

	Water Quality Division Substantive Policy	Page 1 of 6
	Criteria for Aquifer Protection Permit tank exemption under A.R.S. § 49-250(22).	Rev.
		Effective:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

1.0 Purpose

This policy clarifies the definition and exemption criteria for a “tank” for purposes of the Aquifer Protection Permit (APP) program.¹ In particular, the phrase “substantial structural support” is discussed as this has been a long standing issue with regard to the tank definition.

2.0 Definitions

“Tank” means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials. A.R.S. § 49-201(37)

“Determination of Applicability (DOA)” means a process established in A.A.C. R18-9-106 for a potential discharger to request that ADEQ determine the applicability of A.R.S. §§ 49-241 through 49-252 and Arizona Administrative Code Articles 1, 2 and 3, of Title 18, Chapter 9 to the discharge.

“Best Available Demonstrated Control Technology (BADCT)” means the demonstration required under A.R.S. §49-243(B)(1) that the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including where practicable, a technology permitting no discharge of pollutants.

¹ This substantive policy does not address tanks that are exempt from APP, which may be subject to regulatory requirements under other programs (e.g. underground storage tanks, hazardous waste, and spill prevention control and countermeasure). If ADEQ determines that a structure is a tank under the APP definition, that does not mean that ADEQ has determined whether the structure is subject to other regulation, or whether the tank is in compliance with other regulations. The tank’s owner is responsible for determining if other regulations apply and for complying with other regulations.

3.0 Policy Statement

Any person who discharges or who owns or operates a facility that discharges must obtain an APP pursuant to A.R.S. § 49-241(A). Under A.R.S. § 49-250(B)(22), “pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge” are exempt from the APP requirement.²

The APP exemption for a tank applies only to a tank as defined in A.R.S. § 49-201(37). For a structure to qualify for the APP exemption, the structure must meet the definition of “tank” and the exemption criteria. The criteria to qualify for the APP exemption, which includes the areas of Design and Construction, Use and Operation, and Regular Maintenance, is as follows:

1. Design and Construction

- a. Structure must be stationary.
- b. Construction material must be compatible with the anticipated materials to be contained, and may include concrete, steel, plastic, fiberglass, or other non-earthen material.
- c. Construction material must be resistant to wear caused by any equipment that will be placed in or enter the tank for purposes of repair or cleanout.
- d. Structure must provide substantial structural support, which can include:
 - i. Free-standing structures that are designed and constructed to maintain integrity and form under the anticipated loads without the support of surrounding soils and without cracking or failure.
 - ii. Reinforced concrete structures designed and constructed to maintain integrity and form under the anticipated loads, utilizing support of the subgrade and surrounding soils, without cracking or failure.
- e. A flexible membrane liner installed in an excavation is **not** considered to meet the criteria for substantial structural support.
- f. Structure may have sloped sides and ramps to allow access for cleanout.
- g. Structure must be capable of containing the material that is to be held, without leakage, release or overtopping.
- h. All joints must be sealed with sealants compatible with the anticipated materials to be contained.
- i. The subgrade, and surrounding soils in the case of underground or partially underground tanks, must be properly designed and constructed to support the expected load from the tank, the tank contents and any equipment that will be placed in or enter the tank for purposes of repair or cleanout.

² This substantive policy does not address underground storage tanks that are exempted by rule (A.A.C. R18-9-103(2)) as follows: “underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001”. A.R.S. § 49-1001(16) defines a “Regulated substance” as:

(a) Petroleum.

(b) A substance specified in the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code section 9601(14)) but not including a substance regulated as a hazardous waste under the solid waste disposal act of 1984 (P.L. 98-616; 98 Stat. 3221; 42 U.S.C. § 6921).

2. Use and Operation

- a. The material to be contained must be compatible with the tank construction material. For example, corrosive liquids must not be stored in structures that will easily corrode.
- b. The structure, alone or in conjunction with other such structures, must be operated to fully contain its material(s) without overflow under any circumstances.

