

NOTICE OF PROPOSED EXPEDITED RULEMAKING *(as submitted to Sec. of State)*
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

PREAMBLE

- | <u>1. Article, Part, or Section Affected (applicable)</u> | <u>Rulemaking Action</u> |
|--|---------------------------------|
| R18-13-201 | Amend |
| R18-13-703 | Amend |
| R18-13-1301 | Amend |
| R18-13-1302 | Amend |
| R18-13-1303 | Amend |
| R18-13-1304 | Amend |
| R18-13-1601 | Amend |
| R18-13-1602 | Amend |
| R18-13-1603 | Amend |
| R18-13-1604 | Amend |
| R18-13-1607 | Amend |
| R18-13-1608 | Amend |
| R18-13-1610 | Amend |
| R18-13-1613 | Amend |
- 2. Citations to the agency’s statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statutes: A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A)
Implementing statutes: A.R.S. §§ 49-701.01(C), 49-762, 49-762.03(F), 49-857(C), and 49-851 through 49-868
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:**
Notice of Rulemaking Docket Opening: 26 A.A.R. 1947, September 18, 2020
- 4. The agency’s contact person who can answer questions about the rulemaking:**
Name: Caitlin Caputo or Mark Lewandowski
Address: Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-4677 or (602) 771-2230
Fax: (602) 771-4272
E-mail: caputo.caitlin@azdeq.gov or lewandowski.mark@azdeq.gov
- 5. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:**
The proposed changes will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The changes correct outdated citations, clarify the language of a rule without changing the effect of the rule, and implement, without material change, courses of action proposed in a five-year review report approved by the Governor’s Regulatory Review Council on March 3, 2020.

The definition of Petroleum Contaminated Soil (PCS) is provided in A.R.S. § 49-851(A)(3) and has been unchanged since 1996. Since the current definition in Rule 1601, subsections (8) and (13), of PCS predates the 1996 statute, ADEQ is using A.R.S. § 49-851(A)(3) as a framework for the updated definition of PCS in this rulemaking, but is not including a level for the chemical acenaphthylene since ADEQ never determined a level for that chemical in its SRL rules. The result will be unification of the rule and statutory definitions of PCS.
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The Department of Environmental Quality did not review or rely on any study for this rulemaking.
- 7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.**

The proposed changes do not diminish a previous grant of authority of a political subdivision of this state.

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

Not applicable, in accordance with A.R.S. § 41-1055(D)(2).

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

Not applicable.

10. Where, when, and how persons may provide written comment to the agency on the proposed expedited rule under A.R.S. § 41-1027(C):

Close of Comment: By 5:00pm, Thursday, November 12, 2020.

Written comments may be provided to wasterulemaking@azdeq.gov or either of the individuals listed in item 4 no later than the close of comment.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

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

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The Article 7 rule, which was amended after July 29, 2010, does not require the issuance of a permit. The rules in Articles 2, 13, and 16, were adopted before July 29, 2010, so, under A.A.C. R1-6-301(A)(13) there is no compliance requirement with A.R.S. § 41-1037.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There are no federal laws corresponding to the rules in Articles 2, 7, 13, and 16. R18-13-1607(A) uses the word “only” and appears to prohibit disposal at a facility out of state, therefore subsection (A) should be clarified to avoid inadvertent prohibition on out of state activities.

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

Not applicable.

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

None.

13. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

ARTICLE 1. RESERVED

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Section

R18-13-201. Land Application of Biosolids Exemption

**ARTICLE 7. SOLID WASTE FACILITY PLAN
REVIEW FEES**

Section

R18-13-703. Review of Bill

ARTICLE 13. SPECIAL WASTE

Section

R18-13-1301. Definitions

R18-13-1302. Special Waste Generator Manifesting Requirements

R18-13-1303. Special Waste Shipper Manifesting Requirements

R18-13-1304. Special Waste Receiving Facility Manifesting Requirements

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

Section

R18-13-1601. Definitions

R18-13-1602. Applicability

R18-13-1603. Exemptions

R18-13-1604. Waste Determination

R18-13-1607. Facility Approval; Application

R18-13-1608. General Design and Performance Standards

R18-13-1610. Temporary Treatment Facility

R18-13-1613. Disposal

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

R18-13-201. Land Application of Biosolids Exemption

- A. This Section applies only to biosolids as defined in R18-13-1501(7). The land application of biosolids, when placed on or applied to the land in full conformity with ~~18 A.A.C. 13, Article 15~~ 18 A.A.C. 9, Article 10 and A.R.S. § 49-761(F), and if the site of land application has ceased to receive application of biosolids and all applicable site restrictions set by 18 A.A.C. have been satisfied, is exempt statewide from the definition of solid waste found at A.R.S. § 49-701.01(A). This exemption applies only when the biosolids and the soil to which it has been applied remain at the site of the application.
- B. No change

