

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. ENVIRONMENTAL REVIEWS AND CERTIFICATION

PREAMBLE

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

May 6, 2024.

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

R18-5-116	Amend
R18-5-208	Amend
R18-5-408	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. §§ 49-104(B)(11)-(13)

Implementing statute: A.R.S. § 49-352, 49-353(A)(2), 49-353.01(A)(1), 49-361

4. The effective date of the rule:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the Notice of Final Expedited Rulemaking with the Secretary of State.

5. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the final expedited rule:

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2088, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-105.

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 2792, Issue Date: September 6, 2024, Issue Number: 36, File number: R24-166.

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

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Summary:

The objective of the rulemakings is two-fold:

1. Fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 5; and
2. Correct additional typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues in Chapter 5, which will not add regulatory burden.

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules in Title 18, Chapter 5, Articles 1, 2, and 4. The purpose of Chapter 5, Articles 1, 2, and 4, respectively, is to establish requirements for facility operators under water quality programs, regulate the design and construction of public and semipublic pools and spas, as well as set requirements for subdivision development relative to water quality programs. Expedited rulemaking is appropriate pursuant to A.R.S. §§ 41-1027(A)(1), 41-1027(A)(3), and 41-1027(A)(6) as explained below.

Section by Section Explanation of Proposed Rules:

R18-5-116: Initial Grading and Regrading of Facilities

This rule contains references to A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 regarding appeal rights concerning ADEQ initially grading or regrading a facility. Appeal rights are embedded in the program and, consequently, the references are redundant. In addition, almost all of the rules in 18 A.A.C. 1, Article 2 have either expired or been repealed, with the exception of R18-1-205, an inapplicable rule related to license applications. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1) and A.R.S. § 41-1027(A)(6), ADEQ proposes to remove these references.

R18-5-208(C): Maximum Bathing Load

This rule contains an incorrect citation to R18-5-242, concerning semipublic pools. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend the incorrect citation from R18-5-242, concerning semipublic pools, to R18-5-241, concerning public pools.

18 A.A.C. 5, Article 4 provides the requirements for obtaining approval for the design, installation, and operation of on-site wastewater treatment facilities on subdivision plats. In addition, 18 A.A.C. 9, Articles 1 and 3 prescribe the requirements for permitting on-site wastewater treatment facilities under the Aquifer Protection Permit program. Currently 18 A.A.C. 5, Article 4 does not contain any reference to 18 A.A.C. 9, concerning requirements for on-site wastewater treatment facilities on subdivision plats. Therefore, ADEQ proposes updating and clarifying the rule to ensure it is congruous with the relevant on-site wastewater treatment facility requirements in Chapter 9.

R18-5-408: Requirements for the Approval of Subdivisions that Use On-site Wastewater Treatment Facilities

The rule's section heading as well as references in subsections (A), (B), (C), and (E) utilize the term "individual sewage disposal systems." "Individual sewage disposal systems" is not defined in the A.A.C. and is not a definition that is utilized in Chapter 9 to refer to these types of facilities. The correct term utilized in Chapter 9 is "on-site wastewater treatment facilities." This term is a synonym of "individual sewage disposal systems" and is, in fact, defined and utilized in Chapter 9. Therefore, the term "individual

sewage disposal systems” is incorrect, and confusing to the general public.

ADEQ proposes replacing the term “individual sewage disposal systems” with “on-site wastewater treatment facilities” in the rule. This amendment clarifies the language of the rule without changing its effect. Therefore, pursuant to A.R.S. § 41-1027(A)(3), ADEQ proposes to amend the heading and R18-5-408(A), (B), (C), and (E) to change “individual sewage disposal systems” to “on-site wastewater treatment facilities.”

