

NOTICE OF FINAL RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R18-8-260	Amend
R18-8-261	Amend
R18-8-262	Amend
R18-8-263	Amend
R18-8-264	Amend
R18-8-265	Amend
R18-8-266	Amend
R18-8-268	Amend
R18-8-270	Amend
R18-8-271	Amend
R18-8-273	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. §§ 41-1003 and 49-104

Implementing Statute: A.R.S. § 49-922

3. The effective date of the rule:

60 days after filing with the Secretary of State

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

Notice of Rulemaking Docket Opening: 20 A.A.R. 103, January 10, 2014

Notice of Proposed Rulemaking : 20 A.A.R. 2501, September 12, 2014

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

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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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking: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. The Arizona Department of Environmental Quality (DEQ) is amending the state's hazardous waste rules to incorporate changes in federal regulations implementing Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The amendments in this final rule adopt changes to federal regulations that were in effect as of July 1, 2013 for most sections, and update the general incorporation date in Arizona hazardous waste rules from July 1, 2006 to July 1, 2013. A later incorporation date is established in two Arizona rule sections to capture EPA's solvent-contaminated wipes rule, effective January 31, 2014. This rule also makes technical corrections that the United States Environmental Protection Agency (EPA) has said are necessary to renew Arizona's authorization to implement federal hazardous waste regulations. DEQ-initiated technical corrections are also included. EPA's 2008 rule revising the definition of solid waste is not incorporated by this rulemaking. EPA rules recently vacated by a federal court are also excluded or removed.

Background. Congress passed RCRA in 1976 to establish a national "cradle to grave" regulatory system to control the generation, transportation, treatment, storage and disposal of hazardous wastes. Similar to other national environmental laws, states are encouraged to

assume most of the responsibility for the program and become “authorized” to implement RCRA and its underlying regulations. This process ensures national consistency and minimum standards while providing flexibility to states to implement the national standards with state and local solutions.

The requirements for state hazardous waste program authorization are found in 40 CFR 271. Federal hazardous waste regulations change from year to year, so states with authorization such as Arizona have a continuing obligation to revise their programs to keep up with federal changes and remain authorized states. [40 CFR 271.21(e)(1)]

Arizona's hazardous waste rules are found in 18 A.A.C. 8, Article 2 and have been in effect since 1984. EPA granted “final” authorization to Arizona in 1985 to operate its hazardous waste program in Arizona in lieu of the federal hazardous waste program, subject to the limitations imposed by HSWA (see 50 FR 47736, November 20, 1985). EPA last authorized revisions to Arizona’s hazardous waste program on March 17, 2004. (69 FR 12544) Due largely to federal and Arizona requirements requiring equivalency with federal regulations (see 42 U.S.C. 6926(b) and A.R.S. § 49-922(A)), Arizona’s hazardous waste rules incorporate the federal hazardous waste regulations by reference and are mostly identical to the federal regulations. DEQ regularly compares Arizona’s hazardous waste rules to the federal regulations and amends the Arizona rules, as necessary, to comply with state statute and to facilitate continued authorization. Without continued authorization, EPA, rather than DEQ, would administer parts of the hazardous waste program in Arizona. DEQ’s objective with this rulemaking is to continue administering the federal hazardous waste program in Arizona in place of EPA. DEQ believes that regular incorporation of changes and additions to federal language into Arizona rules will simplify and facilitate continued authorization.

What EPA regulations are being incorporated in this rule?

The following is a list of changes in federal hazardous waste regulations that were effective as federal law as of July 1, 2013 or January 31, 2014 and that are incorporated into Arizona rules. They are discussed more fully later.

- 2007 Technical Correction. A correction in 40 CFR 273 that reinserts a definition for “on-site” inadvertently omitted in a previous EPA rulemaking; 72 FR 35666, June 29, 2007.

- National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments; 73 FR 18970, April 8, 2008.

- Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019; 73 FR 31756, June 4, 2008.

- Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities; 73 FR 72911, December 1, 2008. Technical corrections at 75 FR 79304, December 20, 2010.

- Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes; 75 FR 1236, January 8, 2010.

- Hazardous Waste Technical Corrections and Clarifications Rule; 75 FR 12589, March 18, 2010.

- Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Hazardous Wastes, etc.; 75 FR 75918, December 17, 2010.

- Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes; 76 FR 34147, June 13, 2011.

- Hazardous Waste Technical Corrections and Clarifications Rule; 77 FR 22229, April 13,

2012.

- Revisions to Procedural Rules to Clarify Practices and Procedures Applicable in Permit Appeals Pending Before the Environmental Appeals Board; 78 FR 5281, January 25, 2013.
- Conditional Exclusions from Solid Waste and Hazardous Waste for Solvent-Contaminated Wipes; 78 FR 46447, July 31, 2013; (eff. January 31, 2014).

