

NOTICE OF EXEMPT RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

PREAMBLE

1. Sections Affected

Rulemaking Action

Article 27	New Article
R18-13-2701	New Section
R18-13-2702	New Section
R18-13-2703	New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: Laws 2010, Seventh Special Session, Chapter 7, Section 5.
Implementing statutes: A.R.S. §§ 49-747, 49-762.03, 49-855 and 49-863.

3. The effective date of the rules:

July 1, 2010

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Public Information: 16 A.A.R. 742, May 7, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Peggy J. Guichard-Watters

Address: Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix AZ 85007

E-mail: pgw@azdeq.gov

Telephone: (602) 771-4117 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)

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6. An explanation of the rule, including the agency's reasons for initiating the rule, and the statutory citation to the exemption from regular rulemaking procedures:

In Laws 2010, Seventh Special Session, Chapter 7, Section 5, the Arizona Department of Environmental Quality (ADEQ) was granted authority to increase fees in fiscal year 2010-2011 for services in fiscal year 2010-2011. As stated in Laws 2010, Seventh Special Session, Chapter 7, Section 5, the legislative intent is that the additional revenue generated by the fee increases for the entire agency not exceed \$5,779,100. ADEQ has complied with Section 5, paragraph (B) of the session law and submitted a specific fee plan for legislative consideration by April 1, 2010 which resulted in several rulemakings, including this one.

Laws 2010, Seventh Special Session, Chapter 7, Section 5 states that ADEQ is “exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of establishing fees pursuant to this section until July 1, 2011.”

ADEQ examined multiple fees across its three divisions, Air Quality, Waste Programs, and Water Quality. ADEQ considered the stability of the funding resource, impact on stakeholders, and the revenue shortfall projected for fiscal year 2011. The Waste Programs Division's Solid Waste Program will generate additional fee revenue of approximately \$1.3 million that will be used to fund the services of ADEQ in fiscal year 2011. This will be accomplished by adjusting three Solid Waste Program fees: the Special Waste Management Fee, the Landfill Registration Fees, and the hourly Plan Review Fee to fund ADEQ services in fiscal year 2011. The approximate annual cost of operating ADEQ's Solid Waste Program is \$1,624,900.

ADEQ is adjusting the Special Waste Management Fee from \$2.00 per ton to \$10.00 per ton and raising the maximum of \$20,000 per generator site per year to \$100,000 for special waste that is transported to a facility for treatment, storage or disposal. The \$2.00 per ton fee was initially established in statute in 1993, with the \$20,000 maximum added in 1994. Until this rulemaking, the fee has remained as initially established, except for a nine month period of time in FY 2008 when the fee was temporarily increased to assist in reconciling the agency's budget. ADEQ is creating a new article 27 and a new section, R18-13-2701, which establishes the fee to be charged for fiscal year 2011. This fee supersedes any lesser Special Waste Management Fee listed in Articles 13 and 16 or in Arizona Revised Statutes, Title 49, Chapter 4, Article 9.

ADEQ is increasing the Landfill Registration Fees from a range of \$500.00 through \$5000.00 to a range of \$2,500.00 through \$25,000.00. This will be accomplished through charging the current fees established in statute plus one-time fees. The Landfill Registration Fees were established in statute in 1990. Until this rulemaking, the fees have remained as initially established, except for a nine month period of time in FY 2008 when the fees were temporarily increased to assist in reconciling the agency's budget. ADEQ is creating a new section, R18-13-2702, which establishes the increased fees to be charged for fiscal year 2011. These one-time fees are in addition to the Landfill Registration Fees listed in Arizona Revised Statutes, Title 49, Chapter 4, Article 3, specifically A.R.S. § 49-747.

ADEQ also is increasing the hourly fee for solid waste plan review, including the review of new facility plans, the review of modifications to approved plans, and the review of financial assurance plans and mechanisms. ADEQ began charging for solid waste plan review in 1996. The fee has been increased several times since then. The current hourly review rate of \$58.81 was set in 2002; ADEQ is increasing this to \$127.49 per hour. Because the hourly rate is increasing, the maximum fees charged for the various reviews also must increase. ADEQ is creating a new section, R18-13-2703, which lists the hourly fee rate and the initial and maximum fees for fiscal year 2011. These fees supersede plan review fees listed in R18-13-702.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

April 1, 2010 plan, as required by Laws 2010, Seventh Special Session, Chapter 7, Section 5.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rules 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:

Laws 2010, Seventh Special Session, Chapter 7, Section 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

ADEQ is providing public notice and an opportunity for public comment on these rules. See ADEQ's website, <http://www.adeq.gov>, for further information. Written comments on the exempt rules must be received by close of business June 7, 2010.

