

# ADEQ DRAFT PROPOSED RULE TEXT

(1st PUBLIC DRAFT FOR REVIEW)

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

### ARTICLE 2. HAZARDOUS WASTES

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\* marks a change ADEQ made in the last rule due to EPA errors that remain in the CFR

“dsw” means the change comes from the three EPA definition of solid waste rules we are adopting

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

- A.** All Federal regulations cited in this Article are those revised as of July 1, ~~2018~~ 2019 (and no future editions), unless otherwise noted, and are applicable only as incorporated by this Article. 40 CFR 124, 260 through 266, 268, 270 and 273 or portions of these regulations, are incorporated by reference, as noted in the text. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not incorporated by reference may be used as guidance in interpreting federal regulatory language.
- B.** Any reference or citation to 40 CFR 124, 260 through 266, 268, 270, and 273, or portions of these regulations, appearing in the body of this Article and regulations incorporated by reference, includes any modification to the CFR section made by this Article. When federal regulatory language that has been incorporated by reference has been amended, brackets [ ] enclose the new language. The subsection labeling in this Article may or may not conform to the Secretary of State’s formatting requirements, because the formatting reflects the structure of the incorporated federal regulations.
- C.** All of 40 CFR 260, revised as of ~~July 1, 2018~~ February 7, 2020, (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ) with the exception of the following:

1. 40 CFR 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33; and
  2. The revisions for standardized permits as published at 70 FR 53419; ~~and~~
  3. ~~The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664. Copies of 40 CFR 260 are available at <https://www.eCFR.gov>. Copies of the Federal Register (FR) are available at <https://www.federalregister.gov/>.~~
- D.** § 260.2, titled “Availability of information; confidentiality of information” is amended by the following:
1. § 260.2(a). Any information provided to [the DEQ] under [R18-8-260 through R18-8-266 and R18-8-268 shall] be made available to the public to the extent and in the manner authorized by the [Hazardous Waste Management Act (HWMA), A.R.S. § 49-921 et seq.; the Open Meeting Law, A.R.S. § 38-431 et seq.; the Public Records Statute, A.R.S. § 39-121 et seq.; the Administrative Procedure Act, A.R.S. § 41-1001 et seq.; and rules promulgated pursuant to the above-referenced statutes], as applicable.
  2. § 260.2(b) is replaced with the following:
    - a. The DEQ shall make a record or other information, such as a document, a writing, a photograph, a drawing, sound or a magnetic recording, furnished to or obtained by the DEQ pursuant to the HWMA and regulations promulgated thereunder, available to the public to the extent authorized by the Public Records Statute, A.R.S. §§ 39-121 et seq.; the Administrative Procedure Act, A.R.S. §§ 41-1001 et seq.; and the HWMA, A.R.S. §§ 49-921 et seq. Specifically, the DEQ shall disclose the records or other information to the public unless:
      - i. A statutory exemption authorizes the withholding of the information; or
      - ii. The record or other information contains a trade secret concerning processes, operations, style of work, or apparatus of a person, or other information that the Director determines is likely to cause substantial harm to the person’s competitive position.
    - b. Notwithstanding subsection (a):
      - i. The DEQ shall make records and other information available to the EPA upon request without restriction;
      - ii. As required by the HWMA and regulations promulgated thereunder the DEQ shall disclose the name and address of a person who applies for, or receives, a HWM facility permit;
      - iii. The DEQ and any other appropriate governmental agency may publish quantitative and qualitative statistics pertaining to the generation, transportation, treatment, storage, or disposal of hazardous waste; and
      - iv. An owner or operator may expressly agree to the publication or to the public availability of records or other information.
    - c. A person submitting records or other information to the DEQ may claim that the information contains a confidential trade secret or other information likely to cause substantial harm to the person’s competitive position. In the absence of such claim, the DEQ shall make the information available to the public on request without further notice. No claim of confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700–22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700–22A), or an electronic manifest format that may be prepared and used in accordance with 40 CFR

262.20(a)(3). EPA will make any electronic manifest that is prepared and used in accordance with § 262.20(a)(3), or any paper manifest that is submitted to the system under §§ 264.71(a)(6) or 265.71(a)(6) available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest. A person making a claim of confidentiality shall assert the claim:

- i. At the time the information is submitted to, or otherwise obtained by, the DEQ;
  - ii. By either stamping or clearly marking the words “confidential trade secret” or “confidential information” on each page of the material containing the information. The person may assert the claim only for those portions or pages that actually contain a confidential trade secret or confidential information; and
  - iii. During the course of a DEQ inspection, or other observation, pursuant to the administration of the HWMA Program, by clearly indicating to the inspector which specific processes, operations, styles of work, or apparatus constitute a trade secret. The inspector shall record the claim on the inspection report and the claimant shall sign the report.
- d. The Director shall provide the claimant with an opportunity to submit written comments to demonstrate that the information constitutes a legitimate confidential trade secret or confidential information. The comments shall be limited to confidential use by the DEQ pursuant to A.R.S. § 49-928. Pertinent factors to be considered by the Director for making a determination of confidentiality, and that the claimant may address in the claimant’s written comments, include the following:
- i. Whether the information is proprietary;
  - ii. Whether the information has been disclosed to persons other than the employees, agents, or other representatives of the owner; and
  - iii. Whether public disclosure would harm the competitive position of the claimant.
- e. The Director shall make a determination of each confidentiality claim using the following procedures:
- i. When a claim of confidentiality is asserted for information submitted as part of a HWM facility permit application:
    - (1) The claimant shall submit written comments demonstrating the legitimacy of the claim of confidentiality; and
    - (2) The Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination as part of the completeness review pursuant to R18-8-271(C).
  - ii. When a claim of confidentiality is asserted for information submitted or obtained during an inspection, or for any other information submitted to or obtained by the DEQ pursuant to this Article, but not as part of a HWM facility permit application:
    - (1) The claimant may submit written comments demonstrating the legitimacy of the claim of a confidential trade secret or other confidential information within 10 working days of asserting the confidentiality claim; and
    - (2) If a request for disclosure is made, the Director shall evaluate the confidential-

ity claim and notify the claimant of the result of that determination. In all other instances, the Director may, on the Director's own initiative, evaluate the confidentiality claim and notify the claimant of the result of that determination within 20 working days after the time for submission of comments.

- iii. When any person, hereinafter referred to as the "requestor," submits a request to the DEQ for public disclosure of records or information, the DEQ shall disclose the records or information to the requestor unless the information has been determined to be confidential by the Director, or is subject to a claim of confidentiality that is being considered for determination by the Director.
    - (1) If a confidentiality claim is under consideration by the Director, the requestor shall be notified that the information requested is under a confidentiality claim consideration and therefore is unavailable for public disclosure pending the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
    - (2) When a request for disclosure is made, the claimant shall be notified, within seven working days by certified mail with return receipt requested, that the information under a claim of confidentiality has been requested and is subject to the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
    - (3) If the Director disagrees with the confidentiality claim, the claimant shall have 20 working days to submit written comments either agreeing or disagreeing with the Director's evaluation.
    - (4) If a confidentiality claim is denied by the Director, the Director may request the attorney general to seek a court order authorizing disclosure pursuant to A.R.S. § 49-928.
  - f. Records or information determined by the Director to be legitimate confidential trade secrets or other confidential information shall not be disclosed by the DEQ at administrative proceedings pursuant to A.R.S. § 49-923(A) unless the following procedure is observed:
    - i. The DEQ shall notify both the claimant and the hearing officer of its intention to disclose the information at least 30 days prior to the hearing date. The DEQ shall send with the notice a copy of the confidential information that the DEQ intends to disclose;
    - ii. The claimant and the DEQ shall be allowed 10 days to present to the hearing officer comments concerning the disclosure of such information;
    - iii. The hearing officer shall determine whether the confidential information is relevant to the subject of the administrative proceeding and shall allow disclosure upon finding that the information is relevant to the subject of the administrative proceeding;
    - iv. The hearing officer may set conditions for disclosure of confidential and relevant information or the making of protective arrangements and commitments as warranted; and
    - v. The hearing officer shall give the claimant at least five days' notice before allowing disclosure of the information in the course of the administrative proceeding.
- E.** § 260.10, titled "Definitions," is amended by adding all definitions from § 270.2 to this Section, including the following changes, applicable throughout this Article unless specified otherwise:

