

NOTICE OF PROPOSED RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY STANDARDS

PREAMBLE

1. Permission to proceed with this proposed rulemaking was granted under A.R.S. § 41-1039 by the governor on:

August 24, 2022, &

February 5, 2024

2. Article, Part, or Section Affected (as applicable)

R18-11-406

Rulemaking Action

Amend

3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 49-221, and 49-223.

Implementing statute: A.R.S. §§ 49-221, and 49-223.

4. Citations to all related notices published in the Register that pertain to the current record of the proposed rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 2137, Issue Date: June 28, 2024, Issue Number: 26, File Number: R24-115.

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

Name: Jon Rezabek

Title: Legal Specialist

Division: Water Quality

Address: Arizona Department of Environmental Quality

1110 W. Washington Ave.

Phoenix, AZ 85007

Telephone: (602) 771-8219

Fax: (602) 771-2366

Email: awqs@azdeq.gov

Website: <https://www.azdeq.gov/awqs-update-active-rulemaking>

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

General Explanation of the Collective Rulemaking: The Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. § 49-223(A) to open a rulemaking docket for the adoption of federal drinking water maximum contaminant levels (MCLs) as state aquifer water quality standards (AWQSS) within one year of the Environmental Protection Agency's (EPA's) establishment

of new or adjusted MCLs. MCLs for Arsenic, Bromate, Chlorite, Haloacetic Acids, Microbiological Contaminants, Total Trihalomethanes and Uranium are either unestablished as AWQs or are established but currently have a misaligned value as the standard. MCLs for the seven (7) pollutants can be viewed at 40 *Code of Federal Regulations* (C.F.R.) 141.60 *et seq.* A.R.S. § 49-223(A) requires ADEQ to move forward with the adoption of MCLs as AWQs through the rulemaking process unless substantial opposition to the adoption is received from stakeholders. Upon receipt of substantial opposition, ADEQ may adopt for that pollutant the verbatim MCL as an AWQ, but only upon a finding that the MCL is appropriate for adoption in Arizona as an AWQ. In making this finding, ADEQ must consider whether the assumptions used by the EPA in developing and implementing the MCLs are appropriate for establishing an Arizona state AWQs. The listed assumptions for consideration are technology, cost, sampling and analytical methodologies and public health risk reduction. If ADEQ determines the MCL is inappropriate as an AWQ, the Department may establish an alternative AWQ for the pollutant with an MCL. The alternative AWQ must be:

- (1) Based on the protection of human health and shall rely on technical protocols appropriate for the development of AWQs, and
- (2) Based on credible medical and toxicological evidence that has been subjected to peer review.

Subject Matter of this NPRM: This *Notice of Proposed Rulemaking* (NPRM) proposes to align the AWQ for Arsenic with the MCL for Arsenic. The original MCL for Arsenic was established through Final Rule by EPA, published in the *Federal Register* at 66 *Federal Register* 6979.

What is the MCL for Arsenic that is proposed to be the new AWQ and what is the current AWQ for Arsenic?

Pollutant	Current MCL / Proposed AWQ	Current AWQ
Arsenic	0.010 mg/L	0.05 mg/L

Substantial Opposition: ADEQ has not received substantial opposition from stakeholders on the proposal to adopt the MCL for Arsenic as an AWQ.

Associated Rulemakings: ADEQ proposes a total of five (5) NPRMs in the collective AWQ Update rulemaking. Three (3) of the five (5) NPRMs, including this NPRM, propose to establish or align the AWQs with the MCLs in *Arizona Administrative Code*, (A.A.C.) Title 18, Chapter 11, Article 4 for pollutants Arsenic, Bromate, Chlorite, Haloacetic Acids, Total Trihalomethanes and Uranium. This NPRM’s scope is limited to Arsenic. A second NPRM’s scope includes Uranium. A third NPRM’s scope includes four (4) disinfection byproducts: Bromate, Chlorite, Haloacetic Acids and Total Trihalomethanes. A fourth NPRM’s scope includes microbiological contaminants. A fifth and final NPRM proposes to add a new rule to A.A.C., Title 18, Chapter 9, Articles 1 and 2, detailing implementation of new or adjusted AWQs into existing Individual Aquifer Protection Program permits (APPs), along with adjacent amendments to existing rule to make way for this purpose.

What are Aquifer Water Quality Standards and what is their purpose? Aquifer Water Quality Standards or “AWQs” are

protective groundwater standards that were put in place and designated by the Arizona Legislature to preserve Arizona's aquifer quality for drinking water-protected use (See A.R.S. § 49-224(B)).

How are Aquifer Water Quality Standards Used? The AWQs are used in ADEQ's Aquifer Protection Program (APP), remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), and elsewhere.

