ATTACHMENT K

ARIZONA ADMINISTRATIVE CODE

(Title 18, Chapter 8)

ATTACHMENT K

ARIZONA ADMINISTRATIVE CODE

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APPENDICES

APPENDIX K-1

ARIZONA ADMINISTRATIVE CODE

TITLE 18 CHAPTER 8 (REVISED 6/30/2010)

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY HAZARDOUS WASTE MANAGEMENT

Editor's Note: Article 1 was exempt from the regular rulemaking process (Laws 1995, Ch. 232 § 5). However the Department was required to provide a notice of hearing and public hearing before adoption of this rule. The emergency rules were approved by the Attorney General. (Supp. 96-1). Editor's Note added to clarify exemptions of emergency adoption (Supp. 97-1). The Article was adopted permanently effective December 4, 1997 (Supp. 97-4).

ARTICLE 1. REMEDIAL ACTION REQUIREMENTS

Article 1, consisting of R18-8-101, adopted permanently through the regular rulemaking process, effective December 4, 1997 (Supp. 97-4).

Article 1, consisting of R18-8-101, adopted by emergency action effective March 22, 1996, pursuant to A.R.S. § 41-1026; in effect until permanent rules are adopted pursuant to Laws 1995, Chapter 232 § 5 (Supp. 96-1).

Section

ARTICLE 2. HAZARDOUS WASTES

Article 2 consisting of Section R18-8-273 adopted effective June 13, 1996 (Supp. 96-2).

Article 2 consisting of Sections R9-8-1860 through R9-8-1866, R9-8-1869 through R9-8-1871, and R9-8-1880 amended and renumbered as Article 2, Sections R18-8-260 through R18-8-266, R18-8-269 through R18-8-271, and R18-8-280 (Supp. 87-2).

Section

ARTICLE 3. RECODIFIED

Title 18, Chapter 8, Article 3, consisting of Sections R18-8-301 through R18-8-305, R18-8-307, Table A, Exhibit 1, and Appendices A and B, recodified to Title 18, Chapter 13, Article 13, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 3, consisting of Sections R18-8-301 through R18-8-305, adopted effective August 16, 1993 (Supp. 93-3).

Article 3, consisting of Section R18-8-306, adopted again by emergency action effective May 26, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2).

Article 3, consisting of Section R18-8-306, adopted by emergency action effective February 22, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired.

Section

ARTICLE 4. RECODIFIED

Title 18, Chapter 8, Article 4, consisting of Section R18-8-402, recodified to Title 18, Chapter 13, Article 9, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 17 consisting of Sections R9-8-1711 and R9-8-1717 renumbered as Article 4, Sections R18-8-401 and R18-8-402 (Supp. 87-3).

Section

ARTICLE 5. RECODIFIED

Title 18, Chapter 8, Article 5, consisting of Sections R18-8-502 through R18-8-512, recodified to Title 18, Chapter 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 4 consisting of Sections R9-8-411 through R9-8-416, R9-8-421, R9-8-426 through R9-8-428, and R9-8-431 through R9-8-433 renumbered as Article 5, Sections R18-8-501 through R18-8-513 (Supp. 87-3).

Section
R18-8-501. Expired
R18-8-502. Recodified
R18-8-503. Recodified
R18-8-504. Recodified
R18-8-505. Recodified
R18-8-506. Recodified
R18-8-507. Recodified
R18-8-508. Recodified
R18-8-509. Recodified
R18-8-510. Recodified
R18-8-511. Recodified
R18-8-512. Recodified
R18-8-513. Expired

ARTICLE 6. RECODIFIED

Existing Sections in Article 6 recodified to 18 A.A.C. 13, Article 11 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

Article 12 consisting of Sections R9-8-1211 through R9-8-1216, R9-8-1221 through R9-8-1225, R9-8-1231 through R9-8-1236, and R9-8-1241 through R9-8-1244 renumbered as Article 6, Sections R18-8-601 through R18-8-621 (Supp. 87-3).

Section
R18-8-601. Expired
R18-8-602. Recodified
R18-8-603. Recodified
R18-8-604. Recodified
R18-8-605. Expired
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R18-8-608. Recodified
R18-8-609. Expired
R18-8-610. Expired
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R18-8-615. Recodified
R18-8-616. Recodified
R18-8-617. Recodified
R18-8-618. Recodified
R18-8-619. Recodified
R18-8-620. Recodified
R18-8-621. Expired

ARTICLE 7. RECODIFIED

18 A.A.C. 8, Article 7, consisting of Sections R18-8-701 through R18-8-710, recodified to Title 18, Chapter 13, Article 12, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 7, consisting of Sections R18-8-701 through R18-8-708, adopted permanently with changes effective July 6, 1993 (Supp. 93-3).

Article 7, consisting of Sections R18-8-709 and R18-8-710, adopted again by emergency action effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired.

Article 7, consisting of Sections R18-8-709 and R18-8-710, adopted by emergency action effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1).

Section
R18-8-701. Recodified
R18-8-702. Recodified
R18-8-703. Recodified
R18-8-704. Recodified
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R18-8-710. Recodified

ARTICLE 8. RESERVED

ARTICLE 9. RESERVED

ARTICLE 10. RESERVED

ARTICLE 11. RESERVED

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ARTICLE 13. RESERVED

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ARTICLE 15. RESERVED

ARTICLE 16. RECODIFIED

Article 16, consisting of Sections R18-8-1601 through R18-8-1614, recodified to 18 A.A.C. 13, Article 16 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

Section
R18-8-1601. Recodified
R18-8-1602. Recodified
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R18-8-1608. Recodified
R18-8-1609. Recodified
R18-8-1610. Recodified
R18-8-1611. Recodified
R18-8-1612. Recodified
R18-8-1613. Recodified
R18-8-1614. Recodified

ARTICLE 1. REMEDIAL ACTION REQUIREMENTS

R18-8-101. Remedial Action Requirements; Level and Extent of Cleanup

A. This Article is applicable to Chapter 8 of this Title.

B. In any instance where soil remediation is done under this Chapter, it shall be conducted in accordance with A.A.C. R18-7-201 through R18-7-209.

Historical Note

Emergency rule adopted effective March 22, 1996, pursuant to A.R.S. §§ 49-152 and 41-1026; in effect until permanent rules are adopted (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1 & Supp. 97-3). Adopted permanently through the regular rulemaking process, effective December 4, 1997 (Supp. 97-4).

ARTICLE 2. HAZARDOUS WASTES

R18-8-201. 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.

Historical Note
New Section made by exempt rulemaking at 16 A.A.R. 846, effective July 1, 2010 (Supp. 10-2).

R18-8-202. Reserved

through

R18-8-259. Reserved

R18-8-260. Hazardous Waste Management System: General

A. Federal regulations cited in this Article are those revised as of July 1, 2006 (and no future editions), unless otherwise noted. 40 CFR 124, 260 through 266, 268, 270 and 273 or portions of these regulations, are incorporated by reference, as noted in the text. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not incorporated by reference may be used as guidance in interpreting federal regulatory language.

B. Any reference or citation to 40 CFR 124, 260 through 266, 268, 270, and 273, or portions of these regulations, appearing in the body of this Article and regulations incorporated by reference, includes any modification to the CFR section made by this Article. When federal regulatory language that has been incorporated by reference has been amended, brackets [ ] enclose the new language. The subsection labeling in this Article may or may not conform to the Secretary of State's formatting requirements, because the formatting reflects the structure of the incorporated federal regulations.

C. All of 40 CFR 260 and the accompanying appendix, revised as of January 29, 2007 (and no future editions), with the exception of 40 CFR 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ). Copies of 40 CFR 260 are available at www.gpoaccess.gov/cfr/index.html.

D. § 260.2, titled "Availability of information; confidentiality of information" is amended by the following:
1. § 260.2(a). Any information provided to [the DEQ] under [R18-8-260 et seq. shall] be made available to the public to the extent and in the manner authorized by the [Hazardous Waste Management Act (HWMA), A.R.S. § 49-921 et seq.; the Open Meeting Law, A.R.S. § 38-431 et seq.; the Public Records Statute, A.R.S. § 39-121 et seq.; the Administrative Procedure Act, A.R.S. § 41-1001 et seq.; and rules promulgated pursuant to the above-referenced statutes], as applicable.
2. § 260.2(b) is replaced with the following:
   a. The DEQ shall make a record or other information, such as a document, a writing, a photograph, a drawing, sound or a magnetic recording, furnished to or obtained by the DEQ pursuant to the HWMA and regulations promulgated thereunder, available to the public to the extent authorized by the Public Records Statute, A.R.S. §§ 39-121 et seq.; the Administrative Procedure Act, A.R.S. §§ 41-1001 et seq.; and the HWMA, A.R.S. §§ 49-921 et seq. Specifically, the DEQ shall disclose the records or other information to the public unless:
      i. A statutory exemption authorizes the withholding of the information; or
      ii. The record or other information contains a trade secret concerning processes, operations, style of work, or apparatus of a person, or other information that the Director determines is likely to cause substantial harm to the person's competitive position.
   b. Notwithstanding subsection (a):
      i. The DEQ shall make records and other information available to the EPA upon request without restriction;
      ii. As required by the HWMA and regulations promulgated thereunder the DEQ shall disclose the name and address of a person who applies for, or receives, a HWM facility permit;
      iii. The DEQ and any other appropriate governmental agency may publish quantitative and qualitative statistics pertaining to the generation, transportation, treatment, storage, or disposal of hazardous waste; and
      iv. An owner or operator may expressly agree to the publication or to the public availability of records or other information.
   c. A person submitting records or other information to the DEQ may claim that the information contains a confidential trade secret or other information likely to cause substantial harm to the person's competitive position. In the absence of such claim, the DEQ shall make the information available to the public on request without further notice. A person making a claim of confidentiality shall assert the claim:
      i. At the time the information is submitted to, or otherwise obtained by, the DEQ
      ii. By either stamping or clearly marking the words "confidential trade secret" or "confidential information" on each page of the material containing the information. The person may assert the claim only for those portions or pages that actually contain a confidential trade secret or confidential information; and
      iii. During the course of a DEQ inspection, or other observation, pursuant to the administration of the HWMA Program, by clearly indicating to the inspector which specific processes, operations, styles of work, or apparatus constitute a trade secret. The inspector shall record the claim on the inspection report and the claimant shall sign the report.
   d. The Director shall provide the claimant with an opportunity to submit written comments to demonstrate that the information constitutes a legitimate

confidential trade secret or confidential information. The comments shall be limited to confidential use by the DEQ pursuant to A.R.S. § 49-928. Pertinent factors to be considered by the Director for making a determination of confidentiality, and that the claimant may address in the claimant's written comments, include the following:

i. Whether the information is proprietary;
ii. Whether the information has been disclosed to persons other than the employees, agents, or other representatives of the owner; and
iii. Whether public disclosure would harm the competitive position of the claimant.

e. The Director shall make a determination of each confidentiality claim using the following procedures:
   i. When a claim of confidentiality is asserted for information submitted as part of a HWM facility permit application:
      (1) The claimant shall submit written comments demonstrating the legitimacy of the claim of confidentiality; and
      (2) The Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination as part of the completeness review pursuant to § 124.3(c) (as incorporated by R18-8-271(C)).
   ii. When a claim of confidentiality is asserted for information submitted or obtained during an inspection, or for any other information submitted to or obtained by the DEQ pursuant to this Article, but not as part of a HWM facility permit application:
      (1) The claimant may submit written comments demonstrating the legitimacy of the claim of a confidential trade secret or other confidential information within 10 working days of asserting the confidentiality claim; and
      (2) If a request for disclosure is made, the Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination. In all other instances, the Director may, on the Director's own initiative, evaluate the confidentiality claim and notify the claimant of the result of that determination within 20 working days after the time for submission of comments.
   iii. When any person, hereinafter referred to as the "requestor," submits a request to the DEQ for public disclosure of records or information, the DEQ shall disclose the records or information to the requestor unless the information has been determined to be confidential by the Director, or is subject to a claim of confidentiality that is being considered for determination by the Director.
      (1) If a confidentiality claim is under consideration by the Director, the requestor shall be notified that the information requested is under a confidentiality claim consideration and therefore is unavailable for public disclosure pending the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
      (2) When a request for disclosure is made, the claimant shall be notified, within seven working days by certified mail with return receipt requested, that the information under a claim of confidentiality has been requested and is subject to the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
      (3) If the Director disagrees with the confidentiality claim, the claimant shall have 20 working days to submit written comments either agreeing or disagreeing with the Director's evaluation.
      (4) If a confidentiality claim is denied by the Director, the Director may request the attorney general to seek a court order authorizing disclosure pursuant to A.R.S. § 49-928.

f. Records or information determined by the Director to be legitimate confidential trade secrets or other confidential information shall not be disclosed by the DEQ at administrative proceedings pursuant to A.R.S. §§ 49-923(A) unless the following procedure is observed:
   i. The DEQ shall notify both the claimant and the hearing officer of its intention to disclose the information at least 30 days prior to the hearing date. The DEQ shall send with the notice a copy of the confidential information that the DEQ intends to disclose;
   ii. The claimant and the DEQ shall be allowed 10 days to present to the hearing officer comments concerning the disclosure of such information;
   iii. The hearing officer shall determine whether the confidential information is relevant to the subject of the administrative proceeding and shall allow disclosure upon finding that the information is relevant to the subject of the administrative proceeding;
   iv. The hearing officer may set conditions for disclosure of confidential and relevant information or the making of protective arrangements and commitments as warranted; and
   v. The hearing officer shall give the claimant at least five days' notice before allowing disclosure of the information in the course of the administrative proceeding.

E. § 260.10, titled "Definitions," is amended by adding all definitions from § 270.2 (as incorporated by R18-8-260 and R18-8-270) to this Section, including the following changes, applicable throughout this Article unless specified otherwise:

1. ["Acute Hazardous Waste" means waste found to be fatal to humans in low doses or, in the absence of data on human toxicity, that has been shown in studies to have an oral lethal dose (LD) 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation lethal concentration (LC) 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or that is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness.]
2. ["Application" means the standard United States Environmental Protection Agency forms for applying for a permit, including any additions, revisions or modifications to the forms. Application also includes the informa-

tion required pursuant to §§ 270.14 through 270.29 (as incorporated by R18-8-270, regarding the contents of a Part B HWM facility permit application).]

3. ["Biennial report" means "annual report."]
4. ["Chapter" means "Article" except in § 264.52(b), see R18-8-264, and § 265.52(b), see R18-8-265.]
5. "Closure" means [, for facilities with effective hazardous waste permits, the act of securing a HWM facility pursuant to the requirements of R18-8-264. For facilities subject to interim status requirements, "closure" means the act of securing a HWM facility pursuant to the requirements of R18-8-265.]
6. ["Concentration" means the amount of a substance in weight contained in a unit volume or weight.]
7. ["Department" or "the DEQ" means the Department of Environmental Quality.]
8. "Department of Transportation" or "DOT" means the U.S. Department of Transportation.
9. ["Director" or "state Director" means the Director of the Department of Environmental Quality or an authorized representative, except in §§ 262.50 through 262.57, 268.5 through 268.6, 268.42(b), and 268.44 which are non-delegable to the state of Arizona.]
10. ["Draft permit" means a document prepared under § 124.6 (as incorporated by R18-8-271(E)) indicating the Director's tentative decision to issue, deny, modify, revoke, reissue, or terminate a permit. A denial of a request for modification, revocation, reissuance or termination, as discussed in § 124.5 (as incorporated by R18-8-271(D)), is not a draft permit.]
11. ["Emergency permit" means a permit that is issued in accordance with § 270.61 (as incorporated by R18-8-270).]
12. ["EPA," "Environmental Protection Agency," "United States Environmental Protection Agency," "U.S. EPA," "EPA HQ," "EPA Regions," and "Agency" mean the DEQ with the following exceptions:
    a. Any references to EPA identification numbers;
    b. Any references to EPA hazardous waste numbers;
    c. Any reference to EPA test methods or documents;
    d. Any reference to EPA forms;
    e. Any reference to EPA publications;
    f. Any reference to EPA manuals;
    g. Any reference to EPA guidance;
    h. Any reference to EPA Acknowledgment of Consent;
    i. References in §§ 260.2(b) (as incorporated by R18-8-260(D)(2));
    260.10 (definitions of "Administrator," "EPA region," "Federal agency," "Person," and "Regional Administrator" (as incorporated by R18-8-260(E));
    260, Appendix I (as incorporated by R18-8-260(C));
    260.11(a) (as incorporated by R18-8-260);
    261, Appendix IX (as incorporated by R18-8-261(A));
    262.32(b) (as incorporated by R18-8-262(A));
    262.50 through 262.57 (as incorporated by R18-8-262(A));
    262.80 through 262.89 (as incorporated by R18-8-262(A));
    262, Appendix (as incorporated by R18-8-262(A));
    263.10(a) Note (as incorporated by R18-8-263(A));
    264.12(a)(2), 264.71(d), 265.12(a)(2), 265.71(d);
    268.1(e)(3) (as incorporated by R18-8-268);
    268.5, 268.6, 268.42(b), and 268.44, which are non-delegable to the state of Arizona (as incorporated by R18-8-268);
    270.1(a)(1) (as incorporated by R18-8-270);
    270.1(b) (as incorporated by R18-8-270(B));
    270.2 (definitions of "Administrator," "Approved program or Approved state," "Director," "Environmental Protection Agency," "EPA," "Final authorization," "Permit," "Person," "Regional Administrator," and "State/EPA agreement") (as incorporated by R18-8-270(A));
    270.3 (as incorporated by R18-8-270(A));
    270.5 (as incorporated by R18-8-270(A));
    270.10(e)(1) through (2) (as incorporated by R18-8-270(A) and R18-8-270(D));
    270.11(a)(3) (as incorporated by R18-8-270(A));
    270.32(a) and (c) (as incorporated by R18-8-270(M) and R18-8-270(O));
    270.51 (as incorporated by R18-8-270(P));
    270.72(a)(5) and (b)(5) (as incorporated by R18-8-270(A));
    124.1(f) (as incorporated by R18-8-271(B));
    124.5(d) (as incorporated by R18-8-271(D));
    124.6(e) (as incorporated by R18-8-271(E));
    124.10(c)(1)(ii) (as incorporated by R18-8-271(I)); and
    124.13 (as incorporated by R18-8-271(L)).]
13. ["Federal Register" means a daily or weekly major local newspaper of general circulation, within the area affected by the facility or activity, except in §§ 260.11(b) (as incorporated by R18-8-260) and 270.10(e)(2) (as incorporated by R18-8-270 (D)).]
14. ["HWMA" or "State HWMA" means the State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended.]
15. ["Hazardous Waste Management facility" or "HWM facility" means any facility or activity, including land or appurtenances thereto, that is subject to regulation under this Article.]
16. ["Key employee" means any person employed by an applicant or permittee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the applicant or permittee. Key employee does not include an employee exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste.]
17. ["National" means "state" in §§ 264.1(a) and 265.1(a) (as incorporated by R18-8-264 and R18-8-265).]
18. ["Off-site" means any site that is not on-site.]
19. ["Permit" means an authorization, license, or equivalent control document issued by the DEQ to implement the requirements of this Article. Permit includes "permit-by-rule" in § 270.60 (as incorporated by R18-8-270) and "emergency permit" in § 270.61 (as incorporated by R18-8-270), and it does not include interim status as in § 270.70 (as incorporated by R18-8-270) or any permit which has not yet been the subject of final action, such as a "draft permit" or a "proposed permit."]
20. ["Permit-by-rule" means a provision of this Article stating that a facility or activity is considered to have a HWM facility permit if it meets the requirements of the provision.]
21. ["Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a HWM facility to accept hazardous waste.]
22. ["RCRA," "Resource Conservation and Recovery Act," "Subtitle C of RCRA," "RCRA Subtitle C," or "Subtitle C" when referring either to an operating permit or to the

federal hazardous waste program as a whole, mean the "State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended" with the following exceptions:

a. Any reference to a specific provision of "RCRA," "Resource Conservation and Recovery Act," "Subtitle C of RCRA," "RCRA Subtitle C," or "Subtitle C";

b. References in §§ 260.10 (definition of "Act or RCRA") (as incorporated by R18-8-260(E); 260, Appendix I, (as incorporated by R18-8-260(C)); 261, Appendix IX, (as incorporated by R18-8-261(A)); 262, Appendix, (as incorporated by R18-8-262(A)); 270.1(a)(2) (as incorporated by R18-8-270(A)); 270.2, definition of "RCRA," (as incorporated by R18-8-270(A)); and 270.51, "EPA-issued RCRA permit," (as incorporated by R18-8-270(P)).]

