

**A316 SUBCOMMITTEE  
CHAIRMAN'S EDITED DISCUSSION DRAFT  
WITH SUBCOMMITTEE PARTICIPANT COMMENTS,  
AS OF APRIL 1, 2014**

**I. Background:**

The A316 Subcommittee of OWAC has convened by telephone conference call nine times between December 2012 and February 2014. Work has focused on 5 Topic Categories established in late 2012.

The Topic Categories are as follows:

- 1 - Buyer and Seller Responsibilities,
- 2 - Repairs,
- 3 - Training and Certification,
- 4 - Standards and Definitions, and
- 5 - Enforcement.

The A316 Subcommittee Charter is in [Appendix C](#).

Subcommittee discussion has focused on answering questions relevant to each topic category and determining consensus preferences. Public representatives usually participate in teleconference discussion as do OWAC members.

The subcommittee process, while not complete, is at a point where rough cuts can be identified for program modifications. This report is:

- the chairman's interpretation of key findings to date, with limited participant discussion and comments over the period of February 27 thru March 19, and
- a status update for presentation to the ADEQ Onsite Wastewater Advisory Committee on March 20.

Division of the rule update effort appears feasible by both short (quick fix) and long term actions. Such division can facilitate early action on simple rule and policy adaptations. Considerable work will be needed to refine and plan implementation of major revisions to R18-9-A316.

## **II. Point of Beginning:**

As it stands, R18-9-A316 is the principle provision for administratively managing Discharge Authorizations for the On-site Wastewater Treatment Facilities (OWTF) program as is stated in subsection R18-9-A316.A;

### **"R18-9-A316. Transfer of Ownership Inspection for On-site Wastewater Treatment Facilities**

#### **A. Conforming with this Section satisfies the Notice of Transfer requirements under R18-9-A304."**

## **III. Missing/ineffective Program Components:**

Participating members of OWAC and other stakeholders recognize the challenges of managing the Arizona onsite wastewater program. While all do not fully agree with a list of missing/ineffective elements, the Subcommittee Chairman believes a consensus exists that there is ***bad business model*** for much of the delegated program.

Questions have also been raised by A316 Subcommittee participants about related gaps pertaining to program administration and operation for operating general permit OWTFs and reclaimed water facilities serving both residential and commercial wastewater sources. The 2001 and 2005 rulemaking concept for statewide program uniformity has not been achieved. While some actions may seem out-of-scope for R18-9-A316, many pertain to missing/ineffective elements which could be incorporated in reorganized and updated R18-9-A316 and 14 A.A.C. 1.

The following actions need consideration (typically in rule, and some with statutory updating):

- improve transfer inspection process timeframes and notifications;
- rationalizing the operational differences between the Pima County transfer ordinance and R18-9-A316;

- address the problem of perpetual facility life for 1.09 GPs and Type 4 OWTFs, and the associated *business problem* it creates for ADEQ and delegated agencies;
- merge onsite wastewater and reclaimed water facilities permitting standards and procedures to eliminate regulatory separation pertaining to inspection and transfer of ownership;
- address chronic inspection deficiencies;
- address inadequate local agency notification about system deficiencies and repairs;
- fully incorporate in R18-9-A316 the relevant parts of R18-9-A303 Renewal of Discharge Authorization, and R18-9-A304 Notice of Transfer for both 1.09 GPs and Type 4 OWTFs (to *address the program business problem by fully incorporating the relevant parts of R18-9-A303 Renewal of Discharge Authorization with specific renewal requirements, and R18-9-A304 Notice of Transfer for both 1.09 GPs and Type 4 OWTFs*);
- reorganization of the 14 A.A.C. 1, Water Quality Protection Fees for 1.09 GPs and Type 4 OWTFs so such funds can be directly received by local agencies; and
- update delegation of program functions and duties between ADEQ and local agencies to include financial aspects of collecting and sharing revenue.

#### **IV. Key Recommendations Received for Early Action**

Quick fix actions have been updated by Lowell Fagen in January and March 2014, presented herein as [Appendix A](#) and [Appendix D](#). Action by the A316 Subcommittee is pending.

Proposed changes may require increased ADEQ responsibility for inspector training and list management. Additional supporting information is discussed herein summarizing the Coconino County pilot study, [Appendix B](#).

#### **V. Summary of Findings:**

1. Buyer and Seller Responsibilities - consensus is pending.
2. Repairs - shall be made if inspection determines need. Policy is necessary for classifying/detecting/reporting/enforcing violations of

R18-9-A309.A, especially R18-9-A309.A.9.b, and R18-9-B301.I. Subcommittee preference is for rule requirement for Buyer sign and date the ROI form provided by the Seller. Subcommittee is interested in considering rule provision specifying types of repairs which are to be made and when, resembling AAR Addendum language.