Who are the stakeholders to this rulemaking? The stakeholders for this rulemaking include permittees of the APP, remediation projects under the Water Quality Assurance Revolving Fund (WQARF), the Voluntary Remediation Program (VRP), private well owners, community water systems and the constituents they serve, as well as all Arizonans who benefit from the state's aquifers being protected for drinking water use.

What has been the stakeholder process thus far for this rulemaking? ADEQ has conducted a number of general and specific stakeholder meetings, as well as tribal listening sessions, concerning this rulemaking. The dates of those events are as follows: 9/29/22, 6/8/23, 9/11/23, 12/12/23, 12/13/23, 4/29/24, 8/8/24 and others. A repository of stakeholder materials can be found published on ADEQ's website here: <https://www.azdeq.gov/rulemaking/awqs-update/resources>.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

MCL Assumptions Report – Arsenic Aquifer Water Quality Standards Technical Support:

Summary: This report provides a review of the EPA assumptions used to establish the MCL for Arsenic at 66 *Federal Register* 6976. The assumptions reviewed are listed in A.R.S. § 49-223(A) and include technologies, costs, sampling and analytical methodologies and public health risk reduction.

Study Resource: Provided review of the EPA assumptions used to establish the MCL for Arsenic at 66 *Federal Register* 6976 in order to inform ADEQ further on the subject matter and its applicability in the AWQS setting.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: LaPat-Polasko, L., Hoagland-Stamatovski, B., and Brenton, H. (2023). MCL Assumptions Report – Arsenic Aquifer Water Quality Standards Technical Support. Matrix New World Engineering, Land Surveying and Landscape Architecture, PC.

Draft Economic Impact Statement for Arsenic Proposed AWQS:

Summary: This report provides the Department a draft economic impact statement on the proposed Arsenic AWQS modeled after the requirements of A.R.S. § 41-1055.

Study Resource: This report informs ADEQ on the economic impact of the subject matter of the rulemaking.

Public Review: The public may review this study or may obtain copies from the Department by request. Requests can be submitted to the Department by email at awqs@azdeq.gov or by mail to Arizona Department of Environmental Quality, 1110 W. Washington Ave. Phoenix, AZ 85007.

Reference: McClure Consulting LLC with The Natelson Dale Group, Inc. (2024). Draft Economic Impact Statement for Arsenic Proposed AWQS. McClure Consulting LLC with The Natelson Dale Group, Inc.

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

Opening a rulemaking docket and pursuing the adoption of new or adjusted MCLs as AWQs is a mandate the Arizona State Legislature has enshrined in statute for ADEQ to execute (*see* A.R.S. § 49-223). An identification of the proposed rulemaking can be found in Heading No. 6 above. The stakeholders to face the most significant burden by this rulemaking are the applicable APP permittees. The APP has around 500 individual permittees; however, only a fraction of them will be significantly burdened by the adjustment of the Arsenic AWQS from 0.05 mg/L to 0.010 mg/L. This is because a portion of the APP permittees will not be discharging above the adjusted AWQS and will, therefore, not need to incur expenses on the purchasing, installation, operation and maintenance of technologies designed to remove Arsenic down to the new level. Another portion of the APP permittees may be discharging Arsenic at a level above the AWQS, but will be determined to be not further degrading the quality of the aquifer at the applicable point of compliance at the time of permit or amendment issuance (*See* A.R.S. § 49-243(B)(3)). This determination will be made pursuant to the AWQS implementation rule, which is being proposed in a concurrently filed NPRM with a scope of A.A.C., Title 18, Chapter 9, Articles 1 and 2. In these cases, Aquifer Quality Limits (AQLs) and/or a Discharge Limits (DLs) may be set above the AWQS, which may involve less spending on Arsenic removal technologies.

Generally, affected APP permittees can expect to see cost increases primarily related to compliance in the form of technological upgrades or installations into their facilities that may be required to meet the new AWQS, as well as any Departmental fees associated with meeting the higher standard through permit amendments. Compliance costs associated with the proposed adjusted AWQS for Arsenic can be characterized as significant, but also indeterminate at this time. This is due to knowledge of costs associated with Arsenic treatment, as well as unknowns associated with Arsenic concentrations in certain localities, among other factors. Compliance costs are expected to vary among permittees based on a number of factors, including a facility's treatment technologies, varying technology or process applicability according to specific water conditions, operational cost variance due to influent concentration and water quality, and the scale of operations (costs per unit of wastewater treated tend to decrease as the volume increases) (*See* Matrix and McClure Reports referenced in Heading No. 7 above).