3. Regular Maintenance

- a. Structures must be maintained on a regular basis to assure that all cracks and joints are sealed, or other defects corrected, so that leakage does not occur.
- b. In order to meet the regular maintenance requirement, structures must be inspected on a regular basis.

Implementing this Substantive Policy:

ADEQ personnel evaluate whether a structure meets the definition of a tank and qualifies for the tank exemption. The evaluation may be part of a DOA application, an APP application review, or as part of an inspection.

If a structure is evaluated as part of an APP application and it is determined that it meets the definition and exemption criteria, the decision will be documented as follows:

1. The tank will be mentioned in the APP Fact Sheet as an exempt facility.
2. The tank will **not** be listed as a discharging facility regulated by the permit.
3. If a tank is part of a treatment process that results in a discharge, it is subject to BADCT review without being listed as a discharging facility.

ADEQ will not allow a tank to operate in a manner inconsistent with the design, construction, operation and regular maintenance criteria detailed in the tank definition and required by the tank exemption as described above. If ADEQ discovers during an inspection a structure does not meet the criteria because it is being poorly maintained or operated, or was improperly designed or constructed, ADEQ will direct the owner or operator of the structure to comply with one of the following options:

1. Bring the structure into conformance with the design, construction, operation and regular maintenance criteria that will meet the tank definition and satisfy the conditions of the exemption; or
2. Discontinue use of the structure; or
3. Apply for an Aquifer Protection Permit.

ADEQ may require additional actions if operation of the structure has resulted in a discharge.

4.0 Policy Owner

Section Manager, Water Permits Section, Water Quality Division

5.0 Applicability

Facilities with tanks

6.0 Communication & Training

The substantive policy will be e-mailed to managers and staff of the Water Quality Division, Permits and Compliance Sections, the Waste Programs Division, Permits and Compliance Sections, and the Southern Regional Office. Managers will be directed to review and discuss the substantive policy during a staff meeting. The substantive policy will be posted on the ADEQ website and a list serve message will be sent to subscribers of the APP update list.

7.0 Compliance & Audit Plan

Use of this substantive policy is the responsibility of staff and managers performing DOA reviews, APP application reviews and inspections when there is a structure that may meet the APP definition of a tank and the tank exemption. The Policy Owner will audit the use of the policy on an annual basis for the items listed in Attachment A: Audit Considerations.

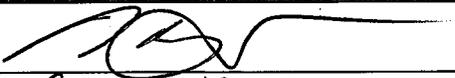
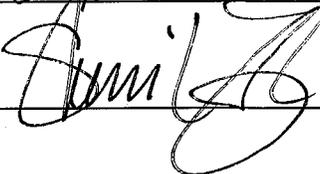
8.0 Review & Revision

The substantive policy will be reviewed on a biennial schedule or in the event there is a statutory change in the definition of a tank or exemption criteria for a tank. If the policy is revised for any reason, the communication and training described in Item 6.0 above will be repeated to ensure that all staff is made aware of revisions.

9.0 Additional Documentation

None

10.0 Approved by:

Affected Division Director(s)	Trevor Baggione		3-18-15
	Laura Malone		3-19-15
Administrative Counsel as to form	Sherri Zendri		3/30/15

11.0 Historical Note

[Redacted Header]		
	New Substantive Policy	

ATTACHMENT A
Audit Considerations

The following is a list of items that will be evaluated as part of a periodic audit of this substantive policy. The results of the audit should be used to determine whether the substantive policy needs to be revised or if other actions need to be taken.

- Verify the substantive policy is still being used.
- Has the substantive policy been superseded by rules, statute, or other events?
- Does the historical note accurately reflect the history of review/revisions?
- Determine if training is needed.
- Verify website reference links are still operational.
- Verify individual roles and responsibilities still appropriate.

List recommendations for revisions or other actions: