

Appendix K-2  
Revision No. 3  
Date: 03/17/13

**APPENDIX K-2**  
**ARIZONA ADMINISTRATIVE REGISTER**  
**TITLE 18 CHAPTER 8 (REVISED 5/25/2012)**

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY  
HAZARDOUS WASTE MANAGEMENT

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1244.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 23, 2011.*

[R12-77]

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

R18-8-260	Amend
R18-8-270	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. § 49-104(B)(17); Laws 2011, 1st Regular Session, Ch. 220  
Implementing Statutes: A.R.S. §§ 49-922(B)(5) and 49-931(A)
- 3. The effective date of the rule:**
  - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable
  - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

July 1, 2012; to coincide with the beginning of the state fiscal year.
- 4. Citations to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 17 A.A.R. 1822, September 16, 2011  
Notice of Proposed Rulemaking: 17 A.A.R. 1916, September 30, 2011
- 5. The agency's contact persons 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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**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. This rulemaking was conducted as required by Laws 2011, 1st Regular Session, Ch. 220 (hereafter "HB 2705"), which also enacted temporary hazardous waste fees for Fiscal Year (FY) 2012. The final rule increases existing hazardous waste fees beginning July 1, 2012 to address the direct and indirect costs of the Department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing hazardous waste permits and enforcing the requirements of the regulatory program. The goal is to achieve self sufficiency of the Arizona Department of Environmental Quality's (ADEQ or the Department) Hazardous Waste Program and replace General Fund monies no longer appropriated to the Program. The new fees from this rule are effective July 1, 2012.

Background. The Arizona Hazardous Waste Program is required by A.R.S. § 49-922 and consists primarily of a permitting function and an inspection and compliance function. Like other environmental programs, it is based largely on federal law that calls for states to adopt and implement certain federal regulations as stringently as EPA. As a consequence of Arizona being granted "authorization" to implement the federal regulations in Arizona "in lieu of" the United States Environmental Protection Agency (EPA), ADEQ also receives a regular two-year grant from EPA, known as the RCRA (Resource Conservation and Recovery Act) grant.

Since ADEQ was first granted authorization for the Hazardous Waste Program in 1985, the federal RCRA grant has played a key part in the funding and authorization of the Arizona Hazardous Waste Program. However, the grant was never designed to be the sole source of funding. In 1991, fees from hazardous waste generators, permit processing fees, and fees from civil and criminal penalties were added as revenue sources to the Hazardous Waste Management Fund. Civil and criminal penalties were redirected to the General Fund in 1996. In addition, until recently, there has always been General Fund support for ADEQ's Hazardous Waste Program.

As a result of the economic downturn in 2007-2008, many states including Arizona began to experience budget shortfalls. Lump sum budget reductions and fund transfers to the General Fund from state agencies, including the ADEQ were undertaken by the legislature. Monies from various ADEQ funds including the Hazardous Waste Management Fund were transferred to the General Fund. In addition, the FY 2011 budget eliminated all of the ADEQ's General Fund (\$6,247,700) for operations. Special session legislation allowed ADEQ to increase fees through exempt rules for air, water, and waste programs for FY 2011. (Laws 2010, 7th Spec. Sess., Ch. 7, § 5) In 2011, HB 2705 gave ADEQ the authority to continue increased waste program fees for FY 2012. The increased fees in this rule are also authorized by HB 2705 and would begin July 1, 2012 for FY 2013.

HB 2705. HB 2705 directed ADEQ to establish fees for two types of hazardous waste entities: hazardous waste generators and facilities that store, treat, or dispose of hazardous waste. The statute directs that the fees are to be set based on hazardous waste generated and disposed, and for the costs of evaluating hazardous waste facility permits. The bill set out a number of further requirements for those fee increases contained in A.R.S. §§ 49-104(B)(17), 49-922, and 49-931. Two principal requirements are: 1) the fees should "be fairly assessed and impose the least burden and cost to the parties subject to the fees"; and 2) the permit fees are to be based on "the direct and indirect costs of the department's relevant duties" ... "related to issuing licenses" ... "and enforcing the requirements of the applicable regulatory program." Other requirements also apply and are discussed later.

In the context of this rulemaking, ADEQ has interpreted these two main requirements to mean it should collect an amount necessary to maintain an approvable program and to satisfy the detailed requirements to protect the public and the environment from hazardous wastes that are set out in A.R.S. § 49-922. ADEQ interprets "fairly assessed" to mean that the amount of fees collected from any class of hazardous waste entities should be proportional to the "direct and indirect costs" that can be attributed to that class.

Informal Comment. In 2011, ADEQ facilitated extensive informal comment on funding for the Hazardous Waste Program and hosted four public meetings. An e-mail 'listserv' was created consisting of hazardous waste related entities and each meeting was announced to the listserv and posted on ADEQ's web site. The meetings were held in Phoenix and ADEQ provided a call-in mechanism to allow participation by phone. Attendance averaged 50-75 people per meeting. Meetings on January 24 and January 31 concentrated on concepts and the design of legislation. The meetings on June 30 and July 28 reviewed draft rule language and responded to comments from the public. Oral comments were recorded at the meetings, and written comments were accepted after each meeting. At the time, the hazardous waste listserv contained over 450 e-mail addresses for the hazardous waste rule.

Explanation of New Fees. These final rules increase fees in the Hazardous Waste Programs for hazardous waste generation and disposal, and permits. The first set of fees increased is the per ton hazardous waste generation fee and the per ton hazardous waste disposal fee at A.R.S. § 49-931. Disposal fees apply only to hazardous waste disposed in Arizona. HB 2705 removed the fees previously established by that statute and authorized ADEQ to establish the fees by rule. The table below shows how the new fee amounts compared to previous fee amounts.

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**Table 1. Hazardous Waste Generation and Disposal Fees**

<b>Type of Hazardous Waste "Facility"</b>	<b>FY 2010 and before</b>	<b>FY 2011 and FY 2012</b>	<b>New fee beginning FY 2013</b>	<b>Maximum fee per site beginning FY 2013</b>
A.R.S. § 49-931(A)(1)	\$10/ton	\$70/ton	\$67.50/ton	\$200,000
A.R.S. § 49-931(A)(2)	\$40/ton	\$280/ton	\$270/ton	\$5,000,000
A.R.S. § 49-931(A)(3)	\$4/ton	\$28/ton	\$27/ton	\$160,000

The second set of increased fees are the fees for processing hazardous waste permits, which were previously in rule at R18-8-270. The tables below show how the new application fees, maximum fees, and hourly rate compare to the previous amounts.

**Table 2. Hazardous Waste Permits  
New and Previous Application and Maximum Fees for Various License Types**

<b>License Type</b>	<b>Application Fee Previous/New</b>	<b>Maximum Fee Previous/New</b>
Permit for: Container Storage/Container Treatment	\$10,000/\$20,000	NA/\$250,000
Permit for: Tank Storage/Tank Treatment	\$10,000/\$20,000	NA/\$300,000
Permit for: Surface Impoundment	\$10,000/\$20,000	NA/\$400,000
Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/Miscellaneous Unit	\$10,000/\$20,000	NA/\$500,000
Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/Research, Development, and Demonstration	\$10,000/\$20,000	NA/\$300,000
Corrective Action Permit/Remedial Action Plan (RAP) Approval	\$10,000/\$20,000	NA/\$300,000
Post-Closure Permit	\$10,000/\$20,000	NA/\$400,000
Closure of Container/Tank/Drip Pad/Containment Building	\$2,500/\$5,000/unit	NA/\$100,000
Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/Waste Pile/Land Treatment Unit/Landfill	\$2,500/\$5,000/unit	NA/\$300,000
Class 1 Modification (requiring Director Approval)	\$1,000/\$1,000	NA/\$50,000
Class 2 Modification	\$2,500/\$5,000	NA/\$250,000
Class 3 Modification (for Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$10,000/\$20,000	NA/\$400,000
Class 3 Modification (except for Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$10,000/\$10,000	NA/\$250,000

**Table 3. Hazardous Waste Hourly Rate**

<b>Hazardous Waste permits</b>	<b>April 2006 to July 2010</b>	<b>FY 2011 and FY 2012</b>	<b>New beginning FY 2013</b>
Hourly rate	\$95.29	\$95.29	\$136.00

The application fee increases in Table 2 are a result of the increase in the hourly rate. ADEQ needs to obtain sufficient monies up front so that payments do not lag behind services provided. The maximum fees for hazardous waste permit actions are new and are required by HB 2705. Maximum fees are set to provide predictability to permit applicants while also allowing ADEQ to be reasonably certain that it meets Licensing Time-frames and not expend more resources processing a permit than the amount for which it can be reimbursed. ADEQ has increased the hourly rate it uses for permit review from \$95.29 to \$136.

**Explanation of hourly rate.**

ADEQ estimated the hourly rate of \$136 per hour for hazardous waste permitting staff (project management and technical review) based on the permitting work of a full-time employee (FTE) and made the following assumptions:

**Hours**

- Assumes an FTE works 2080 hours annually (40 hours X 52 weeks).
- NON-PROGRAM HOURS include:
  - hours related to employee leave (sick, vacation, holiday), calculated at the maximum available of 320 hours.
  - hours related to training, meetings and minor tasks estimated at 315 hours.

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- hours lost due to employee turnover – assuming a rate of 10 percent - 208 hours.
- TOTAL NON-PROGRAM HOURS estimated at 843 hours annually.
- PROGRAM HOURS are what remain when non-program hours are subtracted from the total annual hours. Program hours include both review and decision-making on specific applications (i.e. billable), and those hours not related to review hours of specific applications (i.e. non-billable). Some of the Program Hours are therefore not billable.
  - TOTAL PROGRAM HOURS = 2080 - 843 = 1237 hours/year.
  - NON-BILLABLE PROGRAM HOURS includes, among other duties, customer service time, inter-division and inter-agency coordination, permit administration, and program development (rules and policies). This is estimated at 403 hours annually.
  - BILLABLE PROGRAM HOURS = 1237 - 403 = 834 hours/year.

**Costs**

- Salaries + employee related expenses (ERE) related to Billable Program Hours performed by an FTE.
  - ERE (e.g., health insurance, worker’s compensation) benefits at rate of 42 percent of salary.
  - A portion of Non-Program Hours in support of Billable Program Hours are included in costs. This is estimated at 568 hours/year (67.4 percent of total Non-Program Hours).
  - Program staff includes Project Managers, Engineers, and Hydrologists at an average hourly rate of \$27.40.

Cost = (834 + 568 hours) X \$27.40/hour X 1.42 = \$54,549

- Management/ Supervisory hours in support of the program staff work are included in costs, and are estimated at 300 hours/year. This includes unit and section managers at an average hourly rate of \$33.96.

Cost = (300 hours) X \$33.96/hour X 1.42 = \$14,467

- Administration Support hours in support of the program staff and management’s and supervisors’ work are included in costs, estimated at 200 hours/year at an average hourly rate of \$15.73.

Cost = (200 hours) X \$15.73/hour X 1.42 = \$4,467

- Subtotal of personnel services and ERE for the project manager, management staff, and administrative support staff (\$54,549 + \$14,467 + \$4,467 = \$73,483).
- Add Indirect expenses (49.53 percent of personal services and ERE by federal formula) for rent, utilities, etc., estimated at \$36,396 (\$73,483 X 0.4953 = \$36,396).
- Add Other Expenses such as per diem travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at \$3,500.
- Total Costs Related to Permit Process for one FTE= \$113,379. (\$73,483 + \$36,396 + \$3,500 = \$113,379)

**Hourly Rate**

Dividing the total costs of an FTE (\$113,379) by Billable Program Hours (834) yields the hourly rate for permit processing of \$136/hour (\$113,379 ÷ 834 billable program hours = \$136/hour).

- The remaining 678 hours of an FTE’s work year are not directly billable to permit processing (e.g., non-billable program hours and balance of the non-program hours (403 + 32.6 percent X 843 = 678)) and must be supported through the RCRA grant and annual generator fees.