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-703. Review of Bill

- A. No change
- B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. ~~§ 49-769~~ §§ 41-1092 through 1092.12.

ARTICLE 13. SPECIAL WASTE

R18-13-1301. Definitions

In addition to the terms prescribed in A.R.S. § 49-851, the terms in this Article shall have the following meanings:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. "Special waste manifest" means a form provided by the Department, shown as ~~Exhibit A~~ Appendix B to this Article, and used to identify the origin, quantity, composition, routing, and destination of special waste during its transportation from a generator's facility to a special waste receiving facility.
13. No change
14. No change

R18-13-1302. Special Waste Generator Manifesting Requirements

- A. A generator shall request a generator identification number on a form provided by the Director, and shown as ~~Exhibit B~~ Appendix A to this Article, prior to shipping special waste. Within 30 days of receiving the completed form, the Director shall issue the identification number to the generator.
- B. No change
1. No change
 2. No change
 3. No change
 4. No change
- C. No change
- D. No change
- E. No change
1. No change
 2. No change
- F. No change
- G. No change

R18-13-1303. Special Waste Shipper Manifesting Requirements

- A. A special waste shipper who receives special waste in Arizona for transport to a special waste receiving facility in Arizona shall request a special waste shipper identification number on a form provided by the Director and shown as ~~Exhibit B~~ Appendix A to this Article. The Director shall issue an identification number within 30 days of receipt of the completed form.
- B. A special waste shipper shall:
 - 1. Accept special waste for intrastate shipment to a special waste receiving facility only if the waste is accompanied by a special waste manifest which is completed and signed in accordance with the provisions of ~~R18-8-302~~ R18-13-1302.
 - 2. No change
 - a. No change
 - b. No change
- C. No change

R18-13-1304. Special Waste Receiving Facility Manifesting Requirements

- A. A special waste receiving facility shall request an identification number on a form provided by the Director, and shown as ~~Exhibit B~~ Appendix A to this Article, and obtain the number prior to receiving special waste. The Department shall issue the identification number within 30 days of receipt of the completed form.
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. No change
- D. No change
 - 1. No change
 - 2. No change

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

R18-13-1601. Definitions

In addition to definitions in A.R.S. § 49-851 and A.A.C. R18-13-1301, the terms in this Article shall have the following meanings:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. “Non-regulated soils” means soils ~~contaminated with total petroleum hydrocarbon (TPH) levels equal to or less than 100 mg/kg which that~~ are neither hazardous waste, PCS, nor solid waste PCS, and which do not constitute an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
- 8. ~~“PCS” means petroleum contaminated soils, which are not hazardous waste or solid waste PCS, which are excavated for storage, treatment, or disposal, and which contain contaminants as described by any of the following:~~
 - ~~a. TPH which exceeds concentrations of 5,000 mg/kg,~~
 - ~~b. Benzene which exceeds concentrations of 0.13 mg/kg,~~
 - ~~c. Toluene which exceeds concentrations of 200 mg/kg,~~
 - ~~d. Ethylbenzene which exceeds concentrations of 68 mg/kg,~~
 - ~~e. Total xylene which exceeds concentrations of 44 mg/kg.~~
- 8. “PCS” or “petroleum-contaminated soils” means soils excavated for storage, treatment or disposal containing one or more of the contaminants in the list below at the following concentrations:
 - a. Benzene greater than or equal to 1.4 mg/kg,
 - b. Toluene greater than or equal to 650 mg/kg,
 - c. Ethylbenzene greater than or equal to 400 mg/kg,
 - d. Total Xylenes greater than or equal to 420 mg/kg,
 - e. Anthracene greater than or equal to 240,000 mg/kg,
 - f. Benz(A)anthracene greater than or equal to 21 mg/kg,
 - g. Benzo(A)pyrene greater than or equal to 2.1 mg/kg,
 - h. Benzo(B)fluoranthene greater than or equal to 21 mg/kg,
 - i. Benzo(K)fluoranthene greater than or equal to 210 mg/kg,
 - j. Chrysene greater than or equal to 2,000 mg/kg,
 - k. Dibenz(A,H)anthracene greater than or equal to 2.1 mg/kg,
 - l. Fluoranthene greater than or equal to 22,000 mg/kg,