Two EPA rules that became final just after July 1, 2006 were already incorporated by DEQ in its last hazardous waste rulemaking: one regulating cathode ray tubes, and the other, a large corrections rulemaking. For that reason they are not included in this rulemaking. DEQ's last hazardous waste rulemaking was published at 14 A.A.R. 409, February 8, 2008.

What other changes are being made to Arizona hazardous waste rules?

DEQ is also making a number of technical corrections in this rule. Changes requested by EPA and related to an authorization review of Arizona rules done in 2009 are at R18-8-260(E)(12)(i), R18-8-260(F)(2), renumbered R18-8-260(F)(6)(a) and R18-8-262(I). Arizona initiated changes are located throughout the rule including R18-8-262(H), R18-8-264(H), R18-8-265(H) and (K), R18-8-270(S), and R18-8-271(Q). The textual changes at R18-8-264(H) and R18-8-265(H) reverse an error DEQ made in incorporating EPA's manifest rule in 2006. The textual changes at R18-8-261(I) also correct earlier incorporation errors.

Arizona Performance Track rules. On May 14, 2009, EPA published a notice indicating that it would be terminating its National Environmental Performance Track Program. ADEQ intends to continue its performance track program known as the Arizona Environmental Performance Track Program. DEQ has made changes to R18-8-260(F)(4) to allow remaining RCRA Performance Track incentives to continue under the Arizona program.

Descriptions of EPA regulations incorporated

- 2007 Technical Correction; 72 FR 35666, June 29, 2007. EPA made a technical correction

to 40 CFR 273.9 by reinserting a definition for “on-site” that had been inadvertently omitted; 72 FR 35666, June 29, 2007. The definition disappeared between the publication of the July 1, 2005 and July 1, 2006 editions of “40 CFR Parts 266 to 299”. It probably was left out during the codification of EPA’s Mercury Containing Equipment rule, which was published in the August 5, 2005 FR, and during which § 273.9 was amended. EPA reinserted the previous version of the definition without change.

- National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments; 73 FR 18970, April 8, 2008. In this rulemaking, EPA finalized amendments to the national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors (HWCs), which EPA promulgated on October 12, 2005. EPA clarified several compliance and monitoring provisions, and also corrected several omissions and typographical errors in the final rule. DEQ has determined that none of these types of HWCs exist in Arizona at the present time. DEQ is adopting these amendments under the authority of A.R.S. § 49-922, which directs DEQ to adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of RCRA.

In authorization documents related to the Hazardous Waste portion of this final rule, EPA did not consider the provisions of these amendments to be either more or less stringent than the previous federal requirements, so that states are not required to adopt and seek authorization for them. The EPA rulemaking amended 40 CFR Parts 63, 264, and 266. In this rulemaking, DEQ incorporates into state rule all of the amendments to 264 and 266, without modification. DEQ has proposed to incorporate the amendments to Part 63 in a separate rulemaking. See 20 A.A.R. 1798, July 18, 2014.

- Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019; 73 FR 31756, June 4, 2008. In this rule, EPA amended the list of hazardous wastes from non-specific sources (called F-wastes) by modifying the scope of the EPA Hazardous Waste No. F019 (wastewater treatment sludges

from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process). EPA amended the F019 listing to exempt wastewater treatment sludges from zinc phosphating, when such phosphating is used in the motor vehicle manufacturing process, provided that the wastes are not placed outside on the land prior to shipment to a landfill for disposal, and the wastes are placed in landfill units that are subject to or meet the specified landfill design criteria.

In its Federal Register notice for the final rule, EPA stated that the rule was less stringent than the previous federal requirements, so that states are not required to adopt and seek authorization for it. Nevertheless, EPA strongly encouraged states to adopt it. The provisions of the rule must be adopted by an authorized state before they are effective in that state.

The EPA rulemaking amended 40 CFR Parts 261 and 302. In this rulemaking, DEQ is incorporating into state rule the amendments to Part 261, without modification.

- Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities; 73 FR 72911, December 1, 2008. Technical corrections at 75 FR 79304, December 20, 2010. In this rule, EPA finalized an alternative set of generator requirements applicable to laboratories owned by eligible academic entities. The rule provided a flexible and protective set of regulations that address the specific nature of hazardous waste generation and accumulation in laboratories at colleges and universities, as well as other eligible academic entities formally affiliated with colleges and universities. The final EPA rule is optional. Affected entities have the choice of managing their hazardous wastes in accordance with the new alternative regulations or remaining subject to the existing generator regulations.

In its Federal Register notices for the final rule and corrections, EPA considered them to be

neither more nor less stringent than the previous federal requirements, so that states are not required to adopt and seek authorization for them. Nevertheless, EPA strongly encouraged states to adopt them. They must be adopted by an authorized state before it can be effective in that state.