The rate of \$136 per hour is comparable to private sector rates and with the rates charged by other ADEQ divisions and state agencies that are engaged in similar levels of technical review and project management. For comparison, the average private sector consultant rate for similar work activities charged in ADEQ’s hazardous waste permit program typically ranges from \$135 to \$145 per hour. Using this same hourly rate calculation methodology, the Air Quality Division currently charges \$141.50 per hour, and the Water Quality Division currently charges \$122 per hour. The Arizona Department of Water Resources, using the same hourly rate calculation methodology, currently charges \$118 per hour. The nominal differences in fees charged between the divisions and agencies largely relate to the hourly rate differences between the specialty staff needed by each particular program. Those programs requiring more specialty technical review (e.g., by hydrologists or engineers) will have slightly higher hourly rates.

Billing Details. During the informal public participation process, stakeholders asked ADEQ for a rule requirement to put more detail on the periodic and final bills they get from ADEQ. ADEQ added this requirement to the proposed rule at R18-8-270(G)(5). At the time of the Notice of Proposed Rulemaking, ADEQ stated that its proposal to provide a detailed hours breakdown on every bill [See R18-8-270(G)(5)(b)] was not currently practicable due to the lack of an automated software system. ADEQ has begun developing an automated tracking system to facilitate the collection of detailed billing information. The continuing shortage of resources has caused ADEQ to place a new starting date for certain billing information requirements in R18-8-270(G)(5). ADEQ now expects the system will be in place by the end of CY 2012.

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Hazardous Waste Generation Fees: Maximums. ADEQ has increased hazardous waste generation fees from the amounts they were before FY 2011. As can be seen from Table 1, the new permanent rates are slightly lower than they were for the previous two fiscal years.

The prior hazardous waste generation fees were set in statute at A.R.S. § 49-931, but the statute did not establish maximum fees. ADEQ has established maximum fees for hazardous waste generators in units of dollars per generator site per year because it believes that generators with multiple sites are able to treat each of their sites as separate fiscal units. This provides predictability on a per site basis. The maximum fees are set to provide assurance to ADEQ that it will continue to collect about the same revenues if generation rates remain approximately the same, while providing certainty to generators that changes in operations or regulations will not drive their fees over a specified amount.

ADEQ analyzed different combinations of per ton fees and generator site maximums using various factors including proportionality and impacts on small businesses. Since federal regulations have definitions for large quantity generator (LQG) and small quantity generator (SQG), these categories allow assessment of both the proportionality and the small business impact of various hazardous waste generation fee and cap combinations.

Although other criteria can apply, under federal regulations, an entity that generates more than 2,200 pounds of hazardous waste in any month is an LQG, while one that generates more than 220 pounds but less than 2,200 pounds in any month is normally an SQG. When these categories are matched against ADEQ's database of generators, the new per ton fee and fee caps will result in approximately 85% of the hazardous waste generation fees paid by LQGs of hazardous waste and approximately 15% paid by SQGs. ADEQ estimates that in 2009-2010 it expended approximately 60% of its hazardous waste resources on LQGs and approximately 40% on SQGs. These resource figures are subject to change based on ADEQ compliance initiatives, RCRA grant workplan requirements and EPA inspection and compliance initiatives that are established on a year to year basis. The preponderance of ADEQ resources expended on LQGs is partially accounted for by the fact that there are more requirements that apply to LQGs. Not only do inspections of LQGs take more time, but ADEQ also inspects LQGs more frequently.

Finally, ADEQ seeks to minimize the impact of these fees on small businesses. ADEQ believes that SQGs are more likely to be small businesses than LQGs. (The maximum amount of hazardous waste an SQG can generate in a year is about 12 tons.) ADEQ believes that under this fee and fee cap arrangement, it has both fairly assessed the fees and minimized the impact on small business.

ADEQ discusses other fee and fee cap alternatives in item 9 of this Notice.

Under A.R.S. § 49-104(B)(17)(b), (c), and (d), ADEQ must also consider the availability of other funds, the impact of the fees on the parties subject to the fees, and the fees charged for similar duties performed by the Department, other agencies, and the private sector.

ADEQ has already discussed the availability, regular use, and conditions required for using the federal RCRA grant, and ADEQ is using the grant to the maximum extent. It was noted earlier that civil and criminal penalties that result from hazardous waste enforcement go to the General Fund and no longer to the Hazardous Waste Management Fund, so that these funds are not available to mitigate these fee increases. The same is true of hazardous waste fuel penalties under A.R.S. § 49-932. Finally, under A.R.S. § 49-929, all hazardous waste entities pay small registration fees into the Water Quality Assurance Revolving Fund (WQARF) established under A.R.S. § 49-282, but the WQARF statute does not allow WQARF funds to be used for either hazardous waste permitting or inspections, except as provided in A.R.S. § 49-282(E)(7), which allows a limited amount to be used for hazardous waste compliance monitoring, investigation and enforcement activities.

As discussed earlier, ADEQ has considered the impact of the fees on the parties subject to the fees through its collection of the least amount of fees necessary to sustain an approvable program, and a fair, proportional assessment of those fees.

In considering the fees charged for similar duties performed by the Department, other agencies, and the private sector, ADEQ notes that it has already compared hourly rates for the most similar duties. Many agencies are not required to recover their full processing costs with fees, and in that case, it is more difficult to make a direct comparison. For example in Nevada, the hourly rate for hazardous waste permit processing is \$50 per hour, (NAC 444.8446) but the purpose of Nevada's fee is merely to "offset the cost to process and review the application." (emphasis added) In Arizona, the hourly rate has to cover both the direct and indirect costs. In addition, Nevada charges a significant annual operating fee as well as miscellaneous "[a]dditional fees to offset cost of inspection and other regulation." Similar scenarios exist for hazardous waste generation fees, where states charge lower fees but where the fees are not designed to sustain so much of program costs.

**7. A reference to any study relevant to the rules that the agency reviewed and either relied on 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:**

None

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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

Identification of the rulemaking: 18 A.A.C. 8, Article 2, amending R18-8-260 and R18-8-270. (For further information, see item 6 of this preamble.) These rules are not designed to change the conduct of any regulated hazardous waste entities. The rules are designed to collect increased fees for some hazardous waste entities. The per ton fees for generation and disposal of hazardous waste are increased in R18-8-260. Maximum fees are set and the application fees and hourly rate are increased for processing hazardous waste permits in R18-8-270.

