physical availability of groundwater supplies in those areas. The economic impact is not possible to quantify because it depends on factors such as the current groundwater levels and rates of urbanization in the areas of the withdrawals. However, the Department believes there will be no significant negative economic impact.

**9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Jeff Tannler  
Statewide AMA Director  
Telephone: (602) 771-8424  
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E-mail: jmtannler@azwater.gov

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Department will hold an oral proceeding on the proposed rulemaking on July 7, 2014, at 10:00 a.m. at the following location:

Central Arizona College  
Signal Peak Campus  
8470 N. Overfield Road  
Coolidge, AZ 85128  
Room T116

Written comments may be submitted at any time prior to the close of the public record on July 7, 2014, at 5:00 p.m. Written comments not submitted at the oral proceeding described above should be submitted to:

Name: Sharon Scantlebury  
Docket Supervisor  
Address: Arizona Department of Water Resources  
3550 N. Central Ave.  
Phoenix, AZ 85012  
Telephone: (602) 771-8472  
Fax: (602) 771-8686  
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**11. 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:**

None

- 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:**  
Not applicable
- 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:**  
Not applicable
- 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:**  
Not applicable

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

None

**13. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

Section

R12-15-725.01. Pinal AMA – Extinguishment Credits Calculation; ~~Automatic Repeal~~

R12-15-725.02. Pinal AMA – Extinguishment Credits Calculation Effective September 15, 2014 Repeal

**ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

**R12-15-725.01. Pinal AMA – Extinguishment Credits Calculation; ~~Automatic Repeal~~**

~~A.~~ The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

1. No Change
2. No Change
  - a. No Change
  - b. No Change
3. No Change
4. No Change
  - a. No Change
  - b. No Change
    - i. No Change
    - ii. No Change

~~B.~~ This section shall repeal automatically effective September 15, 2014.

**R12-15-725.02. Pinal AMA – Extinguishment Credits Calculation Effective September 15, 2014 Repeal**

Beginning September 15, 2014, the Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (3) or (4) of this Section.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (3) or (4) of this Section, except that:
  - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
  - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.
3. Except as provided in subsection (4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (1) or (2) of this Section, the Director shall use the allocation factor associated with the year or portion of a year in which the grandfathered right is extinguished, as shown in the table below.

Year	Allocation Factor
2010	100
2011	100
2012	100

*Arizona Administrative Register / Secretary of State*  
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2013	100
January 1, 2014- through September 14, 2014	100
September 15, 2014- through December 31, 2014	94
2015	88
2016	82
2017	76
2018	74
2019	72
2020	70
2021	68
2022	66
2023	64
2024	62
2025	60
2026	58
2027	56
2028	54
2029	52
2030	50
2031	48
2032	46
2033	44
2034	42
2035	40
2036	38
2037	36
2038	34
2039	32
2040	30
2041	28

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2042	26
2043	24
2044	22
2045	20
2046	18
2047	16
2048	14
2049	12
2050	10
2051	8
2052	6
2053	4
2054	2
After 2054	0

4. ~~If, before January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (1) or (2) of this Section, the Director shall use an allocation factor determined as follows:~~
- ~~a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (3) of this Section.~~
  - ~~b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (3) of this Section. The Director shall determine the year as follows:~~
    - ~~i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.~~
    - ~~ii. Subtract the difference in subsection (4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.~~

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOLID WASTE MANAGEMENT**

*Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1292.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 27, 2013.*

[R14-75]

**PREAMBLE**

- |   |  |
|---|--|
| <p><b><u>1. Article, Part, or Section Affected (as applicable)</u></b><br/>R18-13-802</p> <p><b><u>2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):</u></b><br/>Authorizing statutes: A.R.S. §§ 41-1003 and 49-104<br/>Implementing statute: A.R.S. §§ 49-706 and 49-761</p> | <p><b><u>Rulemaking Action</u></b><br/>New Section</p> |
|---|--|

**3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 20 A.A.R. 286, February 7, 2014

**4. The agency's contact person who can answer questions about the rulemaking:**

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Waste Programs Division  
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**5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Summary. The Arizona Department of Environmental Quality (ADEQ) is proposing to establish a solid waste general permit under A.R.S. § 49-706 for a class of solid waste land disposal facilities that would otherwise need a solid waste plan approval under A.R.S. § 49-762. Under the proposed rule, the general permit offers coverage to a mining landfill if: 1) the landfill is already included as a discharging facility in an area-wide Aquifer Protection Permit (APP); or 2) the landfill would be exempt from such an APP, or 3) the landfill is part of an application for an APP and is located at a site with a groundwater protection permit.