- m. Fluorene greater than or equal to 26,000 mg/kg;
 - n. Indenopyrene greater than or equal to 21 mg/kg;
 - o. Naphthalene greater than or equal to 190 mg/kg;
 - p. Pyrene greater than or equal to 29,000 mg/kg;
9. No change
10. No change
11. No change
12. No change
13. “Solid waste PCS” means excavated soils contaminated with petroleum, ~~which that~~ are not hazardous waste and ~~which meet any of the following~~ not PCS but that contain one or more of the contaminants in the list below at the following concentrations:
- a. ~~Have TPH concentrations which exceed 100 mg/kg but which are at or below 5,000 mg/kg;~~ Benzene greater than or equal to 0.65 but less than 1.4 mg/kg;
 - b. ~~Are soils contaminated with non-fuel, non-solvent petroleum products with a TPH which exceeds 100 mg/kg;~~ Toluene greater than or equal to 650 mg/kg;
 - c. Ethylbenzene greater than or equal to 400 mg/kg;
 - d. Total Xylenes greater than or equal to 270 but less than 420 mg/kg;
 - e. Anthracene greater than or equal to 22,000 but less than 240,000 mg/kg;
 - f. Benz(A)anthracene greater than or equal to 6.9 but less than 21 mg/kg;
 - g. Benzo(A)pyrene greater than or equal to 0.69 but less than 2.1 mg/kg;
 - h. Benzo(B)fluoranthene greater than or equal to 6.9 but less than 21 mg/kg;
 - i. Benzo(K)fluoranthene greater than or equal to 69 but less than 210 mg/kg;
 - j. Chrysene greater than or equal to 680 but less than 2,000 mg/kg;
 - k. Dibenz(A,H)anthracene greater than or equal to 0.69 but less than 2.1 mg/kg;
 - l. Fluoranthene greater than or equal to 2,300 but less than 22,000 mg/kg;
 - m. Fluorene greater than or equal to 2,700 but less than 26,000 mg/kg;
 - n. Indenopyrene greater than or equal to 6.9 but less than 21 mg/kg;
 - o. Naphthalene greater than or equal to 56 but less than 190 mg/kg;
 - p. Pyrene greater than or equal to 2,300 but less than 29,000 mg/kg;
14. No change
15. No change
16. “Temporary treatment facility” means an on-site treatment facility, or an off-site treatment facility owned or operated by the generator of PCS, where the PCS is treated to reduce ~~TPH, benzene, toluene, ethylbenzene, or total xylene concentrations~~ the contaminants that make it PCS and which complies with the requirements of R18-13-1610.
17. ~~“Total petroleum hydrocarbons” or “TPH” means the sum of the aliphatic and aromatic hydrocarbon constituents contained in petroleum, as determined through laboratory testing.~~
17. “Treatability study” means a study in which a special waste is subjected to a treatment process to determine any one or more of the following:
- a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
18. “Treatment facility” means a special waste receiving facility at which PCS is treated to reduce the PCS contaminants and, if in the state of Arizona, has been Department-approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858, and at which PCS receives treatment to reduce TPH or benzene, toluene, ethylbenzene, or total xylene concentrations.

R18-13-1602. Applicability

- A. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change

- 7. No change
- C. No change
- D. PCS incorporated into asphalt for use in paving is not subject to other provisions of this Article if the owner or operator of the facility where the asphalt is produced does all of the following:
 - 1. Notifies the Department in writing at least 30 days prior to commencing such incorporation,
 - 2. Maintains records in accordance with R18-13-1614,
 - 3. Stores the PCS prior to incorporation in accordance with R18-13-1611,
 - 4. ~~Uses only soil characterized as PCS based on TPH concentrations as set forth in R18-13-1601(8)(a).~~
- E. Requirements in this Article for Department-approved facilities do not apply to facilities that are out of state or in Indian Country.