3. Training and Certification - Topic continues to be under subcommittee discussion. Actions may include refinements such as:
  - a. prescribe ADEQ program responsibilities and funding,
  - b. prescribe ADEQ program administration including listing of qualified inspectors,
  - c. prescribe ADEQ compliance responsibilities (Some teleconference participants thought ADEQ requirements and a list of qualified inspectors should be best posted on the ADEQ website. Others presented a case for rule language to specify requirements for training program content, testing, and test scores.), and
  - d. expand the training program should include 2 inspector grades (systems with 4.02 GP only technology) and all other systems (1.09 GP, 4.03 - 4.23 GPs, and reclaimed water facilities, if unified elsewhere in rule). Some subcommittee participants needed a refresher about 4-page A316 Subcommittee report to OWAC on September 20, 2013.
4. Standards and Definitions - To be discussed. OWAC members Dawn Long and Joelle Wirth are working on questions.
5. Enforcement - Topic has been expanded to include both A316 matters and the overall program under a separate subcommittee.

## **VI. Subcommittee Concerns about Perpetual Life On-site Wastewater General Permits:**

- Perpetual life general permits and the associated complaint-driven inspection program is a *bad business model*. Local agencies collect fees for reviewing applications and issuing Discharge Authorizations for 5,000 to 10,000 systems per year *while approximately 500,000 are operating without revenue for routine oversight*. 18 A.A.C. Chapters 9 and 14 provide a clearly identifiable revenue stream to ADEQ for individual permits and retained Type 2 and 3 general permits. Fees are collected for annual registration of individual permits and periodic revenue from renewal and transfer of Type 2 and Type 3 GPs:

- Current rules for the 1.09 GP, Type 4 OWTFs, and residential gray water facilities make no provision for funding a program for routine compliance or complaint inspection, see R18-9-A303.B and R18-9-711;
- ADEQ and local agencies responsible for 1.09 GP, Type 4 OWTFs, and residential gray water facilities have no funding for program administration, updating, training, compliance assistance, etc;
- All Type 2 and 3 General Permits (never delegated to local agencies, thereby retained by ADEQ) have prescribed renewal periods of 2 to 7 years, and renewal fees ranging between \$500.00 and \$2,500.00 per R18-9-A303.C and R18-14-108;
- Individual permits, wholly administered by ADEQ have stipulated annual registration fees in rule, **see box below**. If a similar program would apply to all onsite wastewater systems based on 5% of the smallest APP Discharge Flows and Annual Registration Fee in R18-14-104 Table 2 (equivalent to the typical OWTF sized between 150 - 500 gpd) the comparably scaled annual registration fee would be \$25.00. Annual revenue for the approximately 500,000 systems (1.09 GP and Type 4 OWTFs) subject to the ARS, would annually produce \$12.5 million. While a lesser rate may be sufficient, the point is that such *revenue could be shared among the delegated local agencies and ADEQ for program administration including database and online support/access, program updating, training & curriculum development, inspection, compliance assistance, research, etc.*

## **R18-14-104. Annual Fees for Water Quality Protection Services**

### A. Annual Registration Fees.

The annual registration fee required under A.R.S. § 49-242 is in Table 2:

**Table 2. APP Annual Registration Fees**

| Discharge (in Gallons) | Annual Registration Fee |
|------------------------|-------------------------|
| 3,000 to 9,999         | \$500                   |
| 10,000 to 99,999       | \$1,000                 |
| 100,000 to 999,999     | \$2,500                 |
| 1,000,000 to 9,999,999 | \$6,000                 |

|                    |         |
|--------------------|---------|
| 10,000,000 or more | \$8,500 |
|--------------------|---------|

New revenues could bootstrap the statewide program into the 21st Century. *Such a program could be feasible if fees were collected once every 5 years and/or at the time of title transfer when less than 5 years.*

- **Transfer of Ownership is a transfer of title to another owner of a property, including the onsite wastewater treatment and reclaimed water facilities, notwithstanding any permitting status associated with the property.**

In other areas of general regulation, such as a motor vehicle title and license transfer, or a credit card holder name or address change; the administrative authority issues documents and charges fees as provided by law or contract (such as a cardholder agreement). In both cases these instruments are another form of general permit program administration to generate revenue to support ongoing administrative activities.