What is a General Permit? A general permit is a single permit document written with language comprehensive enough to cover a large number of substantially similar facilities. (See the definition at A.R.S. § 41-1001.) The issuing agency and regulated facilities can realize savings through the issuance of a single document that can cover multiple facilities, a simplified application procedure, and no requirement that a hearing may potentially be held for each covered facility. Only the general permit itself requires a hearing.

A general permit can be established outside of and pursuant to rules, or within a rule itself. This proposed General Permit is required to be established in rule and is written as one rule Section.

Scope of this General Permit. ADEQ regulates non-municipal solid waste landfills (NMSWLFs) under both the Solid Waste and Aquifer Protection Permit (APP) Programs. These landfills are identified in A.R.S. § 49-762 as facilities requiring Solid Waste Facility Plan Approval. Under A.R.S. § 49-761(C), solid waste rules for NMSWLFs may not be more stringent than or conflict with 40 CFR 257. Section 49-761(C) separates ADEQ's authority for solid waste rules from aquifer protection standards and allows aquifer protection standards that are more stringent. At mining sites, NMSWLFs are generally considered discharging facilities pursuant to A.R.S. § 49-241 and are often included in what is known as an area-wide APP to specify those aquifer protection standards. Rather than issuing a separate Plan Approval to identify the solid waste requirements, ADEQ has historically included the requirements in the APP that covers the entire mining site. This proposed

General Permit is drafted so that it will cover the solid waste requirements of these mining landfills with one document.

Advantages of this General Permit. This General Permit should free permit staff from having to write the same or similar solid waste conditions in individual permits multiple times. In addition, it eliminates the inefficient division of labor resulting from a single permit needing drafting and coordination by both the Waste and Water Divisions at ADEQ.

This permit will also provide greater certainty to mining entities with landfills. Applicants and commenters have expressed concern over whether and to what extent non-groundwater conditions can be included in APPs. This has complicated the negotiation of APP permit conditions related to landfills and could potentially result in permits that are not consistent in this regard. This general permit contains uniform, specific criteria and methods to demonstrate compliance with the general performance standards in 40 CFR 257 and would provide greater assurance that each similarly situated landfill is being regulated in the same way.

In order to establish a general permit under A.R.S. § 49-706, 3 conditions must be satisfied: 1) the facilities, activities or practices in the class of eligible facilities must be substantially similar; 2) there should not be environmental or public health benefits that would be gained from issuing individual permits that offset the savings of the general permit, and 3) the Director must be satisfied that the requirements in the general permit will enable the facilities covered under it to meet all applicable solid waste requirements.



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With this proposed general permit, the first requirement is realized because the eligibility requirements are drafted so that the landfills described by the permit and their waste disposal practices are substantially similar. Stakeholders have indicated that there are 10-20 of these hard rock mining landfills.

ADEQ has also determined that there would be little, if any, environmental or public health benefit gained from writing individual permits for these landfills compared to a single general permit. The solid waste requirements for these facilities are contained in 40 CFR 257 and A.R.S. Title 49 and are related more to public safety than public health, e.g. protection from fires and explosions. Impeding vector access to waste is also covered easily in a general permit since these facilities tend to be located away from populated areas.

Third, although the proposed general permit includes flexible language relating to the operating requirements in order to minimize permittee cost, there are sufficient built-in opportunities for ADEQ and the applicant to exchange information about the mechanisms the individual landfills may choose to use to meet the requirements. In order to issue authority to operate, ADEQ looks at any individual conditions that would apply to the landfill.

**6. 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:**

None

**7. 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

**8. The preliminary summary of the economic, small business and consumer impact:**

Identification of the proposed rulemaking: 18 A.A.C. 13, Article 8 (For further information, see Part 5 of this preamble.)

This rule provides an alternative permitting mechanism and regulatory structure for non-municipal solid waste landfills (NMSWLFs) at mining sites. The entities that own and operate these landfills will be potentially affected by this rule, if they choose to apply for coverage under the General Permit. In addition, this rule affects ADEQ since it changes the permit issuance procedures for these facilities.

Costs and benefits for ADEQ. This general permit rule should free ADEQ permit staff from having to write the same or similar solid waste conditions in individual permits multiple times. In addition, it eliminates an inefficient division of labor where a single permit needs to be drafted and coordinated by both the Waste and Water Divisions at ADEQ.