R18-13-1603. Exemptions

- A. No change
- B. No change
- C. No change
- D. No change
- E. ~~Soil characterized as PCS solely because the TPH concentration exceeds 5,000 mg/kg may be disposed in accordance with A.R.S. § 49-761 et seq. and shall be exempt from the requirements of this Article, except that the generator shall comply only with the requirements for accumulation sites in R18-13-1612, if either of the following conditions are met:

 - 1. ~~The mathematical product of the TPH (mg/kg) and the number of tons excavated is less than 10,000.~~
 - 2. ~~The mathematical product of the TPH (mg/kg) and the number of cubic yards excavated is less than 8,500.~~~~

R18-13-1604. Waste Determination

- A. No change
 - 1. No change
 - 2. No change
- B. No change
 - 1. No change
 - 2. No change
- C. ~~Where multiple samples are collected from a stockpile of contaminated soil generated from a single source, the stockpile shall be considered as PCS if the arithmetic mean of the TPH concentrations of the samples exceeds 5,000 mg/kg. A sample having a concentration of total petroleum hydrocarbons which is below the analytical method detection limit or reporting limit shall be assigned a concentration which is 1/2 of the reported analytical method detection limit or reporting limit.~~
- D.C. If soil excavated during the initial investigation of a site to determine the extent of contamination is PCS, the PCS may be returned into the excavation site from which the soil was removed if all of the following conditions are met:
 - 1. There is no freestanding liquid within the excavation, unless the State Fire Marshal or other jurisdictional fire authority directs otherwise, and the requirements of subsections (2) and (3) of this subsection are met.
 - 2. The owner or operator provides notification to the Department that the PCS has been returned to the excavation within 14 days after the return of the PCS to the excavation.
 - 3. The owner or operator completes a site characterization within 120 days and implements remediation within 150 days after the date the site characterization began.

R18-13-1607. Facility Approval; Application

- A. PCS shall be treated, stored, or disposed only at a PCS disposal facility, storage facility, treatment facility, or temporary treatment facility. A facility located in Arizona shall not be constructed or operated prior to obtaining written approval from the Department, except as provided for in A.R.S. § 49-858.
- B. No change
- C. No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - 3. No change
 - 4. No change
 - a. No change
 - b. No change
 - c. No change

- d. No change
- e. No change
- f. No change
- g. No change
- h. No change
- i. No change
- 5. No change
- 6. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
- 7. No change
- D. No change
- E. No change
- F. No change

R18-13-1608. General Design and Performance Standards

- A. No change
 - 1. No change
 - 2. No change
- B. A facility which receives PCS for treatment, storage, or disposal shall meet the general design criteria of either subsection (B)(1) or (2) as follows:
 - 1. The PCS shall be held within a containment system designed and constructed to preclude the migration of contaminants into subsurface soil, groundwater, or surface water. The containment system shall meet the following criteria:
 - a. Maintain a maximum ~~hydraulic conductivity~~ permeability coefficient of no more than 1×10^{-7} cm/sec;
 - b. No change
 - c. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- D. No change
- E. No change

R18-13-1610. Temporary Treatment Facility

- A. No change
- B. A temporary treatment facility shall obtain approval from the Department prior to commencing construction or operation. In lieu of the requirements of R18-13-1607(C), an application for approval shall contain all of the following:
 - 1. No change;
 - 2. No change;
 - 3. Application information required pursuant to A.R.S. § ~~49-762~~ 49-762.03(C) for plan approval for temporary treatment facilities;
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 9. No change

- a. No change
 - b. No change
- C. No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 3. No change
- D. No change
- E. No change
- F. In accordance with A.R.S. ~~§ 49-762(F)~~ §§ 49-762.03(C), a temporary treatment facility shall be exempt from the notice and public hearing requirements set forth in A.R.S. ~~§ 49-762(L)~~ § 49-762.04(A).

R18-13-1613. Disposal

- A. No change
- B. A PCS disposal facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
 - 1. No change
 - 2. For purposes of this Section, “composite liner” means a system consisting of two components: the upper component shall consist of a minimum 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a two-foot layer of compacted soil with a ~~hydraulic conductivity~~ permeability coefficient of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component.