23. [Following any references to a specific provision of "RCRA," "Resource Conservation and Recovery Act," or "Subtitle C," the phrase "or any comparable provisions of the state Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended" shall be deemed to be added except in §§ 270.72(a)(5) and (b)(5) (as incorporated by R18-8-270(A)).]
24. ["RCRA § 3005(a) and (e)" means "A.R.S. § 49-922."]
25. ["RCRA § 3007" means "A.R.S. § 49-922."]
26. ["Recyclable Materials" mean hazardous wastes that are recycled.]
27. ["Region" or "Region IX" means "state" or "state of Arizona."]
28. ["Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, such as actions, operations, or milestone events, leading to compliance with the HWMA and this Article.]
29. ["Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.]
30. ["State," "authorized state," "approved state," or "approved program" means the state of Arizona with the following exceptions:

    References at §§ 260.10, definitions of "person," "state," and "United States," (as incorporated by R18-8-260(E)); 262 (as incorporated by R18-8-262(A));
    264.143(e)(1) (as incorporated by R18-8-264(A));
    264.145(e)(1) (as incorporated by R18-8-264(A));
    264.147(a)(1)(ii) (as incorporated by R18-8-264(A));
    264.147(b)(1)(ii) (as incorporated by R18-8-264(A));
    264.147(g)(2) (as incorporated by R18-8-264(A));
    264.147(i)(4) (as incorporated by R18-8-264(A));
    265.143(d)(1) (as incorporated by R18-8-265(A));
    265.145(d)(1) (as incorporated by R18-8-265(A));
    265.147(a)(1)(ii) (as incorporated by R18-8-265(A));
    265.147(g)(2) (as incorporated by R18-8-265(A));
    265.147(i)(4) (as incorporated by R18-8-265(A)); and
    270.2, definitions of "Approved program or Approved state," "Director," "Final authorization," "Person," and "state" (as incorporated by R18-8-270(A)).]

31. ["The effective date of these regulations" means the following dates: "May 19, 1981," in §§ 265.112(a) and (d), 265.118(a) and (d), 265.142(a) and 265.144(a) (as incorporated by R18-8-265); "November 19, 1981," in §§ 265.112(d) and 265.118(d) (as incorporated by R18-8-265); and "January 26, 1983," in § 270.1(c) (as incorporated by R18-8-270).]
32. ["TSD facility" means a "Hazardous Waste Management facility" or "HWM facility."]

F. § 260.10, titled "Definitions," as amended by subsection (E) also is amended as follows, with all definitions in §§ 260.10 (as incorporated by R18-8-260), applicable throughout this Article unless specified otherwise.

1. "Act" or ["the Act" means the state Hazardous Waste Management Act or HWMA, except in R18-8-261(B) and R18-8-262(B).]
2. "Administrator," "Regional Administrator," "state Director," or "Assistant Administrator for Solid Waste and Emergency Response" mean the [Director or the Director's authorized representative, except in § 260.10, definitions of "Administrator," "Regional Administrator," and "hazardous waste constituent" (as incorporated by R18-8-260(E));
   261, Appendix IX (as incorporated by R18-8-261(A));
   262, Subpart E;
   262, Subpart H;
   262, Appendix (as incorporated by R18-8-262);
   264.12(a) (as incorporated by R18-8-264(A));
   265.12(a) (as incorporated by R18-8-265(A));
   268.5, 268.6, 268.42(b), and 268.44, which are non-delegable to the state of Arizona (as incorporated by R18-8-268);
   270.2, definitions of "Administrator", "Director", "Major facility", "Regional Administrator", and "State/EPA agreement" (as incorporated by R18-8-270(A));
   270.3 (as incorporated by R18-8-270(A));
   270.5 (as incorporated by R18-8-270(A));
   270.10(e)(1), (2), and (4) (as incorporated by R18-8-270(A) and R18-8-270(D));
   270.10(f) and (g) (as incorporated by R18-8-270(A) and R18-8-270(E));
   270.11(a)(3) (as incorporated by R18-8-270(A));
   270.14(b)(20) (as incorporated by R18-8-270(A));
   270.32(b)(2) (as incorporated by R18-8-270(N));
   270.51 (as incorporated by R18-8-270(A));
   124.5(d) (as incorporated by R18-8-271(D));
   124.6(e) (as incorporated by R18-8-271(E));
   124.10(b) (as incorporated by R18-8-271(I));
3. "Facility" [or "activity" means:
   a. Any HWM facility or other facility or activity, including] all contiguous land, structures, appurtenances, and improvements on the land [which are] used for treating, storing, or disposing of hazardous waste, [that is subject to regulation under the HWMA program]. A facility may consist of several treatment, storage, or disposal operational units ([that is], one or more landfills, surface impoundments, or combinations of them).
   b. For the purposes of implementing corrective action under 40 CFR 264.101 (as incorporated by R18-8-264), all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).

c. Notwithstanding paragraph (b) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101(as incorporated by R18-8-264), but is subject to corrective action requirements if the site is located within such a facility.

4. ["Member of the Performance Track Program" or "Performance Track member facility" means a facility or generator that has been accepted by EPA for membership in the National Environmental Performance Track Program (as described at http://www.epa.gov/performancetrack/) and by DEQ for membership in the Arizona Environmental Performance Track Program (as described at http://www.azdeq.gov/function/about/track.html) and is still a member of both programs. The Environmental Performance Track Programs are voluntary programs for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.]
5. "New HWM facility" or "new facility" means a HWM facility which began operation, or for which construction commenced, [after November 19, 1980].
6. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, [or a limited liability corporation], partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, [state agency, or an agent or employee of a state agency].
7. "United States" means [Arizona except the following:
   a. References in §§ 262.50, 262.51, 262.53(a), 262.54(c), 262.54(g)(2), 262.54(i), 262.55(a), 262.55(c), 262.56(a)(4), 262.60(a), and 262.60(b)(2) (as incorporated by R18-8-262).
   b. All references in Part 263 (as incorporated by R18-8-263), except §§ 263.10(a) and 263.22(c).]

G. § 260.20(a), titled "General" pertaining to rulemaking petitions, is replaced by the following:

Where the Administrator of EPA has granted a rulemaking petition pursuant to 40 CFR 260.20(a), 260.21, or 260.22, the Director may accept the Administrator's determination and amend the Arizona rules accordingly, if the Director determines the action to be consistent with the policies and purposes of the HWMA.

H. § 260.20(c) and (e) are amended by replacing "*Federal Register*" with "*Arizona Administrative Register.*"

I. § 260.23, titled "Petitions to amend 40 CFR 273 to include additional hazardous wastes" pertaining to rulemaking petitions, is amended as follows: (a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part 273 of this Chapter may petition for a regulatory amendment under this Section, 40 CFR 260.20(b) through (e), and Subpart G of 40 CFR 273.

J. § 260.30, titled "Variances from classification as a solid waste," is replaced by the following: Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, and 260.33, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.

K. § 260.32, titled "Variances to be classified as a boiler," is replaced by the following:

Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a boiler pursuant to 40 CFR 260.32 and 260.33, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.

L. 40 CFR 260.41, titled "Procedures for case-by-case regulation of hazardous waste recycling activities," is amended by deleting the following from the end of the sixth, seventh and eighth sentences of paragraph (a):

"Or unless review by the Administrator is requested. The order may be appealed to the administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal."

M. As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and submit the appropriate registration fee, prescribed below, with their registration:

1. A hazardous waste transporter that picks up or delivers hazardous waste in Arizona shall pay $200 by March 1 of the year following the date of the pick-up or delivery;
2. A large-quantity generator that generated 1,000 kilograms or more of hazardous waste in any month of the previous calendar year shall pay $300; or
3. A small-quantity generator that generated 100 kilograms or more but less than 1,000 kilograms of hazardous waste in any month of the previous year shall pay $100.

N. A person shall pay hazardous waste generation fees under A.R.S. § 49-931. The DEQ shall send an invoice to large-quantity generators quarterly and small-quantity generators annually. The person shall pay an invoice within 30 days of the postmark on the invoice.

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsections (A), (C), and (E) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (C) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1860 renumbered as Section R18-8-260, and subsections (A) and (C) amended effective May 29, 1987 (Supp. 87-2). Amended subsections (D) and (E) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998; R18-8-260 corrected, text was inadvertently omitted (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Subsections in R18-8-260(F)(2) reinstated at request of the Department after a clerical error in 9 A.A.C. 816 omitted the subsections from the rule text, Office File No. M10-288, filed July 20, 2010 (Supp. 10-2).

R18-8-261. Identification and Listing of Hazardous Waste

A. All of 40 CFR 261 and accompanying appendices, revised as of January 29, 2007 (and no future editions), with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 261 are available at www.gpoaccess.gov/cfr/index.html.

B. In the above-adopted federal regulations "Section 1004(5) of RCRA" or "Section 1004(5) of the Act" means A.R.S. § 49-921(5).

C. § 261.4, titled "Exclusions," paragraph (b)(6)(i), is amended as follows:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Subpart D [(as incorporated by R18-8-261)] due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if [documentation is provided to the Director] by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

D. § 261.4, titled "Exclusions," is amended by deleting the phrase "in the Region where the sample is collected" in paragraph (e)(3).

E. § 261.5, titled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators," paragraph (b) is amended as follows:

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of [§ 261.5 (as incorporated by R18-8-261)], a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under [R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271 of this Article], and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of [§ 261.5 (as incorporated by R18-8-261)]. [However, the Director may require reports of any conditionally exempt small quantity generator or group of conditionally exempt small quantity generators regarding the treatment, storage, transportation, disposal, or management of hazardous waste if the hazardous waste of such generator or generators poses a substantial present or potential hazard to human health or the environment, when it is improperly treated, stored, transported, disposed, or otherwise managed.]

F. § 261.5, titled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators," paragraph (f)(3) is amended as follows:

(3) A conditionally exempt small quantity generator may either treat or dispose of [the] acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which is:

(i) Permitted under part 270 of this Chapter [(as incorporated by R18-8-270)];

(ii) In interim status under parts 270 and 265 of this Chapter [(as incorporated by R18-8-270 and R18-8-265)];

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under part 271 of this Chapter;

(iv) Permitted, licensed, or registered by a state to manage municipal [or industrial solid waste and approved by the owner or operator of the solid waste facility to accept acute hazardous waste from conditionally exempt small quantity generators that have not been excluded from disposing of their waste at such a facility under applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791 and] is subject to Part 258 of this Chapter;

(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under § 273 [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of § 273.

G. § 261.5, titled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators," paragraph (g) is amended as follows:

(g) In order for hazardous waste [, other than acute hazardous waste,] generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this [subsection], the generator [shall] comply with the following requirements:

(1) § 262.11 [(as incorporated by R18-8-262)];

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If [such generator] accumulates at any time more than a total of 1,000 kilograms of hazardous wastes, all of those accumulated [hazardous] wastes are subject to regulation under the special provisions of § 262 applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month as well as the requirements of §§ 263 through 266, 268, 270, and 124 [as incorporated by R18-8-262, R18-8-263 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) [(as incorporated by R18-8-262)] for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms;

(3) A conditionally exempt small quantity generator may either treat or dispose of [its] hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which is:

(i) Permitted under part 270 of this Chapter [(as incorporated by R18-8-270)];

(ii) In interim status under parts 270 and 265 of this Chapter [(as incorporated by R18-8-270 and R18-8-265)];

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this Chapter;
(iv) Permitted, licensed, or registered by a state to manage municipal [or industrial solid waste and approved by the owner or operator of the solid waste facility to accept hazardous waste from conditionally exempt small quantity generators who have not been excluded from disposing of their waste at such a facility pursuant to applicable provisions of the Solid Waste Management Act, A.R.S. §§ 49-701 through 49-791 and] is subject to Part 258 of this Chapter;
(v) Permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or
(vi) A facility which:
(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or
(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or
(vii) For universal waste managed under part 273 of this Chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of part 273 of this Chapter.

H. § 261.5, titled "Special requirements for hazardous waste generated by conditionally exempt small quantity generators," paragraph (j) is amended as follows:
(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279 [(as incorporated by A.R.S. § 49-802 into Arizona law)]. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.

I. § 261.6, titled "Requirements for recyclable materials," paragraphs (a)(1) through (a)(3) are amended as follows:
(a)(1)Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as "recyclable materials."
(2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C, F, G, and H (as incorporated by R18-8-266)] and all applicable provisions in parts 270 and 124 of this Chapter [(as incorporated by R18-8-270 and R18-8-271)]:
(i) Recyclable materials used in a manner constituting disposal (40 CFR 266, subpart C);
(ii) Hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O (as incorporated by R18-8-264 and R18-8-265)] (40 CFR 266, subpart H);
(iii) Recyclable materials from which precious metals are reclaimed (40 CFR 266, subpart F);
(iv) Spent lead acid batteries that are being reclaimed (40 CFR 266, subpart G).
(v) U.S. Filter Recovery Services XL waste (40 CFR 266, subpart O).
(3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124 (as incorporated by R18-8-262 through R18-8-266, R18-8-268, R18-8-270, and R18-8-271)] and are not subject to the notification requirements of section 3010 of RCRA:
(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:
(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56(a)(1)-(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in subpart E of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;
(B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.
(ii) Scrap metal that is not excluded under § 261.4(a)(13);
(iii) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12) (as incorporated by R18-8-261);
(iv) (A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801]; and
(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil

meets the used oil fuel specification under [A.R.S. § 49-801].

J. § 261.6, titled "Requirements for recyclable materials," paragraph (c) is amended by adding the following:

[(3) Each facility that recycles hazardous waste received from off-site and that is not otherwise required to submit an annual report under R18-8-262 through R18-8-265 shall submit Form IC, "Identification and Certification," of the Facility Annual Hazardous Waste Report to the Director by March 1 for the preceding calendar year. The annual report shall be mailed to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007. The annual report shall be submitted on a form provided by the DEQ according to the instructions for the form.]

K. § 261.11, titled "Criteria for listing hazardous waste," paragraph (a) is amended as follows:

(a) The [Director] shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(1) It exhibits any of the characteristics of hazardous waste identified in subpart C [(as incorporated by R18-8-261)].

(2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria shall be designated Acute Hazardous Waste.)

(3) It contains any of the toxic constituents listed in Appendix VIII [(as incorporated by R18-8-261)] and, after considering the following factors, the [Director] concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed:

(i) The nature of the toxicity presented by the constituent.

(ii) The concentration of the constituent in the waste.

(iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in (a)(3)(vii) of this [subsection].

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate.

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (E) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1861 renumbered as Section R18-8-261, and subsections (A), (D) and (F) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-262. Standards Applicable to Generators of Hazardous Waste

A. All of 40 CFR 262 and the accompanying appendix, revised as of July 14, 2006 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 262 are available at www.gpoaccess.gov/cfr/index.html.

B. In 40 CFR 262 (as incorporated by R18-8-262(A)):

1. ["Section 3008 of the Act" means A.R.S. §§ 49-923, 49-924 and 49-925.]
2. ["Section 2002(a) of the Act" means A.R.S. § 49-922.]
3. ["Section 3002(6) of the Act" means A.R.S. § 49-922.]

