

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 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER POLLUTION CONTROL

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 2852.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 27, 2013.

[R14-166]

PREAMBLE

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

R18-9-1002	Amend
R18-9-1015	Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 49-203, 49-255.01(B), and 49-255.03(A)
Implementing statutes: A.R.S. §§ 49-255.01 and 49-255.03
- 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. 135, January 17, 2014
- 4. The agency's contact person who can answer question about the rulemaking:**

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Address:	Department of Environmental Quality 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-4836 (Toll-free number in Arizona: (800) 234-5677)
Fax:	(602) 771-4834
E-mail:	lestarge.wendy@azdeq.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Arizona Department of Environmental Quality (ADEQ) is proposing to repeal the prohibition on incineration of biosolids, thereby allowing incineration as a means of disposal of biosolids.

What are biosolids?

Domestic sewage is the waste or wastewater from humans or household operations that is discharged to or otherwise enters a wastewater treatment plant. 40 C.F.R. § 503.9. Through treatment at a wastewater treatment plant, sewage sludge (the solid, semisolid or liquid residue byproduct) is generated. Biosolids are that part of sewage sludge that is used beneficially, usually as a soil amendment for agricultural purposes. Federal law uses the term sewage sludge, but the U.S. Environmental Protection Agency (EPA) uses the terms sewage sludge and biosolids interchangeably in guidance documents. Biosolids are defined in A.A.C. R18-9-1001, as a subset of sewage sludge that is beneficially applied as a soil amendment for agricultural purposes. Biosolids have been used beneficially in Arizona by adding to nutrient-poor soil to increase plant production.

Section 405 of the Clean Water Act (33 U.S.C. 1345) regulates the disposal of sewage sludge in order to prevent it from entering waters of the U.S. For biosolids that are not used beneficially as a soil amendment for agricultural purposes, other disposal means include landfills or incineration. Arizona has regulated aspects of biosolids since 1979. ADEQ's Biosolids/Sewage Sludge Management Program implements Section 405 of the Clean Water Act, A.R.S. § 49-255.03, and 18 A.A.C. 9, Article 10. ADEQ's biosolids rules require that any person applying, generating or transporting biosolids/sewage sludge in Arizona must register that activity. The rules are self-implementing by the person who uses, transports, applies biosolids to land, or places biosolids on a surface disposal site.

Why is ADEQ proposing this change?

ADEQ was delegated the Biosolids/Sewage Sludge Management Program in March 31, 2004 by the EPA. As a federally-delegated program, ADEQ's laws, rules, and program must comply with EPA requirements. Arizona has prohibited incineration of biosolids under R18-9-1002(G) since 2001.

Within the past two years, ADEQ has received inquiries regarding the prohibition on incineration of biosolids, from such groups as the AZ Water Association, who are interested in alternative energy generation. Emerging trends for "best-practices" for the management of biosolids advocate energy neutrality at wastewater treatment plants. With rapidly evolving processes and technologies, such as pyrolysis, gasification and incineration, owners of wastewater treatment plants see that the goal of achieving energy recovery (thermal and electrical energy) from biosolids can be done in a technically sound, environmentally compatible, and cost effective manner.

EPA's rules on biosolids are in 40 CFR, Part 503 and include Subpart E on Incineration. With the repeal on the prohibition of incineration, ADEQ proposes to incorporate by reference Subpart E of the federal rules in order to properly regulate biosolids incinerators. Subpart E rules include monitoring the exit gas from the incinerator and ensuring that National Emission Standards for air quality for specified pollutants, such as beryllium or lead are not exceeded. The Subpart E rules are based on the Clean Water Act, even though they rely on National Emission Standards in 40 CFR Part 61, promulgated under the Clean Air Act.

Clean Air Act regulation

An owner of a biosolids incinerator will need to comply with both Clean Water Act and Clean Air Act requirements, but the Clean Air Act rules are much more comprehensive with respect to air quality concerns. An owner of any future biosolids incinerator will need to obtain a Clean Air Act Permit from ADEQ's Air Quality Division before beginning construction. ADEQ's Air Quality Division will evaluate the proposed facility at that time, determine which applicable federal and state laws apply, and determine any applicable control technology. The Clean Air Act also provides for public participation as part of the permitting process.

Three Arizona counties (Maricopa, Pima, and Pinal) have their own air pollution control agencies and have jurisdiction over stationary sources of air pollutants within their counties (except for refineries, copper smelters, coal-fired power plants, and Portland cement plants). These three counties would be responsible for any Clean Air Act permitting or inspections of new biosolids incinerators located within their respective jurisdictions.

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:

Not applicable

7. 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

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

ADEQ believes that the proposed rule will result in minimal costs to ADEQ. The Biosolids/Sewage Sludge Management Program is under ADEQ's Water Quality Division. As requirements in 40 CFR 503 Subpart E are self-implementing for the entity that seeks to incinerate biosolids, the Water Quality Division will incur minor additional workload in reviewing reports. Any additional workload of permitting and inspecting would be in ADEQ's Air Quality Division. The Air Quality Division already has authority to issue any permits required under the Clean Air Act. The Air Quality Division may incur some costs in becoming familiar with any particularities of biosolids incinerators.

Maricopa, Pima, and Pinal counties, the three Arizona counties with their own air pollution control agencies, could face costs related to any permitting or inspections of new biosolids incinerators located within their respective jurisdictions.

This rulemaking does not impose costs on the current status quo of generators of biosolids or land applicators of biosolids. By eliminating the prohibition on incineration, generators of biosolids may incur benefits in having increased options for management of biosolids. Any generator of biosolids that proposes to construct and operate an incinerator (or any other entity that proposes the same) will face some costs in complying with Subpart E air emissions as required under the Clean Water Act.

Notices of Proposed Rulemaking

Land applicators of biosolids may face increased costs (or reduced benefits) because the supply of biosolids for agricultural purposes may be reduced. Usually the generators of biosolids pay the land applicators to manage the biosolids through land application. Biosolids could be more valuable to the generators of biosolids with increased options of energy recovery through incineration, which consequently could result in lower revenues for the land applicator.

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

Name: Wendy LeStarge
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Fax: (602) 771-4834
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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:

ADEQ has scheduled an oral proceeding to receive oral comments on the rules, in accordance with A.R.S. § 41-1023; the time, place, and location of the hearing is listed below:

Date: December 1, 2014
Time: 1:00 p.m.
Location: Department of Environmental Quality
1110 W. Washington, Room 3175 A & B
Phoenix, AZ 85007
Nature: Oral Proceeding

Written, faxed, or e-mailed comments may be made with the contact person listed in item #4. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 5:00 p.m. December 1, 2014. This rulemaking's public record will close at 5:00 p.m. on December 1, 2014.

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 rule does not require permits, but establishes applicability and general prohibitions necessary to protect public health.

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:

The administrative rule is consistent with federal law and is no more stringent than federal law.

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

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

R18-9-1002(G) 40 CFR Part 503, Subpart E, July 1, 2013 edition

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

Section

R18-9-1002. Applicability and Prohibitions

R18-9-1015. Inspection

**ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE,
AND TRANSPORTATION OF BIOSOLIDS**

R18-9-1002. Applicability and Prohibitions

A. This Article applies to:

1. Any person who:

- a. Prepares biosolids for land application or disposal in a sewage sludge unit or in an incinerator,
- b. Transports biosolids for land application or incineration, or disposal in a sewage sludge unit,
- c. Applies biosolids to the land,
- d. Owns or operates a sewage sludge unit, ~~or~~
- e. Owns or leases land to which biosolids are applied, or
- f. Owns or operates an incinerator that fires sewage sludge.

2. Biosolids applied to the land or placed on a surface disposal site,

3. Land where biosolids are applied, and

4. A surface disposal site.

B. The land application of biosolids in a manner consistent with this Article is exempt from the requirements of the aquifer protection program established under A.R.S. Title 49, Chapter 2, Article 3 and 18 A.A.C. 9, Articles 1, 2, and 3.

C. Except as provided in subsection (D), the land application of biosolids in a manner that is not consistent with Articles 9 and 10 of this Chapter is prohibited.

D. The Department may permit the land application of biosolids in a manner that differs from the requirements in R18-9-1007 and R18-9-1008 if the land application is permitted under the aquifer protection permit program established under A.R.S. Title 49, Chapter 2, Article 3, and 18 A.A.C. 9, Articles 1, 2, and 3.

E. Surface disposal site.

1. Any person who prepares biosolids that are placed in a sewage sludge unit, or places biosolids in a sewage sludge unit, or who owns or operates a biosolids surface disposal site shall comply with 40 CFR 503, Subpart C, which is incorporated by reference in R18-9-A905(A)(9), and

- a. The pathogen reduction requirements in R18-9-1006, and
- b. The vector attraction reduction requirements in R18-9-1010.

2. In addition to the requirements under subsection (E)(1), any person who owns or operates a biosolids surface disposal site shall apply for, and obtain, a permit under 18 A.A.C. 9, Articles 1 and 2.

F. A person shall not apply bulk biosolids to the land or place bulk biosolids in a surface disposal site or fire sewage sludge in a sewage sludge incinerator if the biosolids are likely to adversely affect a threatened or endangered species as listed under section 4 of the Endangered Species Act (16 U.S.C. 1533), or its designated critical habitat as defined in 16 U.S.C. 1532.

G. ~~The incineration of~~ A person incinerating biosolids is prohibited shall comply with the requirements set out in 40 CFR Part 503, Subpart E, July 1, 2013 edition, which is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the U.S. General Printing office at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

R18-9-1015. Inspection

A person subject to this Article shall allow, during reasonable times, a representative of the Department to enter property subject to this Article, to:

1. Inspect all biosolids pathogen and vector treatment facilities, transportation vehicles, incinerators that fire sewage sludge, and land application sites to determine compliance with this Article;
2. Inspect and copy records prepared in accordance with this Article; and
3. Sample biosolids quality.