

**NOTICE OF EXEMPT RULEMAKING**  
**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**PERMIT AND COMPLIANCE FEES**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R18-14-108                         | 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 statute: A.R.S. §§ 49-104(B)(13); 49-203(A)(8)
- 3. The effective date of these 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: Wendy LeStarge  
Address: Arizona Department of Environmental Quality  
1110 W. Washington Street  
Phoenix, AZ 85007  
E-mail: w11@azdeq.gov  
Telephone: (602) 771-4836 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)  
Fax: (602) 771-4834
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including 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 Water Quality Division collects fees for only two types of reviews or permits: Aquifer Protection Permits (APP) and design review of drinking water systems. Because the fees for design review of drinking water systems were newly established in December 2008, ADEQ believes it is premature to consider a fee increase at this time

The current APP fee structure was established in January 2001. ADEQ has been reviewing its APP fee structure since the Auditor General’s 2004 report. In the report, the Auditor General recommended that ADEQ regularly recalculate APP fees based on actual direct costs and current estimates of direct costs and billable hours, and include travel in direct costs. Also in 2004, A.R.S. § 49-241.02 was amended, establishing the current maximum fees, and requiring ADEQ to evaluate and report on the adequacy of the maximum fee caps. In 2005, ADEQ contracted with a consultant to review and determine the adequacy of the fee structure, including its revenues derived from and expenses incurred for processing APPs. ADEQ submitted the report mandated in A.R.S. § 49-241.02(E) to the Legislature by the required August 31, 2009 deadline. All of ADEQ’s reviews of the fees for the APP Program have shown that the current APP fees are not sufficient to fully support the program.

ADEQ will increase individual and general APP fees, annual registration fees, and fees for certain other services as shown on Table 2. For a period of one year, these fees will increase and supersede any lesser fee listed elsewhere in Article 1 or in Arizona Revised Statutes, Title 49, Chapter 2, Article 3. R18-14-108 and Table 2 will repeal automatically, effective July 1, 2011. Additional revenues

generated by fee increases to the Water Quality Division's Permit fees under this exempt rulemaking will be approximately \$2,200,000, and will be used to fund the services of ADEQ in fiscal year 2011.

ADEQ will raise the hourly rate for permitting services from \$61 to \$122. This hourly rate is required to fully fund the total costs (salary and benefits) of ADEQ staff necessary to develop and issue an APP. ADEQ will also raise the maximum allowable fees for individual APPs to account for the increase in the hourly rate.

ADEQ will also double most of the fees associated with general APPs and subdivision approval. The fees for the general APPs, set in 2001, were developed based on the existing \$61 hourly rate and the time spent reviewing general permit documentation. As many of the general APPs were newly created in 2001, review time was approximate. ADEQ has found that the review time for many general APPs was underestimated.

ADEQ will also increase fees for dry well registration, determinations of applicability, and the annual registration for discharge. ADEQ has found that existing fees for dry well registration and determinations of applicability are inadequate to fully cover costs of ADEQ's review.

Revenues derived from the fee increases will provide for the continued ADEQ support of environmental permitting requirements for FY 2011. Affected parties include businesses, individuals, political subdivisions, federal agencies, and non-profit organizations that are applying for an APP or an amendment to an existing APP. ADEQ fairly and equally assesses fees to all parties for services rendered. The Water Quality Division assesses fees in a nondiscriminatory manner against both public and private parties, except as mandated by A.R.S. § 49-203(A)(8) to exempt state agencies from all water quality fees.

At the date of filing, ADEQ has approximately 200 individual APP applications that will be pending after July 1, 2010. These applications and any new applications received after July 1, 2010, will pay the increased hourly rate for any water quality protection services rendered July 1, 2010 until June 30, 2011.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, 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. Arizona Department of Environmental Quality

Information submitted to the Legislature as required under A.R.S. § 49-241.02(E). Arizona Department of Environmental Quality, Water Quality Division (2009)

**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:**

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.azdeq.gov>, for further information. Written comments on the exempt rule 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 hearing 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:**

DRAFT

**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**PERMIT AND COMPLIANCE FEES**

**ARTICLE 1. WATER QUALITY PROTECTION FEES**

Section

R18-14-108. ~~Repealed~~ Water Quality Protection Fees for Fiscal Year 2011

DRAFT

**ARTICLE 1. WATER QUALITY PROTECTION FEES**

**R18-14-108. Repealed Water Quality Protection Fees for Fiscal Year 2011**

- A.** Beginning on July 1, 2010 until June 30, 2011, the fees listed in Table 2 increase and supersede any fee listed otherwise in this Article or in A.R.S. Title 49, Chapter 2, Article 3.
- B.** In addition to the annual registration fee required under A.R.S. § 49-242 for Calendar Year 2010, a one-time increased annual registration fee as listed in Table 2 shall be due within 30 days of the invoice postmark date for the increased fee.
- C.** This Section and Table 2 will repeal automatically, effective July 1, 2011.

