

**NOTICE OF PROPOSED EXPEDITED RULEMAKING**  
**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 16. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**WATER QUALITY ASSURANCE REVOLVING FUND**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking action</u></b>
R18-16-201	Amend
R18-16-202	Amend
R18-16-401	Amend
R18-16-402	Amend
R18-16-404	Amend
R18-16-408	Amend
R18-16-413	Amend
R18-16-415	Amend
R18-16-501	Amend
R18-16-503	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. § 49-104(B)(4).

Implementing statutes: A.R.S. §§ 49-282.03(D), 49-282.06(B), 49-287.01, and Laws 1997, Chapter 287, Section 56(B).

**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: 28 A.A.R. 726.

**4. The agency’s contact person who can answer questions about the rulemaking:**

Name: Dena Kalamchi  
Address: Department of Environmental Quality  
Waste Programs Division  
1110 W. Washington St.  
Phoenix, AZ 85007  
Telephone: (602) 771-5215  
E-mail: kalamchi.dena@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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027(A), to include an explanation about the rulemaking:**

An expedited rulemaking is appropriate pursuant to A.R.S. §§ 41-1027(A)(3) and 41-1027(A)(6). This rulemaking will only correct typographical errors, correct outdated citations, clarify language, and fix similar

clerical issues and will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of those regulated. This rulemaking will also amend redundant or outdated rules. ADEQ identified the need for technical corrections to the WQARF rules during the prior five-year review of 18 A.A.C. Chapter 16.

None of the rule amendments will increase the cost of regulatory compliance, increase a fee or reduce the procedural rights of persons regulated under A.R.S. § 41-1027(A). The following table summarizes the anticipated amendments and their justification under A.R.S. § 41-1027(A)(1)-(8).

Rule	A.R.S. § 41-1027(A) Justification	Amendment Summary
R18-16-201. Preliminary Investigations	(A)(3) because it clarifies language of a rule without changing its effect.	The language in 201(I) will be changed from passive voice to active voice to clarify the rule meaning.
R18-16-202. Site Scoring	(A)(3) because it makes an address change without changing its effect.  (A)(3) because it will clarify language of a rule without changing its effect and (A)(6) because it will amend rules that are redundant.	The department address will be updated to prevent confusion.  Remove redundant sentences to consolidate rule and increase clarity.
R18-16-401. Definitions	(A)(3) because it will clarify language of a rule without changing its effect.  (A)(3) because it will clarify language of a rule without changing its effect.	The term “hazardous substances” will be made singular to reflect the language in the cited A.R.S. § 49-281(8).  The citation in the definition of “vadose zone” will be updated from A.R.S. § 49-201(39) to A.R.S. § 49-201.
R18-16-402. Applicability	(A)(3) because it will clarify the language of a rule without changing its effect.	Language in (F) will be updated to clarify language referring to remedial objectives to conform with the R18-16-406(I) citation.
R18-16-404. Community Involvement Requirements	(A)(3) because it will clarify the language of a rule without changing the rule effect.	Language in (C)(1)(c) will be updated so the phrase conforms with the citation to R18-16-406(J).
R18-16-408. Proposed Remedial Action Plan	(A)(3) because it corrects typographical errors without changing the rule effect.	Will correct capitalization and lowercase issues in rule citations to refer to correct statute provisions.
R18-16-413. Approval of Remedial	(A)(3) because it will make name changes without changing its effect.	The reference to the Board of Technical “Registrations” in (A)(9) will be updated to accurately reflect the name “Board of

Actions Under A.R.S. § 49-285(B)		Technical Registration.”
R18-16-415. Soil Remediation	(A)(6) because it will amend a rule that is outdated.	The citation in (A)(3) to R18-7-209 will be updated to R18-16-210 because the referenced rule was renumbered.
R18-16-501. Definitions	(A)(3) because it will correct a typographical error without changing the rule effect.	The citation to 42 U.S.C. § 300(f) will be corrected to 42 U.S.C. § 300f.
R18-16-503. Request for Interim Remedial Action	(A)(3) because it will correct a typographical error without changing the rule effect.	The reference to 12 A.A.C. 7, Article 15 will be corrected to the intended 12 A.A.C. 15, Article 7.