The EPA rulemakings amended 40 CFR Parts 261 and 262. In this rulemaking, DEQ is incorporating into state rule all of the amendments to Parts 261 and 262, without modification.

- Transboundary Shipments of Hazardous Wastes Between OECD Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes; 75 FR 1236, March 18, 2010. In this rule, EPA implemented recent changes to the agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD) and established notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country. It also specified that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, DC, and required U.S. receiving facilities to match EPA provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

According to EPA, the rule contains amendments that are both more stringent and less stringent than current federal law. Authorized states must adopt the more stringent parts to maintain authorization. EPA strongly recommends that authorized states adopt those amendments that are less stringent. The EPA rulemaking amended Parts 262, 263, 264, 265, 266, and 271. In this rulemaking, DEQ incorporated into state rule all of the amendments without modification.

- Hazardous Waste Technical Corrections and Clarifications Rule; 75 FR 12589, March 18, 2010. By direct final rule, EPA made a large number of technical changes that correct or clarify several parts of the hazardous waste regulations that relate to hazardous waste identification, manifesting, the hazardous waste generator requirements, standards for owners and operators of hazardous waste treatment, storage and disposal facilities, standards for the management of specific types of hazardous waste and specific types of hazardous waste management facilities, the land disposal restrictions program, and the hazardous waste permit program. The EPA rulemaking amended Parts 260, 261, 262, 263, 264, 265, 266, 268 and 270. On June 4, 2010, EPA withdrew six of the changes. In this rulemaking, DEQ has incorporated into state rule all of the remaining changes without modification.

- Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Hazardous Wastes, etc.; 75 FR 75918, December 17, 2010. In this rule, EPA amended its regulations under RCRA to remove saccharin and its salts from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded. EPA characterized the changes in the rule as less stringent than the existing Federal requirements. Therefore, States will not be required to adopt and seek authorization for the changes. The EPA rulemaking amended Parts 261 and 268. In this rulemaking, DEQ incorporates into state rule all of the amendments without modification.

- Land Disposal Restrictions: Revision of the Treatment Standards for Carbamate Wastes; 76 FR 34147, June 13, 2011. EPA issued a Direct Final Rule to revise the Land Disposal Restrictions (LDR) standards for hazardous wastes from the production of carbamates and carbamate commercial chemical products, off- specification or manufacturing chemical intermediates and container residues that become hazardous wastes when they are discarded or intended to be discarded. EPA characterized the changes in the rule as neither more nor less stringent than the existing Federal requirements. Therefore, States will not be required to adopt and seek authorization for the changes. The rule was promulgated pursuant to HSWA authority and took effect in all states, regardless of their authorization status. The EPA rulemaking amended Parts 268 and 271. In this rulemaking, DEQ incorporates into state rule

all of the amendments to Part 268 without modification.

- Hazardous Waste Technical Corrections and Clarifications Rule; 77 FR 22229, April 13, 2012. In this rule, the EPA took final action on two of six technical amendments that were withdrawn in a June 4, 2010, Federal Register partial withdrawal notice. The two technical amendments were: A correction of the typographical error in the entry “K107” in a table listing hazardous wastes from specific sources; and a conforming change to alert certain recycling facilities that they have existing certification and notification requirements under the Land Disposal Restrictions regulations. The EPA changes were to Parts 261 and 266. ADEQ has incorporated those changes without modification.

- Revisions to Procedural Rules to Clarify Practices and Procedures Applicable in Permit Appeals Pending before the Environmental Appeals Board; 78 FR 5281, January 25, 2013; (eff. March 26, 2013) In this rule, EPA revised existing procedures for appeals from RCRA, UIC (underground injection control) and certain water and air permits that are filed with the Environmental Appeals Board (EAB) in an effort to simplify the review process and make it more efficient. Amendments were made to §§ 124.10, 124.16, 124.19, 124.60, 270.42 and 270.155. DEQ opted out of the EAB appeal process for RCRA permits located at 40 CFR 124.19 by 1991 [See R18-8-271(Q)]. DEQ is incorporating only the changes to the part 270 sections with modifications as shown in R18-8-270(P) and (U). In R18-8-271, DEQ is clarifying that it is not incorporating subparts C, D, and G of part 124, which relate to non-RCRA permits, and to RCRA standardized permits, respectively.