1. [“Acute Hazardous Waste” means waste found to be fatal to humans in low doses or, in the absence of data on human toxicity, that has been shown in studies to have an oral lethal dose (LD) 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation lethal concentration (LC) 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or that is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness,] and therefore are either listed in § 261.31 with the assigned hazard code of (H) or are listed in § 261.33(e).
2. [“Application” means the standard United States Environmental Protection Agency forms for applying for a permit, including any additions, revisions or modifications to the forms. Application also includes the information required pursuant to §§ 270.14 through 270.29 (regarding the contents of a Part B HWM facility permit application).]
3. [“Chapter” means “Article” except in § 264.52(b), see R18-8-264, and § 265.52(b), see R18-8-265.]
4. “Closure” means [, for facilities with effective hazardous waste permits, the act of securing a HWM facility pursuant to the requirements of R18-8-264. For facilities subject to interim status requirements, “closure” means the act of securing a HWM facility pursuant to the requirements of R18-8-265.]
5. [“Concentration” means the amount of a substance in weight contained in a unit volume or weight.]
6. [“Department” or “the DEQ” means the Arizona Department of Environmental Quality.]
7. [“Department of Transportation” or “DOT” means the U.S. Department of Transportation.] brackets added
8. [“Director” or “state Director” means the Director of the Department of Environmental Quality or an authorized representative, except in §§ 262.80 through 262.84, 268.5 through 268.6, 268.42(b), and 268.44 which are non-delegable to the state of Arizona.]
9. [“Draft permit” means a document prepared under § 124.6 indicating the Director’s tentative decision to issue, deny, modify, revoke, reissue, or terminate a permit. A denial of a request for modification, revocation, reissuance or termination, as discussed in § 124.5, is not a draft permit.]
10. [“Emergency permit” means a permit that is issued in accordance with § 270.61.]
11. [“EPA,” “Environmental Protection Agency,” “United States Environmental Protection Agency,” “U.S. EPA,” “EPA HQ,” “EPA Regions,” and “Agency” mean the DEQ with the following exceptions:
  - a. Any references to EPA identification numbers;
  - b. Any references to EPA hazardous waste numbers;
  - c. Any reference to EPA test methods or documents;
  - d. Any reference to EPA forms;
  - e. Any reference to EPA publications;
  - f. Any reference to EPA manuals;
  - g. Any reference to EPA guidance;
  - h. Any reference to EPA Acknowledgment of Consent;
  - i. References in §§ ~~260.2(d)~~ 260.1(b);
  - i. ~~References in §§ 260.2(d)~~ 260.4(a)(4);

- 260.10 (definitions of “Administrator,” “EPA region,” “Federal agency,” “Person,” and “Regional Administrator”);
- 260.11(a);
- 260.34;
- 261, Appendix IX;
- 261.39(a)(5);
- 261.41;
- 261.4(a)(24), but in § 261.24(a)(24)(v)(B)(2), “EPA” means “DEQ”;
- 261.4(a)(25); dsw 2008
- 262.21;
- 262.24(a)(3);
- 262.25;
- 262.32(b);
- Part 262, subpart H;
- 263.10(a) Note;
- 264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 265.71(d);
- 268.1(e)(3);
- 268.5, 268.6, 268.42(b), and 268.44, which are nondelegable to the state of Arizona;
- 270.1(a)(1);
- 270.1(b);
- 270.2 (definitions of “Administrator,” “Approved program or Approved state,” “Director,” “Environmental Protection Agency,” “EPA,” “Final authorization,” “Permit,” “Person,” “Regional Administrator,” and “State/EPA agreement”);
- 270.3;
- 270.5;
- 270.10(e)(1) through (2);
- 270.11(a)(3);
- 270.32(a) and (c);
- 270.51;
- 270.72(a)(5) and (b)(5);
- 273.32(a)(3);
- 124.1(f);
- 124.5(d);
- 124.6(e);
- 124.10(c)(1)(ii); and
- 124.13.]
12. [“Federal Register” means a daily or weekly major local newspaper of general circulation, within the area affected by the facility or activity, except in §§ 260.11(b) and 270.10(e)(2).]
  13. [“HWMA” or “State HWMA” means the State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended.]
  14. [“Hazardous Waste Management facility” or “HWM facility” means any facility or activity, including land or appurtenances thereto, that is subject to regulation under this Article.]
  15. [“Key employee” means any person employed by an applicant or permittee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid

waste or hazardous waste operations of the applicant or permittee. Key employee does not include an employee exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste.]

16. [“National” means “state” in §§ 264.1(a) and 265.1(a).]
17. [“Off-site” means any site that is not on-site.]
18. [“Permit” means an authorization, license, or equivalent control document issued by the DEQ to implement the requirements of this Article. Permit includes “permit-by-rule” in § 270.60 and “emergency permit” in § 270.61, and it does not include interim status as in § 270.70 or any permit which has not yet been the subject of final action, such as a “draft permit” or a “proposed permit.”]
19. [“Permit-by-rule” means a provision of this Article stating that a facility or activity is considered to have a HWM facility permit if it meets the requirements of the provision.]
20. [“Physical construction” means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a HWM facility to accept hazardous waste.]
21. [“RCRA,” “Resource Conservation and Recovery Act,” “Subtitle C of RCRA,” “RCRA Subtitle C,” or “Subtitle C” when referring either to an operating permit or to the federal hazardous waste program as a whole, mean the “State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended” with the following exceptions:
  - a. Any reference to a specific provision of “RCRA,” “Resource Conservation and Recovery Act,” “Subtitle C of RCRA,” “RCRA Subtitle C,” or “Subtitle C”;
  - b. References in §§ 260.10 (definition of “Act or RCRA”); 260, Appendix I; 261, Appendix IX; Part 262, subpart H, 270.1(a)(2); 270.2, definition of “RCRA,”; and 270.51, “EPA-issued RCRA permit.”]
22. [Following any references to a specific provision of “RCRA,” “Resource Conservation and Recovery Act,” or “Subtitle C,” the phrase “or any comparable provisions of the state Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended” shall be deemed to be added except in §§ 270.72(a)(5) and (b)(5).]
23. [“RCRA § 3005(a) and (e)” means “A.R.S. § 49-922.”]
24. [“RCRA § 3007” means “A.R.S. § 49-922.”]
25. [“RCRA § 3008” means “A.R.S. §§ 49-921 through 49-926”]
26. [“RCRA § 3010” means “A.R.S. § 49-922.”]
27. [“Recyclable Materials” mean hazardous wastes that are recycled.]
28. [“Region” or “Region IX” means “state” or “state of Arizona.”]
29. [“Schedule of compliance” means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, such as actions, operations, or milestone events, leading to compliance with the HWMA and this Article.]
30. [“Site” means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.]
31. [“State,” “authorized state,” “approved state,” or “approved program” means the state of Arizona with the following exceptions:

References at §§ 260.10, definitions of “person,” “state,” and “United States,”; 262; 264.143(e)(1); 264.145(e)(1); 264.147(a)(1)(ii); 264.147(b)(1)(ii); 264.147(g)(2);

- 264.147(i)(4);
  - 265.143(d)(1);
  - 265.145(d)(1);
  - 265.147(a)(1)(ii);
  - 265.147(g)(2);
  - 265.147(i)(4); and
  - 270.2, definitions of “Approved program or Approved state,” “Director,” “Final authorization,” “Person,” and “state”.]
32. [“The effective date of these regulations” means the following dates: “May 19, 1981,” in §§ 265.112(a) and (d), 265.118(a) and (d), 265.142(a) and 265.144(a); “November 19, 1981,” in §§ 265.112(d) and 265.118(d).]
33. [“TSD facility” means a “Hazardous Waste Management facility” or “HWM facility.”]
- F.** § 260.10, titled “Definitions,” as amended by subsection (E) also is amended as follows, with all definitions in § 260.10, applicable throughout this Article unless specified otherwise.
1. “Act” or [“the Act” means the state Hazardous Waste Management Act or HWMA, except in R18-8-261(B) and R18-8-262(B).]
  2. “Administrator,” “Regional Administrator,” “EPA Regional Administrator”, “state Director,” or “Assistant Administrator for Solid Waste and Emergency Response” mean the [Director or the Director’s authorized representative, except in §§:
    - 260.10, in the definitions of “Administrator,” “AES filing compliance date”, “Electronic import-export reporting compliance date”, “Regional Administrator,” and “hazardous waste constituent”;
    - 260.20
    - 260.41;
    - ~~261.41~~; “Administrator”, etc. not used in this section, but CRT exporters note EPA address change eff. 8/6/18
    - 261, Appendix IX;
    - 262.11(c);
    - 262.41;
    - ~~262.42~~; exception reports are not captured in the e-Manifest system
    - 262.43;
    - 262, Subpart H;
    - 264.12(a);
    - 264.71;
    - 265.12(a);
    - 265.71;
    - 268.2(j);
    - 268.5, 268.6, 268.42(b), and 268.44, which are nondelegable to the state of Arizona;
    - 270.2, in the definitions of “Administrator”, “Director”, “Major facility”, “Regional Administrator”, and “State/EPA agreement”;
    - 270.3;
    - 270.5;
    - 270.10(e)(1), (2), and (4);
    - 270.10(f) and (g);
    - 270.11(a)(3);
    - 270.14(b)(20);
    - 270.32(b)(2);

270.51;  
124.5(d);  
124.6(e);  
124.10(b)].