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, renewal, closure plan, and financial assurance reviews. Generators, transporters and TSD facilities are periodically inspected. 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.

Regulatory Universe. ADEQ'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 TSDs, 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 listing of Arizona's 50 largest hazardous waste generators and other related information can be found at <http://www.epa.gov/osw/infore-sources/data/br09/state09.pdf>.

Proposed Hazardous Waste Staff. Due to the elimination of the General Fund appropriation, the transfer of funds from the Hazardous Waste Management Fund to the General Fund and other budget reductions, the Hazardous Waste Program experienced a reduction in staffing levels over the past few years. Some positions were eliminated entirely and others have not been filled following staff lay-offs or voluntary departures. In FY 2008, the Hazardous Waste Program had five permit writers and 11 inspections and compliance officers. The minimum staffing needed to operate the Hazardous Waste Program consists of seven inspectors and 2.8 permit writers. An additional 13 full-time-equivalent positions (FTEs) consisting of support staff include a full-time RCRA attorney from the Attorney General's Office, a hydrologist, pollution prevention staff, records management staff, budget, database and clerical staff, and management. ADEQ believes these staffing levels represent the minimum necessary to process the existing and future workload efficiently and within applicable licensing time-frames. ADEQ does not anticipate the programs or associated staffing levels to expand as a result of this rulemaking.

Budget. The budget necessary to operate the Hazardous Waste Program with the proposed staffing is approximately \$3.3 million. In FY 2010, hazardous waste permitting and generation fees only generated approximately \$357,000. In addition, the portion of a federal grant known as the RCRA grant that was allocated for FY 2010 was \$1.4 million and the WQARF contribution under A.R.S. § 49-287(E)(7) was \$142,600. This rule is designed to address the additional \$1.4 million revenue shortfall.

Implemented Efficiencies. The Hazardous Waste Program has changed its operation in recent years to accomplish required work with fewer resources. Permitting program efficiencies include: using contractors for permit application reviews when necessary for technical support or schedule concerns; working to improve web site resources to provide better information to the regulated community; utilizing EPA resources to review new permits; and utilizing EPA resources to review some financial assurance mechanisms.

Compliance program efficiencies include: using boilerplate language for inspection reports and enforcement documents to increase overall productivity, efficiency and timeliness for completing inspection related documents; scheduling field work to reduce travel dollars and increase productivity; taking advantage of no-cost training opportunities from outside entities, and cross-training within ADEQ; developing standardized presentations for the general public and for in-house training; using new data search tools to increase proficiency for understanding regulations and searching for EPA and ADEQ regulatory guidance documents; working to improve web site resources to provide better information and increase outreach efforts.

Discussion and Demonstration: The Regulatory Objective. A.R.S. § 49-922 requires that ADEQ establish and implement a hazardous waste management program "equivalent to and consistent with" the federal hazardous waste program. EPA likewise requires states to adopt a program at least as stringent as the federal program in order to be authorized to implement the federal program in lieu of EPA. As a result of being authorized, ADEQ receives RCRA grant funding from EPA to partially offset the cost of running the program. Through the grant and delegation process, EPA maintains close scrutiny of the Arizona program and requires it to achieve certain benchmarks.

Based on stakeholder comments, most in the regulated community agree that ADEQ should implement the federal program rather than EPA, and that ADEQ should continue to meet the criteria and benchmarks for program authorization in order to implement the program and receive the federal RCRA grant. The grant provides approximately \$1.4 million to ADEQ per year and must be spent according to grant priorities. In 2010, 50% of the overall grant had to be spent for enforcement, 35% for permitting and corrective action, and 15% for pollution prevention, while \$200,000 was earmarked specifically for program activities at the Mexico border. In addition, Arizona must match the RCRA

grant with 25% additional state funds (approximately \$375,000). In FY 2010, hazardous waste permit and generation fees totaled only \$357,000. Those fees require an additional \$1.4 million in order to replace the General Fund monies and other funding removed in FY 2010 and make the program more self-sufficient.

Resource Reduction Impacts. Failure to adequately staff and fund the program may cause the loss of the EPA-delegated program and approximately \$1.4 million in state matched federal dollars. If the program reverts back to EPA, Arizona will lose control over enforcement and permitting decisions. If the program continues to receive federal dollars, but is not adequately funded by the state, efforts will be focused on the EPA grant required performance measures. Continuation of some services, such as outreach, technical assistance, timely complaint response, and inspections of small quantity generators, conditionally exempt small quantity generators, and transporters will cease.

Least burden and cost; description of alternatives. A.R.S. § 41-1052(D)(3) requires ADEQ to demonstrate it has selected the alternative with the least burden and cost necessary to achieve the underlying regulatory objective. A nearly identical issue was discussed in item 6 of the preamble with regard to A.R.S. § 49-104(B)(17), which requires that the fees should “be fairly assessed and impose the least burden and cost to the parties subject to the fees”; and that the fees are to be based on “the direct and indirect costs of the department’s relevant duties” ... “related to issuing licenses” ... “and enforcing the requirements of the applicable regulatory program.”

In the context of this hazardous waste rule, ADEQ has interpreted these two main requirements to mean collecting an amount necessary to maintain an approvable program and satisfy the detailed requirements to protect human health and the environment from hazardous wastes that are specified in A.R.S. § 49-922. ADEQ considers “fairly assessed” to mean that the amount of fees collected from any class of hazardous waste entities should be proportional to the “direct and indirect costs” that can be attributed to that class.

ADEQ analyzed different combinations of per ton fees and generator site maximums using various factors including proportionality and impacts on small businesses. Several members of the regulated community requested that ADEQ consider additional fee scenarios that would keep the generator site maximums lower than the amounts being considered by ADEQ. As a result, ADEQ evaluated the following alternative per ton fee/generator site maximum scenarios for facilities that fall under A.R.S. § 49-931(A)(1) under which most of the generator fees are collected.