C. § 262.10, titled "Purpose, scope, and applicability," paragraph (i) is amended as follows:

(i) [For the limited time period required to control, mitigate, or eliminate the immediate threat,] persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv), or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part. [As soon as the immediate response activities are completed, all standards of this part apply. For purposes of this rule, DEQ does not consider emergency response personnel to be generators of residuals resulting from immediate responses, unless they are also the owner of the object of an emergency response. The owner of the object of an emergency response, the owner of the property on which the object of an emergency rests or where the emergency response initiates, or the requestor for an emergency response is responsible for addressing any residual contamination that results from an emergency response.]

D. § 262.11, titled "Hazardous waste determination," paragraph (c)(1) is amended by deleting the following:

(1) ", or according to an equivalent method approved by the Administrator under 40 CFR 260.21."

E. § 262.12, titled "EPA identification numbers," paragraphs (a) and (b) are amended as follows:

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the [DEQ].

(b) A generator who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the generator.

F. § 262.23, titled "Use of the manifest," paragraph (a) is amended by adding the following:

[(4) Submit one (1) copy of each manifest to the DEQ in accordance with R18-8-262(I).]

G. § 262.34, titled "Accumulation time," paragraph (d)(5)(iv)(C) is amended as follows:

(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water [or when a spill has discharged into a storm sewer or dry well, or such an event has resulted in any other discharge that may reach groundwater], the generator immediately [shall] notify the National Response Center (using their 24-hour toll-free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain] the following information:

(1) The name, address, and [the EPA Identification Number] of the generator;

(2) Date, time, [location,] and type of incident (for example, spill or fire);

(3) Quantity and type of hazardous waste involved in the incident;

(4) Extent of injuries, if any; and

(5) Estimated quantity and disposition of recovered materials, if any.

H. § 262.41, titled "Biennial report," is amended as follows:

(a) A generator [shall] prepare and submit a single copy of [an annual] report to the [Director] by March 1 [for the preceding calendar] year. The [annual] report [shall] be submitted on [a form provided by the DEQ according to the instructions for the form, shall describe] generator activities during the previous [calendar] year, and shall include the following information:

(1) The EPA identification number, name, [location,] and [mailing] address of the generator.

(2) The calendar year covered by the report.

(3) The EPA identification number, name, and [mailing] address for each off-site [TSD] facility to which waste was shipped during the [reporting] year [, including the name and address of all applicable foreign facilities for exported shipments.]

(4) The name, [mailing address], and the EPA identification number of each transporter used [by the generator] during the reporting year.

(5) A [waste] description, EPA hazardous waste number (from 40 CFR 261, subpart C or D) [(as incorporated by R18-8-261), U.S. Department of Transportation] hazard class, [concentration, physical state,] and quantity of each hazardous waste [:

i. Generated];

ii. Shipped off-site. This information must be listed by EPA identification number of each off-site facility to which waste was shipped; and

iii. Accumulated at the end of the year].

(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

(7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(8) The certification signed by the generator or [the generator's] authorized representative [, and the date the report was prepared].

(9) [A waste description, EPA hazardous waste number, concentration, physical state, quantity, and handling method of each hazardous waste handled on-site in elementary neutralization or wastewater treatment units.]

(10) [Name and telephone number of facility contact responsible for information contained in the report.]

(b) Any generator who treats, stores, or disposes of hazardous waste on-site, [and is subject to the HWM facility requirements of R18-8-264, R18-8-265, or R18-8-270,] shall submit [an annual] report covering those wastes in accordance with the provisions of 40 CFR 264.75 [(as incorporated by R18-8-264(G)], and § 265.75 [(as incorporated by R18-8-265(G).]

I. Manifests required in 40 CFR 262, subpart B, titled "The Manifest," (as incorporated by R18-8-262) shall be submitted to the DEQ in the following manner:

1. A generator initiating a shipment of hazardous waste required to be manifested shall submit to the DEQ, no later than 45 days following the end of the month of shipment, one copy of each manifest with the signature of that generator and transporter, and the signature of the owner or operator of the designated facility, for any shipment of hazardous waste transported or delivered within that month. If a conforming manifest is not available, the generator shall submit an Exception Report in compliance with § 262.42 (as incorporated by R18-8-262).
2. A generator shall designate on the manifest in item I "Waste No.," the EPA hazardous waste number or numbers for each hazardous waste listed on the manifest.
3. A member of the Performance Track Program, as defined in R18-8-260(F), that initiates a shipment of hazardous waste required to be manifested shall submit the manifest to DEQ as specified in subsections (1) and (2), except a manifest may be submitted to DEQ within 45 days following the end of the calendar quarter of shipment rather than within 45 days following the end-of-the month of shipment.

J. § 262.42, titled "Exception reporting," is amended by replacing "The Exception Report must include:" in paragraph (a)(2) with the following: "The Exception Report shall be submitted to DEQ within 45 days following the end of the month of shipment of the waste and shall include:"

K. § 262.42, titled "Exception reporting," paragraph (b) is amended by adding the following sentence to the end of the paragraph: "This submission to DEQ shall be made within 60 days following the end of the month of shipment of the waste."

L. A generator who accumulates ignitable, reactive, or incompatible waste shall comply with 40 CFR 265.17(a) (as incorporated by R18-8-265(A)).

M. Any generator who must comply with 40 CFR 262.34(a)(1) (as incorporated by R18-8-262) shall keep a written log of the inspections of container, tank, drip pad, and containment building areas and for the containers, tanks, and other equipment located in these storage areas in accordance with 40 CFR 265.174, 265.195, 265.444, and 265.1101(c)(4) (as incorporated by R18-8-265). The inspection log shall be kept by the generator for three years from the date of the inspection. The generator shall ensure that the inspection log is filled in after each inspection and includes the following information: inspection date, inspector's name and signature, and remarks or corrections.

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (D) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1862 renumbered as R18-8-262, and amended effective May 29, 1987 (Supp. 87-2). Amended effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-263. Standards Applicable to Transporters of Hazardous Waste

A. All of 40 CFR 263, revised as of July 1, 2006 (and no future editions), is incorporated by reference, modified by the following subsections of R18-8-263, and on file with the DEQ. Copies of 40 CFR 263 are available at www.gpoaccess.gov/cfr/index.html.

B. § 263.11, titled "EPA identification numbers," is amended by the following:

(a) A transporter must not transport hazardous wastes without having received an EPA identification number from the [DEQ].

(b) A transporter who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be mailed or delivered to: DEQ, Waste Programs Division, GIS and IT Unit, 1110 W. Washington St., Phoenix, AZ 85007.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the transporter.

C. § 263.20, titled "The manifest system," is amended by adding the following:

[A transporter of hazardous waste, with the exception of hazardous waste shipments that originate outside of Arizona, must submit one copy of each manifest to the DEQ, in accordance with R18-8-263(D).]

D. Manifests required in 40 CFR 263, subpart B, titled "Compliance With the Manifest System and Recordkeeping," (as incorporated by R18-8-263) shall be submitted to the DEQ in the following manner:

[A transporter of hazardous waste, unless such hazardous waste shipment originated outside of the state of Arizona, shall submit to the DEQ, no later than 30 days following the end of the month of shipment, copy of each manifest, including the signature of that transporter, for any shipment of hazardous waste transported or delivered within that month.]

E. § 263.30, titled "Immediate action," paragraph (c)(2) is amended by the following:

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590 [and send a copy to the DEQ, Hazardous Waste Inspections and Compliance Unit, 1110 W. Washington St., Phoenix, AZ 85007.]

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-5). Former Section R9-8-1863 renumbered as R18-8-263, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (A) effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A. All of 40 CFR 264 and accompanying appendices, revised as of July 14, 2006 (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(l), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 264 are available at www.gpoaccess.gov/cfr/index.html.

B. § 264.1, titled "Purpose, scope and applicability," paragraph (g)(1) is amended as follows:

(1) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-8-512, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-264] pursuant to § 261.5 [(as incorporated by R18-8-261)];

C. § 264.1, titled "Purpose, scope, and applicability," paragraph (g)(8)(i)(D) is amended as follows:

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40

CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]

D. § 264.11, titled "Identification number," is replaced by the following:

1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007. Upon receiving the request, the DEQ will assign an EPA identification number to the facility owner or operator.

E. § 264.15 titled "General inspection requirements," paragraph (b)(5)(i) is amended by replacing "National Environmental Performance Track Program" with "Performance Track Program."

F. § 264.18, titled "Location standards," paragraph (c) is amended by deleting the following:

(c) ", except for the Department of Energy Waste Isolation Pilot Project in New Mexico."

G. § 264.56, titled "Emergency procedures," paragraph (d)(2) is amended as follows:

(2) [The emergency coordinator, or designee, shall] immediately notify [the DEQ at (602) 771-2330 or (800) 234-5677, extension 771-2330, and notify] either the government official designated as the on-scene coordinator for that geographical area, (in the applicable regional contingency plan under 40 CFR 1510) or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report [shall include the following]:

(i) Name and telephone number of reporter;
(ii) Name and address of facility;
(iii) Time and type of incident (for example, release, fire);
(iv) Name and quantity of material(s) involved, to the extent known;
(v) The extent of injuries, if any; and
(vi) The possible hazards to human health, or the environment, outside the facility.

H. § 264.71, titled "Use of manifest system," paragraph (a)(4) is amended as follows:

Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator [and submit one copy of each manifest to DEQ, according to R18-8-264(I).]

I. § 264.75, titled "Biennial report," is amended as follows:

The owner or operator [of a facility that treated, stored, or disposed of hazardous waste shall] prepare and submit a single copy of [an annual report to the Director] by March 1 [for the preceding calendar] year. The [annual] report must be submitted on [a form provided by DEQ according to the instructions for the form.] The report [shall describe treatment, disposal, or storage] activities during the previous calendar year and [shall] include [the following information]:

(a) Name, [mailing] address, [location] and the EPA identification number of the facility;
(b) The calendar year covered by the report;
(c) [For facilities receiving waste from off-site,] the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; and, for imported shipments, the report must give the name and address of the foreign generator;
(d) A [waste] description, [EPA hazardous waste number, concentration, physical state], and quantity of each hazardous waste the facility received during the year. For [waste received from off-site], this information must be listed by the EPA identification number of each generator;
(e) The method of treatment, storage, or disposal for each hazardous waste;
(f) Reserved;
(g) The most recent closure cost estimate under § 264.142, [(as incorporated by R18-8-264)], and for disposal facilities, the most recent post-closure cost estimate under § 264.144, [(as incorporated by R18-8-264)];
(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.
(j) The certification signed by the owner or operator of the facility, or authorized representative, [and the date the report was prepared];
(k) [Name and telephone number of facility contact responsible for information contained in the report; and]
(l) [If the TSD facility is also a generator, the complete generator annual report as required by § 262.41 (as incorporated by R18-8-262).]

J. Manifests required in 40 CFR 264, Subpart E, titled "Manifest System, Recordkeeping, and Reporting," (as incorporated by R18-8-264) shall be submitted to the DEQ in the following manner:

[1. The TSD facility receiving off-site shipments of hazardous wastes required to be manifested shall submit to the DEQ, no later than 30 days following the end of the month of shipment, one copy of each manifest with the signature, in accordance with § 264.71(a)(1) (as incorporated by R18-8-264), of the owner or operator of the facility, or agent, for any shipment of hazardous waste received within that month.
2. If a facility receiving hazardous waste from off-site is also a generator, the owner or operator shall also submit generator manifests as required by R18-8-262(H).]

K. § 264.93, titled "Hazardous constituents," paragraph (c) is amended as follows:

(c) In making any determination under [§ 264.93(b) (as incorporated by R18-8-264)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] § 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].

L. § 264.94, titled "Concentration limits," paragraph (c) is amended as follows:

(c) In making any determination under [§ 264.94(b) (as incorporated by R18-8-264)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].

M. § 264.143, titled "Financial assurance for closure," paragraph (h), and 264.145, titled "Financial assurance for post-closure care," paragraph (h), are amended by replacing the third sentence in each citation with the following: "Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona."

N. § 264.147, titled "Liability requirements," paragraphs (a)(1)(i) and (b)(1)(i) are amended by deleting the following from the fourth sentence in each citation: ", or Regional Administrators if the facilities are located in more than one Region."

O. § 264.151, titled "Wording of the instruments," is adopted except any reference to "{of/for} the Regions in which the facilities are located" is deleted and "an agency of the United States Government" is deleted from the second paragraph of the Trust Agreements.

P. § 264.301, titled "Design and operating requirements," is amended by adding the following:

[The DEQ may require that hazardous waste disposed in a landfill operation, be treated prior to landfilling to reduce the water content, water solubility, and toxicity of the waste. The decision by the DEQ shall be based upon the following criteria:

1. Whether the action is necessary to protect public health;
2. Whether the action is necessary to protect the groundwater, particularly where the groundwater is a source, or potential source, of a drinking water supply;
3. The type of hazardous waste involved and whether the waste may be made less hazardous through treatment;
4. The degree of water content, water solubility, and toxicity of the waste;
5. The existence or likelihood of other wastes in the landfill and the compatibility or incompatibility of the wastes with the wastes being considered for treatment;
6. Consistency with other laws, rules and regulations, but not necessarily limited to laws, rules, and regulations relating to landfills and solid wastes.]

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1864 renumbered as Section R18-8-264, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

A. All of 40 CFR 265 and accompanying appendices, revised as of July 14, 2006 (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 265 are available at www.gpoaccess.gov/cfr/index.html.

B. § 265.1, titled "Purpose, scope, and applicability," paragraph (c)(5) is amended as follows:

(5) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-8-512, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-265, pursuant to § 261.5 (as incorporated by R18-8-261)];

C. § 265.1, titled "Purpose, scope, and applicability," paragraph (c)(11)(i)(D) is amended as follows:

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677]

D. § 265.11, titled "Identification number," is replaced by the following:

[1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be mailed or delivered to: ADEQ, Hazardous Waste Facilities Assistance Unit, 1110 W. Washington St., Phoenix, AZ 85007. Upon receiving the request, the DEQ shall assign an EPA identification number to the facility owner or operator.]

E. § 265.15 titled "General inspection requirements," paragraph (b)(5)(i) is amended by replacing "National Environmental Performance Track Program" with "Performance Track Program."

F. § 265.18, titled "Location standards," is amended by deleting the following:

", except for the Department of Energy Waste Isolation Pilot Project in New Mexico."

G. § 265.56, titled "Emergency procedures," paragraph (d)(2) is amended as follows:

(2) [The emergency coordinator, or designee, immediately shall] notify [the DEQ at (602) 771-2330 or 800/234-5677, and notify] either the government official designated as the on-scene coordinator for that geographical area, (in the applicable regional contingency plan under 40 CFR 1510) or the National Response Center (using

their 24-hour toll-free number 800/424-8802). The report [shall include the following]:

(i) Name and telephone number of the reporter;
(ii) Name and address of the facility;
(iii) Time and type of incident (for example, release, fire);
(iv) Name and quantity of material(s) involved, to the extent known:
(v) The extent of injuries, if any; and
(vi) The possible hazards to human health, or the environment, outside the facility.

H. § 265.71, titled "Use of manifest system," paragraph (a)(4) is amended as follows:

Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator [and submit one copy of each manifest to DEQ, according to R18-8-265(I).]

I. § 265.75, titled "Biennial report," is amended as follows:

The owner or operator [of a facility that treated, stored, or disposed of hazardous waste] shall prepare and submit a copy of [an annual] report to the [Director] by March 1 [for the preceding calendar] year. The [annual] report must be submitted on [a form provided by DEQ according to the instructions for the form]. The report [shall describe] facility activities during the previous calendar year and must include the following information:

(a) Name, [mailing] address, [location], and EPA identification number of the facility;
(b) The calendar year covered by the report;
(c) For [facilities receiving waste from off-site], the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; [and] for imported shipments, the report must give the name and address of the foreign generator;
(d) A [waste] description, [EPA hazardous waste number, concentration, physical state], and quantity of each hazardous waste the facility received [according to the quantity treated, stored or disposed] during the year. For [waste received from off-site], this information must be listed by EPA identification number of each generator;
(e) The method of treatment, storage, or disposal for each hazardous waste;
(f) Monitoring data under § 265.94(a)(2)(ii) and (iii), and (b)(2) [(as incorporated by R18-8-265)], where required;
(g) The most recent closure cost estimate under § 265.142 [(as incorporated by R18-8-265)], and, for disposal facilities, the most recent post-closure cost estimate under § 265.144 [(as incorporated by R18-8-265,)];
(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;
(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984;
(j) The certification signed by the owner or operator of the facility, or authorized representative, [and the date the report was prepared; and
(k) Name and telephone number of facility contact responsible for information contained in the report.]

J. Manifests required in 40 CFR 265, subpart E, titled "Manifest System, Recordkeeping, and Reporting," (as incorporated by R18-8-265) shall be submitted to the DEQ in the following manner:

The TSD facility receiving off-site shipments of hazardous wastes required to be manifested shall submit to the DEQ, no later than 30 days following the end of the month of shipment, a copy of each manifest with the signature, in accordance with § 265.71(a)(1) (as incorporated by R18-8-265), of the owner or operator of the facility, or agent, for any shipment of hazardous waste received within that month.

K. § 265.90, titled "Applicability," paragraphs (a) and (d)(1), and § 265.93, titled "Preparation, evaluation, and response," paragraph (3) (as incorporated by R18-8-265), are amended by deleting the following phrase: "within one year"; and § 265.90, titled "Applicability," paragraph (d)(2) (as incorporated by R18-8-265), is amended by deleting the following phrase: "Not later than one year."

L. § 265.112(d), titled "Notification of partial closure and final closure," subparagraph (1) is amended as follows:

1. The owner or operator must submit the closure plan to the [Director] at least 180 days prior to the date on which [the owner or operator] expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, [tank, container storage, or incinerator unit], or final closure if it involves such a unit, whichever [occurs earlier. The owner or operator with approved closure plans shall notify the Director] in writing at least 60 days prior to the date on which [the owner or operator expects] to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility [if it involves such a unit. The owner or operator] with approved closure plans must notify the [Director] in writing at least 45 days prior to the date on which [the owner or operator expects] to begin final closure of a facility with only tanks, container storage, or incinerator units.

