	Water Quality Division Substantive Policy	ADEQ
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	Aquifer Protection Permits Type 4 General Permit Alternative Setback Requests	Policy No. 3002.2022
		Effective: 12/01/2022

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

1.0 **Purpose**

Pursuant to A.R.S. § 41-1001(22), "substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. The clarification provided in this substantive policy statement has been determined by ADEQ to meet applicable state and federal law and, therefore, ADEQ provides this substantive policy to assist persons in interpreting rules pertinent to ADEQ. Notwithstanding this substantive policy statement, ADEQ may consider alternative approaches to comply with applicable law.

This policy assists onsite wastewater treatment facility (OWTF) responsible parties, their agents, ADEQ delegated local agencies and others by clarifying the requirements in the Aquifer Protection Permits (APP), General Permits.

ADEQ has received questions from delegated authorities and the regulated community concerning whether alternative setbacks are available for conventional septic systems through A.A.C. R18-9-A312(G). This policy clarifies the procedure for requesting an alternative setback for APP Type 4 General Permits as specified in A.A.C. R18-9-A312(C)(2) and A.A.C. R18-9-A312(G).

2.0 **Definitions**

A.A.C. – Means Arizona Administrative Code.

Applicant – Means a "person," as defined in A.A.C. R18-9-101, who submits a Request for Discharge Authorization to the Department for the purpose of obtaining authorization from the Department to discharge in a manner consistent with the Type 4 General Permit for which they are applying.

Aquifer Protection Permits (APP) – Means a regulatory program in the state of Arizona authorized by the state legislature under A.R.S. Title 49, Chapter 2, Article 3.

A.R.S. – Means Arizona Revised Statutes.

Department – Means the Arizona Department of Environmental Quality.

Notice of Intent to Discharge (NOI) – is a form required from an applicant for a Type 4 General Permit per A.A.C. R18-9-A301(B).

On-site Wastewater Treatment Facility (OWTF) – Refers to the definition of the same name in A.A.C. R18-9-101.

Type 4 General Permit – Means a category of Aquifer Protection Permits listed in Part E of A.A.C. Title 18, Chapter 9, Article 3.

3.0 Policy Statement

- 3.1 A.A.C. R18-9-A312(C)(2) and A.A.C. R18-9-A312(G) allow OWTF applicants to request a reduced setback for both conventional and alternative systems, either separately or in combination, when submitting an NOI for OWTFs.
- 3.2 According to A.A.C. R18-9-A312(G)(3), the Department reviews the request for a reduced setback and determines whether either of the following criteria have been demonstrated in the request:
 - 3.2.1 The requested change achieves equal or better performance compared with the general permit requirement, or
 - 3.2.2 The requested change addresses site or system conditions more satisfactorily than the requirements of this Article.
- 3.3 According to A.A.C. R18-9-A312(G)(4), approval of the request is left to the discretion of the Department.
- 3.4 According to A.A.C. R18-9-A312(G)(5) and (6), the Department must deny the requested change if any of the following are determined:
 - 3.4.1 The requested change will adversely affect other permittees or cause or contribute to a violation of an Aquifer Water Quality Standard.
 - 3.4.2 The requested change fails to achieve equal or better performance compared to the general permit requirement.
 - 3.4.3 The requested change fails to address site or system conditions more satisfactorily than the general permit requirement.
 - 3.4.4 The requested change is insufficiently justified based on the information provided in the submittal.
 - 3.4.5 The requested change requires excessive review time, research, or specialized expertise by the Department to act on the request.
 - 3.4.6 The Department has justifiable cause to deny.
- 3.5 The Department must additionally consider the criteria in A.A.C. R18-9-A312(G)(7) if the requested reduced setback is for an OWTF(s) described in one or more of the general permits in A.A.C. R18-9-E303 through R18-9-E322 (i.e., an alternative system), either separately or in combination with a conventional septic tank system described in A.A.C. R18-9-E302.

- 3.6 The criteria in A.A.C R18-9-A312(G)(7) are not applicable for a reduced setback for a conventional septic tank system described in A.A.C. R19-9-E302.
- 3.7 The Department may approve a request for a reduced setback for a conventional septic tank system described in A.A.C. R18-9-E302 using the criteria in A.A.C. R18-9-A312(G)(1) through (6).

4.0 Authority

A.R.S. § 49-104(a)(1) provides authority for ADEQ to formulate policies, plans and programs to implement Title 49 to protect the environment. A.R.S. § 49-245 provides authority for ADEQ to promulgate rules for general APP.

5.0 Audience

General Public

ADEQ Water Quality Permitting and Inspection Staff

ADEQ Management

Onsite Wastewater Treatment Facility Responsible Parties and their Agents

ADEQ Delegated Authorities or Local Agencies

6.0 Policy Steward

ADEQ Water Quality Division Director

7.0 Communication & Training

This policy will be noticed in accordance with A.R.S. § 41-1091. ADEQ will make this policy available on the Agency's policy website and the Agency's delegation website. ADEQ will distribute the policy to Delegated Authorities and Local Agencies. ADEQ staff is available for training, clarification and discussion.



8.0 Annual Policy Review

This policy will be reviewed annually during the Agency Annual Policy Review and will be revised or withdrawn as necessary at that time.

9.0 Additional Documents

Engineering Review Instructions for an Alternative Request (A312G) for Type 4 General Permit Applications

10.0 Approval

Title	Name	Signature	Date
Affected Executive Leadership Team Member	Trevor Baggione		Sep 7, 2022
Administrative Counsel, as to form	Edwin Slade	 Edwin Slade (Sep 29, 2022 14:05 PDT)	Sep 29, 2022

11.0 Historical Note

N/A.