3. “Facility” [or “activity” means:
  - a. Any HWM facility or other facility or activity, including] all contiguous land, and structures, other appurtenances, and improvements on the land [which are] used for treating, storing, or disposing of hazardous waste, [that is subject to regulation under the HWMA program] or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units ([that is], one or more landfills, surface impoundments, or combinations of them). **dsw 2008**
  - [b]**. For the ~~purposes~~ purpose of implementing corrective action under 40 CFR 264.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h). **brackets added**
  - [c]**. Notwithstanding paragraph (**[b]**) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility. **brackets added**
4. “Final closure” means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under parts 264 and 265 of this chapter are no longer conducted at the facility unless subject to the provisions in [§§ 262.15 and 262.17.]\*
5. “New HWM facility” or “new facility” means a HWM facility which began operation, or for which construction commenced, [after November 19, 1980].
6. “Person” means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, [or a limited liability corporation], partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, [state agency, or an agent or employee of a state agency].
7. “United States” or “U.S.” means [Arizona except for the following:
  - a. The definitions of “CRT exporter” and “recognized trader” in § 260.10.
  - b. §§ 261.4(a)(23) and 261.4(a)(25). **dsw**
  - b. § 261.4(d)(4) and (e)(4).
  - c. § 261.39(a)(5).
  - e. § 262.14(a)(5). **airbags**
  - d. Part 262, subpart H.
  - e. All references in Part 263 except §§ 263.10(a) and 263.22(c).
  - f. § 266.80.]
- G.** § 260.20(a), titled “General” pertaining to rulemaking petitions, is replaced by the following:

Where the Administrator of EPA has granted a rulemaking petition pursuant to 40 CFR 260.20(a), 260.21, or 260.22, the Director may accept the Administrator’s determination and amend the Arizona rules accordingly, if the Director determines the action to be consistent with the policies and purposes of the HWMA.
- H.** § 260.23, titled “Petitions to amend 40 CFR 273 to include additional hazardous wastes” pertaining to rulemaking petitions, is amended as follows: (a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part

273 of this chapter may petition for a regulatory amendment under this Section, 40 CFR 260.20[(b) through (e)], and Subpart G of 40 CFR 273.

- I. § 260.30, titled “Non-waste determinations and variances from classification as a solid waste,” is replaced by the following: Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, ~~and 260.33~~, and 260.34, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA. **Pre-2008 solid waste exclusions, determinations and variances remain valid according to EPA’s 2015 preamble.**
- J. § 260.32, titled “Variances to be classified as a boiler,” is replaced by the following:

Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a boiler pursuant to 40 CFR 260.32 and 260.33, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.
- K. 40 CFR 260.41, titled “Procedures for case-by-case regulation of hazardous waste recycling activities,” is amended by deleting the following from the end of paragraph (a):

“or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal.”
- L. As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and submit the appropriate registration fee, prescribed below, with their registration. After the effective date of this rule, all registrations shall be done through DEQ’s myDEQ portal. For registration, go to <http://www.azdeq.gov/mydeq>.
  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.
- M. 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, including very small quantity generators who become a small quantity generator due to an episodic event, 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.

## **R18-8-261. Identification and Listing of Hazardous Waste**

- A. All of 40 CFR 261 and accompanying appendices, revised as of ~~July 1, 2018~~ February 7, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:
1. The revisions for standardized permits as published at 70 FR 53419; and
  2. ~~The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664~~ 40 CFR §§ 261.149, 261.400(a), 261.400(b), 261.410(e), 261.410(f), 261.411, and 261.420; (all except 261.149 to remove sections applicable to former “verified recycler exclusion”) Copies of 40 CFR 261 are available at <https://www.eCFR.gov>. Copies of the Federal Register (FR) are available at <https://www.federalregister.gov/>.
- B. In the above-adopted federal regulations “~~Section~~ section 1004(5) of RCRA” or “~~Section~~ section 1004(5) of the Act” means A.R.S. § 49-921(5).
- C. § 261.4, titled “Exclusions,” paragraph (b)(6)(i), is amended as follows:
- (i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in subpart D due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if [documentation is provided to the Director] by a waste generator or by waste generators that:
    - (A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
    - (B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
    - (C) The waste is typically and frequently managed in non-oxidizing environments.
- D. § 261.4, titled “Exclusions,” paragraph (e)(1) is amended as follows:
- (1) Except as provided in paragraphs (e)(2) and (4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in 40 CFR 260.10, are not subject to any requirement of 40 CFR parts 261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of [40 CFR 262.13 and 262.16(b)]\* when:
    - (i) The sample is being collected and prepared for transportation by the generator or sample collector; or
    - (ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
    - (iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.
- E. § 261.4, titled “Exclusions,” is amended by deleting the phrase “in the Region where the sample is collected” in paragraph (e)(3)iii.
- F. § 261.6, titled “Requirements for recyclable materials,” paragraphs (a)(1) through (a)(3) are amended as follows:
- (a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as “recyclable materials.”
  - (2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C through N] and all applicable provisions in parts 268, 270 and 124 of this chapter:

- (i) Recyclable materials used in a manner constituting disposal (40 CFR part 266, subpart C);
  - (ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O] (40 CFR part 266, subpart H);
  - (iii) Recyclable materials from which precious metals are reclaimed (40 CFR part 266, subpart F);
  - (iv) Spent lead acid batteries that are being reclaimed (40 CFR part 266, subpart G).
- (3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124] and are not subject to the notification requirements of section 3010 of RCRA:
- (i) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials [shall] comply with the requirements of 40 CFR part 262, subpart H.
    - (A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in [§ 262.83(b), (g) and (i),]\* export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in [subpart H] of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;
    - (B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.
  - (ii) Scrap metal that is not excluded under § 261.4(a)(13);
  - (iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12);
  - (iv) (A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
  - (B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[, ] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801]; and
  - (C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel

without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under [A.R.S. § 49-801].

**G.** § 261.11, titled “Criteria for listing hazardous waste,” paragraph (a) is amended as follows:

(a) The [Director] shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

- (1) It exhibits any of the characteristics of hazardous waste identified in subpart C.
- (2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria shall be designated Acute Hazardous Waste.)
- (3) It contains any of the toxic constituents listed in Appendix VIII and, after considering the following factors, the [Director] concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed:
  - (i) The nature of the toxicity presented by the constituent.
  - (ii) The concentration of the constituent in the waste.
  - (iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in (a)(3)(vii) of this [subsection].
  - (iv) The persistence of the constituent or any toxic degradation product of the constituent.
  - (v) The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation.
  - (vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.
  - (vii) The plausible types of improper management to which the waste could be subjected.
  - (viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.
  - (ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.
  - (x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.
  - (xi) Such other factors as may be appropriate.