M. §§ 265.143, titled "Financial assurance for closure," paragraph (g), and 265.145, titled "Financial assurance for post-closure care," paragraph (g), are amended by replacing the third sentence in each citation with the following: "Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona."

N. § 265.193, titled "Containment and detection of releases" (as incorporated by R18-8-265), is amended by adding the following:

[For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall ensure that:

1. A level is measured daily;
2. A material balance is calculated and recorded daily; and
3. A yearly test for leaks in the tank and piping system, using a method approved by the DEQ is performed.]

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1865 renumbered as Section R18-8-265, subsection (A) amended and a new subsection (I) added effective May 29, 1987 (Supp. 87-2).

Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities

A. All of 40 CFR 266 and accompanying appendices, revised as of July 14, 2006 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 266 are available at www.gpoaccess.gov/cfr/index.html.

B. § 266.100, titled "Applicability" paragraph (c) is amended as follows:

(c) The following hazardous wastes and facilities are not subject to regulation under this subpart:

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 [(as incorporated by R18-8-261)] of this Chapter. Such used oil is subject to regulation under [A.R.S. §§ 49-801 through 49-818] rather than this subpart;

(2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;

(3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(iii)-(iv) [(as incorporated by R18-8-261)] of this Chapter, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under § 261.5 [(as incorporated by R18-8-261)] of this Chapter; and

(4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

Historical Note

Adopted effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1866 renumbered as Section R18-8-266, and amended effective May 29, 1987 (Supp. 87-2). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-267. Reserved

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, revised as of July 14, 2006 (and no future editions), with the exception of Part 268, Subpart B, is incorporated by reference and on file with the DEQ. Copies of 40 CFR 268 are available at www.gpoaccess.gov/cfr/index.html.

Historical Note

Adopted effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-269. Standards Applicable to the State-owned Hazardous Waste Facility

A. This Section applies only to the state owned and contracted site specified in A.R.S. § 49-902(A).

B. Pursuant to A.R.S. § 49-901 et seq., the DEQ shall develop a facility at the location specified in A.R.S. § 49-902(A).

C. Transportation routes.

1. A transporter hauling hazardous waste to or from the state HWM facility shall utilize established public roads and highways that are built and maintained to meet state or county specifications; and
2. The approach to and the departure from the facility shall be from the east or west.

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Former Section R9-8-1869 renumbered without change as Section R18-8-269 (Supp. 87-2). Amended subsections (A) and (B) effective December 1, 1988 (Supp. 88-4). Amended effective December 2, 1994 (Supp. 94-4).

R18-8-270. Hazardous Waste Permit Program

A. All of 40 CFR 270, revised as of July 14, 2006 (and no future editions), with the exception of §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Cop-

ies of 40 CFR 270 are available at www.gpoaccess.gov/cfr/index.html.

B. § 270.1, titled "Purpose and scope of these regulations," paragraph (b) is replaced by the following:

1. [After the effective date of these regulations the treatment, storage, or disposal of any hazardous waste is prohibited except as follows:
   a. As allowed under § 270.1(c)(2) and (3) (as incorporated by R18-8-270);
   b. Under the conditions of a permit issued pursuant to these regulations; or
   c. At an existing facility accorded interim status under the provisions of § 270.70 (as incorporated by R18-8-270).
2. The direct disposal or discharge of hazardous waste into or onto any of the following is prohibited:
   a. Waters of the state as defined in A.R.S. § 49-201(31), excluding surface impoundments as defined in § 260.10 (as incorporated by R18-8-260); and
   b. Injection well, ditch, alleyway, storm drain, leachfield, or roadway.]

C. § 270.1, titled "Purpose and scope of these regulations," paragraph (c)(3)(i)(D) is amended as follows:

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]

D. § 270.10, titled "General application requirements," paragraph (e)(2), is amended as follows:

(2) The [Director] may extend the date by which owners and operators of specified classes of existing [HWM facilities shall submit Part A of their permit application if the Administrator has published in the Federal Register that EPA is granting an extension under 40 CFR § 270.10(e)(2) for those classes of facilities.]

E. § 270.10(g), titled "Updating permit applications," subparagraph (1)(ii) is amended as follows:

(ii) With the [Director] no later than the effective date of regulatory provisions listing or designating wastes as hazardous in [the] state if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

F. § 270.10(g), titled "Updating permit applications," subparagraph (1)(iii), is amended as follows:

(iii) As necessary to comply with provisions of § 270.72 [(as incorporated by R18-8-270)] for changes during interim [status]. Revised Part A applications necessary to comply with the provisions of § 270.72 [(as incorporated by R18-8-270) shall be filed with the [Director.]

G. § 270.10, titled "General application requirements," is amended by adding the following:

1. When submitting any of the following applications, an applicant shall remit to the DEQ a permit application fee of $10,000:
   a. Initial Part B application submitted pursuant to §§ 270.10 and 270.51(a)(1) (as incorporated by R18-8-270);
   b. Part B permit renewal application submitted pursuant to § 270.10(h) (as incorporated by R18-8-270);
   c. Application for a Class 3 Modification according to §§ 270.42 (as incorporated by R18-8-270); and
   d. Application for a research, development, and demonstration permit.
2. If the reasonable cost of processing the application identified in subsection (G)(1) is less than $10,000, the DEQ shall refund the difference between the reasonable cost and $10,000 to the applicant.
   a. Permits other than post-closure. If the reasonable cost of processing the application is greater than $10,000, the DEQ shall bill the applicant for the difference and the applicant shall pay the difference in full before the DEQ issues the permit.
   b. Post-closure permits. If the reasonable cost of processing the application is greater than $10,000, the DEQ shall bill the applicant for the difference.
3. When submitting an application for any one of the permit-related activities described in this subsection, the applicant shall remit to the DEQ $2,500. If the reasonable cost of processing the application is greater than $2,500, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application. A refund shall be paid by the DEQ if the reasonable cost is less than the $2,500 fee, either within 45 days of a valid withdrawal of the permit application or upon permit issuance. This subsection applies to all the following:
   a. An application for a modification of a Part B permit pursuant to § 270.41 (as incorporated by R18-8-270);
   b. An application for a Class 2 modification of a permit submitted after permit issuance, according to § 270.42 (as incorporated by R18-8-270);
   c. An application for approval of a final closure plan that is not submitted as part of a Part B application, including the review and approval of the closure report; and
   d. An application for a remedial action plan (RAP) submitted pursuant to 40 CFR 270, Subpart H (as incorporated by R18-8-270).
4. With an application for a partial closure plan for a facility, the applicant shall remit to the DEQ a fee of $2,500 for each hazardous waste management unit involved in the partial closure plan or $10,000, whichever is less. If the reasonable cost of processing the application, including review and approval of the closure report, is more than the initial fee paid, the applicant shall be billed for the difference, and the difference shall be paid in full at the time DEQ completes review and approval of the closure report associated with the permit. If the reasonable cost is less than the fee paid by the applicant, DEQ shall refund the difference within 45 days of the closure report review and approval associated with the permit.
5. The fee for a land treatment demonstration permit issued under § 270.63 (as incorporated by R18-8-270) for hazardous waste applies toward the $10,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration (as incorporated by R18-8-270).
6. An applicant shall remit to the DEQ a permit application fee of $1,000 for any one of the following:
   a. An application for a transfer of a Part B permit to a different owner or operator pursuant to § 270.40 (as incorporated by R18-8-270), or
   b. An application for a Class 1 permit modification according to § 270.42 (as incorporated by R18-8-270) that is required as a consequence of mitigating hazardous waste compliance violations. If the rea-

sonable cost of processing the transfer application or modification is greater than $1,000, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application.

7. The DEQ shall provide the applicant itemized billings for individual costs of the DEQ employees involved in the processing of applications and all other costs to the DEQ pursuant to the following factors when determining the reasonable cost under R18-8-270(G):
   a. Hourly salary and personnel benefit costs;
   b. Per diem expenses;
   c. Transportation costs;
   d. Reproduction costs;
   e. Laboratory analysis charges;
   f. Public notice advertising and mailing costs;
   g. Presiding officer expenses;
   h. Court reporter expenses;
   i. Facility rentals; and
   j. Other reasonable, direct, permit-related expenses documented in writing by the DEQ.
8. Any person who receives a final bill from the DEQ for the processing and issuance or denial of a permit under this Article may request an informal review of all billing items and may pay the bill under protest. If the bill is paid under protest, the DEQ shall issue the permit if it would be otherwise issuable after normal payment. Such a request shall specify each area of dispute, and it shall be made in writing, within 30 days of the date of receipt of the final bill, to the division director of the DEQ for the Office of Waste Programs. The final bill shall be sent by certified mail, return receipt requested. The informal review shall take place within 30 days of the DEQ's receipt of the request unless agreed otherwise by the DEQ and the applicant. Notice of the time and place of informal review shall be mailed to the requester at least 10 working days prior to the informal review. The division director of the DEQ shall review whether or not the amounts of time billed are correct and reasonable for the tasks involved. Disposition of the informal review shall be mailed to the requester within 10 working days after the informal review.
9. The DEQ's division director's decision after the informal review shall become final within 30 days after receipt of the decision, unless the applicant requests in writing a hearing pursuant to R18-1-202.]

H. § 270.12, titled "Confidentiality of information," paragraph (a) is amended as follows:

(a) In accordance with [R18-8-260(D)(2)], any information submitted to [the DEQ] pursuant to these regulations may be claimed as confidential by the submitter. [Such a claim shall] be asserted at the time of submission in the manner prescribed [in R18-8-260(D)(2)(c)(ii)]. If no [such] claim is made at the time of submission, [the DEQ] may make the information available to the public without further notice. If a claim is asserted, the information [shall] be treated in accordance with the procedures in [R18-8-260(D)(2)(d) and (e).]

I. § 270.13, titled "Contents of Part A of the permit application," paragraph (k)(9) is amended as follows:

(9) Other relevant environmental permits, including [any federal, state, county, city, or fire department] permits.

J. § 270.14, titled "Contents of Part B: General requirements," paragraph (b) is amended by adding the following:

[(23) Any additional information required by the DEQ to evaluate compliance with facility standards and informational requirements of R18-8-264, R18-8-269 and R18-8-270.

(24)(i) A signed statement, submitted on a form supplied by the DEQ that demonstrates:
   (A) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application; or
   (B) In the case of a corporation or business entity, no officer, director, partner, key employee, other person, or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

ii. Failure to comply with subsection (i), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271).]

K. § 270.30, titled "Conditions applicable to all permits" paragraph (l)(10) is amended as follows:

(10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under [§ 270.30(l)(4),(5), and (6) (as incorporated by R18-8-270)] at the same time monitoring [(including annual)] reports are submitted. The reports shall contain the information listed in [§ 270.30(l)(6) (as incorporated by R18-8-270)].

L. § 270.30, titled "Conditions applicable to all permits" paragraph (L) is amended by adding the following:

[All reports listed above (as incorporated by R18-8-270) shall be submitted to the Director in such a manner that the reports are received within the time periods required under this Article.]

M. § 270.32, titled "Establishing permit conditions," paragraph (a), is amended by deleting the following:

"and 270.3 (considerations under Federal law)."

N. § 270.32, titled "Establishing permit conditions," paragraph (b) is amended by deleting the reference to 40 CFR 267.

O. § 270.32, titled "Establishing permit conditions," paragraph (c) is amended by deleting the second sentence.

P. § 270.51, titled "Continuation of expiring permits," paragraph (a) is amended by deleting the following:

"under 5 USC 558(c)."

Q. § 270.51, titled "Continuation of expiring permits," paragraph (d) is amended by replacing "EPA-issued" with "EPA, joint EPA/DEQ, or DEQ-issued."

R. § 270.65, titled "Research, development, and demonstration permits," is amended as follows:

(a) The [Director] may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Part 264 or 266 [(as incorporated by R18-8-264 and R18-8-266).] [A research, development, and demonstration] permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this subsection, and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the [Director] deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(3) Shall include such requirements as the [Director] deems necessary to protect human health and the environment [, including requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the Director] deems necessary regarding testing and providing of information [relevant] to the [Director] with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permits under this Section, the [Director] may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements [, or add conditions to the permit in accordance with the permitting procedures set forth in R18-8-270 and R18-8-271,] except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

(c) The [Director] may order an immediate termination of all operations at the facility at any time [the Director] determines that termination is necessary to protect human health and the environment.

(d) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

S. § 270.110, titled "What must I include in my application for a RAP?," is amended by adding paragraphs (j) and (k) as follows:

[(j) A signed statement, submitted on a form supplied by DEQ that demonstrates:

(1) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.

(2) In the case of a corporation or business entity, no officer, director, partner, key employee, other person or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.

(k) Failure to comply with subsection (j), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 (as incorporated by R18-8-270) and §§ 124.3(d) and 124.5(a) (as incorporated by R18-8-271).]

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsections (A) and (K) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1870 renumbered as R18-8-270, subsection (A) amended and a new subsection (S) added effective May 29, 1987 (Supp. 87-2). Amended subsections (B) and (K) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-271. Procedures for Permit Administration

A. All of 40 CFR 124 and the accompanying appendix, revised as of July 1, 2006 (and no future editions), relating to HWM facilities, with the exception of §§ 124.1 (b) through (e), 124.2, 124.4, 124.16, 124.20 and 124.21, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 124 are available at www.gpoaccess.gov/cfr/index.html.

B. § 124.1, titled "Purpose and scope," paragraph (a) is replaced by the following:

[This Section contains the DEQ procedures for issuing, modifying, revoking and reissuing, or terminating all hazardous waste management facility permits. This Section describes the procedures the DEQ shall follow in reviewing permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. This Section also includes procedures for assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. The procedures of this Section also apply to denial of a permit for the active life of a RCRA HWM facility or unit under § 270.29 (as incorporated by R18-8-270(A)).]

C. § 124.3, titled "Application for a permit," is replaced by the following:

[(a) (1) Any person who requires a permit under this Article shall complete, sign, and submit to the Director an application for each permit required under § 270.1 (as incorporated by R18-8-270). Applications are not required for RCRA permits-by-rule in § 270.60 (as incorporated by R18-8-270).

(2) The Director shall not begin processing a permit until the applicant has fully complied with the application requirements for that permit. (Refer to §§ 270.10 and 270.13 as incorporated by R18-8-270).

(3) An applicant for a permit shall comply with the signature and certification requirements of § 270.11, as incorporated by R18-8-270.

(b) Reserved.

(c) The Director shall review for completeness every application for a permit. Each application submitted by a new HWM facility shall be reviewed for completeness by the Director in the order of priority on the basis of hazardous waste capacity established in a list by the Director. The Director shall make the list available upon request. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for additional information do not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and the Director may take appropriate enforcement actions against an existing HWM facility pursuant to A.R.S. §§ 49-923, 49-924 and 49-925.

(e) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the Director shall notify the applicant and schedule a date for a site visit.

(f) The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in paragraph (c) of this subsection.

(g) For each application from a new HWM facility, the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to do the following:

(1) Prepare a draft permit or Notice of Intent to Deny;
(2) Give public notice;
(3) Complete the public comment period, including any public hearing;
(4) Make a decision to issue or deny a final permit; and
(5) Issue a final decision.

D. § 124.5, titled "Modification, revocation, and reissuance, or termination of permits," is replaced by the following:

[(a) Permits may be modified, revoked, and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked, and reissued, or terminated for the reasons specified in §§ 270.41 or 270.43 (as incorporated by R18-8-270). All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Director decides the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(c) Modification, revocation or reissuance of permits procedures.

(1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 270.41 or 270.42(c) (as incorporated by R18-8-270), the Director shall prepare a draft permit under § 124.6 (as incorporated by R18-8-271(E)), incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

(2) In a permit modification under this [subsection], only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. The permit modification shall have the same expiration date as the unmodified permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) "Classes 1 and 2 modifications" as defined in § 270.42 (as incorporated by R18-8-270) are not subject to the requirements of this subsection.

(d) If the Director tentatively decides to terminate a permit under § 270.43 (as incorporated by R18-8-270), the Director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6 (as incorporated by R18-8-271(E)). In the case of permits that are processed or issued jointly by both the DEQ and the EPA, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibilities from the EPA to the state.

(e) The Director shall base all draft permits, including notices of intent to terminate, prepared under this subsection on the administrative record as defined in § 124.9 (as incorporated by R18-8-271(H)).]

E. § 124.6, titled "Draft permits," is replaced by the following:

(a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Director tentatively decides to deny the permit application, the Director shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under (e) of this subsection.

(c) Reserved.

(d) If the Director decides to prepare a draft permit, the Director shall prepare a draft permit that contains the following information:

(1) All conditions under §§ 270.30 and 270.32 (as incorporated by R18-8-270), unless not required under 40 CFR 264 and 265 (as incorporated by R18-8-264 and R18-8-265);
(2) All compliance schedules under § 270.33 (as incorporated by R18-8-270);
(3) All monitoring requirements under § 270.31 (as incorporated by R18-8-270); and
(4) Standards for treatment, storage, and/or disposal and other permit conditions under § 270.30 (as incorporated by R18-8-270).

(e) All draft permits prepared by the DEQ under this subsection shall be accompanied by a statement of basis (§ 124.7, as incorporated by R18-8-271(F)) or fact sheet (§ 124.8, as incorporated by R18-8-271(G)), and shall be based on the administrative record (§ 124.9, as incorpo-

rated by R18-8-271(H)), publicly noticed (§ 124.10, as incorporated by R18-8-271(I)) and made available for public comment (§ 124.11, as incorporated by R18-8-271(J)). The Director shall give notice of opportunity for a public hearing (§ 124.12, as incorporated by R18-8-271(K)), issue a final decision (§ 124.15, as incorporated by R18-8-271(N)) and respond to comments (§ 124.17, as incorporated by R18-8-271(O)).