Issuance of the Notice of Transfer can be administratively accompanied by the Reissued Discharge Authorization with provisions appropriate to the technology and use in a manner resembling the Pima County process. *Revision of R18-9-A316 could commemorate such a process, and authorize local agency fee collection for a Reissued Discharge Authorization.*

This approach could become the first step to modernize the A316 institutional paradigm for delegations and help develop local agency and ADEQ capacity for updating technical standards and processes for the program using the current performance-based general permits framework.

Inspection rule should require inspector to search of official permitting records, determine compliance with capacity/source/modification requirements, high wastewater level in tank, surfacing discharge, sewage backup, etc.

## **VII. First Cut Approach**

A phased, 3-Step plan was prepared for the (M)arch 4 A316 Subcommittee meeting. Although not discussed due to time limitations, comments were requested by March 18.

**Step 1**, is envisioned to be an overview of an amplified rule (say a new R18-9-A316.1, replacing current R19-9-A316.A) covering onsite wastewater facilities Program Administration and Compliance.

**Step 2**, is envisioned for a new R18-9-A316.2, largely based on the current R18-9-A316.B - G with improvements addressing some missing/ineffective program components such as:

- Incorporate recommended changes appearing in **Appendix A**
- Rework R18-9-A316.B.1 and 2 to make ADEQ more accountable, specifying inspector recertification periods, require written tests to be taken and passed for all recertification classes, and specify acceptable inspector training/testing programs. This may require new legislation, and addressing deficient inspector performance described in **Appendix B**.
- Delete all of R18-9-A316.B.3. Upgraded inspector training, ADEQ leadership along with "beefed-up" provisions in R18-9-A316.B.1 and 2 should fix things.
- Modify scope and details of an inspection in R18-9-A316.C, require inspector to obtain copy of applicable county records before performing inspection, and require preparation of a to-scale plot plan sketch if no accurate, to-scale plot plan is on file at the county.
- Modify R18-9-A316.D to require inspector to promptly provide a copy of all **Report of Inspection forms** to local agency even if repairs/modifications are to be later made. This should minimize obfuscation by those "shopping" for a "clean" inspection report and those who may have made repairs without a required local permit.
- Incorporate changes to incorporate A303, A305, A306, and A308 for 1.09 GP, Type 4 OWTFs, and Type 1 Reclaimed Water General Permit (if unified elsewhere in rule) and conforming changes resembling R18-9-A304.A.2 & 3, and C in the transferred rules. This is to consolidate principle administrative components of the program in an updated R18-9-A316.
- Modify R18-9-A316.E so that the Notice of Transfer form is changed to also be a new owner's request for reissuance of the General Permit

Discharge Authorization by the county agency (or ADEQ if facility type is not delegated to a local agency).

- Review Article 3, Parts A and B, and the fee rule to ensure necessary changes are made to ensure all 1.09 GP OWTFs are covered by the transfer inspection program.

**Step 3**, is envisioned to add a new R18-9-A316.3 to cover an enhanced Program Administration and Compliance.

## Appendix A - Quick Fix Recommendations by Lowell Fagen, January 2014

SUMMARY OF UPDATED A316 ISSUES FOR CONSIDERATION (Lowell Fagen, 1/07/14):

### TIMELY DELIVERY OF THE ROI TO SELLER & BUYER; A316(C) & (D)

INTRO: Parts of current ADEQ rule are behind the curve of newer technologies, including today's commonly used electronic methods of delivering documents.

OVERVIEW OF A316(C) & (D): The instructions as to timing of delivery of the ROI to Seller are ambiguous ("The inspector shall...provide it to the person transferring the property.") -- Ditto re to timing of delivery of ROI to the Buyer ("Before the property is transferred...")

By rule, the sequence of ROI delivery (Inspector to Seller, Seller to Buyer) may seem logical in theory. However, in many real world transactions, it has not always proven to be workable -- often because of ROI delays, Seller to Buyer: i.e. Seller overlooks/loses or forgets to send ROI to Buyer; Seller is on vacation or unavailable when ROI is delivered...or other snags preventing Seller's timely delivery to Buyer.

PROBLEM: Reports from many parts of the state (not all) indicate the ROI is often delivered to the Buyer only a day or two -- sometimes the day of COE; typically when the Buyer is signing a blizzard of other closing documents at the escrow office.

RESULT: Buyer's late receipt of this critical disclosure report does not allow adequate time for Buyer to review/understand...or respond to the ROI.

Joelle's "Notice of Transfer Pilot Study" was revealing; and concluded that "the inspection program is not functioning as it was intended." It's likely this conclusion may also be common in other areas.