**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:**

Not applicable.

**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.**

Not applicable.

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

Not applicable. The agency is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under 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: (30 days from publication in register)

Hearing: No hearing is scheduled at this time. A hearing may be requested pursuant A.R.S. §§ 41-1023(C) by sending a request to [wasterulemaking@azdeq.gov](mailto:wasterulemaking@azdeq.gov) before close of comment.

Written comments may be sent to [wasterulemaking@azdeq.gov](mailto:wasterulemaking@azdeq.gov) or the individual 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:**

Not applicable.

**a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A), and whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable.

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

There is similar federal law - CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980) - but no federal or state requirement that the Arizona WQARF rules (governing cleanup with state funds) be consistent with CERCLA (federally funded cleanups).

**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:**

<u>Incorporated material</u>	<u>Location</u>
Eligibility and evaluation site scoring model established October 3, 1996	R18-6-202

**13. The full text of the rules follows:**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 16. DEPARTMENT OF ENVIRONMENTAL QUALITY**

**WATER QUALITY ASSURANCE REVOLVING FUND PROGRAM**

**ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING**

Section

R18-16-201. Preliminary Investigations

R18-16-202. Site Scoring

**ARTICLE 4. REMEDY SELECTION**

Section

R18-16-401. Definitions

R18-16-402. Applicability

R18-16-404. Community Involvement Requirements

R18-16-408. Proposed Remedial Action Plan

R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)

R18-16-415. Soil Remediation

**ARTICLE 5. INTERIM REMEDIAL ACTIONS**

Section

R18-16-501. Definitions

R18-16-503. Request for Interim Remedial Action

**ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING**

**R18-16-201. Preliminary Investigations**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
- C. No change
- D. No change
- E. No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
- F. No change
- G. No change
  - 1. No change
  - 2. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
  - 4. No change
- H. No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
- I. Following completion of the preliminary investigation, the Department or any person identified under subsection (L) shall prepare a preliminary investigation report ~~shall be prepared~~. The report shall contain the following information:
  - 1. Information gathered and reviewed under subsection (G), including a summary of the information with references to relevant reports.

2. If applicable, the conceptual site model developed under subsection (H).
3. If sampling was conducted under subsection (H):
  - a. A description of the sampling activities.
  - b. Analytical results including a summary of the results with references to relevant reports.
  - c. A map of sample locations.
  - d. Data quality information including a summary with references to relevant reports.

**J.** No change

**K.** No change

1. No change
2. No change

**L.** No change

1. No change
2. No change
3. No change
4. No change
5. No change

**R18-16-202. Site Scoring**

In order to score a site or portion of a site, the Department shall use the eligibility and evaluation site scoring model established by the Department on October 3, 1996, which is incorporated by reference. ~~The eligibility and evaluation site scoring model as established on October 3, 1996, is incorporated by reference.~~ This incorporation by reference does not include any later amendments or editions. A copy of the incorporated material is available for inspection and reproduction at the Arizona Department of Environmental Quality, ~~3033 North Central Avenue, Phoenix, Arizona 85012-2809~~ 1110 W. Washington St, Phoenix, AZ 85007 ~~and the Office of the Secretary of State. A copy of the incorporated material can be obtained from the Arizona Department of Environmental Quality, 3033 north Central Avenue, Phoenix, Arizona 85012-2809.~~

**ARTICLE 4. REMEDY SELECTION**

**R18-16-401. Definitions**

The following definitions shall apply in this Article, unless the context otherwise requires:

“Alternative remedy” means a combination of remedial strategies and remedial measures different from the reference remedy that is capable of achieving remedial objectives. The alternative remedies are compared with the reference remedy for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

“Comparison criteria” means risk, cost, benefit, and practicability, as those terms are described in R18-16-407(H)(3).