Costs and benefits for entities that own and operate mining landfills

This permit will provide greater certainty to mining entities with landfills. Applicants and commenters have expressed concern over whether and to what extent non-groundwater conditions can be included in APPs. This has complicated the negotiation of APP permit conditions related to landfills and could potentially result in permits that are not consistent in this regard. This general permit contains uniform, specific criteria and methods to demonstrate compliance with the general performance standards in 40 CFR 257 and would provide greater assurance that each similarly situated landfill is being regulated in the same way.

This general permit should also provide two other economic benefits: a less costly and a quicker alternative to obtaining Solid Waste Facility Plan approval. The initial fee prescribed by R18-13-702 to review a Solid Waste Facility Plan application for the non-APP requirements for a NMSWLF operating under an APP is \$2,000 with a maximum fee of \$50,000, whereas initial and maximum fees for other solid waste landfills are \$20,000 and \$200,000 respectively. The billing rate for the Plan review is \$122 per hour, but the actual costs are difficult to quantify as there is currently no process for obtaining Solid Waste Facility Plan approval for NMSWLFs. Costs related to solid waste requirements applicable to landfills are currently incurred by applicants during the APP permitting process, but these have varied over time, have differed between applications, and are as a rule difficult to readily isolate because ADEQ costs tied to landfill review are included in the larger overall ADEQ bills for APP processing.

In general, the process is longer for both the Solid Waste Plan approval and approval under APP and involves: 1) submitting an application; 2) obtaining agency initial review of whether the plan is administratively complete or not; 3) responding to requests for additional information from the agency; issuing a public notice of the plan and responding to public comments; responding to technical deficiencies identified by the agency; and final approval or disapproval.

In contrast, the cost to obtain coverage under this proposed General Permit is a flat fee of \$15,000. The applicant submits a Notice of Intent with the information specified in rule. The Department reviews the information and either issues an Authority to Operate or denies an Authority to Operate.

Probable Impact on Small Businesses. ADEQ is not aware of any small business that has a landfill at a mining operation. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if possible. As discussed above, this general permit is expected to have a positive economic impact on all entities that choose coverage. However, if a small business was to be covered under this permit, state and federal law does not allow ADEQ to relax requirements contained in A.R.S. Title 49 or 40 CFR 257. Therefore, ADEQ would have no legal or

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feasible option to reduce stringency for small businesses. Moreover, in developing this general permit, ADEQ has built flexibility into the permit in the form of alternative operational requirements in subsections (G)(3), (G)(4) and (D)(5). This flexibility is beneficial to small and large businesses alike.

**Conduct Change Analysis.** Under A.R.S. § 41-1055(A)(1), the agency must discuss the conduct the rule is designed to affect and how it will affect it. This general permit supplements general federal requirements with objective performance criteria for operation of a specific set of non-municipal solid waste landfills and deters conduct that would not meet those performance criteria. In general, the permit protects the environment and public safety and provides a level playing field for similarly situated entities.

**Probable Benefits Outweigh the Probable Costs; Rule Imposes the Least Burden Necessary to Achieve the Regulatory Objective.** [A.R.S. § 41-1052(D)(3)] ADEQ has determined that its own costs to develop this rule will be relatively small-less than \$50,000 in employee salaries with no other costs involved. The Department has also identified potential benefits for itself with more efficient permitting. In addition, ADEQ estimates that there are significant benefits for regulated facilities that decide to obtain coverage under the General Permit in the cost of the permit. Although this may result in less revenue for ADEQ, ADEQ costs will also decrease proportionately, perhaps allowing personnel to be re-deployed to other areas. When balanced against the probable benefits resulting from reduced permit fees, faster processing, and reduced uncertainty, ADEQ's preliminary determination is that the probable benefits outweigh the probable costs.

ADEQ has also determined that the requirements of the general permit impose the least burden necessary to achieve the regulatory objective. The regulatory objective is to establish a general permit under A.R.S. § 49-706 that contains design and operating rules for this class of landfills conforming to A.R.S. § 49-761(C). In developing this permit, ADEQ worked with regulated entities, including the Arizona Mining Association, to make sure that the appropriate solid waste requirements were in the permit, and in such a way as to provide maximum clarity and flexibility.

**9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

Name: Mark Lewandowski  
Address: Arizona Department of Environmental Quality  
Waste Programs Division  
1110 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)  
Fax: (602) 771-4381  
TTD: (602) 771-4829  
E-mail: lewandowski.mark@azdeq.gov

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: July 8, 2014  
Time: 1:30 p.m.  
Location: Arizona Department of Environmental Quality  
1110 W. Washington, Suite 145  
Phoenix, AZ 85007  
Nature: Public hearing on the proposed rules, with opportunity for formal comments on the record. Please call (602) 771-4795 for special accommodations pursuant to the Americans with Disabilities Act.