F. § 124.7, titled "Statement of basis," is replaced by the following: The DEQ shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8, (as incorporated by R18-8-271(G)), is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

G. § 124.8, titled "Fact sheet," is replaced by the following:

(a) The DEQ shall prepare a fact sheet for every draft permit for a new HWM facility, and for every draft permit that the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity that is the subject of the draft permit;

(2) The type and quantity of wastes, that are proposed to be or are being treated, stored, or disposed;

(3) Reserved.

(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9, (as incorporated by R18-8-271(H));

(5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(6) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under §§ 124.10 (as incorporated by R18-8-271(I)) and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision; and

(7) Name and telephone number of a person to contact for additional information.

(8) Reserved.

H. § 124.9 titled "Administrative record for draft permits" is replaced by the following:

(a) The provisions of a draft permit prepared under § 124.6 (as incorporated by R18-8-271(E)) shall be based on the administrative record defined in this subsection.

(b) For preparing a draft permit under § 124.6 (as incorporated by R18-8-271(E)), the record consists of:

(1) The application, if required, and any supporting data furnished by the applicant, subject to paragraph (e) of this subsection;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The statement of basis under §§ 124.7 (as incorporated by R18-8-271(F)) or fact sheet under § 124.8 (as incorporated by R18-8-271(G));

(4) All documents cited in the statement of basis or fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

(6) Reserved.

(c) Material readily available at the DEQ or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this subsection, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

(d) This subsection applies to all draft permits when public notice was given after the effective date of these rules.

(e) All items deemed confidential pursuant to A.R.S. § 49-928 shall be maintained separately and not disclosed to the public.

I. § 124.10, titled "Public notice of permit actions and public comment period," is replaced by the following:

(a) Scope.

(1) The Director shall give public notice that the following actions have occurred:

(i) A permit application has been tentatively denied under § 124.6(b) (as incorporated by R18-8-271(E));

(ii) A draft permit has been prepared under § 124.6(d) (as incorporated by R18-8-271(E)); and

(iii) A hearing has been scheduled under § 124.12 (as incorporated by R18-8-271(K)).

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b) (as incorporated by R18-8-271(D)). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(b) Timing.

(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this subsection shall allow at least 45 days for public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(c) Methods. Public notice of activities described in paragraph (a)(1) of this subsection shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):

(i) An applicant;

(ii) Any other agency which the Director knows has issued or is required to issue a HWM facility permit or any other federal environmental permit for the same facility or activity;

(iii) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the

Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes). For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States;

(iv) Reserved.

(v) Reserved.

(vi) Reserved.

(vii) Reserved.

(viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;

(ix) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state-funded newsletters, environmental bulletins, or state law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to the request.); and

(x) (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(B) To each state agency having any authority under state law with respect to the construction or operation of the facility;

(2) By newspaper publication and radio announcement broadcast, as follows:

(i) Reserved.

(ii) For all permits, publication of a notice in a daily or weekly major local newspaper of general circulation within the area affected by the facility or activity, at least once, and in accordance with the provisions of paragraph (b) of this subsection; and

(iii) For all permits, a radio announcement broadcast over two local radio stations serving the affected area at least once during the period two weeks prior to the public hearing. The announcement shall contain:

(A) A brief description of the nature and purpose of the hearing;

(B) The information described in items (i), (ii), (iii), (iv), and (vii) of subparagraph (d)(1) of this subsection;

(C) The date, time, and place of the hearing; and

(D) Any additional information considered necessary or proper; or

(3) Reserved.

(4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d) (1) Each public notice issued under this Article shall contain the following minimum information:

(i) Name and address of the office processing the permit action for which notice is being given;

(ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by such permit;

(iii) A brief description of the business conducted at the facility or activity described in the permit application;

(iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the statement of basis or fact sheet;

(v) A brief description of the comment procedures required by §§ 124.11 (as incorporated by R18-8-271(J) and 124.12 (as incorporated by R18-8-271(K)) and the time and place of any hearing that shall be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(vi) The location of the administrative record required by § 124.9 (as incorporated by R18-8-271(H)), the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant (except for confidential information pursuant to A.R.S. § 49-928) is available as part of the administrative record;

(vii) The locations where a copy of the application and the draft permit may be inspected and the times at which these documents are available for public review; and

(viii) Reserved.

(ix) Any additional information considered necessary or proper.

(2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this subsection, the public notice of a hearing under § 124.12 (as incorporated by R18-8-271(K)) shall contain the following information:

(i) Reference to the date of previous public notices relating to the permit;

(ii) Date, time, and place of the hearing; and

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(iv) Reserved.

(e) In addition to the general public notice described in paragraph (d)(1) of this subsection, all persons identified in paragraphs (c)(1)(i), (ii), and (iii) of this subsection shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).

J. § 124.11, titled "Public comments and requests for public hearings," is replaced by the following:

During the public comment period provided under § 124.10 (as incorporated by R18-8-271(I)), any person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to

be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 124.17 (as incorporated by R18-8-271(O)).

K. § 124.12, titled "Public hearings," is replaced by the following:

[(a) (1) The Director shall hold a public hearing whenever the Director finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The Director may also hold a public hearing at the Director's discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3) The Director shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing has been received within 45 days of public notice under § 124.10(b)(1) (as incorporated by R18-8-271(I)). Whenever possible the Director shall schedule a hearing under this subsection at a location convenient to the nearest population center to the proposed facility.

(4) Public notice of the hearing shall be given as specified in § 124.10 (as incorporated by R18-8-271(I)).

(b) Reserved.

(c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 (as incorporated by R18-8-271(I)) shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(e) Reserved.]

L. § 124.13, titled "Obligation to raise issues and provide information during the public comment period," is replaced by the following:

[All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10, (as incorporated by R18-8-271(I)). Any supporting materials that a commenter submits shall be included in full and shall not be incorporated by reference, unless they are already part of the administrative record in the same proceeding or consist of state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the DEQ as directed by the Director.]

M. § 124.14, titled "Reopening of the public comment period," is replaced by the following:

(a) (1) The Director may order the public comment period reopened if the procedures of this paragraph could expedite the decision-making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 60 days after public notice under paragraph (a)(2) of this subsection, set by the Director. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Director.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) (as incorporated by R18-8-271(M)) apply.

(3) On the Director's own motion or on the request of any person, the Director may direct that the requirements of paragraph (a)(1) of this subsection shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this subsection will substantially expedite the decision-making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this subsection. Commenters may request longer comment periods and they shall be granted under § 124.10 (as incorporated by R18-8-271(I)) to the extent they appear necessary.

(b) If any data, information, or arguments submitted during the public comment period, including information or arguments required under § 124.13 (as incorporated by R18-8-271(L)), appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under §§ 124.6 (as incorporated by R18-8-271(E));

(2) Prepare a revised statement of basis under § 124.7 (as incorporated by R18-8-271(F)), a fact sheet or revised fact sheet under this § 124.8 (as incorporated by R18-8-271(G)), and reopen the comment period under this subsection; or,

(3) Reopen or extend the comment period under § 124.10 (as incorporated by R18-8-271(I)) to give interested persons an opportunity to comment on the information or arguments submitted.

(c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 (as incorporated by R18-8-271(I)) shall define the scope of the reopening.

(d) Reserved.

(e) Public notice of any of the above actions shall be issued under §§ 124.10 (as incorporated by R18-8-271(I)).

N. § 124.15, titled "Issuance and effective date of permit," is replaced by the following:

(a) After the close of the public comment period under § 124.10 (as incorporated by R18-8-271(I)) on a draft permit, the Director shall issue a final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 (as incorporated by R18-8-270(A)). The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For purposes of this subsec-

tion, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 (as incorporated by R18-8-270(A)) becomes effective on the date specified by the Director in the final permit notice.

(1) Reserved.
(2) Reserved.
(3) Reserved.

O. § 124.17, titled "Response to comments," is replaced by the following:

(a) At the time that any final decision to issue a permit is made under § 124.15 (as incorporated by R18-8-271(N)), the Director shall issue a response to comments. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
(2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18 (as incorporated by R18-8-271(P)). If new points are raised or new material supplied during the public comment period, the DEQ may document its response to those matters by adding new materials to the administrative record.

(c) The response to comments shall be available to the public.

P. § 124.18, titled "Administrative record for final permit" is replaced by the following:

(a) The Director shall base final permit decisions under § 124.15 (as incorporated by R18-8-271(N)) on the administrative record defined in this subsection.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit, and:

(1) All comments received during the public comment period provided under § 124.10 (as incorporated by R18-8-271(I)), including any extension or reopening under § 124.14, (as incorporated by R18-8-271(M));
(2) The tape or transcript of any hearing(s) held under § 124.12 (as incorporated by R18-8-271(K));
(3) Any written materials submitted at such a hearing;
(4) The response to comments required by § 124.17 (as incorporated by R18-8-271(O)) and any new material placed in the record under that subsection;
(5) Reserved.
(6) Other documents contained in the supporting file for the permit; and
(7) The final permit.

(c) The additional documents required under (b) of this subsection shall be added to the record as soon as possible after their receipt or publication by the DEQ. The record shall be complete on the date the final permit is issued.

(d) This subsection applies to all final permits when the draft permit was subject to the administrative record requirement of § 124.9 (as incorporated by R18-8-271(H)).

(e) Material readily available at the DEQ, or published materials which are generally available and which are included in the administrative record under the standards of this subsection or of § 124.17 (as incorporated by R18-8-271(O)), ("Response to comments"), need not be physically included in the same file as the rest of the record as long as the materials and their location are specifically identified in the statement of basis or fact sheet or in the response to comments.

Q. § 124.19, titled "Appeal of RCRA, UIC, and PSD permits," is replaced by the following:

A final permit decision (or a decision under § 270.29 (as incorporated by R18-8-270(A)) to deny a permit for the active life of a RCRA hazardous waste management facility or unit issued under § 124.15 (as incorporated by R18-8-271(N)) is an appealable agency action as defined in A.R.S. § 49-1092 and is subject to appeal under A.R.S. Title 41, Ch. 6, Art. 10.

R. § 124.31(a) titled "Pre-application public meeting and notice" is amended by deleting the following sentence:

"For the purpose of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271."

S. § 124.32(a) titled "Public notice requirements at the application stage" is amended by deleting the following sentence:

"For the purpose of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271."

T. § 124.33(a) titled "Information repository" is amended by deleting the following sentence:

"For the purpose of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271."

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1871 renumbered as R18-8-271; subsections (A), (C), (E), (I), (L) and (M) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (C) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-272. Reserved

R18-8-273. Standards for Universal Waste Management

All of 40 CFR 273, revised as of July 14, 2006 (and no future editions), is incorporated by reference and on file with the DEQ. Copies of 40 CFR 273 are available at www.gpoaccess.gov/cfr/index.html.

Historical Note

Adopted effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1).

R18-8-274. Reserved

R18-8-275. Reserved

R18-8-276. Reserved

R18-8-277. Reserved

R18-8-278. Reserved

R18-8-279. Reserved

R18-8-280. Compliance

A. Inspection and entry. For purposes of ensuring compliance with the provisions of HWMA, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes, including used oil that may be classified as hazardous waste pursuant to A.R.S. Title 49, Chapter 4, Article 7 shall, upon request of any officer, employee, or representative of the DEQ duly designated by the Director, furnish information pertaining to such wastes and permit such person at reasonable times:

1. To enter any establishment or other place maintained by such person where hazardous wastes are or have been generated, stored, treated, disposed, or transported from;
2. To have access to, and to copy all records relating to such wastes;
3. To inspect any facilities, equipment (including monitoring and control equipment), practices, and operations, relating to such wastes;
4. To inspect, monitor, and obtain samples from such person of any such wastes and of any containers or labeling for such wastes; and
5. To record any inspection by use of written, electronic, magnetic and photographic media.

B. Penalties. A person who violates HWMA or any permit, rule, regulation, or order issued pursuant to HWMA is subject to civil and/or criminal penalties pursuant to A.R.S. §§ 49-923 through 49-925, as amended. Nothing in this Article shall be construed to limit the Director's or Attorney General's enforcement powers authorized by law including but not limited to the seeking or recovery of any civil or criminal penalties.

C. A certification statement may be required on written submittals to the DEQ in response to Compliance Orders or in response to information requested pursuant to subsection (A) of this Section. In addition, the DEQ may request in writing that a certification statement appear in any written submittal to the DEQ. The certification statement shall be signed by a person authorized to act on behalf of the company or empowered to make decisions on behalf of the company on the matter contained in the document.

D. Site assessment plan.

1. The requirement to develop a site assessment plan shall be contained in a Compliance Order. The Director may require an owner or operator to develop a site assessment plan based on one or more of the following conditions:
   a. Unauthorized disposal or discharges of hazardous waste or hazardous waste constituents which have not been remediated.
   b. Results of environmental sampling by the DEQ that indicate the presence of a hazardous waste or hazardous waste constituents.
   c. Visual observation of unauthorized disposal or discharges which cannot be verified pursuant to § 262.11 (as incorporated by R18-8-262), § 264.13 (as incorporated by R18-8-264), or § 265.13 (as incorporated by R18-8-265) as not containing a hazardous waste or hazardous waste constituents.
   d. Other evidence of disposal or discharges of hazardous waste or hazardous waste constituents into the environment which have not been remediated.
2. The site assessment plan shall describe in detail the procedures to determine the nature, extent and degree of hazardous waste contamination in the environment.
3. The site assessment plan shall be approved by the DEQ before implementation.
4. The site assessment shall be conducted and the results shall be submitted to the DEQ within the time limitations established by the DEQ.
5. The DEQ may request in writing that a site assessment plan be conducted. The DEQ will review a voluntarily submitted site assessment plan if the plan satisfies the requirements listed in subsections (D)(2) through (4).

Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (B) effective June 27, 1985 (Supp. 85-3). Former Section R9-8-1880 renumbered as Section R18-8-280, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended October 11, 1989 (Supp. 89-4). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective June 13, 1996 (Supp. 96-2).

ARTICLE 3. RECODIFIED

Title 18, Chapter 8, Article 3, consisting of Sections R18-8-301 through R18-8-305, R18-8-307, Table A, Exhibit 1, and Appendices A and B, recodified to Title 18, Chapter 13, Article 13, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-301. Recodified

Historical Note

Adopted effective August 16, 1993 (Supp. 93-3). Amended effective March 24, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-302. Recodified

Historical Note

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-303. Recodified

Historical Note
Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-304. Recodified

Historical Note
Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-305. Recodified

Historical Note
Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-306. Repealed

Historical Note
Emergency rule adopted effective February 22, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Emergency rule adopted again effective May 26, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired. Emergency rule adopted again effective August 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 2, 1993 (Supp. 93-4). The permanent rule that was adopted effective December 2, 1993, was inadvertently published without the changes the agency made. Those changes appear here. (Supp. 95-4). Section repealed by summary rulemaking with an interim effective date of July 16, 1999, filed in the Office of the Secretary of State June 25, 1999 (Supp. 99-2). Interim effective date of July 16, 1999 now the permanent effective date (Supp. 99-4).

R18-8-307. Recodified

Historical Note
Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Table A. Recodified

Historical Note
Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Table A recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Exhibit 1. Recodified

Historical Note
Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Exhibit 1 recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix A. Recodified

Historical Note
Adopted effective August 16, 1993 (Supp. 93-3). Appendix A recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix B. Recodified

Historical Note
Adopted effective August 16, 1993 (Supp. 93-3). Appendix B recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 4. RECODIFIED

Title 18, Chapter 8, Article 4, consisting of Section R18-8-402, recodified to Title 18, Chapter 13, Article 9, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-401. Expired

Historical Note
Adopted effective December 21, 1977 (Supp. 77-6). Former Section R9-8-1711 renumbered without change as Section R18-8-401 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-402. Recodified

Historical Note
Adopted effective December 21, 1977 (Supp. 77-6). Former Section R9-8-1717 renumbered without change as Section R18-8-402 (Supp. 87-3). Section recodified to A.A.C. R18-13-902, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 5. RECODIFIED

Title 18, Chapter 8, Article 5, consisting of Sections R18-8-502 through R18-8-512, recodified to Title 18, Chapter 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-501. Expired

Historical Note
Former Section R9-8-411 renumbered without change as Section R18-8-501 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-502. Recodified

Historical Note
Former Section R9-8-412 renumbered without change as Section R18-8-502 (Supp. 87-3). Section recodified to A.A.C. R18-13-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-503. Recodified

Historical Note
Former Section R9-8-413 renumbered without change as Section R18-8-503 (Supp. 87-3). Section recodified to A.A.C. R18-13-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-504. Recodified

Historical Note

Former Section R9-8-414 renumbered without change as Section R18-8-504 (Supp. 87-3). Section recodified to A.A.C. R18-13-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-505. Recodified

Historical Note

Former Section R9-8-415 renumbered without change as Section R18-8-505 (Supp. 87-3). Section recodified to A.A.C. R18-13-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-506. Recodified

Historical Note

Former Section R9-8-416 renumbered without change as Section R18-8-506 (Supp. 87-3). Section recodified to A.A.C. R18-13-306, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-507. Recodified

Historical Note

Former Section R9-8-421 renumbered without change as Section R18-8-507 (Supp. 87-3). Section recodified to A.A.C. R18-13-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-508. Recodified

Historical Note

Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-8-426 renumbered without change as Section R18-8-508 (Supp. 87-3). Section recodified to A.A.C. R18-13-308, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-509. Recodified

Historical Note

Former Section R9-8-427 renumbered without change as Section R18-8-509 (Supp. 87-3). Section recodified to A.A.C. R18-13-309, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-510. Recodified

Historical Note

Former Section R9-8-428 renumbered without change as Section R18-8-510 (Supp. 87-3). Section recodified to A.A.C. R18-13-310, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-511. Recodified

Historical Note

Former Section R9-8-431 renumbered without change as Section R18-8-511 (Supp. 87-3). Section recodified to A.A.C. R18-13-311, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-512. Recodified

Historical Note

Amended effective August 6, 1976 (Supp. 76-4). Correction in spelling, paragraph (5), "feeding"; former Section R9-8-432 renumbered without change as Section R18-8-512 (Supp. 87-3). Section recodified to A.A.C. R18-13-312, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-513. Expired