**H.** § 261.11, titled “Criteria for listing hazardous waste,” paragraph (c) is amended as follows:

(c) The Administrator will use the criteria for listing specified in this section to establish the exclusion limits referred to in [§ 262.13(c).]\*

**I.** § 261.30, titled “General”, paragraph (d) is amended as follows:

(d) The following hazardous wastes listed in § 261.31 are subject to the exclusion limits for acutely hazardous wastes established in [§ 261.13:]\* EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

**J. Notwithstanding the definitions of “EPA” and “EPA Regional Administrator” in R18-8-260(E)(11) and (F)(2):**

1. In § 261.151(g), the third sentence is replaced by the following: “If the facilities covered by the mechanism are in more than one State, identical evidence of financial assurance must be submitted to and maintained with each state agency regulating hazardous waste or with the appropriate Regional Administrator if a facility is located in an unauthorized State.”
2. § 261.151 is amended by adding at the end: “Whenever this section requires that the owner or operator of a reclamation or intermediate facility notify several Regional Administrators of their financial obligations, the notice shall be to both DEQ and all Regional Administrators of the United States Environmental Protection Agency of Regions which are affected by the owner or operator’s financial assurance mechanisms.” *J.1 and 2 require notice to appropriate Regional Administrators affected by the financial assurance mechanism, as well as DEQ*

**R18-8-262. Standards Applicable to Generators of Hazardous Waste**

- A. All of 40 CFR 262, revised as of ~~July 1, 2018~~ August 21, 2019, (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 262 are available at <https://www.eCFR.gov>.
- B. In 40 CFR 262:
  1. [“Section 3008 of RCRA” means both section 3008 of RCRA and A.R.S. §§ 49-923, 49-924 and 49-925.]
  2. [“Section 2002(a) of the Act” means A.R.S. § 49-922.]
  3. [“Section 3002(6) of the Act” means A.R.S. § 49-922.]
- C. § 262.10, titled “Purpose, scope, and applicability,” paragraph (i) is amended as follows:
  - (i) [For the limited time period required to control, mitigate, or eliminate the immediate threat,] persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv), or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part. [As soon as the immediate response activities are completed, all standards of this part apply. For purposes of this rule, DEQ does not consider emergency response personnel to be generators of residuals resulting from immediate responses, unless they are also the owner of the object of an emergency response. The owner of the object of an emergency response, the owner of the property on which the object of an emergency rests or where the emergency response initiates, or the requestor for an emergency response is responsible for addressing any residual contamination that results from an emergency response.]
- D. § 262.11, titled “Hazardous waste determination and recordkeeping,” paragraphs (d)(1) and (d)(2) are amended by deleting the following:

“, or an equivalent test method approved by the Administrator under 40 CFR 260.21,”
- E. § 262.13, titled “Generator category determinations”, paragraph (f)(1)(iii) is amended as follows:
  - (iii) If a very small quantity generator’s wastes are mixed with used oil, the mixture is subject to 40 CFR 279 [(as incorporated by A.R.S. § 49-802)]. Any material produced from such a mixture by processing, blending, or other treatment is also [so regulated].
- F. § 262.16, titled “Conditions for exemption for a small quantity generator that accumulates hazardous waste”, paragraph (b)(9)(iv)(C) is amended as follows:

- (C) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water [or when a spill has discharged into a storm sewer or dry well, or such an event has resulted in any other discharge that may reach groundwater], the small quantity generator immediately [shall] notify the National Response Center (using their 24-hour toll-free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain] the following information:
- (1) The name, address, and [the EPA Identification Number] of the generator;
  - (2) Date, time, [location,] and type of incident (for example, spill or fire);
  - (3) Quantity and type of hazardous waste involved in the incident;
  - (4) Extent of injuries, if any; and
  - (5) Estimated quantity and disposition of recovered materials, if any.
- G.** Any generator who must comply with 40 CFR 262.16 or 262.17 shall keep a written log of the inspections of container, tank, drip pad, and containment building areas and for the containers, tanks, and other equipment located in these storage areas in accordance with 40 CFR 265.174, 265.195, 265.444, and 265.1101(c)(4). The inspection log shall be kept by the generator for three years from the date of the inspection. The generator shall ensure that the inspection log is filled in after each inspection and includes the following information: inspection date, inspector's name and signature, and remarks or corrections. **LQGs must also keep a written log**
- H.** § 262.17, titled "Conditions for exemption for a large quantity generator that accumulates hazardous waste", paragraph (f)(1) is amended as follows:
- (1) The large quantity generator notifies [DEQ] at least 30 days prior to receiving the first shipment from a very small quantity generator(s) using EPA Form 8700-12; and
- I.** § 262.18, titled "EPA identification numbers and re-notification for small quantity generators and large quantity generators," paragraphs (a), (b) and (d) are amended as follows:
- (a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the [DEQ].
  - (b) A generator who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be submitted to DEQ through the myDEQ online portal.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the generator.
  - (d) Re-notification. (1) A small quantity generator must re-notify [DEQ] starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification must be submitted through the myDEQ online portal by September 1 of each year in which re-notifications are required.
  - (2) A large quantity generator must re-notify [DEQ] by March 1 of each even numbered year thereafter using EPA Form 8700-12. A large quantity generator may submit this re-notification as part of its Report required under § 262.41.
- J.** § 262.20, titled "General requirements", paragraph (a)(2) is amended as follows:
- (2) The revised manifest form and procedures in 40 CFR 260.10, 261.7, [262.16, 262.17,\* 262.20, 262.21, 262.27, 262.32, 262.83(c) through (e), 262.84,] shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, [262.16, 262.17,\* 262.20, 262.21, 262.32, 262.83(c) through (e), 262.84,] contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

- K. § 262.212, titled “Making the hazardous waste determination at an on-site interim status or permitted treatment, storage or disposal facility”, paragraph (e)(3) is amended as follows:
  - (3) Count the hazardous waste toward the eligible academic entity’s generator status, pursuant to [§ 262.13(c) and (d)]\* in the calendar month that the hazardous waste determination was made, and
- L. § 262.265, titled “Emergency procedures”, paragraph (d)(2) is amended as follows:
  - (2) The emergency coordinator [shall] immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424–8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain the following information:]
    - (i) The name, address, and [the EPA Identification Number] of the generator;
    - (ii) Date, time, [location,] and type of incident (for example, spill or fire);
    - (iii) Quantity and type of hazardous waste involved in the incident;
    - (iv) Extent of injuries, if any; and
    - (v) Estimated quantity and disposition of recovered materials, if any.]
- M. A generator who accumulates ignitable, reactive, or incompatible waste shall comply with 40 CFR 265.17.

**R18-8-263. Standards Applicable to Transporters of Hazardous Waste**

- A. All of 40 CFR 263, revised as of July 1, ~~2018~~ 2019, (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 263 are available at <https://www.eCFR.gov>.
- B. § 263.11, titled “EPA identification numbers,” is amended by the following:
  - (a) A transporter must not transport hazardous wastes without having received an EPA identification number from the [DEQ].
  - (b) A transporter who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be submitted to DEQ through the myDEQ online portal.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the transporter.
- C. § 263.30, titled “Immediate action,” paragraph (c)(2) is amended by the following:
  - (2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590 [and send a copy to the DEQ, Hazardous Waste Unit, 1110 W. Washington St., Phoenix, AZ 85007.]

**R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

- A. All of 40 CFR 264 and accompanying appendices, revised as of ~~July 1, 2018~~ February 7, 2020, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(l), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 264 are available at <https://www.eCFR.gov>.
- B. § 264.1, titled “Purpose, scope and applicability,” paragraph (g)(1) is amended as follows:
  - (1) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-13-312, A.R.S.

- §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under ~~[R18-8-264]~~ pursuant to § 262.14; **simplified**
- C.** § 264.1, titled “Purpose, scope, and applicability,” paragraph (g)(8)(i)(D) is amended as follows:
- (D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]
- D.** § 264.11, titled “Identification number,” is replaced by the following:
1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
  2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be submitted to DEQ through the myDEQ online portal. Upon receiving the request, the DEQ will assign an EPA identification number to the facility owner or operator.
- E.** § 264.18, titled “Location standards,” paragraph (c) is amended by deleting the following:  
(c) “, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.”
- F.** § 264.56, titled “Emergency procedures,” paragraph (d)(2) is amended as follows:
- (2) [The emergency coordinator, or designee, shall] immediately notify [the DEQ at (602) 771-2330 or (800) 234-5677, extension 771-2330, and notify] either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report [shall include the following]:
- (i) Name and telephone number of reporter;
  - (ii) Name and address of facility;
  - (iii) Time and type of incident (for example, release, fire);
  - (iv) Name and quantity of material(s) involved, to the extent known;
  - (v) The extent of injuries, if any; and
  - (vi) The possible hazards to human health, or the environment, outside the facility.
- G.** § 264.93, titled “Hazardous constituents,” paragraph (c) is amended as follows:
- (c) In making any determination under [§ 264.93(b)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] § 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].
- H.** § 264.94, titled “Concentration limits,” paragraph (c) is amended as follows:
- (c) In making any determination under [§ 264.94(b)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].
- I.** § 264.143, titled “Financial assurance for closure,” paragraph (h), and 264.145, titled “Financial assurance for post-closure care,” paragraph (h), are amended by replacing the third sentence in each citation with the following: “Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona.”