- Conditional Exclusions From Solid Waste and Hazardous Waste for Solvent-Contaminated Wipes; 78 FR 46447, July 31, 2013; (parts 260 and 261) (eff. January 31, 2014) In this rule, EPA modified its hazardous waste management regulations for solvent-contaminated wipes by revising the definition of solid waste to conditionally exclude solvent-contaminated wipes that are cleaned and reused and by revising the definition of hazardous waste to conditionally exclude solvent-contaminated wipes that are disposed. The rule's purpose was to provide a consistent regulatory framework appropriate to the level of risk posed by solvent-contaminated wipes while maintaining protection of human health and the environment and

reducing overall compliance costs for industry, many of which are small businesses. The rule includes requirements and conditions that are less stringent than those required under the base RCRA hazardous waste program but is not effective in authorized states until adopted. The EPA changes were to Parts 260 and 261. ADEQ has incorporated those changes without modification.

What regulations are not being incorporated in this rule?

- Standardized Permit Rule; 70 FR 53419, September 8, 2005. In this rule, EPA finalized revisions to the RCRA hazardous waste permitting program to allow for a “standardized permit.” In its last two hazardous waste rulemakings, DEQ discussed but did not propose to incorporate the Standardized Permit rule. No facilities have thus far indicated an interest in a standardized permit. At this time, DEQ has decided to continue with this position, and not burden the hazardous waste rules with an extra set of procedures for a class of permits no one is interested in.

- EPA Revisions to the Solid Waste Definition; 73 FR 64668, October 30, 2008. Effective December 29, 2008, EPA revised the definition of solid waste to exclude certain hazardous secondary materials from regulation under Subtitle C of RCRA. For some time, EPA has been revisiting this rule and has stated that it would modify the rule as a result of a June 30, 2009 public meeting and comments it received. EPA proposed revisions to this rule on July 22, 2011. No final EPA action had been taken at the time of this state rulemaking. Therefore, DEQ is not incorporating the 2008 rule by reference at this time. Adoption of the 2008 rule is not required for authorization.

- Oil-Bearing Hazardous Secondary Materials From the Petroleum Refining Industry Processed in a Gasification System To Produce Synthesis Gas; 75, January 2, 2008. This rule was vacated by a federal court. See *Sierra Club & La. Env'tl. Action Network v. EPA*; United States Court of Appeals for the District of Columbia Circuit; Decided; June 27, 2014.

- Expansion of RCRA Comparable Fuel Exclusion, 73 FR 77954, December 19, 2008; and

Withdrawal of the Emission-Comparable Fuel Exclusion under RCRA, 75 FR 33712, June 15, 2010. A federal court recently nullified these rulemakings and vacated 40 CFR 261(a)(14) and 261.38. See NRDC v. EPA; United States Court of Appeals for the District of Columbia Circuit; Decided June 27, 2014.

- Conditional Exclusion for Carbon Dioxide (CO₂) Streams in Geologic Sequestration Activities; 79 FR 350, January 3, 2014 (parts 260 and 261) (eff. March 14, 2014). DEQ hazardous waste rules normally incorporate federal regulations revised as of July 1 of a calendar year because this coincides with the revision date for CFR volumes containing Title 40 and makes it simpler to determine the applicable EPA regulations. DEQ makes an exception to this general rule if there is significant stakeholder interest. Through the drafting of this final rule, DEQ received no stakeholder inquiries about this federal regulation. This regulation should be incorporated in DEQ's next hazardous waste rulemaking.

- Modification of the Hazardous Waste Manifest System; Electronic Manifests, 79 FR 7517, February 7, 2014, eff. Aug. 6, 2014. This EPA rule was published on February 7, but not effective as a final agency action until August, 2014. In addition, EPA indicated that the actual "implementation and compliance date" would be even later. DEQ will consider this rule for incorporation with its next hazardous waste rulemaking.

- Correction in used oil rebuttable presumption text at 40 CFR 261.3. 79 FR 35290, published and effective. June 20, 2014.

- Revisions to the Export Provisions of the Cathode Ray Tube (CRT) rule. [79 FR 36220](#), published June 26, 2014, effective December 26, 2014.

7. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to 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 rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

Identification of the rulemaking: 18 A.A.C. 8, Article 2 (For further information, see Part 6 of this preamble.)

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, renewals, closure plans, and financial assurance reviews. Generators, transporters and TSD facilities are inspected periodically. 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.

DEQ'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 TSD facilities, 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 report shows that over 200,000 tons of hazardous waste were generated in Arizona in 2011. DEQ processes over 30,000 manifests tracking this waste annually. An EPA report of Arizona's 50 largest hazardous waste generators and other related information from 2011 can be found at

There are eleven separate federal regulations that are incorporated by this rule, spanning 7 years through July 1, 2013, and for one regulation through January 31, 2014. Looking just at the federal regulations to be incorporated, this rulemaking as a whole will decrease the cost of regulatory compliance by a significant amount. However, the rulemaking's significance for ADEQ's continued authorization is equally important as the rule will also minimize the cost of compliance and preserve procedural rights for Arizona businesses by assuring that ADEQ and not EPA is administering the hazardous waste program. Finally, the rulemaking will close the confusing 7 year gap between the federal regulations and the state rules. DEQ believes that the probable benefits of these rules will outweigh the probable costs.