Based on Coconino county's review/analysis of home buyer's complaints, procedural and other errors, there are multiple reasons for confusion. Along with my observations, these include but not limited to: (a) The regulatory process, forms & lack of enforcement/oversight; (b) Inspector training deficiencies; (c) Inadequate review of completed ROI & NOT Forms by real estate agents, plus questionable counseling of their clients; and (d) The AAR On-Site WWT Facility Addendum which calls for the inspection to be performed, "no later than three (3) days prior to Close of Escrow."

(Note: This Addendum is required when Realtors submit a Buyer's offer for a property served by an onsite system. The Addendum's terms are designed to basically track with ADEQ rule A316. AAR's planned update of the Addendum has been on hold pending potential ADEQ rule changes.)

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Therefore, I'm proposing OWAC consider a recommendation to ADEQ to revise rule **A316** to reflect common practices/procedures that have evolved in many counties concerning the timely delivery of the ROI & related documents to Seller & Buyer, such as:

- \* Inspector emails the completed ROI & related documents to Escrow;
- \* Upon receipt, Escrow transmits to Seller & Buyer; and to real estate agents;
- \* Some Inspectors email the ROI direct to Seller & Buyer as well as Escrow.

So, what would a revised rule look like? An example of new language might be: "Inspectors shall ensure that the completed Report of Inspection and related documents, including the Notice of Transfer, are transmitted without delay to the Seller/Transferor, the Buyer/Transferee and the Title Company."

(Note: Many inspectors are completing Sections 5, 6 & 7 of the NOT & submitting it to Escrow along with the ROI. This streamlines the process and can help avoid the Buyer filing an incomplete/inaccurate NOT.)

Such procedures could eliminate unnecessary delays in delivering documents to the parties; yet essentially complies with intent of current rule...and should be of minimal or no cost to the Department...in my opinion.

#### DOCUMENTS IN SELLER'S POSSESSION

A316(D)(2) states: "Documents in the person's possession relating to permitting, operation, and maintenance of the on-site wastewater treatment Facility."

Limiting the source of documents to those "in the person's possession" often eliminates the Buyer's awareness of relevant disclosure issues...because:

- (a) Relatively few owners have complete permitting documents, "in their possession" -- in particular if the system was installed prior to 1/01/01;
- (b) Even those having some documentation, their records are often incomplete and/or misleading...but not recognized as such by uninformed Buyers & Sellers; and
- (c) Tends to encourage lazy Sellers and listing agents.

To enhance full disclosure, SUGGEST A REVISION OF (D)(2) be considered, such as: "Documents in the person's possession, and any documents of record available at the appropriate county or state agency, relating to permitting of the on-site wastewater treatment facility, operation and maintenance information (manual), and any records of repairs or servicing for the Facility."

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## **NOTICE OF TRANSFER PILOT STUDY - DATA FINDINGS**

The Coconino County Public Health Services District (CCPHSD) has been gathering data on the ADEQ Notice of Transfer (NOT) process for septic system inspections in our county. We began this study due to the fact that the NOT's and Report of Inspections (ROI) that were being submitted did not agree with the information that was currently in our records. After cross referencing the NOT's and ROI's with CCPHSD records, here is what was found over a 4 month period:

- 1) 82 total submittals – 43 NOT's with ROI, 39 NOT's only. Out of the 82 submitted only 12 were correct the first time. 85.4% had errors.
- 2) The errors ranged from a date being transcribed incorrectly to an unpermitted septic system being inspected.
- 3) Out of the 39 NOT's only 25.6% of those submitted correct the first time. 74.4% had errors.
- 4) Out of the 43 NOT's w/ROI only 4.6% of those submitted were correct the first time. 95.4% had errors.
- 5) We are still waiting for 35 NOT's (42.7%) to be corrected and returned.
- 6) 12 of the submittals did not have permit records and only 4 (33%) of those were correct the first time.
- 7) Question 7 on the ROI's had the highest frequency of incorrect responses at 28%. Question 7 on the NOT's had the highest incorrect rate at 51%.

### **OTHER FINDINGS:**

- 1) Most inspectors could not tell the difference between the date issued of a CA (Approval to Construct) and a DA (Verification of General Permit Conformance). They are just not familiar with "permit speak"
- 2) More than 1 inspector expressed frustration with filling out the ROI.
- 3) Most inspectors don't really see the importance of the ROI. They are just going through the motions.
- 4) The title agents do not know what they are looking at with a ROI so the information is just transcribed incorrectly.
- 5) Often took multiple times to get the information corrected if not prompted with the correct answer.
- 6) Qualifications and education should be improved and maintained to do inspections.
- 7) Most sketches and maps submitted did not contain a lot of detail.