Historical Note

Adopted effective March 14, 1979 (Supp. 79-2). Former Section R9-8-433 renumbered without change as Section R18-8-513 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

ARTICLE 6. RECODIFIED

Existing Sections in Article 6 recodified to 18 A.A.C. 13, Article 11 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-601. Expired

Historical Note

Former Section R9-8-1211 renumbered without change as Section R18-8-601 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-602. Recodified

Historical Note

Former Section R9-8-1212 renumbered without change as Section R18-8-602 (Supp. 87-3). Section R18-8-602 recodified to R18-13-1102 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-603. Recodified

Historical Note

Former Section R9-8-1213 renumbered without change as Section R18-8-603 (Supp. 87-3). Section R18-8-603 recodified to R18-13-1103 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-604. Recodified

Historical Note

Former Section R9-8-1214 renumbered without change as Section R18-8-604 (Supp. 87-3). Section R18-8-604 recodified to R18-13-1104 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-605. Expired

Historical Note

Former Section R9-8-1215 renumbered without change as Section R18-8-605 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-606. Recodified

Historical Note

Former Section R9-8-1216 renumbered without change as Section R18-8-606 (Supp. 87-3). Section R18-8-606 recodified to R18-13-1106 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-607. Expired

Historical Note

Former Section R9-8-1221 renumbered without change as Section R18-8-607 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-608. Recodified

Historical Note

Former Section R9-8-1222 renumbered without change as Section R18-8-608 (Supp. 87-3). Section R18-8-608

recodified to R18-13-1108 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-609. Expired

Historical Note
Former Section R9-8-1223 renumbered without change as Section R18-8-609 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-610. Expired

Historical Note
Former Section R9-8-1224 renumbered without change as Section R18-8-610 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-611. Expired

Historical Note
Former Section R9-8-1225 renumbered without change as Section R18-8-611 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

R18-8-612. Recodified

Historical Note
Former Section R9-8-1231 renumbered without change as Section R18-8-612 (Supp. 87-3). Section R18-8-612 recodified to R18-13-1112 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-613. Recodified

Historical Note
Former Section R9-8-1232 renumbered without change as Section R18-8-613 (Supp. 87-3). Section R18-8-613 recodified to R18-13-1113 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-614. Recodified

Historical Note
Former Section R9-8-1233 renumbered without change as Section R18-8-614 (Supp. 87-3). Section R18-8-614 recodified to R18-13-1114 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-615. Recodified

Historical Note
Former Section R9-8-1234 renumbered without change as Section R18-8-615 (Supp. 87-3). Section R18-8-615 recodified to R18-13-1115 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-616. Recodified

Historical Note
Former Section R9-8-1235 renumbered without change as Section R18-8-616 (Supp. 87-3). Section R18-8-616 recodified to R18-13-1116 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-617. Recodified

Historical Note
Former Section R9-8-1236 renumbered without change as Section R18-8-617 (Supp. 87-3). Section R18-8-617 recodified to R18-13-1117 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-618. Recodified

Historical Note
Former Section R9-8-1241 renumbered without change as Section R18-8-618 (Supp. 87-3). Section R18-8-618 recodified to R18-13-1118 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-619. Recodified

Historical Note
Former Section R9-8-1242 renumbered without change as Section R18-8-619 (Supp. 87-3). Section R18-8-619 recodified to R18-13-1119 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-620. Recodified

Historical Note
Former Section R9-8-1243 renumbered without change as Section R18-8-620 (Supp. 87-3). Section R18-8-620 recodified to R18-13-1120 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-621. Expired

Historical Note
Former Section R9-8-1244 renumbered without change as Section R18-8-621 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

ARTICLE 7. RECODIFIED

18 A.A.C. 8, Article 7, consisting of Sections R18-8-701 through R18-8-710, recodified to Title 18, Chapter 13, Article 12, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-701. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1201, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-702. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1202, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-703. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1203, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-704. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1204, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-705. Recodified

Historical Note
Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1205, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-706. Recodified

Historical Note

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1206, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-707. Recodified

Historical Note

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1207, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-708. Recodified

Historical Note

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1208, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-709. Recodified

Historical Note

Emergency rule adopted effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency rule adopted again effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired (Supp. 93-3). Emergency rule permanently adopted without change effective February 1, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1209, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-8-710. Recodified

Historical Note

Emergency rule adopted effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency rule adopted again effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired (Supp. 93-3). Emergency rule permanently adopted without change effective February 1, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1210, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 8. RESERVED

ARTICLE 9. RESERVED

ARTICLE 10. RESERVED

ARTICLE 11. RESERVED

ARTICLE 12. RESERVED

ARTICLE 13. RESERVED

ARTICLE 14. RESERVED

ARTICLE 15. RESERVED

ARTICLE 16. RECODIFIED

Article 16, consisting of Sections R18-8-1601 through R18-8-1614, recodified to 18 A.A.C. 13, Article 16 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1601. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1602. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1603. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1604. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1605. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1606. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1607. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1608. Recodified

Historical note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1609. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1610. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1611. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1612. Recodified

Historical Note

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1613. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-8-1614. Recodified

Historical Note
Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

APPENDIX K-2

ARIZONA ADMINISTRATIVE REGISTER

TITLE 18 CHAPTER 8 (REVISED 5/25/2012)

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY HAZARDOUS WASTE MANAGEMENT

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1244.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 23, 2011.

[R12-77]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**

R18-8-260	Amend
R18-8-270	Amend

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

Authorizing Statutes: A.R.S. § 49-104(B)(17); Laws 2011, 1st Regular Session, Ch. 220

Implementing Statutes: A.R.S. §§ 49-922(B)(5) and 49-931(A)

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

July 1, 2012; to coincide with the beginning of the state fiscal year.

4. Citations to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 17 A.A.R. 1822, September 16, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 1916, September 30, 2011

5. The agency's contact persons who can answer questions about the rulemaking:

Name:	Peggy Guichard-Watters
Address:	Department of Environmental Quality Waste Programs Division 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-4117, or (800) 234-5677, enter 771-4117 (Arizona only)
Fax:	(602) 771-2383
TTD:	(602) 771-4829
E-mail:	pgw@azdeq.gov
or	
Name:	Mark Lewandowski
Address:	Department of Environmental Quality Waste Programs Division 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)
Fax:	(602) 771-4246

TTD: (602) 771-4829

E-mail: lewandowski.mark@azdeq.gov

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

Summary. This rulemaking was conducted as required by Laws 2011, 1st Regular Session, Ch. 220 (hereafter "HB 2705"), which also enacted temporary hazardous waste fees for Fiscal Year (FY) 2012. The final rule increases existing hazardous waste fees beginning July 1, 2012 to address the direct and indirect costs of the Department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing hazardous waste permits and enforcing the requirements of the regulatory program. The goal is to achieve self sufficiency of the Arizona Department of Environmental Quality's (ADEQ or the Department) Hazardous Waste Program and replace General Fund monies no longer appropriated to the Program. The new fees from this rule are effective July 1, 2012.

Background. The Arizona Hazardous Waste Program is required by A.R.S. § 49-922 and consists primarily of a permitting function and an inspection and compliance function. Like other environmental programs, it is based largely on federal law that calls for states to adopt and implement certain federal regulations as stringently as EPA. As a consequence of Arizona being granted "authorization" to implement the federal regulations in Arizona "in lieu of" the United States Environmental Protection Agency (EPA), ADEQ also receives a regular two-year grant from EPA, known as the RCRA (Resource Conservation and Recovery Act) grant.

Since ADEQ was first granted authorization for the Hazardous Waste Program in 1985, the federal RCRA grant has played a key part in the funding and authorization of the Arizona Hazardous Waste Program. However, the grant was never designed to be the sole source of funding. In 1991, fees from hazardous waste generators, permit processing fees, and fees from civil and criminal penalties were added as revenue sources to the Hazardous Waste Management Fund. Civil and criminal penalties were redirected to the General Fund in 1996. In addition, until recently, there has always been General Fund support for ADEQ's Hazardous Waste Program.

As a result of the economic downturn in 2007-2008, many states including Arizona began to experience budget shortfalls. Lump sum budget reductions and fund transfers to the General Fund from state agencies, including the ADEQ were undertaken by the legislature. Monies from various ADEQ funds including the Hazardous Waste Management Fund were transferred to the General Fund. In addition, the FY 2011 budget eliminated all of the ADEQ's General Fund ($6,247,700) for operations. Special session legislation allowed ADEQ to increase fees through exempt rules for air, water, and waste programs for FY 2011. (Laws 2010, 7th Spec. Sess., Ch. 7, § 5) In 2011, HB 2705 gave ADEQ the authority to continue increased waste program fees for FY 2012. The increased fees in this rule are also authorized by HB 2705 and would begin July 1, 2012 for FY 2013.

HB 2705. HB 2705 directed ADEQ to establish fees for two types of hazardous waste entities: hazardous waste generators and facilities that store, treat, or dispose of hazardous waste. The statute directs that the fees are to be set based on hazardous waste generated and disposed, and for the costs of evaluating hazardous waste facility permits. The bill set out a number of further requirements for those fee increases contained in A.R.S. §§ 49-104(B)(17), 49-922, and 49-931. Two principal requirements are: 1) the fees should "be fairly assessed and impose the least burden and cost to the parties subject to the fees"; and 2) the permit fees are to be based on "the direct and indirect costs of the department's relevant duties" … "related to issuing licenses" … "and enforcing the requirements of the applicable regulatory program." Other requirements also apply and are discussed later.

In the context of this rulemaking, ADEQ has interpreted these two main requirements to mean it should collect an amount necessary to maintain an approvable program and to satisfy the detailed requirements to protect the public and the environment from hazardous wastes that are set out in A.R.S. § 49-922. ADEQ interprets "fairly assessed" to mean that the amount of fees collected from any class of hazardous waste entities should be proportional to the "direct and indirect costs" that can be attributed to that class.

Informal Comment. In 2011, ADEQ facilitated extensive informal comment on funding for the Hazardous Waste Program and hosted four public meetings. An e-mail 'listserv' was created consisting of hazardous waste related entities and each meeting was announced to the listserv and posted on ADEQ's web site. The meetings were held in Phoenix and ADEQ provided a call-in mechanism to allow participation by phone. Attendance averaged 50-75 people per meeting. Meetings on January 24 and January 31 concentrated on concepts and the design of legislation. The meetings on June 30 and July 28 reviewed draft rule language and responded to comments from the public. Oral comments were recorded at the meetings, and written comments were accepted after each meeting. At the time, the hazardous waste listserv contained over 450 e-mail addresses for the hazardous waste rule.

Explanation of New Fees. These final rules increase fees in the Hazardous Waste Programs for hazardous waste generation and disposal, and permits. The first set of fees increased is the per ton hazardous waste generation fee and the per ton hazardous waste disposal fee at A.R.S. § 49-931. Disposal fees apply only to hazardous waste disposed in Arizona. HB 2705 removed the fees previously established by that statute and authorized ADEQ to establish the fees by rule. The table below shows how the new fee amounts compared to previous fee amounts.

Table 1. Hazardous Waste Generation and Disposal Fees

Type of Hazardous Waste "Facility"	FY 2010 and before	FY 2011 and FY 2012	New fee beginning FY 2013	Maximum fee per site beginning FY 2013
A.R.S. § 49-931(A)(1)	$10/ton	$70/ton	$67.50/ton	$200,000
A.R.S. § 49-931(A)(2)	$40/ton	$280/ton	$270/ton	$5,000,000
A.R.S. § 49-931(A)(3)	$4/ton	$28/ton	$27/ton	$160,000

The second set of increased fees are the fees for processing hazardous waste permits, which were previously in rule at R18-8-270. The tables below show how the new application fees, maximum fees, and hourly rate compare to the previous amounts.

Table 2. Hazardous Waste Permits
New and Previous Application and Maximum Fees for Various License Types

License Type	Application Fee Previous/New	Maximum Fee Previous/New
Permit for: Container Storage/Container Treatment	$10,000/$20,000	NA/$250,000
Permit for: Tank Storage/Tank Treatment	$10,000/$20,000	NA/$300,000
Permit for: Surface Impoundment	$10,000/$20,000	NA/$400,000
Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/ Miscellaneous Unit	$10,000/$20,000	NA/$500,000
Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/Research, Development, and Demonstration	$10,000/$20,000	NA/$300,000
Corrective Action Permit/Remedial Action Plan (RAP) Approval	$10,000/$20,000	NA/$300,000
Post-Closure Permit	$10,000/$20,000	NA/$400,000
Closure of Container/Tank/Drip Pad/Containment Building	$2,500/$5,000/unit	NA/$100,000
Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/Waste Pile/Land Treatment Unit/Landfill	$2,500/$5,000/unit	NA/$300,000
Class 1 Modification (requiring Director Approval)	$1,000/$1,000	NA/$50,000
Class 2 Modification	$2,500/$5,000	NA/$250,000
Class 3 Modification (for Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$10,000/$20,000	NA/$400,000
Class 3 Modification (except for Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$10,000/$10,000	NA/$250,000

Table 3. Hazardous Waste Hourly Rate

Hazardous Waste permits	April 2006 to July 2010	FY 2011 and FY 2012	New beginning FY 2013
Hourly rate	$95.29	$95.29	$136.00

The application fee increases in Table 2 are a result of the increase in the hourly rate. ADEQ needs to obtain sufficient monies up front so that payments do not lag behind services provided. The maximum fees for hazardous waste permit actions are new and are required by HB 2705. Maximum fees are set to provide predictability to permit applicants while also allowing ADEQ to be reasonably certain that it meets Licensing Time-frames and not expend more resources processing a permit than the amount for which it can be reimbursed. ADEQ has increased the hourly rate it uses for permit review from $95.29 to $136.

Explanation of hourly rate.

ADEQ estimated the hourly rate of $136 per hour for hazardous waste permitting staff (project management and technical review) based on the permitting work of a full-time employee (FTE) and made the following assumptions:

Hours

- Assumes an FTE works 2080 hours annually (40 hours X 52 weeks).
- NON-PROGRAM HOURS include:
  - hours related to employee leave (sick, vacation, holiday), calculated at the maximum available of 320 hours.
  - hours related to training, meetings and minor tasks estimated at 315 hours.

- hours lost due to employee turnover – assuming a rate of 10 percent - 208 hours.
- TOTAL NON-PROGRAM HOURS estimated at 843 hours annually.

- PROGRAM HOURS are what remain when non-program hours are subtracted from the total annual hours. Program hours include both review and decision-making on specific applications (i.e. billable), and those hours not related to review hours of specific applications (i.e. non-billable). Some of the Program Hours are therefore not billable.
  - TOTAL PROGRAM HOURS = 2080 - 843 = 1237 hours/year.
  - NON-BILLABLE PROGRAM HOURS includes, among other duties, customer service time, inter-division and inter-agency coordination, permit administration, and program development (rules and policies). This is estimated at 403 hours annually.
  - BILLABLE PROGRAM HOURS = 1237 - 403 = 834 hours/year.

Costs

- Salaries + employee related expenses (ERE) related to Billable Program Hours performed by an FTE.
  - ERE (e.g., health insurance, worker's compensation) benefits at rate of 42 percent of salary.
  - A portion of Non-Program Hours in support of Billable Program Hours are included in costs. This is estimated at 568 hours/year (67.4 percent of total Non-Program Hours).
  - Program staff includes Project Managers, Engineers, and Hydrologists at an average hourly rate of $27.40.

Cost = (834 + 568 hours) X $27.40/hour X 1.42 = $54,549

- Management/ Supervisory hours in support of the program staff work are included in costs, and are estimated at 300 hours/year. This includes unit and section managers at an average hourly rate of $33.96.

Cost = (300 hours) X $33.96/hour X 1.42 = $14,467

- Administration Support hours in support of the program staff and management's and supervisors' work are included in costs, estimated at 200 hours/year at an average hourly rate of $15.73.

Cost = (200 hours) X $15.73/hour X 1.42 = $4,467

- Subtotal of personnel services and ERE for the project manager, management staff, and administrative support staff ($54,549 + $14,467 + $4,467 = $73,483).
- Add Indirect expenses (49.53 percent of personal services and ERE by federal formula) for rent, utilities, etc., estimated at $36,396 ($73,483 X 0.4953 = $36,396).
- Add Other Expenses such as per diem travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at $3,500.
- Total Costs Related to Permit Process for one FTE= $113,379. ($73,483 + $36,396 + $3,500 = $113,379)

Hourly Rate

Dividing the total costs of an FTE ($113,379) by Billable Program Hours (834) yields the hourly rate for permit processing of $136/hour ($113,379 ÷ 834 billable program hours = $136/hour).

- The remaining 678 hours of an FTE's work year are not directly billable to permit processing (e.g., non-billable program hours and balance of the non-program hours (403 + 32.6 percent X 843 = 678)) and must be supported through the RCRA grant and annual generator fees.

The rate of $136 per hour is comparable to private sector rates and with the rates charged by other ADEQ divisions and state agencies that are engaged in similar levels of technical review and project management. For comparison, the average private sector consultant rate for similar work activities charged in ADEQ's hazardous waste permit program typically ranges from $135 to $145 per hour. Using this same hourly rate calculation methodology, the Air Quality Division currently charges $141.50 per hour, and the Water Quality Division currently charges $122 per hour. The Arizona Department of Water Resources, using the same hourly rate calculation methodology, currently charges $118 per hour. The nominal differences in fees charged between the divisions and agencies largely relate to the hourly rate differences between the specialty staff needed by each particular program. Those programs requiring more specialty technical review (e.g., by hydrologists or engineers) will have slightly higher hourly rates.

Billing Details. During the informal public participation process, stakeholders asked ADEQ for a rule requirement to put more detail on the periodic and final bills they get from ADEQ. ADEQ added this requirement to the proposed rule at R18-8-270(G)(5). At the time of the Notice of Proposed Rulemaking, ADEQ stated that its proposal to provide a detailed hours breakdown on every bill [See R18-8-270(G)(5)(b)] was not currently practicable due to the lack of an automated software system. ADEQ has begun developing an automated tracking system to facilitate the collection of detailed billing information. The continuing shortage of resources has caused ADEQ to place a new starting date for certain billing information requirements in R18-8-270(G)(5). ADEQ now expects the system will be in place by the end of CY 2012.