Impact of EPA regulations incorporated. This rule incorporates into Arizona hazardous waste rules eleven federal rulemakings that became effective between approximately October 11, 2005 and January 31, 2014. EPA has characterized ten of the regulations as either equivalent to or less stringent than previous federal regulations, and DEQ anticipates that there will be only positive economic impacts now that they are adopted into state rule. In addition, although none of the ten equivalent or less stringent changes are required for authorization (because states have the right under federal law to be more stringent), some of the changes would not be effective in Arizona unless adopted by the state. Incorporating these rules by reference reduces the regulatory burden for regulated entities in Arizona.

Incorporating equivalent or less stringent federal regulations also facilitates continued authorization of DEQ's hazardous waste program because there are fewer differing provisions for EPA to analyze and compare. Continued authorization is beneficial because it allows the hazardous waste program to be administered by DEQ at the state level rather than by EPA in San Francisco or Washington.

Incorporation of the rule covering the listed hazardous waste F019 in automobile manufacturing and the rule covering hazardous waste combustors will have little direct

impact in Arizona because there are currently no facilities in Arizona that would be subject to them. DEQ believes that incorporating the academic laboratories rule will have a potentially positive economic impact because it creates an option for eligible academic entities to handle what would otherwise be hazardous waste as less regulated “unwanted materials.” If an eligible academic entity decides there would be no net benefit in switching to this option, it can choose to stay in the current hazardous waste system. DEQ believes that there are about 30 academic entities currently generating hazardous waste that would be eligible for this option.

In this rulemaking, DEQ has not incorporated EPA’s 2005 standardized permits rule, which EPA characterized in 2005 as a rule that “will relieve regulatory burden for all small entities eligible for the rule” “in the form of administrative paperwork burden reduction cost savings.” (70 FR at 53447) EPA’s hazardous waste standardized permit is not a general permit as defined by A.R.S. § 41-1001, since each standardized permit applies to just one facility. It is actually a simplified individual permit. Since 2005, no sources that DEQ permits have responded to DEQ inquiries indicating interest in switching to or initially using this potentially simpler permit. This lack of interest is, in part, recognition of the transition costs in changing permits, including terminating the current permit. DEQ believes that HW facilities know their costs and potential savings better than a government agency and further believes that if an economic incentive is not there for these facilities, adding the procedure into state rules would have unnecessarily made the rules more complex, and increased the cost of the rulemaking.

One federal regulation, the transboundary rule dealing with exports of spent lead-acid batteries, contained changes that were more stringent than the previous federal regulations. Under both A.R.S. § 49-922 and federal law, ADEQ must adopt federal changes that increase stringency to maintain its program as “equivalent to and consistent with” the federal program. DEQ also recognized that it had to incorporate this more stringent federal change into Arizona rules to maintain DEQ’s authorization for the federal hazardous waste program. Continued authorization is beneficial because it allows the hazardous waste program to be

administered by DEQ at the local level rather than by the EPA in San Francisco or Washington.

Technical corrections. This rule also makes a number of state-initiated and EPA-suggested technical corrections. None of the technical corrections would have any economic impact.

The technical corrections to R18-8-260(E)(12)(i) and (F) are necessary for authorization according to communications from EPA during its recent authorization review of Arizona rules. These are sections where, during previous rulemakings, DEQ unintentionally assumed authority for actions that must remain with EPA because the authority is nondelegable. R18-8-260(E)(12) lists exceptions to the general incorporation rule that “EPA” means “DEQ”. The corrections are additional exceptions added at R18-8-260(E)(12)(i). The corrections at R18-8-260(F)(2) and renumbered (F)(6) involve exceptions to the general rule that “Administrator” means “Director” and “United States” means “Arizona.”

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 possible. As discussed above, DEQ has determined that most of the changes have either a potentially positive impact or no impact on small businesses because they are equivalent to or less stringent than the standards currently in existence. The more stringent changes could impact Arizona small businesses if they export spent lead-acid batteries but DEQ is not aware of any of these businesses.

In EPA’s rulemaking, EPA “examined a subset of small entities expected to face the largest relative impacts as measured by cost to sales ratios. The average annual gross sales of the potentially impacted small companies within this subset with fewer than 20 employees were found to range from \$0.4 million to \$4.1 million, depending upon the NAICS sector. The annual compliance costs for these companies, as a percentage of average annual gross sales, were found to range from 0.01 percent to 0.08 percent.”(75 FR at 1252)

In addition to the impact being relatively small, DEQ has no legal or feasible option other than to adopt the more stringent federal changes. Moreover, adopting more stringent federal

changes helps ensure that DEQ remains the primary administrator of the Hazardous Waste Program, and not EPA. This is beneficial to small and large businesses alike.