Table 2.

<u>Water Quality Protection Service</u>	<u>Applicable Fee</u>
<b><u>Individual Permits</u></b>	
<u>Individual or Area-wide Aquifer Protection Permit</u>	<u>\$122 per hour up to maximum of \$200,000</u>
<u>Complex Modification to Individual or Area-wide Aquifer Protection Permit</u>	<u>\$122 per hour up to maximum of \$200,000</u>
<u>Clean closure of facility without Aquifer Protection Permit</u>	<u>\$122 per hour up to maximum of \$70,000</u>
<u>Standard Modification to Individual or Area-wide Aquifer Protection Permit</u>	<u>\$122 per hour up to maximum of \$50,000</u>
<u>Reclaimed Water Individual Permit</u>	<u>\$122 per hour up to maximum of \$32,000</u>
<b><u>Increased Fee Required for Annual Registration per A.R.S. § 49-242 of Discharge or Influent per Day Under the Permit or Notice of Disposal (in Gallons)</u></b>	
<u>Gallons of Permitted Discharge or Influent per Day</u>	
<u>3000 to 9999</u>	<u>\$25</u>
<u>10,000 to 99,999</u>	<u>\$150</u>
<u>100,000 to 999,999</u>	<u>\$1500</u>
<u>1,000,000 to 9,999,999</u>	<u>\$2500</u>
<u>10,000,000 or more</u>	<u>\$4000</u>
<b><u>General Permits</u></b>	

<u>All Type 2 General Permits</u>	<u>\$600</u>
<u>All Type 2 General Permits Renewals</u>	<u>\$200</u>
<u>All Type 3 General Permits</u>	<u>\$3000</u>
<u>All Type 3 General Permits Renewals</u>	<u>\$1000</u>
<u>Type 4.01 General Permit Sewer Collections Systems</u>	
<u>Gravity Sewer Only with Manholes</u>	
· <u>Serving less than or equal to 50 connections</u>	<u>\$1000</u>
· <u>Serving 51 to 300 connections</u>	<u>\$2000</u>
· <u>Serving 301 or more Connections</u>	<u>\$1000</u>
<u>Force Mains Including Gravity Sewer Components</u>	
· <u>Serving less than or equal to 50 connections</u>	<u>\$1600</u>
· <u>Serving 51 to 300 connections</u>	<u>\$2600</u>
· <u>Serving 301 or more connections</u>	<u>\$1000</u>
<u>Type 4 Onsite Wastewater Treatment Facilities</u>	
<u>Type 4.02 Septic tank/conventional disposal, less than 3000 gallons per day</u>	<u>\$800</u>
<u>Type 4.03 Composting toilet, less than 3000 gallons per day</u>	<u>\$800</u>
<u>Type 4.04 Pressure distribution system, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.05 Gravelless trench, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.06 Natural seal evapotranspiration bed, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.07 Lined evapotranspiration bed, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.08 Wisconsin mound, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.09 Engineered pad system, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.10 Intermittent sand filter, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.11 Peat filter, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.12 Textile filter, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.13 Ruck® system, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.14 Sewage vault, less than 3000 gallons per day</u>	<u>\$800</u>
<u>Type 4.15 Aerobic system/subsurface disposal, less than 3000 gallons per day</u>	<u>\$1600</u>

<u>Type 4.16 Aerobic system/surface disposal, less than 3000 gallons per day</u>	<u>\$2000</u>
<u>Type 4.17 Cap system, less than 3000 gallons per day</u>	<u>\$800</u>
<u>Type 4.18 Constructed wetlands, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.19 Sand-lined trench, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.20 Disinfection device, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.21 Sequencing batch reactor, less than 3000 gallons per day</u>	<u>\$1200</u>
<u>Type 4.22 Subsurface drip irrigation, less than 3000 gallons per day</u>	<u>\$1000</u>
<u>Type 4.23 Onsite wastewater treatment facility, flow from 3000 to less than 24,000 gallons per day</u>	<u>\$3600</u>
<u>Each additional general permit for multiple design elements from more than one Type 4 General Permit, as stated in R18-14-102(C)(7)(b)</u>	<u>\$500</u>
<b><u>Other Services</u></b>	
<u>Dry well registration</u>	<u>\$100</u>
<u>Determination of Applicability</u>	<u>\$1000</u>
<u>Subdivision approval with sewage treatment and disposal provided outside the boundaries of individual lots</u>	<u>\$600 per 150 lots</u>
<u>Subdivision approval with sewage treatment and disposal located within the boundary of lot</u>	<u>\$1000 for 40 lots or less</u> <u>\$2000 for 41 to 150 lots</u> <u>\$2000 per additional 150 lots</u>