Next, subsection (A) references guidance found in engineering bulletins for on-site wastewater treatment facilities. The applicable engineering bulletin is Engineering Bulletin #12 titled, “Minimum Requirements for the Design and Installation of Septic Tank Systems and Alternative On-site Disposal Systems,” published in June 1989. Engineering Bulletin #12 is no longer used and has been replaced with the current rules found in A.A.C. Title 18, Chapter 9, Articles 1 and 3, which were adopted in 2001. In addition, subsection (A) states that there may be additional requirements provided by local health departments to assist in approval of on-site wastewater treatment facilities. Removing a reference to engineering bulletins from this subsection will not impact the availability of these bulletins to the public as a resource. In addition, removing from this subsection a reference to local health departments that may exist will not impact any applicable local health department requirements. Therefore, pursuant to A.R.S. § 41-1027(A)(6), ADEQ proposes to remove language in subsection (A) that references engineering bulletins and local health department requirements that may be required and replace the language with a reference to the applicable rules at 18 A.A.C. 9, Articles 1 and 3.

Next, subsection (E)(1) describes the qualifications of a person submitting a geological report containing the percolation tests and boring logs, which includes an engineer, geologist or other qualified person. R18-9-A310, which covers the method for percolation tests for subsurface characterization, describes in R18-9-A310(H) the qualifications for a person performing a percolation test. R18-5-408(E)(1) uses the term “geological report,” while R18-9-A310(H) uses the term “site investigation,” but the terms are synonyms. While the requirements of R18-9-A310(H) apply to this rule currently, including a reference to the applicable Chapter 9 rule in this rule would clarify the language in subsection (E)(1). The proposed amendment provides clarity to R18-5-408(E)(1) as to who can perform and submit a report, without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A310(H).

Next, subsection (E)(1) sets forth requirements for conducting percolation testing for subdivision plats, but it does not reference the applicable rules guiding percolation testing methods for on-site wastewater treatment facilities. These requirements are found in R18-9-A310(F)(1), which describes percolation test methods for subsurface characterization of on-site wastewater treatment facilities. While the requirements of R18-9-A310(F)(1) apply to the rule currently, a reference to the percolation test methods for subsurface characterization in Chapter 9 would clarify the language in the rule, and make subsection (E)(1) more user-friendly.

ADEQ proposes referencing the requirements of R18-9-A310(F)(1), with the exception of the requirement in R18-9-A310(F)(1)(a) because R18-5-408(E)(1) already delineates the number of percolation tests required to be performed for a subdivision. The proposed amendment to R18-5-408(E) clarifies the language of the rule without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A310(F)(1), with the exception of the requirements of R18-9-A310(F)(1)(a).

Finally, ADEQ proposes to insert a reference to the total nitrogen discharge requirements found in R18-9-A309(8)(c) for

subdivisions, which are required to be included in the geological report in R18-5-408(E)(1). The proposed amendment clarifies the language of the rule without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A309(8)(c).

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

Not applicable.

9. 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.

10. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

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

The Agency did not receive any public comments on A.A.C. Title 18 Chapter 5.

13. 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 statutes 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:

Not applicable.

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:

The Safe Drinking Water Act, as amended, is applicable to the subject of this rule. *See* 42 U.S.C. § 300f et seq. This rulemaking is not more stringent than is required by federal law.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(l). If yes, include the analysis with the rulemaking package.

Not applicable.

14. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable.

15. 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) state where the text was changed between the emergency and the final expedited rulemaking package:

The rules were not previously made as an emergency rule.

16. The full text of the rules follows:

Rule text begins on the next page.

Pre-Publication

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY – ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

Section

R18-5-116. Initial Grading and Regrading of Facilities

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

Section

R18-5-208. Maximum Bathing Load

ARTICLE 4. SUBDIVISIONS

Section

R18-5-408. Investigation of On-Site Wastewater Treatment Facilities

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

R18-5-116. Initial Grading and Regrading of Facilities

~~A. The Department shall act under A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 when initially grading or when re-grading a facility.~~

B. A. If it is determining the initial grade of a facility or whether to regrade a facility, the Department shall consider the facility characteristics in R18-5-114 and R18-5-115, and whether:

1. The facility has special design features or characteristics that make it unusually difficult to operate;
2. The water or wastewater is unusually difficult to treat;
3. The facility uses effluent; or
4. The facility poses a potential risk to public health, safety or welfare.