“Community involvement area” has the same meaning as defined in A.R.S. § 49-281(3).

“Contaminant of concern” means a hazardous substance that results from a release and that has been identified by the Department as the subject of remedial action at a site.

“Hazardous ~~substances~~ substance” has the same meaning as in A.R.S. § 49-281(8).

“Nonrecoverable costs” has the same meaning as in A.R.S. § 49-281(9).

“Proposed remedy” means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives that is identified at the conclusion of a feasibility study and is incorporated in the proposed remedial action plan.

“Reference remedy” means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives. The reference remedy is compared with the alternative remedies for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

“Remedial measure” means a specific action taken in conjunction with remedial strategies as part of the remedy to achieve one or more of the remedial objectives. For example, remedial measures may include well replacement, well modification, water treatment, provision of replacement water supplies, and engineering controls.

“Remedial objective” means the goal, as established through the process in R18-16-406, to be achieved by a remedy selected under this Article. Remedial objectives include the following elements:

- Protecting against the loss or impairment of identified uses of land and waters of the state;
- Restoring, replacing, or otherwise providing for identified uses of land and waters of the state;
- Time-frames when action is needed to protect against or provide for the impairment or loss of the use; and
- The projected duration of the action needed to protect or provide for the use.

“Remedial strategy” means one or a combination of the six general approaches described in R18-16-407(F) which may be employed in conjunction with remedial measures as part of the remedy to achieve the remedial objectives.

“Remedy” has the same meaning as in A.R.S. § 49-281(13).

“Site-specific human health risk assessment” means a scientific evaluation of the probability of an adverse effect to human health from exposure to specific types and concentrations of contaminants at or from a site. A site-specific human health risk assessment contains four components: identification of potential contaminants; an exposure assessment; a toxicity assessment; and a risk characterization.

“Site registry” or “registry” means the registry of scored sites maintained by the Department under A.R.S. § 49-287.01(D).

“Vadose zone” has the same meaning as in A.R.S. § ~~49-201(39)~~ 49-201.

“Water provider” means the owner or operator of a public water system, an agricultural improvement district, or an irrigation and water conservation district.

**R18-16-402. Applicability**

- A. No change
- B. No change
- C. No change
- D. No change
  - 1. No change
  - 2. No change
  - 3. No change

E. No change

F. Notwithstanding subsections (D) and (E), neither a remedial investigation nor a feasibility study shall be considered complete under this Article until the information described in R18-16-406(D) is collected, a draft remedial investigation report is prepared and distributed under R18-16-406(F), and remedial objectives are ~~selected~~ developed under R18-16-406(I) and reported under R18-16-406(J). Thereafter, the procedures set forth in R18-16-407 through R18-16-412 shall apply to the selection of a remedy based upon the remedial investigation or feasibility study. To the extent that any of the alternative remedies discussed in a feasibility study that is substantially complete before the effective date of this Article will not achieve the remedial objectives, the feasibility study shall be modified so that the alternative remedies achieve remedial objectives. Additional evaluation of alternative remedies, if necessary, shall be conducted in accordance with R18-16-407 and reported in a supplemental report before preparation of a ~~final~~ feasibility study report under R18-16-407(I).