Tonnage cap: 250 ton  
Facilities covered by the cap: 14  
Tonnage fee for this cap: \$140.50 per ton  
Money saving threshold: 518 tons  
Facilities saving money due to the cap: 5

Tonnage cap: 95 ton  
Facilities covered by the cap: 35  
Tonnage fee for this cap: \$205.50 per ton  
Money saving threshold: 289 tons  
Facilities saving money due to the cap: 12

ADEQ determined that fee scenarios like the two described above would place a substantial hardship on small businesses. Under the scenarios described above and considered at the request of several in the regulated community, generators would see their hazardous waste generation fees increase from \$10/ton to \$140.50/ton and even \$205.50/ton instead of the \$67.50/ton rate in the final rule. ADEQ could not justify such drastic per ton fee increases for the sake of lowering the generator site maximum, which would ultimately benefit five to 12 of the largest generators of hazardous waste in the state.

ADEQ considered the impact of the fees on the parties subject to the fees through its collection of the least amount of fees necessary to sustain an approvable program, and a fair, proportional assessment of those fees. Under the fee scenario proposed by ADEQ (\$67.50/ton with a \$200,000 generator site maximum), two generators would come within \$14,000 to \$16,000 of the cap based on CY2010 hazardous waste generation data.

Generation rates vary from year to year. Based on a review of CY 2009, 2008, and 2007 hazardous waste generation data, generators who undergo major renovations and generate substantially higher volumes of hazardous waste as a result will have a significant cost savings. For instance, in 2008, one facility generated 11,537 tons of hazardous waste. If the new per ton fee (\$67.50) is applied to this volume of hazardous waste, the generator would meet the cap at 2,963 tons and would not pay generation fees on the remaining 8,574 tons.

Cost/Benefit. The probable costs for this rule are the \$1.4 million in estimated increased fees necessary for the program described above. This amount would replace the General Fund monies and other sources that partially funded the Hazardous Waste Program in the past without cost to the regulated community.

The probable benefits are:

- *Ability of Arizona to implement the federal hazardous waste program.* EPA currently does not have the staff to perform hazardous waste inspections and permitting activities in Arizona; therefore, there could be a significant period of time during which there would be no hazardous waste oversight in Arizona, including responding to citizens’ complaints regarding hazardous waste issues. In terms of permitting activities, ADEQ is held to specific licensing time-frames to issue hazardous waste permits in a timely manner; EPA would not be bound by Ari-

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zona's rules on licensing time-frames. EPA administration of the hazardous waste program would most certainly result in a delay of statutorily mandated permit processing, causing Arizona businesses to delay start-up, expansion or modification.

- *Local control over enforcement and permitting decisions:* Hazardous waste enforcement and permitting are inexact processes. ADEQ engages heavily with the regulated community during these processes. Arizona businesses could suffer from the inability to engage with the regulators in a timely manner at a convenient location since they would have to engage with EPA staff in San Francisco. Furthermore, the regulated community could no longer take advantage of ADEQ's efforts to educate regulated entities about enforcement policies. ADEQ developed the Compliance and Enforcement Handbook, which is available to the public, with the purpose of promoting appropriate, consistent, and timely enforcement of Arizona's environmental statutes and rules in a manner that is transparent to all who are affected, including the regulated community. EPA does not have a similar guidance document that is tailored to the needs of Arizona businesses.
- *Control over other hazardous waste activities:* RCRA has numerous reporting requirements for generators of hazardous waste. Because Arizona has the authority to implement the hazardous waste program, the business community in Arizona submits documentation to and requests required information (e.g., EPA identification numbers) from ADEQ. Absent an Arizona-specific hazardous waste program, Arizona businesses will be forced to submit reports to and request needed information from EPA in San Francisco. ADEQ receives hundreds of calls each month from Arizona businesses handling hazardous waste, requesting compliance assistance. This service to Arizona businesses would no longer be available.
- *Arizona businesses will be subject to Arizona's Penalty Authority rather than EPA's Administrative Penalty Authority:* ADEQ has authority to seek a penalty of up to \$1,000 per day for the violation of a Compliance Order [A.R.S. § 49-923] or to seek penalties of up to \$25,000 per day for violations of the Arizona Hazardous Waste Management Act [A.R.S. § 49-924]. In contrast, EPA can assess a penalty of up to \$37,500 per day for RCRA violations and this amount is periodically adjusted for inflation. EPA's penalty authority places the burden on the responsible party to contest EPA's alleged violations whereas ADEQ's places the burden on the state.
- *Rulemaking oversight:* A.R.S. § 49-922 requires the Director to adopt rules to establish a hazardous waste program. Hazardous waste rules adopted by ADEQ currently go through the Governor's Regulatory Review Council and stakeholder review processes. When EPA adopts a new regulation, Arizona currently has the authority to review the regulation and decide whether to propose it for adoption. If the Hazardous Waste Program is reverted to EPA, Arizona would lose the ability to decide whether to adopt federal regulations; future EPA regulations would become effective in Arizona at the same time they became effective nationwide.
- *Compliance assistance outreach to regulated community:* Throughout the year, ADEQ staff participates in numerous conferences and training seminars with the goal of educating the regulated community about ADEQ hazardous waste requirements and policies. It is unlikely that EPA would schedule trips to Arizona for staff to participate in short-term outreach events.

In addition to these benefits, there is a general benefit to the state budget due to the Hazardous Waste Program moving toward a fee-based revenue system without the need for General Fund support. At the same time, the rule is fair and equitable, in that more of the costs of the Hazardous Waste Program would be borne by those who need it.

ADEQ believes that the benefits exceed the cost.

Rules More Stringent than Corresponding Federal Law. [A.R.S. § 41-1052(D)(9)] There is no corresponding federal law that requires hazardous waste fees.

Probable Impact on Political Subdivisions of this State Directly Affected by this Rulemaking [A.R.S. § 49-1055 (B)(3)(b)]

Political subdivisions that will be directly impacted by this fee rule are generators of hazardous waste, or one that holds or applies for a hazardous waste permit. It is known that several municipal water treatment plants are small quantity hazardous waste generators. These, such as the 24th Avenue treatment plant owned by the City of Phoenix and which generated three tons in 2009, would be minimally impacted by this fee rule. Also in 2009, the three state universities together generated a total of 210 tons of hazardous waste. The average impact to each university of the generation fee being increased from \$10 to \$67.50 is 70 tons X \$57.50 or \$4025, which is less than the cost of one in-state tuition. ADEQ has classified this impact as minimal.