Hazardous Waste Generation Fees; Maximums. ADEQ has increased hazardous waste generation fees from the amounts they were before FY 2011. As can be seen from Table 1, the new permanent rates are slightly lower than they were for the previous two fiscal years.

The prior hazardous waste generation fees were set in statute at A.R.S. § 49-931, but the statute did not establish maximum fees. ADEQ has established maximum fees for hazardous waste generators in units of dollars per generator site per year because it believes that generators with multiple sites are able to treat each of their sites as separate fiscal units. This provides predictability on a per site basis. The maximum fees are set to provide assurance to ADEQ that it will continue to collect about the same revenues if generation rates remain approximately the same, while providing certainty to generators that changes in operations or regulations will not drive their fees over a specified amount.

ADEQ analyzed different combinations of per ton fees and generator site maximums using various factors including proportionality and impacts on small businesses. Since federal regulations have definitions for large quantity generator (LQG) and small quantity generator (SQG), these categories allow assessment of both the proportionality and the small business impact of various hazardous waste generation fee and cap combinations.

Although other criteria can apply, under federal regulations, an entity that generates more than 2,200 pounds of hazardous waste in any month is an LQG, while one that generates more than 220 pounds but less than 2,200 pounds in any month is normally an SQG. When these categories are matched against ADEQ's database of generators, the new per ton fee and fee caps will result in approximately 85% of the hazardous waste generation fees paid by LQGs of hazardous waste and approximately 15% paid by SQGs. ADEQ estimates that in 2009-2010 it expended approximately 60% of its hazardous waste resources on LQGs and approximately 40% on SQGs. These resource figures are subject to change based on ADEQ compliance initiatives, RCRA grant workplan requirements and EPA inspection and compliance initiatives that are established on a year to year basis. The preponderance of ADEQ resources expended on LQGs is partially accounted for by the fact that there are more requirements that apply to LQGs. Not only do inspections of LQGs take more time, but ADEQ also inspects LQGs more frequently.

Finally, ADEQ seeks to minimize the impact of these fees on small businesses. ADEQ believes that SQGs are more likely to be small businesses than LQGs. (The maximum amount of hazardous waste an SQG can generate in a year is about 12 tons.) ADEQ believes that under this fee and fee cap arrangement, it has both fairly assessed the fees and minimized the impact on small business.

ADEQ discusses other fee and fee cap alternatives in item 9 of this Notice.

Under A.R.S. § 49-104(B)(17)(b), (c), and (d), ADEQ must also consider the availability of other funds, the impact of the fees on the parties subject to the fees, and the fees charged for similar duties performed by the Department, other agencies, and the private sector.

ADEQ has already discussed the availability, regular use, and conditions required for using the federal RCRA grant, and ADEQ is using the grant to the maximum extent. It was noted earlier that civil and criminal penalties that result from hazardous waste enforcement go to the General Fund and no longer to the Hazardous Waste Management Fund, so that these funds are not available to mitigate these fee increases. The same is true of hazardous waste fuel penalties under A.R.S. § 49-932. Finally, under A.R.S. § 49-929, all hazardous waste entities pay small registration fees into the Water Quality Assurance Revolving Fund (WQARF) established under A.R.S. § 49-282, but the WQARF statute does not allow WQARF funds to be used for either hazardous waste permitting or inspections, except as provided in A.R.S. § 49-282(E)(7), which allows a limited amount to be used for hazardous waste compliance monitoring, investigation and enforcement activities.

As discussed earlier, ADEQ has considered the impact of the fees on the parties subject to the fees through its collection of the least amount of fees necessary to sustain an approvable program, and a fair, proportional assessment of those fees.

In considering the fees charged for similar duties performed by the Department, other agencies, and the private sector, ADEQ notes that it has already compared hourly rates for the most similar duties. Many agencies are not required to recover their full processing costs with fees, and in that case, it is more difficult to make a direct comparison. For example in Nevada, the hourly rate for hazardous waste permit processing is $50 per hour, (NAC 444.8446) but the purpose of Nevada's fee is merely to "offset the cost to process and review the application." (emphasis added) In Arizona, the hourly rate has to cover both the direct and indirect costs. In addition, Nevada charges a significant annual operating fee as well as miscellaneous "[a]dditional fees to offset cost of inspection and other regulation." Similar scenarios exist for hazardous waste generation fees, where states charge lower fees but where the fees are not designed to sustain so much of program costs.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, 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

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

Not applicable

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

Identification of the rulemaking: 18 A.A.C. 8, Article 2, amending R18-8-260 and R18-8-270. (For further information, see item 6 of this preamble.) These rules are not designed to change the conduct of any regulated hazardous waste entities. The rules are designed to collect increased fees for some hazardous waste entities. The per ton fees for generation and disposal of hazardous waste are increased in R18-8-260. Maximum fees are set and the application fees and hourly rate are increased for processing hazardous waste permits in R18-8-270.

Program Description. Under A.R.S. § 49-922 and federal law, Arizona's Hazardous Waste Program is responsible for ensuring that all regulated hazardous waste in Arizona is stored, transported, and disposed of properly, and is largely a preventative program to keep hazardous waste from entering the environment. The program maintains an inventory of hazardous waste generators, transporters and treatment, storage, and disposal (TSD) facilities in Arizona. Permits are issued, managed, and maintained for TSD facilities; this activity includes permit modifications, renewal, closure plan, and financial assurance reviews. Generators, transporters and TSD facilities are periodically inspected. Hazardous waste complaints are investigated. Compliance data is collected and stored. Hazardous waste is tracked from generation to disposal. Compliance assistance is provided, enforcement actions are pursued against significant violators, and oversight is provided for the remediation of contaminated sites.

Regulatory Universe. ADEQ's Hazardous Waste Program regulates a universe of over 1500 facilities, including metal platers, chemical manufacturers, laboratories, explosive and munition manufacturers, pesticide manufacturers, hazardous waste TSDs, and military installations. There are currently 13 permitted TSD facilities, 181 to 265 large quantity generators, 901 to 1513 small quantity generators, and 217 to 340 transporters. An EPA listing of Arizona's 50 largest hazardous waste generators and other related information can be found at http://www.epa.gov/osw/inforesources/data/br09/state09.pdf.

Proposed Hazardous Waste Staff. Due to the elimination of the General Fund appropriation, the transfer of funds from the Hazardous Waste Management Fund to the General Fund and other budget reductions, the Hazardous Waste Program experienced a reduction in staffing levels over the past few years. Some positions were eliminated entirely and others have not been filled following staff lay-offs or voluntary departures. In FY 2008, the Hazardous Waste Program had five permit writers and 11 inspections and compliance officers. The minimum staffing needed to operate the Hazardous Waste Program consists of seven inspectors and 2.8 permit writers. An additional 13 full-time-equivalent positions (FTEs) consisting of support staff include a full-time RCRA attorney from the Attorney General's Office, a hydrologist, pollution prevention staff, records management staff, budget, database and clerical staff, and management. ADEQ believes these staffing levels represent the minimum necessary to process the existing and future workload efficiently and within applicable licensing time-frames. ADEQ does not anticipate the programs or associated staffing levels to expand as a result of this rulemaking.

Budget. The budget necessary to operate the Hazardous Waste Program with the proposed staffing is approximately $3.3 million. In FY 2010, hazardous waste permitting and generation fees only generated approximately $357,000. In addition, the portion of a federal grant known as the RCRA grant that was allocated for FY 2010 was $1.4 million and the WQARF contribution under A.R.S. § 49-287(E)(7) was $142,600. This rule is designed to address the additional $1.4 million revenue shortfall.

Implemented Efficiencies. The Hazardous Waste Program has changed its operation in recent years to accomplish required work with fewer resources. Permitting program efficiencies include: using contractors for permit application reviews when necessary for technical support or schedule concerns; working to improve web site resources to provide better information to the regulated community; utilizing EPA resources to review new permits; and utilizing EPA resources to review some financial assurance mechanisms.

Compliance program efficiencies include: using boilerplate language for inspection reports and enforcement documents to increase overall productivity, efficiency and timeliness for completing inspection related documents; scheduling field work to reduce travel dollars and increase productivity; taking advantage of no-cost training opportunities from outside entities, and cross-training within ADEQ; developing standardized presentations for the general public and for in-house training; using new data search tools to increase proficiency for understanding regulations and searching for EPA and ADEQ regulatory guidance documents; working to improve web site resources to provide better information and increase outreach efforts.

Discussion and Demonstration: The Regulatory Objective. A.R.S. § 49-922 requires that ADEQ establish and implement a hazardous waste management program "equivalent to and consistent with" the federal hazardous waste program. EPA likewise requires states to adopt a program at least as stringent as the federal program in order to be authorized to implement the federal program in lieu of EPA. As a result of being authorized, ADEQ receives RCRA grant funding from EPA to partially offset the cost of running the program. Through the grant and delegation process, EPA maintains close scrutiny of the Arizona program and requires it to achieve certain benchmarks.

Based on stakeholder comments, most in the regulated community agree that ADEQ should implement the federal program rather than EPA, and that ADEQ should continue to meet the criteria and benchmarks for program authorization in order to implement the program and receive the federal RCRA grant. The grant provides approximately $1.4 million to ADEQ per year and must be spent according to grant priorities. In 2010, 50% of the overall grant had to be spent for enforcement, 35% for permitting and corrective action, and 15% for pollution prevention, while $200,000 was earmarked specifically for program activities at the Mexico border. In addition, Arizona must match the RCRA

grant with 25% additional state funds (approximately $375,000). In FY 2010, hazardous waste permit and generation fees totaled only $357,000. Those fees require an additional $1.4 million in order to replace the General Fund monies and other funding removed in FY 2010 and make the program more self-sufficient.

Resource Reduction Impacts. Failure to adequately staff and fund the program may cause the loss of the EPA-delegated program and approximately $1.4 million in state matched federal dollars. If the program reverts back to EPA, Arizona will lose control over enforcement and permitting decisions. If the program continues to receive federal dollars, but is not adequately funded by the state, efforts will be focused on the EPA grant required performance measures. Continuation of some services, such as outreach, technical assistance, timely complaint response, and inspections of small quantity generators, conditionally exempt small quantity generators, and transporters will cease.

Least burden and cost; description of alternatives. A.R.S. § 41-1052(D)(3) requires ADEQ to demonstrate it has selected the alternative with the least burden and cost necessary to achieve the underlying regulatory objective. A nearly identical issue was discussed in item 6 of the preamble with regard to A.R.S. § 49-104(B)(17), which requires that the fees should "be fairly assessed and impose the least burden and cost to the parties subject to the fees"; and that the fees are to be based on "the direct and indirect costs of the department's relevant duties" … "related to issuing licenses" … "and enforcing the requirements of the applicable regulatory program."

In the context of this hazardous waste rule, ADEQ has interpreted these two main requirements to mean collecting an amount necessary to maintain an approvable program and satisfy the detailed requirements to protect human health and the environment from hazardous wastes that are specified in A.R.S. § 49-922. ADEQ considers "fairly assessed" to mean that the amount of fees collected from any class of hazardous waste entities should be proportional to the "direct and indirect costs" that can be attributed to that class.

ADEQ analyzed different combinations of per ton fees and generator site maximums using various factors including proportionality and impacts on small businesses. Several members of the regulated community requested that ADEQ consider additional fee scenarios that would keep the generator site maximums lower than the amounts being considered by ADEQ. As a result, ADEQ evaluated the following alternative per ton fee/generator site maximum scenarios for facilities that fall under A.R.S. § 49-931(A)(1) under which most of the generator fees are collected.

Tonnage cap: 250 ton
Facilities covered by the cap: 14
Tonnage fee for this cap: $140.50 per ton
Money saving threshold: 518 tons
Facilities saving money due to the cap: 5

Tonnage cap: 95 ton
Facilities covered by the cap: 35
Tonnage fee for this cap: $205.50 per ton
Money saving threshold: 289 tons
Facilities saving money due to the cap: 12

ADEQ determined that fee scenarios like the two described above would place a substantial hardship on small businesses. Under the scenarios described above and considered at the request of several in the regulated community, generators would see their hazardous waste generation fees increase from $10/ton to $140.50/ton and even $205.50/ton instead of the $67.50/ton rate in the final rule. ADEQ could not justify such drastic per ton fee increases for the sake of lowering the generator site maximum, which would ultimately benefit five to 12 of the largest generators of hazardous waste in the state.

ADEQ considered the impact of the fees on the parties subject to the fees through its collection of the least amount of fees necessary to sustain an approvable program, and a fair, proportional assessment of those fees. Under the fee scenario proposed by ADEQ ($67.50/ton with a $200,000 generator site maximum), two generators would come within $14,000 to $16,000 of the cap based on CY2010 hazardous waste generation data.

Generation rates vary from year to year. Based on a review of CY 2009, 2008, and 2007 hazardous waste generation data, generators who undergo major renovations and generate substantially higher volumes of hazardous waste as a result will have a significant cost savings. For instance, in 2008, one facility generated 11,537 tons of hazardous waste. If the new per ton fee ($67.50) is applied to this volume of hazardous waste, the generator would meet the cap at 2,963 tons and would not pay generation fees on the remaining 8,574 tons.

Cost/Benefit. The probable costs for this rule are the $1.4 million in estimated increased fees necessary for the program described above. This amount would replace the General Fund monies and other sources that partially funded the Hazardous Waste Program in the past without cost to the regulated community.

The probable benefits are:

- *Ability of Arizona to implement the federal hazardous waste program.* EPA currently does not have the staff to perform hazardous waste inspections and permitting activities in Arizona; therefore, there could be a significant period of time during which there would be no hazardous waste oversight in Arizona, including responding to citizens' complaints regarding hazardous waste issues. In terms of permitting activities, ADEQ is held to specific licensing time-frames to issue hazardous waste permits in a timely manner; EPA would not be bound by Ari-

zona's rules on licensing time-frames. EPA administration of the hazardous waste program would most certainly result in a delay of statutorily mandated permit processing, causing Arizona businesses to delay start-up, expansion or modification.

- *Local control over enforcement and permitting decisions:* Hazardous waste enforcement and permitting are inexact processes. ADEQ engages heavily with the regulated community during these processes. Arizona businesses could suffer from the inability to engage with the regulators in a timely manner at a convenient location since they would have to engage with EPA staff in San Francisco. Furthermore, the regulated community could no longer take advantage of ADEQ's efforts to educate regulated entities about enforcement policies. ADEQ developed the Compliance and Enforcement Handbook, which is available to the public, with the purpose of promoting appropriate, consistent, and timely enforcement of Arizona's environmental statutes and rules in a manner that is transparent to all who are affected, including the regulated community. EPA does not have a similar guidance document that is tailored to the needs of Arizona businesses.
- *Control over other hazardous waste activities:* RCRA has numerous reporting requirements for generators of hazardous waste. Because Arizona has the authority to implement the hazardous waste program, the business community in Arizona submits documentation to and requests required information (e.g., EPA identification numbers) from ADEQ. Absent an Arizona-specific hazardous waste program, Arizona businesses will be forced to submit reports to and request needed information from EPA in San Francisco. ADEQ receives hundreds of calls each month from Arizona businesses handling hazardous waste, requesting compliance assistance. This service to Arizona businesses would no longer be available.
- *Arizona businesses will be subject to Arizona's Penalty Authority rather than EPA's Administrative Penalty Authority:* ADEQ has authority to seek a penalty of up to $1,000 per day for the violation of a Compliance Order [A.R.S. § 49-923] or to seek penalties of up to $25,000 per day for violations of the Arizona Hazardous Waste Management Act [A.R.S. § 49-924]. In contrast, EPA can assess a penalty of up to $37,500 per day for RCRA violations and this amount is periodically adjusted for inflation. EPA's penalty authority places the burden on the responsible party to contest EPA's alleged violations whereas ADEQ's places the burden on the state.
- *Rulemaking oversight:* A.R.S. § 49-922 requires the Director to adopt rules to establish a hazardous waste program. Hazardous waste rules adopted by ADEQ currently go through the Governor's Regulatory Review Council and stakeholder review processes. When EPA adopts a new regulation, Arizona currently has the authority to review the regulation and decide whether to propose it for adoption. If the Hazardous Waste Program is reverted to EPA, Arizona would lose the ability to decide whether to adopt federal regulations; future EPA regulations would become effective in Arizona at the same time they became effective nationwide.
- *Compliance assistance outreach to regulated community:* Throughout the year, ADEQ staff participates in numerous conferences and training seminars with the goal of educating the regulated community about ADEQ hazardous waste requirements and policies. It is unlikely that EPA would schedule trips to Arizona for staff to participate in short-term outreach events.

In addition to these benefits, there is a general benefit to the state budget due to the Hazardous Waste Program moving toward a fee-based revenue system without the need for General Fund support. At the same time, the rule is fair and equitable, in that more of the costs of the Hazardous Waste Program would be borne by those who need it.

ADEQ believes that the benefits exceed the cost.

Rules More Stringent than Corresponding Federal Law. [A.R.S. § 41-1052(D)(9)] There is no corresponding federal law that requires hazardous waste fees.

Probable Impact on Political Subdivisions of this State Directly Affected by this Rulemaking [A.R.S. § 49-1055 (B)(3)(b)]

Political subdivisions that will be directly impacted by this fee rule are generators of hazardous waste, or one that holds or applies for a hazardous waste permit. It is known that several municipal water treatment plants are small quantity hazardous waste generators. These, such as the 24th Avenue treatment plant owned by the City of Phoenix and which generated three tons in 2009, would be minimally impacted by this fee rule. Also in 2009, the three state universities together generated a total of 210 tons of hazardous waste. The average impact to each university of the generation fee being increased from $10 to $67.50 is 70 tons X $57.50 or $4025, which is less than the cost of one in-state tuition. ADEQ has classified this impact as minimal.

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if any of the following methods are legal and feasible in meeting the statutory objectives which are the basis of the rulemaking:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

Although the listed methods are not generally relevant to a rule establishing fees, (fees must be fairly assessed and based on direct and indirect costs) ADEQ believes that it has appropriately reduced the impact of the rule on small businesses by the way it established the per ton rate and maximum fee for generation and disposal fees under A.R.S. § 49-931.

Probable Impact on Small Businesses. [A.R.S. § 41-1055(B)(5)] ADEQ has looked at its database of hazardous waste generators and permittees and tried to determine which ones are likely to be small businesses. An example would be dry cleaners. Dry cleaners are often independently owned and operated and not likely to exceed the revenue and employee limits in the statutory definition of small business. Most dry cleaners are also SQGs, so that the impact of the increased generation fees will be based on generation of 12 tons or less. It is likely that most small businesses that generate hazardous waste will be small quantity generators and that the increased generation fees will have limited to moderate impact on them.

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

ADEQ inserted a later effective date (January 1, 2013) for certain billing information requirements in R18-8-270(G)(5)(b) to compensate for delay in the development of an automated invoice tracking system. ADEQ's goal is to implement a new agency wide Revenue Invoice Collection System or RICS by December 31, 2012.

Minor clarifications and grammar corrections were made at the request of G.R.R.C. staff.

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

Comment 1: There should be separate, reduced hazardous waste generation fees for hazardous waste generated during remediation or other permit-mandated activity.

Response 1: There is no chemical or environmental impact difference between remediated and generated hazardous waste. The commenter asserts that ADEQ should charge lower fees for remediated waste for the policy reason that it would encourage the cleanup of waste that might otherwise remain unremediated. While ADEQ is unaware of any empirical evidence that this would in fact be the case, ADEQ disagrees with this approach for several policy reasons. First, the proper handling of hazardous waste should be encouraged, not discouraged, as it would by giving the mishandling of hazardous waste a financial incentive. There should not be a lower fee for finally disposing of hazardous waste properly after it has already been released to the environment. Further, a separate fee for hazardous waste excavated during remediation will complicate the program by making it necessary to distinguish between and monitor the mixing of remediation wastes and other hazardous wastes. Finally, a discount for remediated hazardous waste would require ADEQ to charge a higher fee for hazardous waste that is generated normally, in order to keep total fee revenue the same.

Comment 2: The revised federal definition of solid waste would expand the hazardous waste universe if it becomes final.

Response 2: The Department recognizes that EPA action and other events could increase or decrease the amount of hazardous waste fees it collects. The revised federal definition of solid waste is not finalized. The revised definition is proposed and currently undergoing public comment. The Department will consider the revised definition after it is adopted at the federal level along with other factors that may affect generation at that time. The annual report required by HB 2705 on ADEQ's waste revenues and expenditures beginning in 2014, will be part of this effort.

Comment 3: The fees are not fairly assessed for less complex generators. Commenter is a mini-steel mill that asserts fees should be tailored based on the complexity of the generating facility, and that large generators with one or two streams of hazardous waste can be less complex and therefore easier to regulate than smaller generators with multiple streams or multiple points of generation.

Response 3: ADEQ believes that the proposed hazardous waste generation fees are fairly assessed. Under Arizona's Hazardous Waste Program, hazardous waste generators are classified according to the amount of waste that they generate. This premise is determined in statute and is parallel to the structure of the federal Hazardous Waste Program. The commenter suggests that single stream generators, regardless of the quantity of waste generated, are simpler operations than those that handle multiple hazardous waste streams and therefore would require less Departmental resources. In ADEQ's experience, whether a facility handles multiple hazardous wastes or just one hazardous waste is not a reliable indicator of the complexity of the facility.

ADEQ believes that the amount of hazardous waste generated has the best overall correlation to oversight costs attributable to hazardous waste entities. The amount generated is the primary measure used in EPA's national system and is therefore already in use and easiest to verify. There are over 1500 facilities in Arizona that are already classified as either large or small quantity generators. In addition, hazardous waste generators may change operations and processes often. As a result, volume provides a less burdensome way to assess fees than a matrix related to waste streams or generation points. Any system based upon the number of waste streams or points of generation to adjust fees would be complex and more prone to error.

The commenter feels that a large generator such as itself should not have to be responsible for such a large percentage of ADEQ's hazardous waste operating expenses. During the informal comment period, ADEQ reduced the maximum fee from $400,000 to $200,000 to address this concern directly.

Comment 4: There is no record to support the 85/15 LQG/SQG split. Commenter points to statements in the proposed rule preamble that under the proposed fee and cap arrangement 85% of hazardous waste fees will be paid by large quantity generators while only 60% of applicable resources were spent on LQGs. Commenter further states there are no findings related to the impact of this proposed fee and fee cap arrangement on small businesses.

Response 4: The number of large quantity generators (LQGs) compared to the number of small quantity generators (SQGs) varies year to year. Furthermore, a facility may be classified an LQG one month and an SQG the following month, depending on the amount of waste that it generates. The Department attempted to address this disparity by lowering the fee cap. As ADEQ stated in the Notice of Proposed Rulemaking (NPRM) on page 1920, the 60/40 resource split is just a snapshot estimate for one year; the ratio changes from year to year or even month to month based on many factors.

To ensure that ADEQ minimizes the impact of these fees on small businesses from year to year**,** the proposed fee and fee cap arrangement appears slightly more favorable to smaller generators. However, both the amount of fees collected and the amount of resources expended in FY 2013 will likely be different from the estimates in the NPRM. A separate fee for small generators is administratively burdensome because it would require ADEQ to continually determine whether a business fits this classification and may result in possible billing errors. ADEQ presented various options for the fee and fee caps during the workshops and the values in the NPRM appear to be the most acceptable and effective at meeting various needs well into the future.

Comment 5: The rules do not impose the least burden and cost to parties subject to the fees. Commenter states that ADEQ should look at reducing the work that it considers necessary for the hazardous waste program in order to meet the mandate of imposing the least burden and cost on fee payers. Commenter suggests deleting the requirement that a copy of each manifest be submitted to the agency, similar to other states.

Response 5: The Department will continue to explore ways to improve efficiencies and reduce unnecessary regulatory burdens. For example, ADEQ is pilot testing submittal of manifests in electronic format. Hazardous waste manifests are a critical component of Arizona's Hazardous Waste Program. Manifests are used as part of the inspections and compliance process. Manifests are also used by the Department for generator billing and to provide information to the public.

Comment 6: ADEQ should explain what it means by a "valid" withdrawal of a permit application in proposed R18-8-270(G)(2).

Response 6: "Valid withdrawal of the permit application" is used in A.A.C. R18-8-270(G)(2)(c) to prompt a final accounting of applicant monies paid against ADEQ services expended on the application. The phrase refers to the timely withdrawal of a request for a license by the applicant's authorized agent or signatory accompanied by adequate justification that the basis for the submittal is no longer applicable.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

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:

These rules do not require permits. This rulemaking is for the purpose of setting fees for the Hazardous Waste Program only. The rules do not establish or amend program permits, except as they pertain to fees.

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:

These rules are not more stringent than corresponding federal laws. There is no corresponding federal law that requires hazardous waste fees.

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

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

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

None

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

Not applicable

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT

ARTICLE 2. HAZARDOUS WASTES

Section
R18-8-260. Hazardous Waste Management System: General
R18-8-270. Hazardous Waste Permit Program

ARTICLE 2. HAZARDOUS WASTES

R18-8-260. Hazardous Waste Management System: General

A. No change
B. No change
C. No change
D. No change
1. No change
2. No change
   a. No change
      i. No change
      ii. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
   c. No change
      i. No change
      ii. No change
      iii. No change
   d. No change
      i. No change
      ii. No change
      iii. No change
   e. No change
      i. No change
         (1) No change
         (2) No change
      ii. No change
         (1) No change
         (2) No change
      iii. No change
         (1) No change
         (2) No change
         (3) No change
         (4) No change
   f. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change

E. No change
1. No change
2. No change
3. No change
4. No change

5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
    g. No change
    h. No change
    i. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
    a. No change
    b. No change
23. No change
24. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. No change
32. No change

F. No change
1. No change
2. No change
3. No change
    a. No change
    b. No change
    c. No change
4. No change
5. No change
6. No change
7. No change
    a. No change
    b. No change

G. No change
H. No change
I. No change
J. No change
K. No change
L. No change
M. As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and sub-

mit the appropriate registration fee, prescribed below, with their registration:

1. A hazardous waste transporter that picks up or delivers hazardous waste in Arizona shall pay $200 by March 1 of the year following the date of the pick-up or delivery;
2. A large-quantity generator that generated 1,000 kilograms or more of hazardous waste in any month of the previous calendar year shall pay $300; or
3. A small-quantity generator that generated 100 kilograms or more but less than 1,000 kilograms of hazardous waste in any month of the previous year shall pay $100.

N. A person shall pay hazardous waste generation and disposal fees as required under A.R.S. § 49-931. The DEQ shall send an invoice to large-quantity generators quarterly and small-quantity generators annually. The person shall pay an invoice within 30 days of the postmark on the invoice. The following hazardous waste fees shall apply:

1. A person who generates hazardous waste that is shipped offsite shall pay $67.50 per ton but not more than $200,000 per generator site per year of hazardous waste generated;
2. An owner or operator of a facility that disposes of hazardous waste shall pay $270 per ton but not more than $5,000,000 per disposal site per year of hazardous waste disposed; and
3. A person who generates hazardous waste that is retained onsite for disposal or that is shipped offsite for disposal to a facility that is owned and operated by that generator shall pay $27 per ton but not more than $160,000 per generator site per year of hazardous waste disposed.

R18-8-270. Hazardous Waste Permit Program

A. No change

B. No change

1. No change
   a. No change
   b. No change
   c. No change
2. No change
   a. No change
   b. No change

C. No change

D. No change

E. No change

F. No change

G. § 270.10, titled "General application requirements," is amended by adding the following:

1. When submitting an application for any of the ~~following applications~~ license types in the Table below, an applicant shall remit to the DEQ ~~a permit~~ an application fee ~~of $10,000~~ as shown in the Table.

Table - Hazardous Waste Permitting
Application and Maximum Fees For Various License Types

License Type	Application Fee	Maximum Fee
Permit for: Container Storage/Container Treatment	$20,000	$250,000
Permit for: Tank Storage/Tank Treatment	$20,000	$300,000
Permit for: Surface Impoundment	$20,000	$400,000
Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/Miscellaneous Unit	$20,000	$500,000
Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/Research, Development, and Demonstration	$20,000	$300,000
Corrective Action Permit/Remedial Action Plan (RAP) Approval	$20,000	$300,000
Post-Closure Permit	$20,000	$400,000
Closure of Container/Tank/Drip Pad/Containment Building	$5,000/unit	$100,000
Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/Waste Pile/Land Treatment Unit/Landfill	$5,000/unit	$300,000
Class 1 Modification (requiring Director Approval)	$1,000	$50,000
Class 2 Modification	$5,000	$250,000
Class 3 Modification (for a permit with an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$20,000	$400,000

Class 3 Modification (for a permit without an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$10,000	$250,000

~~a. Initial Part B application submitted pursuant to §§ 270.10 and 270.51(a)(1) (as incorporated by R18-8-270);~~
~~b. Part B permit renewal application submitted pursuant to § 270.10(h) (as incorporated by R18-8-270);~~
~~c. Application for a Class 3 Modification according to §§ 270.42 (as incorporated by R18-8-270); and~~
~~d. Application for a research, development, and demonstration permit.~~

2. If the ~~reasonable~~ total cost of processing the application identified in ~~subsection (G)(1)~~ the Table is less than ~~$10,000~~ the application fee listed in the Table, the DEQ shall refund the difference between the ~~reasonable~~ total cost and ~~$10,000~~ the amount listed in the Table to the applicant.
   a. Permits and permit modifications other than post-closure permits and closure plans. If the ~~reasonable~~ total cost of processing the application is greater than ~~$10,000~~ the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit approval. ~~and the~~ The applicant shall pay the difference in full before the DEQ issues the permit.
   b. Post-closure permits. If the ~~reasonable~~ total cost of processing the application is greater than ~~$10,000~~ the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit issuance. The applicant shall pay the difference in full within 45 days of the date of the bill.
   c. Withdrawals. In the event of a valid withdrawal of the permit application by the applicant, if the total costs of processing the application are less than the amount paid, the DEQ shall refund the difference. If the total costs are greater than the amount paid, the DEQ shall bill the applicant for the difference, and the applicant shall pay the difference within 45 days of the date of the bill.

~~3. When submitting an application for any one of the permit-related activities described in this subsection, the applicant shall remit to the DEQ $2,500. If the reasonable cost of processing the application is greater than $2,500, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application. A refund shall be paid by the DEQ if the reasonable cost is less than the $2,500 fee, either within 45 days of a valid withdrawal of the permit application or upon permit issuance. This subsection applies to all the following:~~
~~a. An application for a modification of a Part B permit pursuant to § 270.41 (as incorporated by R18-8-270);~~
~~b. An application for a Class 2 modification of a permit submitted after permit issuance, according to § 270.42 (as incorporated by R18-8-270);~~
~~c. An application for approval of a final closure plan that is not submitted as part of a Part B application, including the review and approval of the closure report; and~~
~~d. An application for a remedial action plan (RAP) submitted pursuant to 40 CFR 270, Subpart H (as incorporated by R18-8-270).~~

~~4.~~3. With an application for a ~~partial~~ closure plan for a facility, the applicant shall remit to the DEQ ~~a~~ an application fee of ~~$2,500~~ $5,000 for each hazardous waste management unit involved in the ~~partial~~ closure plan or ~~$10,000~~ $20,000, whichever is less. If the ~~reasonable~~ total cost of processing the application, including review and approval of the closure report, is more than the ~~initial~~ application fee paid, the applicant shall be billed for the difference, and the difference shall be paid in full ~~at the time~~ after the DEQ completes review and approval of the closure report ~~associated with the permit~~ and within 30 days of notification by the Director. If the reasonable cost is less than the fee paid by the applicant, the DEQ shall refund the difference within ~~45~~ 30 days of the closure report review and approval ~~associated with the permit~~. The maximum fee for a closure plan is shown in the Table.

~~5.~~4. The fee for a land treatment demonstration permit issued under § 270.63 (as incorporated by R18-8-270) for hazardous waste applies toward the ~~$10,000~~ $20,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration (as incorporated by R18-8-270).

~~6. An applicant shall remit to the DEQ a permit application fee of $1,000 for any one of the following:~~
~~a. An application for a transfer of a Part B permit to a different owner or operator pursuant to § 270.40 (as incorporated by R18-8-270), or~~
~~b. An application for a Class 1 permit modification according to § 270.42 (as incorporated by R18-8-270) that is required as a consequence of mitigating hazardous waste compliance violations. If the reasonable cost of processing the transfer application or modification is greater than $1,000, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application.~~

~~7.~~5. The DEQ shall provide the applicant itemized ~~billings~~ bills at least semiannually for ~~individual costs of the DEQ employees involved in the processing of applications and all other costs to the DEQ pursuant to the following factors when determining the reasonable cost under R18-8-270(G).~~ the expenses associated with evaluating the application and approving or denying the permit or permit modification. The following information shall be included in each bill:
   a. The dates of the billing period;
   b. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
      i. Each review task performed,

ii. The facility and operational unit involved,
iii. The hourly rate;
c. A description and amount of review-related costs as described in subsection (G)(6)(b); and
d. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.

6. Fees shall consist of processing charges and review-related costs as follows:
a. Processing charges. The DEQ shall calculate the processing charges using a rate of $136 per hour, multiplied by the number of review hours used to evaluate and approve or deny the permit or permit modification.
b. Review-related costs means any of the following costs applicable to a specific application:
~~a. Hourly salary and personnel benefit costs;~~
~~b.~~i. Per diem expenses~~;~~,
~~c.~~ii. Transportation costs~~;~~,
~~d.~~iii. Reproduction costs~~;~~,
~~e.~~iv. Laboratory analysis charges performed during the review of the permit or permit modification,~~;~~
~~f.~~v. Public notice advertising and mailing costs~~;~~,
~~g.~~vi. Presiding officer expenses for public hearings on a permitting decision,~~;~~
~~h.~~vii. Court reporter expenses for public hearings on a permitting decision,~~;~~
~~i.~~viii. Facility rentals for public hearings on a permitting decision,~~;~~ and
~~j.~~ix. Other reasonable~~, direct, permit-related~~ and necessary review-related expenses documented in writing by the DEQ and agreed to by the applicant.
c. Total itemized billings for an application shall not exceed the maximum amounts listed in the Table in this Section.

~~8.~~7. Any person who receives a final bill from the DEQ for the processing and issuance or denial of a permit or permit modification under this Article may request an informal review of all billing items and may pay the bill under protest. If the bill is paid under protest, the DEQ shall issue the permit or permit modification if it would be otherwise issuable after normal payment. Such a request shall specify each area of dispute, and it shall be made in writing, within 30 days of the date of receipt of the final bill, to the division director of the DEQ for the ~~Office of~~ Waste Programs Division. The final bill shall be sent by certified mail, return receipt requested. The informal review shall take place within 30 days of the DEQ's receipt of the request unless agreed otherwise by the DEQ and the applicant. ~~Notice of the time and place of informal review shall be mailed to the requester at least 10 working days prior to the informal review.~~ The division director of the DEQ shall review whether or not the amounts of time billed are correct and reasonable for the tasks involved. Disposition of the informal review shall be mailed to the requester within 10 working days after the informal review.

~~9.~~8. The ~~DEQ's~~ division director's decision after the informal review shall become final within 30 days after receipt of the decision, unless the applicant requests in writing a hearing pursuant to R18-1-202.~~]~~

9. For the purposes of subsection (G), "review hours" means the hours or portions of hours that the DEQ's staff spends on a permit or permit modification. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.

H. No change
I. No change
J. No change
K. No change
L. No change
M. No change
N. No change
O. No change
P. No change
Q. No change
R. No change
S. No change