In many instances, if contact was not made over the phone, the issues that needed to be corrected took multiple times to correct, prolonging the transfer process. Most inspectors and applicants expressed the difficulty in finding the correct information in the permits. Finally, the data compiled shows the need for more training for the inspectors and a simplified NOT and ROI form.

## **Appendix C - OWAC A316 Subcommittee Charter, approved Feb. 21, 2014**

**PURPOSE:** The mission of the OWAC A316 Subcommittee is to consider the current program pursuant to A.A.C. R18-9-A316 and make recommendations to the Onsite Wastewater Advisory Committee (OWAC) sponsored by the Arizona Department of Environmental Quality.

### **ONSITE WASTEWATER ADVISORY COMMITTEE GUIDANCE:**

- In order to promote subcommittee focus, the A316 Subcommittee was instructed by OWAC to consider the following Topic Categories pertaining to the R18-9-A316 regulatory program:
  - 1 - Buyer and Seller Responsibilities,
  - 2 - Repairs,
  - 3 - Training and Certification,
  - 4 - Standards and Definitions, and
  - 5 - Enforcement.
- Recommendations, including related FAQs requested by ADEQ, for OWAC consideration shall be prepared in writing by the A316 Subcommittee to address both short-term and long-term recommendations to improve the efficiency, effectiveness, and public acceptance of the onsite wastewater treatment facilities program related to A.A.C. R18-9-A316.

### **MEMBERSHIP:**

- The A316 Subcommittee shall be those appointed by OWAC.
- Other members of OWAC are *ex officio* members of the subcommittee provided the person regularly participates in subcommittee meetings.
- Persons engaged in the Arizona onsite wastewater industry who are invited to participate by an OWAC-appointed participant.
- Persons from the general public who respond to an ADEQ Public Notice about the activities of the A316 Subcommittee.

**PROCEDURES:** The A316 Subcommittee activity shall conform to State open meeting requirements. This includes a Public Notice posted on the ADEQ website with a Meeting Agenda, Agenda Attachments, and Meeting Notes, as appropriate. Meetings shall be conducted with those present for the agenda-specified time and place, and may include conference call format. Meeting records shall be compiled by the person who prepared the Meeting Agenda, or is otherwise designated by those participating in the announced subcommittee meeting.

### **LEADERSHIP:**

- The A316 Subcommittee shall have a designated Sponsor and Chairperson, appointed by OWAC, for planning and conducting activities of the subcommittee.
- In all instances, the person preparing the A316 Subcommittee Meeting Agenda and meeting materials shall make arrangements with the designated ADEQ staff contact to ensure proper posting on the ADEQ website.
- In general, the Chairperson shall prepare notifications, agendas, and associated documents for meetings; and generally lead meetings and compile the meeting notes.
- The Subcommittee Sponsor or other regularly participating OWAC Member may prepare a notification, agenda, and associated documents for a meeting of the A316 Subcommittee.
- If a meeting of the A316 Subcommittee is conducted by the Subcommittee Sponsor or other regularly participating OWAC Member, that person shall lead the meeting and compile the meeting notes.
- If the A316 Subcommittee membership or leadership roles are modified, the new leaders shall continue the A316 Subcommittee evaluation process through completion of pending written recommendations based on available meeting records.

## **Appendix D - Recommendations by Lowell Fagen, March 19, 2014**

A316 Rule Could State:

The Parties (transferor/Seller and transferee/Buyer) may negotiate terms for the Transfer of Ownership inspection, including but not limited to: (a) choice of inspector; (b) scheduling of inspection; © cost of repairs recommended by Inspector, and (d) allocation of inspection costs. Negotiations may also be subject to Contract terms.

If the Parties choose not to negotiate such terms, it shall be the sole responsibility of the transferor/Seller to schedule and pay for a Transfer of Ownership inspection that conforms with requirements of R18-9-A316(B).

OR:

Subject to agreement of the transferor/Seller, the transferee/Buyer shall choose an Inspector to perform a Transfer of Ownership inspection of the Facility that conforms with requirements of R18-9-A316(B).

Upon receipt of the completed Report of Inspection (ROI), transferee shall ensure a copy is delivered promptly to the transferor/Seller. Inspection costs shall be shared equally by transferee and transferor.

If Escrow fails to close, and transferee is not in breach of Contract terms, transferor shall pay full costs of the inspection.

If the transferor had initiated a Transfer of Ownership inspection within six months before scheduled close of escrow date of a previously accepted contract (or during a previous escrow that failed to close), transferor shall provide to transferee a copy of that Report of Inspection.