- J. § 264.147, titled “Liability requirements,” paragraphs (a)(1)(i) and (b)(1)(i) are amended by deleting the following from the fourth sentence in each citation: “, or Regional Administrators if the facilities are located in more than one Region.”
- K. § 264.151, titled “Wording of the instruments,” is adopted except any reference to “{of/for} the Regions in which the facilities are located” is deleted and “an agency of the United States Government” is deleted from the second paragraph of the Trust Agreements.
- L. § 264.301, titled “Design and operating requirements,” is amended by adding the following:
  - [The DEQ may require that hazardous waste disposed in a landfill operation be treated prior to landfilling to reduce the water content, water solubility, and toxicity of the waste. The decision by the DEQ shall be based upon the following criteria:
  - 1. Whether the action is necessary to protect public health;
  - 2. Whether the action is necessary to protect the groundwater, particularly where the groundwater is a source, or potential source, of a drinking water supply;
  - 3. The type of hazardous waste involved and whether the waste may be made less hazardous through treatment;
  - 4. The degree of water content, water solubility, and toxicity of the waste;
  - 5. The existence or likelihood of other wastes in the landfill and the compatibility or incompatibility of the wastes with the wastes being considered for treatment;
  - 6. Consistency with other laws, rules and regulations, but not necessarily limited to laws, rules, and regulations relating to landfills and solid wastes.]
- M. § 264.1030, titled “Applicability”, paragraph (b)(3) is amended as follows:
  - (3) A unit that is exempt from permitting under the provisions of [40 CFR 262.17(a)]\* (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.
- N. § 264.1050, titled “Applicability”, paragraph (b)(2) is amended as follows:
  - (2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of [40 CFR 262.17(a)]\* (i.e., a hazardous waste recycling unit that is not a “90-day” tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

**R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

- A. All of 40 CFR 265 and accompanying appendices, revised as of ~~July 1, 2018~~ February 7, 2020, (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 265 are available at <https://www.eCFR.gov>.
- B. § 265.1, titled “Purpose, scope, and applicability,” paragraph (c)(5) is amended as follows:
  - (5) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-13-312, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under ~~[R18-8-265, pursuant to § 261.5]~~; **simplified**
- C. § 265.1, titled “Purpose, scope, and applicability,” paragraph (c)(11)(i)(D) is amended as follows:
  - (D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response spe-

cialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677]

- D.** § 265.11, titled “Identification number,” is replaced by the following:
1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
  2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be submitted to DEQ through the myDEQ online portal. Upon receiving the request, the DEQ shall assign an EPA identification number to the facility owner or operator.]
- E.** § 265.18, titled “Location standards,” is amended by deleting the following:  
“, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.”
- F.** § 265.56, titled “Emergency procedures,” paragraph (d)(2) is amended as follows:
- (2) [The emergency coordinator, or designee, immediately shall] notify [the DEQ at (602) 771-2330 or 800/234-5677, and notify] either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800/424-8802). The report [shall include the following]:
    - (i) Name and telephone number of the reporter;
    - (ii) Name and address of the facility;
    - (iii) Time and type of incident (for example, release, fire);
    - (iv) Name and quantity of material(s) involved, to the extent known;
    - (v) The extent of injuries, if any; and
    - (vi) The possible hazards to human health, or the environment, outside the facility.
- G.** § 265.71, titled “Use of the manifest system”, is amended in the Comment following paragraph (c) as follows:  
Comment: The provisions of [§§ 262.15, 262.16 and 262.17]\* are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of [§§ 262.15, 262.16 and 262.17] only apply to owners or operators who are shipping hazardous waste which they generated at that facility.
- H.** § 265.90, titled “Applicability,” paragraphs (a) and (d)(1), and § 265.93, titled “Preparation, evaluation, and response,” paragraph (a), are amended by deleting the following phrase: “within one year”; and § 265.90, titled “Applicability,” paragraph (d)(2), is amended by deleting the following phrase: “Not later than one year.”
- I.** § 265.112(d), titled “Notification of partial closure and final closure,” subparagraph (1) is amended as follows:
1. The owner or operator must submit the closure plan to the [Director] at least 180 days prior to the date on which [the owner or operator] expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, [tank, container storage, or incinerator unit], or final closure if it involves such a unit, whichever [occurs earlier]. The owner or operator with approved closure plans shall notify the Director] in writing at least 60 days prior to the date on which [the owner or operator expects] to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility [if it involves such a unit. The owner or operator] with approved closure plans must notify the [Director] in writing at least 45 days prior to the date on which [the owner or operator expects] to begin final closure of a facility with only tanks, container storage, or incinerator units.

**J.** §§ 265.143, titled “Financial assurance for closure,” paragraph (g), and 265.145, titled “Financial assurance for post-closure care,” paragraph (g), are amended by replacing the third sentence in each citation with the following: “Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona.”

**K.** § 265.193, titled “Containment and detection of releases”, is amended by adding the following:

[For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall ensure that:

1. A level is measured daily;
2. A material balance is calculated and recorded daily; and
3. A yearly test for leaks in the tank and piping system, using a method approved by the DEQ is performed.]

**R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities**

**A.** All of 40 CFR 266 and accompanying appendices, revised as of ~~July 1, 2018~~ August 21, 2019 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 266 are available at <https://www.eCFR.gov>.

**B.** § 266.100, titled “Applicability” paragraph (c) is amended as follows:

(c) The following hazardous wastes and facilities are not subject to regulation under this subpart:

- (1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter. Such used oil is subject to regulation under [A.R.S. §§ 49-801 through 49-818] rather than this subpart;
- (2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;
- (3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(iii) and (iv) of this chapter, and hazardous wastes that are subject to the special requirements for [very]\* small quantity generators under [§§ 262.13 and 262.14]\* of this chapter; and
- (4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

**C.** § 266.108, titled “Small quantity on-site burner exemption” is amended in the Note following paragraph (c) as follows:

Note: Hazardous wastes that are subject to the special requirements for small quantity generators under [§§ 262.13 and 262.14]\* of this chapter may be burned in an off-site device under the exemption provided by § 266.108, but must be included in the quantity determination for the exemption.

**R18-8-268. Land Disposal Restrictions**

All of 40 CFR 268 and accompanying appendices, revised as of ~~July 1, 2018~~ February 7, 2020 (and no future editions), with the exception of Part 268, Subpart B, is incorporated by reference and on file with the DEQ. Copies of 40 CFR 268 are available at <https://www.eCFR.gov>.

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

- A.** All of 40 CFR 270 and the accompanying appendices, revised as of ~~July 1, 2018~~ February 7, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:
1. §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64; and
  2. The revisions for standardized permits as published at 70 FR 53419;
  3. ~~The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664.~~ Copies of 40 CFR 270 are available at <https://www.eCFR.gov>. Copies of the Federal Register are available at <https://www.federalregister.gov>.
- B.** § 270.1, titled “Purpose and scope of these regulations,” paragraph (b) is replaced by the following:
1. [After the effective date of these regulations the treatment, storage, or disposal of any hazardous waste is prohibited except as follows:
    - a. As allowed under § 270.1(c)(2) and (3);
    - b. Under the conditions of a permit issued pursuant to these regulations; or
    - c. At an existing facility accorded interim status under the provisions of § 270.70.
  2. ~~The direct disposal or discharge of hazardous waste into or onto any of the following is prohibited:~~
    - a. ~~Waters of the state as defined in A.R.S. § 49-201, excluding surface impoundments as defined in § 260.10; and~~
    - b. ~~Injection well, ditch, alleyway, storm drain, leachfield, or roadway.]~~
    - c. ~~At an existing facility accorded interim status under the provisions of § 270.70 (as incorporated by R18-8-270).~~
  2. The direct disposal or discharge of hazardous waste into or onto any of the following is prohibited:
    - a. Waters of the state as defined in A.R.S. § 49-201, excluding surface impoundments as defined in § 260.10 ~~(as incorporated by R18-8-260); and~~
    - b. Injection well, ditch, alleyway, storm drain, leachfield, or roadway.] **subsection (B) changes correct a SOS codification error. See SOS published NFRM at 25 A.A.R. 456**
- C.** § 270.1, titled “Purpose and scope of these regulations,” paragraph (c)(3)(i)(D) is amended as follows:
- (D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]
- D.** § 270.10, titled “General application requirements,” paragraph (e)(2), is amended as follows:
- (2) The [Director] may extend the date by which owners and operators of specified classes of existing [HWM facilities shall submit Part A of their permit application if the Administrator has published in the Federal Register that EPA is granting an extension under 40 CFR § 270.10(e)(2) for those classes of facilities.]
- E.** § 270.10(g), titled “Updating permit applications,” subparagraph (1)(ii) is amended as follows:

(ii) With the [Director] no later than the effective date of regulatory provisions listing or designating wastes as hazardous in [the] state if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

F. § 270.10(g), titled “Updating permit applications,” subparagraph (1)(iii), is amended as follows:

(iii)As necessary to comply with provisions of § 270.72 for changes during interim [status]. Revised Part A applications necessary to comply with the provisions of § 270.72 [shall be filed with the [Director.]