G. No change

1. No change
2. No change
3. No change

**R18-16-404. Community Involvement Requirements**

A. No change

B. No change

C. No change

1. No change
  - a. No change
  - b. No change
  - c. Notice to the public of the opportunity to comment on remedial objectives proposed under R18-16-406(I)(5) and the availability of the final remedial investigation report prepared by the Department under R18-16-406(J).
  - d. No change
  - e. No change
  - f. No change
  - g. No change
  - h. No change
  - i. No change
  - j. No change
  - k. No change
  - l. No change
  - m. No change
  - n. No change
  - o. No change

- 2. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
- 3. No change
  - a. No change
  - b. No change
  - c. No change

- D.** No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change

**E.** No change

**F.** No change

**R18-16-408. Proposed Remedial Action Plan**

**A.** No change

**B.** No change

- 1. No change
- 2. The information required in A.R.S. § 49-287.04(~~b~~A).
- 3. No change
- 4. No change

**C.** No change

- 1. At a site where the A.R.S. § 49-287.03 notice has been provided, notice shall be provided by the Department in accordance with A.R.S. § 49-287.04(~~b~~B) and the community involvement plan prepared under R18-16-404. If the Department intends to seek recovery of costs and conduct a cost allocation proceeding for the site, the notice shall also include the following:
  - a. The information required by A.R.S. § 49-287.04(~~e~~C).
  - b. No change
  - c. No change
  - d. No change
- 2. No change

**D.** Any person, other than a person proposing to perform work under an agreement under A.R.S. § 49-287.03(~~e~~C), may submit a proposed remedial action plan to the Department for approval under R18-16-413. The plan may be

accompanied by a request for a determination of whether cost recovery by the Department may be appropriate under A.R.S. § 49-287.02. If the Department determines that cost recovery by the Department is not appropriate, notice shall be provided under subsection (C)(2).

**R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change
  - 8. No change
    - a. No change
    - b. No change
  - 9. An original seal imprint and signature of a registered professional if required by the Arizona Board of Technical Registrations Registration under A.R.S. Title 32, Chapter 1 and the rules made under that Chapter.
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. No change

**R18-16-415. Soil Remediation**

- A. No change
  - 1. No change
  - 2. No change
  - 3. A notice of remediation under ~~R18-7-209~~ R18-7-210 is prepared and submitted to the Department before the remediation is conducted. The notice of remediation shall be accompanied by a written report including the information described in R18-16-406(C)(1), (2), and (3). If the Department has issued a notice under A.R.S. § 49-287.03 for the site or portion of a site, the notice of remediation shall be submitted to the Department 15 calendar days before commencing the remediation or, if the remediation has commenced prior to the Department's notice, within 15 calendar days after the Department's notice is given.
- B. No change
- C. No change

D. No change

## ARTICLE 5. INTERIM REMEDIAL ACTIONS

### R18-16-501. Definitions

In addition to the definitions set forth in A.R.S. § 49-281, the following definitions shall apply in this Article, unless the context otherwise requires:

“Abandoned well” means a well that has been permanently sealed or closed with cement or a cement-bentonite mixture that cannot be re-entered except by redrilling the wellbore, or a well that has been formally abandoned under R12-15-816.

“Currently supplies water” means a well that supplies water at the time the request for interim remedial action is submitted to the Department. Wells that supply water as needed to meet demand, including wells that serve water on an infrequent basis, are considered to currently supply water under this definition.

“Department” means the Arizona Department of Environmental Quality.

“Interim remedial action” means an action taken by the Department or by a well owner or operator under A.R.S. § 49-282.03.

“Part of a public water system” means a well that is owned or operated by an operator of a public water system, but has not been abandoned. A well that has been capped, air gapped or closed due to contamination, but not abandoned, shall be considered part of a public water system.

“Public water system” has the same meaning as defined in 42 U.S.C. § ~~300(f)~~ 300f.

“Registry sites” means sites that have been investigated and placed on the Water Quality Assurance Revolving Fund registry of sites.

“Remedy” has the same meaning as defined in A.R.S. § 49-281(13).

### R18-16-503. Request for Interim Remedial Action

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. A description of any impacts the loss of the well would have on any assured water supply designation or any adequacy statement under 12 A.A.C. ~~7 15~~, Article ~~45 7~~, or on the ability of the water system to meet its legal obligations or its customer or user needs.
8. No change

B. No change