The close of the written comment period will be 5:00 p.m., July 10, 2014. Submit comments to the individual identified in item #4.

**11. 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:**

**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:**

This proposed rule would establish a general permit.

**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:**

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A.R.S. § 49-761(C) requires that rules ADEQ adopts for NMSWLFs may not be more stringent than or conflict with 40 CFR 257 for nonprocedural standards. A.R.S. § 49-761(C) contains another limited exception for more stringent aquifer protection standards which is not relevant for this permit since it only contains solid waste standards. A similar provision (prohibiting rules more stringent than federal standards) exists at A.R.S. § 49-104(A)(17). This proposed general permit is not more stringent than 40 CFR 257.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of businesses in this state to the impact on businesses in other states:**

No person has submitted a competitiveness analysis under A.R.S. § 41-1055(I).

**12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None

**13. The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOLID WASTE MANAGEMENT**

**ARTICLE 2. GENERAL PERMITS**

Section

R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

**ARTICLE 2. GENERAL PERMITS**

**R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations**

**A. This general permit is adopted pursuant to A.R.S. § 49-706 as an alternative to plan approvals for facilities identified in A.R.S. § 49-762(A)(1). This general permit authorizes disposal of solid waste in a landfill at a mining operation if the landfill meets one of the following criteria:**

1. The landfill is identified as a discharging facility in an area-wide aquifer protection permit and is located within the pollutant management area developed for that permit; or
2. The landfill is located within the pollutant management area of an area-wide aquifer protection permit but is exempt from the permit requirement because it contains only inert material as defined in A.R.S. § 49-201; or
3. The landfill is located at a site qualifying as a groundwater protection permit facility as defined in A.R.S. § 49-241.01(C) and the site has submitted an administratively complete application for an aquifer protection permit that has not been denied. Landfills that are located at mining operations and that are subject to best management practices under A.R.S. § 49-762.02(6) are required to comply with those practices and do not require coverage under this general permit.

**B. Authorized and prohibited materials.**

1. Disposal of the following is allowed under this general permit:
  - a. Solid waste generated at the mining operation where the landfill is located; and
  - b. Incidental amounts of putrescible waste generated at the mining operation where the landfill is located. For the purposes of this Section, "putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.
2. Disposal of the following is prohibited under this general permit:
  - a. Used oil as defined in A.R.S. § 49-801(3).
  - b. Human excreta as defined in R18-13-1102.
  - c. Special waste as defined in A.R.S. § 49-851(A)(5).
  - d. Biohazardous medical waste as defined in R18-13-1401.
  - e. Radioactive waste material regulated for disposal pursuant to Title 12, Chapter 1 of the Arizona Administrative Code.
  - f. Hazardous waste as defined in A.R.S. § 49-921(5), including hazardous waste generated by a conditionally exempt small quantity generator.
  - g. Bulk or noncontainerized liquid waste.
  - h. Waste containing polychlorinated biphenyls regulated for disposal pursuant to 40 CFR 761.

**C. A person may operate a landfill at a mining operation under this general permit if:**

1. Operation of the landfill complies with the requirements of this Section;
2. The person files a Notice of Intent to Operate that complies with subsections (D) and (E);