Conduct Change Analysis. Under A.R.S. § 41-1055(A)(1), the agency must discuss the conduct the rule is designed to affect and how it will affect it. The state and federal hazardous waste rules together establish a 'cradle to grave' management system for hazardous waste that deters conduct that would endanger human health or the environment. As stated previously, a significant purpose of the state rules is to allow and encourage EPA to renew its authorization of Arizona's hazardous waste program and prevent EPA from being sole administrator of the program. If EPA became the sole administrator of the hazardous waste program in Arizona, entities previously regulated by DEQ would be harmed in ways that include more difficult communications, probable increased fees and penalties, and a more uncertain regulatory environment.

Rules More Stringent than Corresponding Federal Law and Imposing the Least Burden Necessary to Achieve the Regulatory Objective. [A.R.S. § 41-1052(C)(3) and (C)(9)] Since 1984, DEQ hazardous waste rules have contained several procedural requirements that are more stringent than EPA's. These more stringent procedural requirements are authorized by A.R.S. § 49-922, which in directing DEQ to adopt rules, prohibits only nonprocedural standards that are more stringent than EPA:

- 1) Hazardous Waste Manifests. DEQ requires hazardous waste generators, transporters and TSD (treatment, storage or disposal) facilities to provide a copy of all hazardous waste manifests to DEQ monthly. [See R18-8-262(I) and (J); R18-8-263(C), R18-8-264(J) and R18-8-265(J).] Federal regulations require manifests to be provided to EPA only.
- 2) Annual Reports. Hazardous waste large quantity generators and TSD facilities must submit reports [to DEQ] annually rather than every two years as the federal regulations require. [See R18-8-260(E)(3); R18-8-262(H), R18-8-264(I) and R18-8-265(I).]
- 3) Recyclers and Small Quantity generators are required to submit annual reports to DEQ rather than no reports at all. [R18-8-261(J) and R18-8-262(H)]

These more stringent procedural requirements have been in effect since 1984. The Arizona Department of Health Services in 1984, and DEQ since 1987, determined that these more stringent procedural features are necessary for Arizona to achieve the underlying regulatory objective, which is to “establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations.” [A.R.S. § 49-922(A)] In addition, A.R.S. § 49-922(B)(1) and (2) require rules for “records of hazardous waste” and “submission of reports.” It is clear that DEQ, as the primary enforcement agency, needs to receive a copy of manifests, and that as the primary enforcement agency, it should determine the frequency of reports needed. DEQ’s authority in A.R.S. § 49-922(A) allows procedural requirements to be more stringent than EPA and these are necessary to achieve the objective.

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

No changes were made at the time the final rule was submitted to the Governor’s Regulatory Review Council (GRRRC). As a result of GRRRC staff review, some minor changes were made to make the rule more clear, concise and understandable.

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

ADEQ received no public or stakeholder comments about the rulemaking.

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:

A.R.S. § 41-1037(A)(1) and (2). This rulemaking amends an existing rule that requires a regulatory permit. This rulemaking does not require a general permit because:

- 1) A specific alternative permit is authorized by state statute under A.R.S. § 49-922(B)(5)

and;

2) General permits as defined as defined by A.R.S. § 41-1001 are not recognized under federal hazardous waste regulations with which ADEQ is required to be consistent.

However, it should be noted that ADEQ has already adopted a federal general permit rule that is similar to Arizona general permits. 40 CFR 270.60, "Permits by Rule", applies to 3 types of facilities: 1) ocean disposal barges or vessels; 2) injection wells; and 3) publicly owned treatment works. Under the federal rule, these three types of facilities are "deemed to have a RCRA permit if the conditions listed are met." Only the third category exists in Arizona, and DEQ has incorporated the federal general permit rule for publicly owned treatment works through R18-2-270(A). Note: The hazardous waste standardized permit not incorporated in this rule is not a general permit as defined by A.R.S. § 41-1001, since each standardized permit applies to just one facility.

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:

A.R.S. § 41-1052(D)(9): These rules are not more stringent than corresponding federal laws, except where there is statutory authority. Since EPA's first authorization of Arizona's hazardous waste program in 1985, Arizona rules have been more stringent than EPA's in the areas of reports and manifests. (See 50 FR at 47736, November 20, 1985) This is authorized under A.R.S. § 49-922(B) which states that DEQ may not adopt a nonprocedural standard that is more stringent than EPA. A brief discussion of these more stringent procedural requirements and why they are necessary to achieve the regulatory objective is in item 9 of this preamble.