Benefits referred to in EPA's Final Rule for the Arsenic MCL (66 *Federal Register* 6976) and other peer-reviewed studies show a mitigation of significant adverse health effects when exposure to Arsenic reaches chronic levels above the MCL and generally

demonstrate a monotonic dose-response relationship (*See Matrix Report referenced in Heading No. 7 above*). Arsenic is a known carcinogen and genotoxicant associated with lung, kidney, skin, prostate, liver, and bladder cancer and increased risk of cardiovascular disease, pulmonary disorders, ischemic stroke, and endocrine, neurological, and gastrointestinal disruption (*See Matrix Report referenced in Heading No. 7 above*). Arsenic is absorbed by key organs (liver, kidney, bladder, skin, GI tract) and distributed to other parts of the body (blood, lungs, brain) leading to adverse health outcomes for humans and fetuses (*See Matrix Report referenced in Heading No. 7 above*). EPA's Final Rule shows a correlation between reduced Arsenic exposure and reduced cancer risk (*See Matrix Report referenced in Heading No. 7 above*). Other benefits associated with a reduction of Arsenic exposure include the avoidance of hardships, both financial and otherwise, associated with Arsenic-caused disease (*See McClure Report referenced in Heading No. 7 above*).

In Arizona, all aquifers in the state are protected for drinking water use (*See A.R.S. § 49-224(B)*). Reducing Arsenic contribution to the aquifers of the state will help to mitigate the health risks listed above which directly correlates to economic hardships in treating disease related to Arsenic exposure (*See Matrix and McClure Reports referenced in Heading No. 7 above*). Millions of Arizonans stand to benefit as a result of the adjustment of the Arsenic AWQS (*See Matrix and McClure Reports referenced in Heading No. 7 above*). Two examples include a projected health risk reduction and treatment cost savings for private well owners and cost savings associated with public drinking water systems and their clientele due to a reduction of Arsenic in the groundwater source that would otherwise need to be treated at the public drinking water facility (*See Matrix and McClure Reports referenced in Heading No. 7 above*).

ADEQ projects that stakeholders subject to the VRP and WQARF programs will see little to no impact from the scope of this AWQS rulemaking.

10. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Jon Rezabek
Title: Legal Specialist
Division: Water Quality
Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007
Telephone: (602) 771-8219
Fax: (602) 771-2366
Email: awqs@azdeq.gov
Website: <https://www.azdeq.gov/awqs-update-active-rulemaking>

11. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The public comment period for this rulemaking will take place between November 15th, 2024 and December 16th, 2024. The public comment period will close on December 16th, 2024. Please submit comments on the rule in this *Notice of Proposed Rulemaking* (NPRM) at any time during the public comment period via the AWQS comment portal found at <https://www.azdeq.gov/awqs-update-active-rulemaking>. Comments may also be submitted via email at awqs@azdeq.gov or via mail at the following physical address:

ADEQ
Attn: Ophelia Begay
Cube 6190C
Groundwater Section
Water Quality Division
1110 W. Washington St.
Phoenix, AZ 85007

ADEQ will be holding a public hearing for the purpose of taking oral comments on the record. All interested parties may attend. The public hearing will be held virtually. The access information is below:

Date: December 16th, 2024
Time: TBD Time
Location: GoToWebinar hosted by Arizona Department of Environmental Quality at:

<https://attendee.gotowebinar.com/register/473262133213561692>

You may also call in and listen to the meeting using your phone, but please note that phone-only access does NOT provide the option for the participant to speak.

PHONE: (562) 247-8422

Access Code: 705-628-496

Listen only; no ability to comment

Nature: Public hearing on the proposed rules.

ADEQ will take reasonable measures to provide access to department services to individuals with limited ability to speak, write or understand English and to those with disabilities. Requests for language translation, ASL interpretation, CART captioning services or disability accommodations must be made at least 48 hours in advance by contacting the Title VI Nondiscrimination Coordinator, Leonard Drago, at 602-771-2288 or Drago.Leonard@azdeq.gov. For a TTY or other device, Telecommunications Relay Services are available by calling 711.

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:

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

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:

This rulemaking does not create a requirement for a permit.

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:

Federal law is not applicable to the subject matter of the rule.

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:

N/A

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

N/A.

14. The full text of the rules follows:

Rule text begins on the next page.

TITLE 18. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY STANDARDS
ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

Section

R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

Section

R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

A. No change

B. The following are the aquifer water quality standards for inorganic chemicals:

Pollutant	(mg/L)
Antimony	0.006
Arsenic	0.05 <u>0.010</u>
Asbestos	7 million fibers/liter (longer than 10 mm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (As Free Cyanide)	0.2
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nickel	0.1
Nitrate (as N)	10
Nitrite (as N)	1
Nitrate and nitrite (as N)	10
Selenium	0.05
Thallium	0.002

C. No change

- D.** No change
- E.** No change
- F.** No change
- G.** No change

Pre-Publication