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3. The person satisfies any requests for additional information from the Department regarding the Notice of Intent to Operate or landfill operation and receives a written Authorization to Operate from the Director; and
4. The person submits the applicable fee established in R18-13-801 for the Disposal category.
- D.** Notice of Intent to Operate. An applicant shall submit to the Department a Notice of Intent to Operate under this general permit. The Notice shall contain:
  1. The name, address, and telephone number of the applicant;
  2. The name, address, and telephone number of a contact person familiar with the operation of the facility;
  3. The legal description of the landfill area, latitude and longitude coordinates, a detailed figure(s) showing both the existing landfill boundary and the anticipated future waste footprint of the landfill at the time of closure, and a map showing the location of the landfill within the mining operation;
  4. A description of how the applicant will meet the public access restrictions in subsection (H)(3);
  5. A description of how the applicant will meet the cover requirements in subsection (H)(4);
  6. A description of how the applicant will meet the methane requirements in subsection (H)(5). For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring sampling results from either:
    - a. One measurement per acre of landfill waste footprint; or
    - b. A minimum of four monitoring probes installed to the depth of refuse around the perimeter of the landfill and measured quarterly for the presence of methane gas for a period of one year;
  7. A narrative description of the landfill, including whether the landfill is existing or planned, the acreage of the current and planned waste footprint, estimated disposal capacity in cubic yards, expected lifespan, projected rate of waste disposal in tons per day or per week, and sources of solid waste generation;
  8. A listing of any other federal or state environmental permits issued for or needed by the landfill, including any individual plan approval, APP, Groundwater Quality Protection Permit, or Notice of Disposal; and
  9. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with all terms of this general permit.
- E.** Existing facility application deadline. Existing facilities that qualify for coverage under subsections (A)(1), (A)(2), or (A)(3) on the effective date of this rule shall submit a Notice of Intent to Operate within 2 years of the effective date of this rule to obtain coverage. The Director may extend this date in individual cases if the facility could not have submitted an administratively complete Notice in time with reasonable diligence.
- F.** Authorization review.
  1. Inspection. The Department may inspect the facility to determine that the applicable terms of this general permit are being met.
  2. Authority to Operate issuance.
    - a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of this general permit, the Director shall issue an Authority to Operate.
    - b. The Authority to Operate authorizes the person to operate the landfill under the terms of this general permit.
  3. Authority to Operate denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of this general permit, the Director shall notify the person of the decision not to issue the Authority to Operate and the person shall not operate the landfill under this general permit. The notification shall inform the person of:
    - a. The reason for the denial with reference to the statute or rule on which the denial is based;
    - b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
    - c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
- G.** Statutory requirements. The landfill shall be:
  1. Located according to the applicable location restrictions in A.R.S. § 49-772; and
  2. Subject to a restrictive covenant recorded pursuant to A.R.S. § 49-771.
- H.** Operational requirements.
  1. Inspect the landfill at least quarterly and after large storm events for overall integrity and condition of the facility, including stormwater diversions, and conduct maintenance and repairs as needed. For the purposes of this Section, a "large storm event" is defined as one-half inch of precipitation in any 24-hour period.
  2. Direct storm water runoff from surrounding areas away from the landfill.
  3. Restrict public access to the landfill or to the mining operation site by signs or physical barriers, including natural barriers.
  4. Apply cover at such frequencies and in such a manner as to control windblown dispersion of waste, reduce the risk of fire and impede disease vectors' access to the waste, taking into account the types and volumes of waste placed in the landfill, the frequency of disposal, and other relevant considerations. The Department may allow other techniques that are demonstrated to be equally protective as applying cover material.

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5. Concentrations of methane gas shall not exceed 25% of the lower explosive limit in facility structures within 100 feet of the landfill boundary and shall not exceed the lower explosive limit beyond the landfill boundary.
6. Methane monitoring.
  - a. For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring data as described in subsection (D)(6) with the Notice of Intent to Operate.
    - i. If the data demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit, then no methane monitoring is required in order to operate under this permit.
    - ii. If the data demonstrate that concentrations of methane gas exceed 25% of the lower explosive limit, then annual methane monitoring using one of the data gathering methods described in subsection D(6) is required in order to operate under this permit. Results of such annual methane monitoring shall be submitted to the Department.
      - (1) A person operating a landfill subject to annual methane monitoring may reduce monitoring to once every five years if the results of three consecutive annual sampling events demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit.
      - (2) A person operating a landfill subject to annual methane monitoring may request the Department to reduce or eliminate such monitoring based on any other methods approved by the Department, including consideration of the potential for methane gas to be present in facility structures within 100 feet of the landfill boundary at concentrations exceeding 25% of the lower explosive limit.
  - b. For landfills that have not accepted waste prior to the effective date of this Section, no methane monitoring is required in order to obtain coverage or operate under this permit.
7. Maintain an operating record that documents compliance with the conditions in this permit.
- I.** Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
  1. Landfill construction drawings and as-built plans, if available;
  2. The operating record required by subsection (H)(7); and
  3. Methane monitoring results, if any, obtained under subsection (H)(6).
- J.** Reporting requirements. A permittee shall report the following to the Department:
  1. Methane monitoring concentrations that exceed those listed in subsection (H)(5) within seven days of the determination.
  2. A change in ownership or expansion of the planned waste footprint shall require the filing of a new Notice of Intent to Operate.
- K.** General applicability. Landfills covered under this general permit:
  1. Are not subject to rules adopted by the Department under A.R.S. § 49-761.
  2. Satisfy the approval requirements in A.R.S. §§ 49-762.03, 49-762.04 and 49-762.07(E).
- L.** For the purposes of this Section, "mining" has the definition at A.R.S. § 27-301.