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

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

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

<u>Federal Citation</u>	<u>State Citation</u>
40 CFR 260	R18-8-260(C)
40 CFR 261	R18-8-261(A)
40 CFR 262	R18-8-262(A)
40 CFR 263	R18-8-263(A)
40 CFR 264	R18-8-264(A)
40 CFR 265	R18-8-265(A)
40 CFR 266	R18-8-266(A)
40 CFR 268	R18-8-268
40 CFR 270	R18-8-270(A)
40 CFR 124	R18-8-271(A)
40 CFR 273	R18-8-273

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
- R18-8-261. Identification and Listing of Hazardous Waste
- R18-8-262. Standards Applicable to Generators of Hazardous Waste
- R18-8-263. Standards Applicable to Transporters of Hazardous Waste
- R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities
- R18-8-268. Land Disposal Restrictions
- R18-8-270. Hazardous Waste Permit Program
- R18-8-271. Procedures for Permit Administration
- R18-8-273. Standards for Universal Waste Management

ARTICLE 2. HAZARDOUS WASTES

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

- A. Federal regulations cited in this Article are those revised as of ~~July 1, 2006~~ July 1, 2013 (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. No change
- C. All of 40 CFR 260 and the accompanying appendix, revised as of ~~January 29, 2007~~ January 31, 2014 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ) with the exception of the following:
1. 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~~
 2. The revisions for standardized permits as published at 70 FR 53419;
 3. The revisions to the solid waste definition as published at 73 FR 64668;
 4. The revisions for the gasification rule as published at 73 FR 57. ~~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. 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. At the time the information is submitted to, or otherwise obtained by, the DEQ;
 - 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. [“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(C));
261, Appendix IX (as incorporated by R18-8-261(A));
261.39(a)(5) (as incorporated by R18-8-261(A));
262.21 (as incorporated by R18-8-262(A));

262.32(b) (as incorporated by R18-8-262(A));
262.50 through 262.57 (as incorporated by R18-8-262(A));
262.60(c) and (e) (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(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 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 nondelegable 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~~)(Q));
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. 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. § 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. No change
- 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, in the definitions of “Administrator,” “Regional Administrator,” and “hazardous waste constituent” (as incorporated by R18-8-260(E));
 - 261.41 (as incorporated by R18-8-261);

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 nondelegable to the state of Arizona (as incorporated by R18-8-268);
270.2, in the 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. No change
 - a. No change
 - b. No change
 - c. No change
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/performancectrack/>) and by DEQ for membership in~~ is a current member of the Arizona Environmental Performance Track Program (as described at

<http://www.azdeq.gov/function/about/track.html>)

<http://www.azdeq.gov/function/programs/zept>) 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. No change

6. No change

7. “United States” means [Arizona except for the following:

a. § 261.39(a)(5) (as incorporated by R18-8-261).

~~a~~b. 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) and 262.60(d) (as incorporated by R18-8-262).

~~b~~c. All references in Part 263 (as incorporated by R18-8-263), except §§ 263.10(a) and 263.22(c).]

d. § 266.80]

G. No change

H. No change

I. No change

J. No change

K. No change

L. No change

M. No change

1. No change

2. No change

3. No change

N. No change

1. No change

2. No change

3. No change

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

A. All of 40 CFR 261 and accompanying appendices, revised as of ~~January 29, 2007~~ January 31, 2014 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:

1. The revisions for standardized permits as published at 70 FR 53419;
2. The revisions to the solid waste definition as published at 73 FR 64668;
3. The revisions for the gasification rule as published at 73 FR 57;
4. 40 CFR 261.4(a)(16) and 261.38. 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. No change

C. No change

D. No change

E. No change

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, if located in the U.S., is:

- (i) Permitted under part 270 of this ~~Chapter~~ chapter [(as incorporated by R18-8-270)];
- (ii) In interim status under parts 270 and 265 of this ~~Chapter~~ 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~~ 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~~ 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.

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 or less 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 of this chapter [(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 or greater of [its] hazardous wastes, all of those accumulated [hazardous] wastes are subject to regulation under the special provisions of § part 262 applicable to generators of ~~between~~ greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of §§ parts 263 through 266, 268, 270, and 271 of this chapter [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 equal or 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, if located in the U.S., is:
- (i) Permitted under part 270 of this ~~Chapter~~ chapter [(as incorporated by R18-8-270)];
 - (ii) In interim status under parts 270 and 265 of this ~~Chapter~~ 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~~ chapter;
 - (iv) Permitted, licensed, or registered by a ~~state~~ 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~~ chapter;
 - (v) Permitted, licensed, or registered by a ~~state~~ 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~~ chapter [(as incorporated by R18-8-273)], a universal waste handler or destination facility subject to the requirements of part 273 of this ~~Chapter~~ chapter.