G. § 270.10, titled “General application requirements,” is amended by adding the following:

1. When submitting an application for any of the license types in the Table below, an applicant shall remit to the DEQ an application fee as shown in the Table.

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

License Type	Application Fee	Maximum Fee
Permit for: Container Storage/Container Treatment	\$20,000	\$250,000
Permit for: Tank Storage/Tank Treatment	\$20,000	\$300,000
Permit for: Surface Impoundment	\$20,000	\$400,000
Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/Miscellaneous Unit	\$20,000	\$500,000
Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/Research, Development, and Demonstration	\$20,000	\$300,000
Corrective Action Permit/Remedial Action Plan (RAP) Approval	\$20,000	\$300,000
Post-Closure Permit	\$20,000	\$400,000
Closure of Container/Tank/Drip Pad/Containment Building	\$5,000/unit	\$100,000
Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/Waste Pile/Land Treatment	\$5,000/unit	\$300,000

Unit/Landfill		
Class 1 Modification (requiring Director Approval)	\$1,000	\$50,000
Class 2 Modification	\$5,000	\$250,000
Class 3 Modification (for a permit with an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$20,000	\$400,000
Class 3 Modification (for a permit without an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$10,000	\$250,000

2. If the total cost of processing the application identified in the Table is less than the application fee listed in the Table, the DEQ shall refund the difference between the total cost and the amount listed in the Table to the applicant.
  - a. Permits and permit modifications other than post-closure permits and closure plans. If the total cost of processing the application is greater than the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit approval. The applicant shall pay the difference in full before the DEQ issues the permit.
  - b. Post-closure permits. If the total cost of processing the application is greater than 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. With an application for a closure plan for a facility, the applicant shall remit to the DEQ an application fee of \$5,000 for each hazardous waste management unit involved in the closure plan or \$20,000, whichever is less. If the total cost of processing the application, including review and approval of the closure report, is more than the application fee paid, the applicant shall be billed for the difference, and the difference shall be paid in full after the DEQ completes review and approval of the closure report 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 30 days of the closure report review and approval. The maximum fee for a closure plan is shown in the Table.
4. The fee for a land treatment demonstration permit issued under § 270.63 for hazardous waste applies toward the \$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.
5. The DEQ shall provide the applicant itemized bills at least semiannually for 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,
      - 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:
      - i. Per diem expenses,
      - ii. Transportation costs,
      - iii. Reproduction costs,
      - iv. Laboratory analysis charges performed during the review of the permit or permit modification,
      - v. Public notice advertising and mailing costs,
      - vi. Presiding officer expenses for public hearings on a permitting decision,
      - vii. Court reporter expenses for public hearings on a permitting decision,
      - viii. Facility rentals for public hearings on a permitting decision, and
      - ix. Other reasonable 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.
  7. A person may seek review of a bill by filing a written request for reconsideration with the Director.
    - a. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation.
    - b. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date or within 35 days of the invoice date, whichever is later.
  8. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 working days after the date the Director receives the written request.
  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.** § 270.12, titled “Confidentiality of information,” paragraph (a) is amended as follows:
- (a) In accordance with [R18-8-260(D)(2)], any information submitted to [the DEQ] pursuant to these regulations may be claimed as confidential by the submitter. [Such a claim shall] be asserted at the time of submission in the manner prescribed [in R18-8-260(D)(2)(c)(ii)]. If no [such] claim is made at the time of submission, [the DEQ] may make the information available to the public without further notice. If a claim is asserted, the information [shall] be treated in accordance with the procedures in [R18-8-260(D)(2)(d) and (e).]
- I.** § 270.13, titled “Contents of Part A of the permit application,” paragraph (k)(9) is amended as follows:
- (9) Other relevant environmental permits, including [any federal, state, county, city, or fire department] permits.
- J.** § 270.14, titled “Contents of Part B: General requirements,” paragraph (b) is amended by adding the following:
- [(23) Any additional information required by the DEQ to evaluate compliance with facility standards and informational requirements of R18-8-264 and R18-8-270.
- (24)(i) A signed statement, submitted on a form supplied by the DEQ that demonstrates:
- (A) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application; or
- (B) In the case of a corporation or business entity, no officer, director, partner, key employee, other person, or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.
- ii. Failure to comply with subsection (i), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 and §§ 124.3(d) and 124.5(a), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 and §§ 124.3(d) and 124.5(a).]
- K.** § 270.30, titled “Conditions applicable to all permits” paragraph (l)(10) is amended as follows:
- (10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under [§ 270.30(l)(4),(5), and (6)] at the same time monitoring [(including annual)] reports are submitted. The reports shall contain the information listed in [§ 270.30(l)(6)].
- L.** § 270.30, titled “Conditions applicable to all permits” paragraph (l) is amended by adding the following:
- [All reports listed above shall be submitted to the Director in such a manner that the reports are received within the time periods required under this Article.]
- M.** § 270.32, titled “Establishing permit conditions,” paragraph (a), is amended by deleting the following:
- “and 270.3 (considerations under Federal law).”
- N.** § 270.32, titled “Establishing permit conditions,” paragraph (b) is amended by deleting the reference to 40 CFR 267.

- O.** § 270.32, titled “Establishing permit conditions,” paragraph (c) is amended by deleting the second sentence.
- P.** § 270.42, titled “Permit modification at the request of permittee”, paragraph (f)(3), is amended as follows:
- (3) An automatic authorization that goes into effect under paragraph (b)(6)(iii) or (v) of this section may be appealed under [Title 41, Chapter 6, Article 10, Arizona Revised Statutes.]
- Q.** § 270.51, titled “Continuation of expiring permits,” paragraph (a) is amended by deleting the following:
- “under 5 USC 558(c).”
- R.** § 270.51, titled “Continuation of expiring permits,” paragraph (d) is amended by replacing “EPA-issued” with “EPA, joint EPA/DEQ, or DEQ-issued.”
- S.** § 270.65, titled “Research, development, and demonstration permits,” is amended as follows:
- (a) The [Director] may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under part 264 or 266. [A research, development, and demonstration] permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:
- (1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this section, and
- (2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the [Director] deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and
- (3) Shall include such requirements as the [Director] deems necessary to protect human health and the environment [, including requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the Director] deems necessary regarding testing and providing of information [relevant] to the [Director] with respect to the operation of the facility.
- (b) For the purpose of expediting review and issuance of permits under this section, the [Director] may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements [, or add conditions to the permit in accordance with the permitting procedures set forth in R18-8-270 and R18-8-271,] except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.
- (c) The [Director] may order an immediate termination of all operations at the facility at any time [the Director] determines that termination is necessary to protect human health and the environment.
- (d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.
- T.** § 270.110, titled “What must I include in my application for a RAP?,” is amended by adding paragraphs (j) and (k) as follows:

- [(j) A signed statement, submitted on a form supplied by DEQ that demonstrates:
  - (1) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.
  - (2) In the case of a corporation or business entity, no officer, director, partner, key employee, other person or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.
- (k) Failure to comply with subsection (j), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 and §§ 124.3(d) and 124.5(a), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 and §§ 124.3(d) and 124.5(a).]
- U. § 270.155 titled “May the decision to approve or deny my RAP application be administratively appealed?”, paragraph (a), is amended as follows:
  - (a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director’s decision to approve or deny your RAP application [under Title 41, Chapter 6, Article 10, Arizona Revised Statutes.] Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 124.15 of this chapter (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit.)