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 any of the following methods are legal and feasible in meeting the statutory objectives which are the basis of the rulemaking:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

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Although the listed methods are not generally relevant to a rule establishing fees, (fees must be fairly assessed and based on direct and indirect costs) ADEQ believes that it has appropriately reduced the impact of the rule on small businesses by the way it established the per ton rate and maximum fee for generation and disposal fees under A.R.S. § 49-931.

Probable Impact on Small Businesses. [A.R.S. § 41-1055(B)(5)] ADEQ has looked at its database of hazardous waste generators and permittees and tried to determine which ones are likely to be small businesses. An example would be dry cleaners. Dry cleaners are often independently owned and operated and not likely to exceed the revenue and employee limits in the statutory definition of small business. Most dry cleaners are also SQGs, so that the impact of the increased generation fees will be based on generation of 12 tons or less. It is likely that most small businesses that generate hazardous waste will be small quantity generators and that the increased generation fees will have limited to moderate impact on them.

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

ADEQ inserted a later effective date (January 1, 2013) for certain billing information requirements in R18-8-270(G)(5)(b) to compensate for delay in the development of an automated invoice tracking system. ADEQ's goal is to implement a new agency wide Revenue Invoice Collection System or RICS by December 31, 2012.

Minor clarifications and grammar corrections were made at the request of G.R.R.C. staff.

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

**Comment 1:** There should be separate, reduced hazardous waste generation fees for hazardous waste generated during remediation or other permit-mandated activity.

**Response 1:** There is no chemical or environmental impact difference between remediated and generated hazardous waste. The commenter asserts that ADEQ should charge lower fees for remediated waste for the policy reason that it would encourage the cleanup of waste that might otherwise remain unremediated. While ADEQ is unaware of any empirical evidence that this would in fact be the case, ADEQ disagrees with this approach for several policy reasons. First, the proper handling of hazardous waste should be encouraged, not discouraged, as it would be by giving the mishandling of hazardous waste a financial incentive. There should not be a lower fee for finally disposing of hazardous waste properly after it has already been released to the environment. Further, a separate fee for hazardous waste excavated during remediation will complicate the program by making it necessary to distinguish between and monitor the mixing of remediation wastes and other hazardous wastes. Finally, a discount for remediated hazardous waste would require ADEQ to charge a higher fee for hazardous waste that is generated normally, in order to keep total fee revenue the same.

**Comment 2:** The revised federal definition of solid waste would expand the hazardous waste universe if it becomes final.

**Response 2:** The Department recognizes that EPA action and other events could increase or decrease the amount of hazardous waste fees it collects. The revised federal definition of solid waste is not finalized. The revised definition is proposed and currently undergoing public comment. The Department will consider the revised definition after it is adopted at the federal level along with other factors that may affect generation at that time. The annual report required by HB 2705 on ADEQ's waste revenues and expenditures beginning in 2014, will be part of this effort.

**Comment 3:** The fees are not fairly assessed for less complex generators. Commenter is a mini-steel mill that asserts fees should be tailored based on the complexity of the generating facility, and that large generators with one or two streams of hazardous waste can be less complex and therefore easier to regulate than smaller generators with multiple streams or multiple points of generation.

**Response 3:** ADEQ believes that the proposed hazardous waste generation fees are fairly assessed. Under Arizona's Hazardous Waste Program, hazardous waste generators are classified according to the amount of waste that they generate. This premise is determined in statute and is parallel to the structure of the federal Hazardous Waste Program. The commenter suggests that single stream generators, regardless of the quantity of waste generated, are simpler operations than those that handle multiple hazardous waste streams and therefore would require less Departmental resources. In ADEQ's experience, whether a facility handles multiple hazardous wastes or just one hazardous waste is not a reliable indicator of the complexity of the facility.

ADEQ believes that the amount of hazardous waste generated has the best overall correlation to oversight costs attributable to hazardous waste entities. The amount generated is the primary measure used in EPA's national system and is therefore already in use and easiest to verify. There are over 1500 facilities in Arizona that are already classified as either large or small quantity generators. In addition, hazardous waste generators may change operations and processes often. As a result, volume provides a less burdensome way to assess fees than a matrix related to waste streams or generation points. Any system based upon the number of waste streams or points of generation to adjust fees would be complex and more prone to error.

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The commenter feels that a large generator such as itself should not have to be responsible for such a large percentage of ADEQ's hazardous waste operating expenses. During the informal comment period, ADEQ reduced the maximum fee from \$400,000 to \$200,000 to address this concern directly.

**Comment 4:** There is no record to support the 85/15 LQG/SQG split. Commenter points to statements in the proposed rule preamble that under the proposed fee and cap arrangement 85% of hazardous waste fees will be paid by large quantity generators while only 60% of applicable resources were spent on LQGs. Commenter further states there are no findings related to the impact of this proposed fee and fee cap arrangement on small businesses.

**Response 4:** The number of large quantity generators (LQGs) compared to the number of small quantity generators (SQGs) varies year to year. Furthermore, a facility may be classified an LQG one month and an SQG the following month, depending on the amount of waste that it generates. The Department attempted to address this disparity by lowering the fee cap. As ADEQ stated in the Notice of Proposed Rulemaking (NPRM) on page 1920, the 60/40 resource split is just a snapshot estimate for one year; the ratio changes from year to year or even month to month based on many factors.

To ensure that ADEQ minimizes the impact of these fees on small businesses from year to year, the proposed fee and fee cap arrangement appears slightly more favorable to smaller generators. However, both the amount of fees collected and the amount of resources expended in FY 2013 will likely be different from the estimates in the NPRM. A separate fee for small generators is administratively burdensome because it would require ADEQ to continually determine whether a business fits this classification and may result in possible billing errors. ADEQ presented various options for the fee and fee caps during the workshops and the values in the NPRM appear to be the most acceptable and effective at meeting various needs well into the future.

**Comment 5:** The rules do not impose the least burden and cost to parties subject to the fees. Commenter states that ADEQ should look at reducing the work that it considers necessary for the hazardous waste program in order to meet the mandate of imposing the least burden and cost on fee payers. Commenter suggests deleting the requirement that a copy of each manifest be submitted to the agency, similar to other states.