H. No change

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~~ through N (as incorporated by R18-8-266)] and all applicable provisions in parts ~~268~~, 270 and 124 of this ~~Chapter~~ chapter [(as incorporated by R18-8-268, R18-8-270 and R18-8-271)]:
- (i) Recyclable materials used in a manner constituting disposal (40 CFR part 266, subpart C);
 - (ii) Hazardous wastes burned ~~for energy recovery~~ (as defined in section 266.100(a)) 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 part 266, subpart H);
 - (iii) Recyclable materials from which precious metals are reclaimed (40 CFR part 266, subpart F);
 - (iv) Spent lead acid batteries that are being reclaimed (40 CFR part 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~~ waste 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. No change

K. No change

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~~ July 1, 2013 (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. No change

1. No change

2. No change

3. No change

C. No change

D. No change

E. No change

F. No change

G. No change

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~~)(I)), and § 265.75 [(as incorporated by R18-8-265(~~G~~)(I)).]

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 ~~113~~ 113 “Waste ~~No.~~ Codes,” 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. No change

K. No change

L. No change

M. No change

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

A. All of 40 CFR 263, revised as of ~~July 1, 2006~~ July 1, 2013 (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. No change

C. No change

D. No change

E. No change

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~~ July 1, 2013 (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.** No change
- C.** No change
- D.** No change
1. No change
 2. No change
- E.** No change
- F.** No change
- 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)~~(2)(iv) is amended as follows:
- Within 30 days ~~after the~~ of 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)~~(J);] and
- I.** No change

J. No change

1. No change
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)~~(I).]

K. No change

L. No change

M. No change

N. No change

O. No change

P. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

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~~ July 1, 2013 (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. No change

C. No change

D. No change

1. No change
2. No change

E. No change

F. No change

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)~~(2)(iv) is amended as follows:

Within 30 days ~~after the~~ of 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)~~(J)]; and

I. No change

J. No change

K. § 265.90, titled “Applicability,” paragraphs (a) and (d)(1), and § 265.93, titled “Preparation, evaluation, and response,” paragraph ~~(3)~~(a) (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. No change

M. No change

N. No change

- 1. No change
- 2. No change
- 3. No change

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~~ July 1, 2013 (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~~ 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)- and (iv) [(as incorporated by R18-8-261)] of this ~~Chapter~~ 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~~ chapter; and
- (4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

R18-8-268. Land Disposal Restrictions

All of 40 CFR 268 and accompanying appendices, revised as of ~~July 14, 2006~~ July 1, 2013 (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.

R18-8-270. Hazardous Waste Permit Program

- A.** All of 40 CFR 270 and the accompanying appendices, revised as of ~~July 14, 2006~~ July 1, 2013 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:
1. §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64;
 2. The revisions for standardized permits as published at 70 FR 53419;
 3. The revisions to the solid waste definition as published at 73 FR 64668. ~~is incorporated by reference, modified by the following subsections, and on file with the DEQ.~~ Copies of 40 CFR 270 are available at www.gpoaccess.gov/cfr/index.html.

B. No change

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

C. No change

D. No change

E. No change

F. No change

G. No change

1. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
3. No change
4. No change
5. No change

- a. No change
- b. No change
 - i. No change
 - ii. No change
 - iii. No change
- c. No change
- d. No change
- 6. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - viii. No change
 - ix. No change
 - c. No change
- 7. No change
- 8. No change
- 9. No change
- 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. § 270.42, titled "Permit modification at the request of permittee", paragraph (f)(3), is amended as follows:

(3) An automatic authorization that goes into effect under paragraph (b)(6)(iii) or (v) of this section may be appealed under [Title 41, Chapter 6, Article 10, Arizona Revised Statutes.]

P.Q. No change

Q.R. No change

R.S. § 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~~ 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~~ section, 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~~ 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~~ section may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

S.T. No change

U. § 270.155 titled "May the decision to approve or deny my RAP application be administratively appealed?", paragraph (a), is amended as follows:

- (a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application [under Title 41, Chapter 6, Article 10, Arizona Revised Statutes.] Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 124.15 of this chapter [(as incorporated by R18-8-271)] (or a decision under § 270.29 [(as incorporated by R18-8-270)] to deny a permit for the active life of a RCRA hazardous waste management facility or unit.)

R18-8-271. Procedures for Permit Administration

- A.** All of 40 CFR 124 ~~and the accompanying appendix~~, revised as of ~~July 1, 2006~~ July 1, 2013 (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 subparts C, D, and G, 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. No change

C. No change

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. No change

F. No change

G. No change

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. § 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~~ 41-1092 and is subject to appeal under A.R.S. Title 41, Ch. 6, Art. 10.

R. No change

S. No change

T. No change

R18-8-273. Standards for Universal Waste Management

All of 40 CFR 273, revised as of ~~July 14, 2006~~ July 1, 2013 (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.