~~C. B.~~ The owner of a facility that is regraded under this Article shall ensure that the facility is operated by an operator, in compliance with this Article, no later than one year from the effective date of the facility regrading.

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

R18-5-208. Maximum Bathing Load

- A. The maximum bathing load for a public or semipublic swimming pool or spa shall not be exceeded.
- B. The maximum bathing load for a public or semipublic swimming pool shall be calculated as the sum of the following:
 1. The shallow area of the swimming pool in square feet divided by 10 square feet, plus
 2. The deep area of the swimming pool in square feet minus 300 square feet for each diving board divided by 24 square feet.
- C. The maximum bathing load for a public swimming pool shall be limited by the number of users for the toilets, showers, or lavatories that are provided in the bathhouses or dressing rooms prescribed in ~~R18-5-242~~ R18-5-241.
- D. The maximum bathing load for a public or semipublic spa shall not exceed the area of the spa in square feet divided by 9 square feet.
- E. The maximum bathing load for a public or semipublic swimming pool or spa shall be posted.

ARTICLE 4. SUBDIVISIONS

R18-5-408. ~~Individual sewage disposal systems~~ On-Site Wastewater Treatment Facilities

- A. ~~Recommendations are found in the engineering bulletins of the Department and such additional requirements as may be provided by local health departments to assist in approval regarding the design, installation and operation of individual sewage~~

~~disposal systems. Copies of these bulletins may be obtained from the Department.~~ “On-site wastewater treatment facility” has the meaning defined in A.R.S. § 49-201(29). On-site wastewater treatment facilities shall be governed by A.A.C. Title 18, Chapter 9, Articles 1 and 3.

- B. Where soil conditions and terrain features or other conditions are such that ~~individual sewage disposal systems on-site wastewater treatment facilities~~ cannot be expected to function satisfactorily or where groundwater or soil conditions are such that ~~individual sewage disposal systems on-site wastewater treatment facilities~~ may cause pollution of groundwater, they are prohibited.
- C. Where such installations may create an unsanitary condition or public health nuisance, ~~individual sewage disposal systems on-site wastewater treatment facilities~~ are prohibited.
- D. The use of cesspools is prohibited
- E. Where an ~~individual sewage disposal system on-site wastewater treatment facility~~ is proposed, the following conditions shall be satisfied:
 - 1. A geological report shall be made by an engineer, geologist or other ~~qualified person~~ who meets the qualifications in R18-9-A310(H). The geological report shall include the total nitrogen discharge requirements of R18-9-A309(8)(c). The geological report shall include results from percolation tests and boring logs obtained at locations designated by the county health departments. There shall be a minimum of one percolation test and boring log per acre, or one percolation test and boring log per lot where lots are larger than one acre, except when it can be shown by submission of other reliable data that soil conditions are such that ~~individual disposal systems on-site wastewater treatment facilities~~ could reasonably be expected to function properly on each lot in the proposed subdivision. The Department may require additional tests when it deems necessary. Percolation tests shall be performed in accordance with all of the requirements in R18-9-A310(F), except for the requirements in R18-9-A310(F)(1)(a). The approval of a subdivision, based upon such reports, shall not extend to the plat if it is further subdivided or lot lines are substantially relocated.
 - 2. Results of all tests shall be submitted to the Department and the local health department for review and approval of the subdivision for the use of ~~individual sewage disposal systems on-site wastewater treatment facilities~~.
 - 3. Such approval must be obtained in writing from the local health department and a copy of the approval shall be submitted to the Department with the subdivision application for approval.