**R18-8-271. Procedures for Permit Administration**

- A. All of 40 CFR 124, revised as of July 1, ~~2018~~ 2019, (and no future editions), with the exception of §§ 124.1 (b) through (e), 124.2, 124.4, 124.16, 124.20, 124.21, and subparts C, D, and G, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 124 are available at <https://www.eCFR.gov>. Copies of the Federal Register are available at <https://www.federalregister.gov>.
- B. § 124.1, titled “Purpose and scope,” paragraph (a) is replaced by the following:
 

[This Section contains the DEQ procedures for issuing, modifying, revoking and reissuing, or terminating all hazardous waste management facility permits. This Section describes the procedures the DEQ shall follow in reviewing permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. This Section also includes procedures for assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. The procedures of this Section also apply to denial of a permit for the active life of a RCRA HWM facility or unit under § 270.29.]
- C. § 124.3, titled “Application for a permit,” is replaced by the following:
  - [(a)(1) Any person who requires a permit under this Article shall complete, sign, and submit to the Director an application for each permit required under § 270.1. Applications are not required for RCRA permits-by-rule in § 270.60.

(2) The Director shall not begin processing a permit until the applicant has fully complied with the application requirements for that permit. (Refer to §§ 270.10 and 270.13).

(3) An applicant for a permit shall comply with the signature and certification requirements of § 270.11.

(b) Reserved.

(c) The Director shall review for completeness every application for a permit. Each application submitted by a new HWM facility shall be reviewed for completeness by the Director in the order of priority on the basis of hazardous waste capacity established in a list by the Director. The Director shall make the list available upon request. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for additional information do not render an application incomplete.

(d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and the Director may take appropriate enforcement actions against an existing HWM facility pursuant to A.R.S. §§ 49-923, 49-924 and 49-925.

(e) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the Director shall notify the applicant and schedule a date for a site visit.

(f) The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in paragraph (c) of this subsection.

(g) For each application from a new HWM facility, the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to do the following:

- (1) Prepare a draft permit or Notice of Intent to Deny;
- (2) Give public notice;
- (3) Complete the public comment period, including any public hearing;
- (4) Make a decision to issue or deny a final permit; and
- (5) Issue a final decision.

**D.** § 124.5, titled “Modification, revocation and reissuance, or termination of permits,” is replaced by the following:

[(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director’s initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §§ 270.41 or 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Director decides the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.

(c) Modification, revocation or reissuance of permits procedures.

- (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 270.41 or 270.42(c), the Director shall prepare a draft permit under § 124.6, incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.
  - (2) In a permit modification under this [subsection], only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. The permit modification shall have the same expiration date as the unmodified permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
  - (3) “Classes 1 and 2 modifications” as defined in § 270.42 are not subject to the requirements of this subsection.
  - (d) If the Director tentatively decides to terminate a permit under § 270.43, the Director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6. In the case of permits that are processed or issued jointly by both the DEQ and the EPA, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibilities from the EPA to the state.
  - (e) The Director shall base all draft permits, including notices of intent to terminate, prepared under this subsection on the administrative record as defined in § 124.9.]
- E.** § 124.6, titled “Draft permits,” is replaced by the following:
- (a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
  - (b) If the Director tentatively decides to deny the permit application, the Director shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under (e) of this subsection.
  - (c) Reserved.
  - (d) If the Director decides to prepare a draft permit, the Director shall prepare a draft permit that contains the following information:
    - (1) All conditions under §§ 270.30 and 270.32, unless not required under 40 CFR 264 and 265;
    - (2) All compliance schedules under § 270.33;
    - (3) All monitoring requirements under § 270.31; and
    - (4) Standards for treatment, storage, and/or disposal and other permit conditions under § 270.30.
  - (e) All draft permits prepared by the DEQ under this subsection shall be accompanied by a statement of basis (§ 124.7,) or fact sheet (§ 124.8,) and shall be based on the administrative record (§ 124.9,) publicly noticed (§ 124.10,) and made available for public comment (§ 124.11,). The Director shall give notice of opportunity for a public hearing (§ 124.12,) issue a final decision (§ 124.15,) and respond to comments (§ 124.17,).

**F.** § 124.7, titled “Statement of basis,” is replaced by the following:

The DEQ shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

**G.** § 124.8, titled “Fact sheet,” is replaced by the following:

- (a) The DEQ shall prepare a fact sheet for every draft permit for a new HWM facility, and for every draft permit that the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.
- (b) The fact sheet shall include, when applicable:
  - (1) A brief description of the type of facility or activity that is the subject of the draft permit;
  - (2) The type and quantity of wastes, that are proposed to be or are being treated, stored, or disposed;
  - (3) Reserved.
  - (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9;
  - (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
  - (6) A description of the procedures for reaching a final decision on the draft permit including:
    - (i) The beginning and ending dates of the comment period under §§ 124.10 and the address where comments will be received;
    - (ii) Procedures for requesting a hearing and the nature of that hearing; and
    - (iii) Any other procedures by which the public may participate in the final decision; and
  - (7) Name and telephone number of a person to contact for additional information.
  - (8) Reserved.

**H.** § 124.9 titled “Administrative record for draft permits” is replaced by the following:

- (a) The provisions of a draft permit prepared under § 124.6 shall be based on the administrative record defined in this subsection.
- (b) For preparing a draft permit under § 124.6, the record consists of:
  - (1) The application, if required, and any supporting data furnished by the applicant, subject to paragraph (e) of this subsection;
  - (2) The draft permit or notice of intent to deny the application or to terminate the permit;
  - (3) The statement of basis under §§ 124.7 or fact sheet under § 124.8;
  - (4) All documents cited in the statement of basis or fact sheet; and
  - (5) Other documents contained in the supporting file for the draft permit.
  - (6) Reserved.
- (c) Material readily available at the DEQ or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this sub-

section, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

- (d) This subsection applies to all draft permits when public notice was given after the effective date of these rules.
- (e) All items deemed confidential pursuant to A.R.S. § 49-928 shall be maintained separately and not disclosed to the public.

I. § 124.10, titled “Public notice of permit actions and public comment period,” is replaced by the following:

(a) Scope.

(1) The Director shall give public notice that the following actions have occurred:

- (i) A permit application has been tentatively denied under § 124.6(b);
- (ii) A draft permit has been prepared under § 124.6(d); and
- (iii) A hearing has been scheduled under § 124.12.

(2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b). Written notice of that denial shall be given to the requester and to the permittee.

(3) Public notices may describe more than one permit or permit actions.

(b) Timing.

(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this subsection shall allow at least 45 days for public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

(c) Methods. Public notice of activities described in paragraph (a)(1) of this subsection shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):

- (i) An applicant;
- (ii) Any other agency which the Director knows has issued or is required to issue a HWM facility permit or any other federal environmental permit for the same facility or activity;
- (iii) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes). For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States;

(iv) Reserved.

(v) Reserved.

(vi) Reserved.

(vii) Reserved.

(viii) Reserved.

(ix) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for “area lists” from participants in past permit proceedings

- in that area; and
- (C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state-funded newsletters, environmental bulletins, or state law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to the request.); and
- (x) (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
- (B) To each state agency having any authority under state law with respect to the construction or operation of the facility;
- (2) By newspaper publication and radio announcement broadcast, as follows:
  - (i) Reserved.
  - (ii) For all permits, publication of a notice in a daily or weekly major local newspaper of general circulation within the area affected by the facility or activity, at least once, and in accordance with the provisions of paragraph (b) of this subsection; and
  - (iii) For all permits, a radio announcement broadcast over two local radio stations serving the affected area at least once during the period two weeks prior to the public hearing. The announcement shall contain:
    - (A) A brief description of the nature and purpose of the hearing;
    - (B) The information described in items (i), (ii), (iii), (iv), and (vii) of subparagraph (d)(1) of this subsection;
    - (C) The date, time, and place of the hearing; and
    - (D) Any additional information considered necessary or proper; or
- (3) Reserved.
- (4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- (d) (1) Each public notice issued under this Article shall contain the following minimum information:
  - (i) Name and address of the office processing the permit action for which notice is being given;
  - (ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by such permit;
  - (iii) A brief description of the business conducted at the facility or activity described in the permit application;
  - (iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the statement of basis or fact sheet;
  - (v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that shall be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

- (vi) The location of the administrative record required by § 124.9, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant (except for confidential information pursuant to A.R.S. § 49-928) is available as part of the administrative record;
  - (vii) The locations where a copy of the application and the draft permit may be inspected and the times at which these documents are available for public review; and
  - (viii) Reserved.
  - (ix) Any additional information considered necessary or proper.
  - (2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this subsection, the public notice of a hearing under § 124.12 shall contain the following information:
    - (i) Reference to the date of previous public notices relating to the permit;
    - (ii) Date, time, and place of the hearing; and
    - (iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
    - (iv) Reserved.
  - (e) In addition to the general public notice described in paragraph (d)(1) of this subsection, all persons identified in paragraphs (c)(1)(i), (ii), and (iii) of this subsection shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).
- J.** § 124.11, titled “Public comments and requests for public hearings,” is replaced by the following:
- During the public comment period provided under § 124.10, any person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 124.17.
- K.** § 124.12, titled “Public hearings,” is replaced by the following:
- [(a) (1) The Director shall hold a public hearing whenever the Director finds, on the basis of requests, a significant degree of public interest in a draft permit.
  - (2) The Director may also hold a public hearing at the Director’s discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
  - (3) The Director shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing has been received within 45 days of public notice under § 124.10(b)(1). Whenever possible the Director shall schedule a hearing under this subsection at a location convenient to the nearest population center to the proposed facility.
  - (4) Public notice of the hearing shall be given as specified in § 124.10.
  - (b) Reserved.
  - (c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

- (d) A tape recording or written transcript of the hearing shall be made available to the public.
- (e) Reserved.]