**Response 5:** The Department will continue to explore ways to improve efficiencies and reduce unnecessary regulatory burdens. For example, ADEQ is pilot testing submittal of manifests in electronic format. Hazardous waste manifests are a critical component of Arizona's Hazardous Waste Program. Manifests are used as part of the inspections and compliance process. Manifests are also used by the Department for generator billing and to provide information to the public.

**Comment 6:** ADEQ should explain what it means by a "valid" withdrawal of a permit application in proposed R18-8-270(G)(2).

**Response 6:** "Valid withdrawal of the permit application" is used in A.A.C. R18-8-270(G)(2)(c) to prompt a final accounting of applicant monies paid against ADEQ services expended on the application. The phrase refers to the timely withdrawal of a request for a license by the applicant's authorized agent or signatory accompanied by adequate justification that the basis for the submittal is no longer applicable.

**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:**

These rules do not require permits. This rulemaking is for the purpose of setting fees for the Hazardous Waste Program only. The rules do not establish or amend program permits, except as they pertain to fees.

**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:**

These rules are not more stringent than corresponding federal laws. There is no corresponding federal law that requires hazardous waste fees.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

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

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

None

**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
- R18-8-270. Hazardous Waste Permit Program

ARTICLE 2. HAZARDOUS WASTES

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

- A. No change
- B. No change
- C. No change
- 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. No change
      - ii. No change
      - iii. No change
    - d. No change
      - i. No change
      - ii. No change
      - iii. No change
    - e. No change
      - i. No change
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      - ii. No change
        - (1) No change
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      - iii. No change
        - (1) No change
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        - (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

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- 5. No change
- 6. No change
- 7. No change
- 8. No change
- 9. No change
- 10. No change
- 11. No change
- 12. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
  - h. No change
  - i. No change
- 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.** No change
  - 1. No change
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    - c. No change
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  - 7. No change
    - a. No change
    - b. No change
- G.** No change
- H.** No change
- I.** No change
- J.** No change
- K.** No change
- L.** No change
- M.** As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and sub-

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mit the appropriate registration fee, prescribed below, with their registration:

1. A hazardous waste transporter that picks up or delivers hazardous waste in Arizona shall pay \$200 by March 1 of the year following the date of the pick-up or delivery;
  2. A large-quantity generator that generated 1,000 kilograms or more of hazardous waste in any month of the previous calendar year shall pay \$300; or
  3. A small-quantity generator that generated 100 kilograms or more but less than 1,000 kilograms of hazardous waste in any month of the previous year shall pay \$100.
- N. A person shall pay hazardous waste generation and disposal fees as required under A.R.S. § 49-931. The DEQ shall send an invoice to large-quantity generators quarterly and small-quantity generators annually. The person shall pay an invoice within 30 days of the postmark on the invoice. The following hazardous waste fees shall apply:
1. A person who generates hazardous waste that is shipped offsite shall pay \$67.50 per ton but not more than \$200,000 per generator site per year of hazardous waste generated;
  2. An owner or operator of a facility that disposes of hazardous waste shall pay \$270 per ton but not more than \$5,000,000 per disposal site per year of hazardous waste disposed; and
  3. A person who generates hazardous waste that is retained onsite for disposal or that is shipped offsite for disposal to a facility that is owned and operated by that generator shall pay \$27 per ton but not more than \$160,000 per generator site per year of hazardous waste disposed.

**R18-8-270. Hazardous Waste Permit Program**

- A. No change
- B. No change
  1. No change
    - a. No change
    - b. No change
    - c. No change
  2. No change
    - a. No change
    - b. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. § 270.10, titled “General application requirements,” is amended by adding the following:
  1. When submitting an application for any of the following applications license types in the Table below, an applicant shall remit to the DEQ a permit an application fee of \$10,000 as shown in the Table.

**Table - Hazardous Waste Permitting**  
**Application and Maximum Fees For Various License Types**

<u>License Type</u>	<u>Application Fee</u>	<u>Maximum Fee</u>
<u>Permit for: Container Storage/Container Treatment</u>	<u>\$20,000</u>	<u>\$250,000</u>
<u>Permit for: Tank Storage/Tank Treatment</u>	<u>\$20,000</u>	<u>\$300,000</u>
<u>Permit for: Surface Impoundment</u>	<u>\$20,000</u>	<u>\$400,000</u>
<u>Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/Miscellaneous Unit</u>	<u>\$20,000</u>	<u>\$500,000</u>
<u>Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/Research, Development, and Demonstration</u>	<u>\$20,000</u>	<u>\$300,000</u>
<u>Corrective Action Permit/Remedial Action Plan (RAP) Approval</u>	<u>\$20,000</u>	<u>\$300,000</u>
<u>Post-Closure Permit</u>	<u>\$20,000</u>	<u>\$400,000</u>
<u>Closure of Container/Tank/Drip Pad/Containment Building</u>	<u>\$5,000/unit</u>	<u>\$100,000</u>
<u>Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/Waste Pile/Land Treatment Unit/Landfill</u>	<u>\$5,000/unit</u>	<u>\$300,000</u>
<u>Class 1 Modification (requiring Director Approval)</u>	<u>\$1,000</u>	<u>\$50,000</u>
<u>Class 2 Modification</u>	<u>\$5,000</u>	<u>\$250,000</u>
<u>Class 3 Modification (for a permit with an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)</u>	<u>\$20,000</u>	<u>\$400,000</u>