Laws 2010, Seventh Special Session, Chapter 7, Section 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As an exempt rulemaking, this rule will not need to be approved by the Governor's Regulatory Review Council, and no oral proceeding will be held.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

ARTICLE 27. SOLID WASTE FEES FOR FY 2011

Section

R18-13-2701. Special Waste Management Fees for Fiscal Year 2011

R18-13-2702. Increased Landfill Registration Fees for Fiscal Year 2011

R18-13-2703. Solid Waste Facility Plan Review Fees for Fiscal Year 2011

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ARTICLE 27. SOLID WASTE FEES FOR FY 2011

R18-13-2701. Special Waste Management Fees for Fiscal Year 2011

Beginning on July 1, 2010 and until June 30, 2011, the director shall collect a fee of \$10 per ton, not more than \$100,000 per generator site per year, for special waste that is transported to a facility in this state for treatment, storage, or disposal. This fee increases and supersedes the per ton fee listed in A.R.S. § 49-855, R18-13-1307(F), and R18-13-1606 and the maximum fee listed in A.R.S. § 49-855 for the period of July 1, 2010 through June 30, 2011. The payor shall remit the fee in accordance with A.R.S. § 49-863. For special waste that is shredder residue, the owner or operator of a special waste facility may pay a special waste management fee of \$3.30 per cubic yard of uncompacted shredder residue or \$7.50 per cubic yard of compacted shredder residue received in lieu of the \$10 per ton fee.

R18-13-2702. Increased Landfill Registration Fees for Fiscal Year 2011

In addition to the landfill registration fees required under A.R.S. § 49-747 for Calendar Year 2010, a one-time landfill registration fee shall be due within 30 days of the invoice postmark date for the increased fee as follows:

1. For solid waste landfills that serve fewer than 10,000 people, \$2000;
2. For solid waste landfills that serve at least 10,000 people but less than 25,000 people, \$3000;
3. For solid waste landfills that serve at least 25,000 people but less than 50,000 people, \$4,000;
4. For solid waste landfills that serve at least 50,000 people but less than 100,000 people, \$8,000;
5. For solid waste landfills that serve at least 100,000 people but less than 200,000 people, \$12,000;
6. For solid waste landfills that serve 200,000 people or more, \$20,000;
7. For solid waste landfills that are open to the public and that accept demolition waste, \$6,000; and
8. For solid waste landfills that are closed to the public and that accept nonhazardous waste, \$6,000.

R18-13-2703. Solid Waste Facility Plan Review Fees for Fiscal Year 2011

A. Beginning July 1, 2010 and until June 30, 2011, the initial and maximum fees for the review of a solid waste facility plan, a modification of an approved facility plan, and a financial assurance plan are listed in the following table. These fees increase and supersede the initial and maximum fees listed in R18-13-702(A) for the period of July 1, 2010 through June 2011. The applicant shall remit the fees in accordance with R18-13-702.

Fee Table

<u>Fees for Plan Review of New Solid Waste Facilities</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Solid Waste Landfills</u>	<u>\$15,000</u>	<u>\$150,000</u>
<u>Other Solid Waste Facilities Subject to Plan Approval</u>	<u>\$10,000</u>	<u>\$100,000</u>

<u>Fees for Modifications to Solid Waste Facility Plans</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Solid Waste Landfills - Type IV</u>	<u>\$15,000</u>	<u>\$150,000</u>
<u>Solid Waste Landfills - Type III</u>	<u>\$2,000</u>	<u>\$75,000</u>
<u>Other Solid Waste Facilities Subject to Plan Approval - Type IV</u>	<u>\$10,000</u>	<u>\$100,000</u>
<u>Other Solid Waste Facilities Subject to Plan Approval - Type III</u>	<u>\$500</u>	<u>\$50,000</u>

<u>Fees for Review of Financial Responsibility Plans for Solid Waste Facilities</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Annual Review for Solid Waste Landfills</u>	<u>\$500</u>	<u>\$5,000</u>

B. Beginning July 1, 2010 and until June 30, 2011, when determining reasonable cost under A.R.S. § 49-762.03, the department shall use an hourly billing rate of \$127.49 for all direct labor spent working on the review of a solid waste facility plan, a modification of an approved facility plan,

and a financial assurance plan. This fee increases and supersedes the hourly billing rate listed in R18-13-702(F) for the period of July 1, 2010 through June 30, 2011. The applicant shall remit the fees in accordance with R18-13-702.

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