**L.** § 124.13, titled “Obligation to raise issues and provide information during the public comment period,” is replaced by the following:

[All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director’s tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10. Any supporting materials that a commenter submits shall be included in full and shall not be incorporated by reference, unless they are already part of the administrative record in the same proceeding or consist of state or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the DEQ as directed by the Director.]

**M.** § 124.14, titled “Reopening of the public comment period,” is replaced by the following:

- (a) (1) The Director may order the public comment period reopened if the procedures of this paragraph could expedite the decision-making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director’s tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 60 days after public notice under paragraph (a)(2) of this subsection, set by the Director. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Director.
- (2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) apply.
- (3) On the Director’s own motion or on the request of any person, the Director may direct that the requirements of paragraph (a)(1) of this subsection shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this subsection will substantially expedite the decision-making process. The notice of the draft permit shall state whenever this has been done.
- (4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this subsection. Commenters may request longer comment periods and they shall be granted under § 124.10 to the extent they appear necessary.
- (b) If any data, information, or arguments submitted during the public comment period, including information or arguments required under § 124.13, appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:
  - (1) Prepare a new draft permit, appropriately modified, under §§ 124.6;
  - (2) Prepare a revised statement of basis under § 124.7, a fact sheet or revised fact sheet under this § 124.8, and reopen the comment period under this subsection; or,

- (3) Reopen or extend the comment period under § 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.
- (c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 shall define the scope of the reopening.
- (d) Reserved.
- (e) Public notice of any of the above actions shall be issued under §§ 124.10.
- N.** § 124.15, titled “Issuance and effective date of permit,” is replaced by the following:
  - (a) After the close of the public comment period under § 124.10 on a draft permit, the Director shall issue a final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For purposes of this subsection, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.
  - (b) A final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 becomes effective on the date specified by the Director in the final permit notice.
    - (1) Reserved.
    - (2) Reserved.
    - (3) Reserved.
- O.** § 124.17, titled “Response to comments,” is replaced by the following:
  - (a) At the time that any final decision to issue a permit is made under § 124.15, the Director shall issue a response to comments. This response shall:
    - (1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
    - (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
  - (b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18. If new points are raised or new material supplied during the public comment period, the DEQ may document its response to those matters by adding new materials to the administrative record.
  - (c) The response to comments shall be available to the public.
- P.** § 124.18, titled “Administrative record for final permit” is replaced by the following:
  - (a) The Director shall base final permit decisions under § 124.15 on the administrative record defined in this subsection.
  - (b) The administrative record for any final permit shall consist of the administrative record for the draft permit, and:
    - (1) All comments received during the public comment period provided under § 124.10, including any extension or reopening under § 124.14;
    - (2) The tape or transcript of any hearing(s) held under § 124.12;
    - (3) Any written materials submitted at such a hearing;
    - (4) The response to comments required by § 124.17 and any new material placed in the record under that subsection;
    - (5) Reserved.

- (6) Other documents contained in the supporting file for the permit; and
- (7) The final permit.
- (c) The additional documents required under (b) of this subsection shall be added to the record as soon as possible after their receipt or publication by the DEQ. The record shall be complete on the date the final permit is issued.
- (d) This subsection applies to all final permits when the draft permit was subject to the administrative record requirement of § 124.9.
- (e) Material readily available at the DEQ, or published materials which are generally available and which are included in the administrative record under the standards of this subsection or of § 124.17, (“Response to comments”), need not be physically included in the same file as the rest of the record as long as the materials and their location are specifically identified in the statement of basis or fact sheet or in the response to comments.
- Q.** § 124.19, titled “Appeal of RCRA, UIC, and PSD permits,” is replaced by the following:  
A final permit decision (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit issued under § 124.15 is an appealable agency action as defined in A.R.S. § 41-1092 and is subject to appeal under A.R.S. Title 41, Ch. 6, Art. 10.
- R.** § 124.31(a) titled “Pre-application public meeting and notice” is amended by deleting the following sentence:  
“For the purpose of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271.”
- S.** § 124.32(a) titled “Public notice requirements at the application stage” is amended by deleting the following sentence:  
“For the purpose of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271.”
- T.** § 124.33(a) titled “Information repository” is amended by deleting the following sentence:  
“For the purpose of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271.”

**R18-8-273. Standards for Universal Waste Management**

- A.** All of 40 CFR 273, revised as of ~~July 1, 2018~~ February 7, 2020 (and no future editions), is incorporated by reference and on file with the DEQ. Copies of 40 CFR 273 are available at <https://www.eCFR.gov>.
- B.** § 273.13, titled “Waste management”, paragraphs (c)(2)(iii) and (c)(2)(iv) are amended as follows:
  - (iii)Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]\*

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]\*

C. § 273.33, titled “Waste management”, paragraphs (c)(2)(iii) and (c)(2)(iv) are amended as follows:

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks [from] broken ampules from that containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]\*

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]\*

### **R18-8-280. Compliance**

A. Inspection and entry. For purposes of ensuring compliance with the provisions of HWMA, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes, including used oil that may be classified as hazardous waste pursuant to A.R.S. Title 49, Chapter 4, Article 7, and hazardous secondary materials, shall, upon request of any officer, employee, or representative of the DEQ duly designated by the Director, furnish information pertaining to such wastes and permit such person at reasonable times:

1. To enter any establishment or other place maintained by such person where ~~hazardous~~ such wastes are or have been generated, stored, treated, disposed, or transported from;
2. To have access to, and to copy all records relating to such wastes;
3. To inspect any facilities, equipment (including monitoring and control equipment), practices, and operations, relating to such wastes;
4. To inspect, monitor, and obtain samples from such person of any such wastes and of any containers or labeling for such wastes; and
5. To record any inspection by use of written, electronic, magnetic and photographic media.

B. Penalties. A person who violates HWMA or any permit, rule, regulation, or order issued pursuant to HWMA is subject to civil and/or criminal penalties pursuant to A.R.S. §§ 49-923 through 49-925, as amended. Nothing in this Article shall be construed to limit the Director’s or Attorney General’s enforcement powers authorized by law including but not limited to the seeking or recovery of any civil or criminal penalties.

C. A certification statement may be required on written submittals to the DEQ in response to Compliance Orders or in response to information requested pursuant to subsection (A) of this Section. In addition, the DEQ may request in writing that a certification statement appear in any written submittal to the DEQ. The certification statement shall be signed by a person authorized to act on behalf of the company or empowered to make decisions on behalf of the company on the matter contained in the document.

D. Site assessment plan.

1. The requirement to develop a site assessment plan shall be contained in a Compliance Order. The Director may require an owner or operator to develop a site assessment plan based on one or more of the following conditions:
  - a. Unauthorized disposal or discharges of hazardous waste or hazardous waste constituents which have not been remediated.
  - b. Results of environmental sampling by the DEQ that indicate the presence of a hazardous waste or hazardous waste constituents.

- c. Visual observation of unauthorized disposal or discharges which cannot be verified pursuant to § 262.11, § 264.13, or § 265.13 as not containing a hazardous waste or hazardous waste constituents.
  - d. Other evidence of disposal or discharges of hazardous waste or hazardous waste constituents into the environment which have not been remediated.
2. The site assessment plan shall describe in detail the procedures to determine the nature, extent and degree of hazardous waste contamination in the environment.
  3. The site assessment plan shall be approved by the DEQ before implementation.
  4. The site assessment shall be conducted and the results shall be submitted to the DEQ within the time limitations established by the DEQ.
  5. The DEQ may request in writing that a site assessment plan be conducted. The DEQ will review a voluntarily submitted site assessment plan if the plan satisfies the requirements listed in subsections (D)(2) through (4).