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<u>Class 3 Modification (for a permit without an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)</u>	<u>\$10,000</u>	<u>\$250,000</u>
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- a. ~~Initial Part B application submitted pursuant to §§ 270.10 and 270.51(a)(1) (as incorporated by R18-8-270);~~
  - b. ~~Part B permit renewal application submitted pursuant to § 270.10(h) (as incorporated by R18-8-270);~~
  - e. ~~Application for a Class 3 Modification according to §§ 270.42 (as incorporated by R18-8-270); and~~
  - d. ~~Application for a research, development, and demonstration permit.~~
2. If the reasonable total cost of processing the application identified in subsection (G)(1) the Table is less than \$10,000 the application fee listed in the Table, the DEQ shall refund the difference between the reasonable total cost and \$10,000 the amount listed in the Table to the applicant.
- a. ~~Permits and permit modifications other than post-closure permits and closure plans.~~ If the reasonable total cost of processing the application is greater than \$10,000 the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit approval, ~~and the~~ The applicant shall pay the difference in full before the DEQ issues the permit.
  - b. ~~Post-closure permits.~~ If the reasonable total cost of processing the application is greater than \$10,000 the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit issuance. The applicant shall pay the difference in full within 45 days of the date of the bill.
  - c. Withdrawals. In the event of a valid withdrawal of the permit application by the applicant, if the total costs of processing the application are less than the amount paid, the DEQ shall refund the difference. If the total costs are greater than the amount paid, the DEQ shall bill the applicant for the difference, and the applicant shall pay the difference within 45 days of the date of the bill.
3. ~~When submitting an application for any one of the permit related activities described in this subsection, the applicant shall remit to the DEQ \$2,500. If the reasonable cost of processing the application is greater than \$2,500, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application. A refund shall be paid by the DEQ if the reasonable cost is less than the \$2,500 fee, either within 45 days of a valid withdrawal of the permit application or upon permit issuance. This subsection applies to all the following:~~
- a. ~~An application for a modification of a Part B permit pursuant to § 270.41 (as incorporated by R18-8-270);~~
  - b. ~~An application for a Class 2 modification of a permit submitted after permit issuance, according to § 270.42 (as incorporated by R18-8-270);~~
  - e. ~~An application for approval of a final closure plan that is not submitted as part of a Part B application, including the review and approval of the closure report; and~~
  - d. ~~An application for a remedial action plan (RAP) submitted pursuant to 40 CFR 270, Subpart H (as incorporated by R18-8-270).~~
- 4.3. ~~With an application for a partial closure plan for a facility, the applicant shall remit to the DEQ a an application fee of \$2,500 \$5,000 for each hazardous waste management unit involved in the partial closure plan or \$10,000 \$20,000, whichever is less. If the reasonable total cost of processing the application, including review and approval of the closure report, is more than the initial application fee paid, the applicant shall be billed for the difference, and the difference shall be paid in full at the time after the DEQ completes review and approval of the closure report associated with the permit and within 30 days of notification by the Director. If the reasonable cost is less than the fee paid by the applicant, the DEQ shall refund the difference within ~~45~~ 30 days of the closure report review and approval associated with the permit. The maximum fee for a closure plan is shown in the Table.~~
- 5.4. ~~The fee for a land treatment demonstration permit issued under § 270.63 (as incorporated by R18-8-270) for hazardous waste applies toward the \$10,000 \$20,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration (as incorporated by R18-8-270).~~
6. ~~An applicant shall remit to the DEQ a permit application fee of \$1,000 for any one of the following:~~
- a. ~~An application for a transfer of a Part B permit to a different owner or operator pursuant to § 270.40 (as incorporated by R18-8-270), or~~
  - b. ~~An application for a Class 1 permit modification according to § 270.42 (as incorporated by R18-8-270) that is required as a consequence of mitigating hazardous waste compliance violations. If the reasonable cost of processing the transfer application or modification is greater than \$1,000, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application.~~
- 7.5. ~~The DEQ shall provide the applicant itemized billings bills at least semiannually for individual costs of the DEQ employees involved in the processing of applications and all other costs to the DEQ pursuant to the following factors when determining the reasonable cost under R18-8-270(G): the expenses associated with evaluating the application and approving or denying the permit or permit modification. The following information shall be included in each bill:~~
- a. The dates of the billing period;
  - b. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
    - i. Each review task performed.

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- ii. The facility and operational unit involved.
  - iii. The hourly rate.
  - c. A description and amount of review-related costs as described in subsection (G)(6)(b); and
  - d. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.
6. Fees shall consist of processing charges and review-related costs as follows:
- a. Processing charges. The DEQ shall calculate the processing charges using a rate of \$136 per hour, multiplied by the number of review hours used to evaluate and approve or deny the permit or permit modification.
  - b. Review-related costs means any of the following costs applicable to a specific application:
    - a- Hourly salary and personnel benefit costs;
    - ~~b-i.~~ Per diem expenses;
    - ~~e-ii.~~ Transportation costs;
    - ~~d-iii.~~ Reproduction costs;
    - ~~e-iv.~~ Laboratory analysis charges performed during the review of the permit or permit modification;
    - ~~f-v.~~ Public notice advertising and mailing costs;
    - ~~g-vi.~~ Presiding officer expenses for public hearings on a permitting decision;
    - ~~h-vii.~~ Court reporter expenses for public hearings on a permitting decision;
    - ~~i-viii.~~ Facility rentals for public hearings on a permitting decision; and
    - ~~j-ix.~~ Other reasonable, direct, permit-related and necessary review-related expenses documented in writing by the DEQ and agreed to by the applicant.
  - c. Total itemized billings for an application shall not exceed the maximum amounts listed in the Table in this Section.
- 8-7. Any person who receives a final bill from the DEQ for the processing and issuance or denial of a permit or permit modification under this Article may request an informal review of all billing items and may pay the bill under protest. If the bill is paid under protest, the DEQ shall issue the permit or permit modification if it would be otherwise issuable after normal payment. Such a request shall specify each area of dispute, and it shall be made in writing, within 30 days of the date of receipt of the final bill, to the division director of the DEQ for the ~~Office of~~ Waste Programs Division. The final bill shall be sent by certified mail, return receipt requested. The informal review shall take place within 30 days of the DEQ's receipt of the request unless agreed otherwise by the DEQ and the applicant. ~~Notice of the time and place of informal review shall be mailed to the requester at least 10 working days prior to the informal review.~~ The division director of the DEQ shall review whether or not the amounts of time billed are correct and reasonable for the tasks involved. Disposition of the informal review shall be mailed to the requester within 10 working days after the informal review.
- 9-8. ~~The DEQ's division director's decision after the informal review shall become final within 30 days after receipt of the decision, unless the applicant requests in writing a hearing pursuant to R18-1-202.~~
9. For the purposes of subsection (G), "review hours" means the hours or portions of hours that the DEQ's staff spends on a permit or permit modification. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.

- 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. No change
- R. No change
- S. No change