

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER QUALITY STANDARDS

PREAMBLE

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

May 6, 2024.

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

R18-11-101	Amend
R18-11-301	Amend

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

Authorizing statute: A.R.S. § 49-104(A)(1), (A)(7), (A)(10), (A)(13), (B)(4), (B)(11)

Implementing statute: A.R.S. §§ 49-202(A), (H); 49-203(A)(1), (2), (3), (5), (6) - (10); 49-221; 49-222; 49-223

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

Notice of Expedited Rulemaking Docket Opening: 28 A.A.R. 2089, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-107

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

Name: Matthew O'Donnell
Title: Attorney
Division: Office of Administrative Counsel
Address: Arizona Department of Environmental Quality
Office of Administrative Counsel
1110 W. Washington Street
Phoenix, AZ 85007
Telephone: (602) 809-4869
Email: waterqualityrulecorrections@azdeq.gov
Website: <https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup>

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules related to water quality standards. The objective of this rulemaking is to fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 11, as well

as correct typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues therein.

The purpose of Chapter 11, Articles 1 and 3 is to establish standards for surface waters and reclaimed water.

The proposed amendments to Title 18, Chapter 11, Articles 1 and 3 are limited to correcting errors and amending references that are outdated.

The proposed amendments to the rule are justified under the expedited rulemaking requirements in A.R.S. § 41-1027. Specifically, Subsection (A) limits an agency to conducting an expedited rulemaking only if the rulemaking “does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following [requirements outlined in (A)(1) - (A)(8)]”. The applicable requirements relied upon in this rulemaking include the following: (A)(3) “Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect” and (A)(6) “Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government”. This proposed expedited rulemaking is expected to fix and clarify rules without adding regulatory burden because this rulemaking consists only of minor spelling and grammar corrections and updates to reflect statute/rule renumbering and repeal. Indeed, this cleanup will serve to reduce regulatory burden by removing confusion and enhancing public understanding of the rules.

Section-by-Section Explanation of Proposed Rules:

- | | |
|------------|---|
| R18-11-101 | Amend to update definitions section: Add reference to A.R.S. § 49-255 to Definition (9); update A.R.S. reference in definition (33) to reflect renumbering; miscellaneous spelling and grammar changes to (51); |
| R18-11-301 | Amend to update definitions section: Update references to A.R.S, A.A.C. to reflect renumbering; miscellaneous spelling and grammar changes. |

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

Not applicable.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

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

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

10. Where, when, and how a person may provide written comments on the proposed expedited rule:

Close of record: October 7, 2004

Written comments may be sent to the individual listed in Item 5 by the close of record.

No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant to A.R.S. § 41-1027(C) by submitting a written request to the individual listed in Item 5 by the close of record.

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 proposed changes to these rules do not require a permit.

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

The Clean Water Act (CWA) [33 U.S.C. § 1251, *et seq.*], as amended, is applicable to the subject of this rule. The changes to the rule proposed in this rulemaking are not more stringent than is required by federal law.

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

Not applicable.

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

Not applicable.

13. The full text of the rules follows:

Rule text begins on the next page.

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY STANDARDS

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

Section
R18-11-101. Definitions

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

Section
R18-11-301. Definitions

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

R18-11-101. Definitions

The following terms apply to this Article:

1. “Acute toxicity” means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. “Agricultural irrigation (AgI)” means the use of a surface water for crop irrigation.
3. “Agricultural livestock watering (AgL)” means the use of a surface water as a water supply for consumption by livestock.
4. “Annual mean” is the arithmetic mean of monthly values determined over a consecutive 12-month period, provided that monthly values are determined for at least three months. A monthly value is the arithmetic mean of all values determined in a calendar month.
5. “Aquatic and wildlife (cold water) (A&Wc)” means the use of a surface water by animals, plants, or other coldwater organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
6. “Aquatic and wildlife (effluent-dependent water) (A&Wedw)” means the use of an effluent-dependent water by animals, plants, or other organisms for habitation, growth, or propagation.
7. “Aquatic and wildlife (ephemeral) (A&We)” means the use of an ephemeral water by animals, plants, or other organisms, excluding fish, for habitation, growth, or propagation.
8. “Aquatic and wildlife (warm water) (A&Ww)” means the use of a surface water by animals, plants, or other warmwater organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
9. “Arizona Pollutant Discharge Elimination System (AZPDES)” means the point source discharge permitting program established under A.R.S. § 49-255, et seq., and 18 A.A.C. 9, Article 9.
10. “Assimilative capacity” means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
11. “Clean Water Act” means the Federal Water Pollution Control Act [33 U.S.C. 1251 to 1387].
12. “Complete Mixing” means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.

13. “Criteria” means elements of water quality standards that are expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
14. “Critical flow conditions of the discharge” means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone’s receiving water as follows:
 - a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
 - b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
 - c. For human health based water quality standard criteria, the discharge flow critical condition is the longterm arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
15. “Critical flow conditions of the receiving water” means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
 - a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day average flow event expected to occur once every ten years, on average (1Q10).
 - b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
 - c. For human health based water quality standard criteria, in order to simulate long-term exposure, the receiving water critical flow condition is the harmonic mean flow.
16. “Deep lake” means a lake or reservoir with an average depth of more than 6 meters.
17. “Designated use” means a use specified in Appendix B of this Article for a surface water.
18. “Domestic water source (DWS)” means the use of a surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
19. “Effluent-dependent water (EDW)” means a surface water or portion of a surface water, that consists of a point source discharge without which the surface water would be ephemeral. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.
20. “Ephemeral water” means a surface water or portion of surface water that flows or pools only in direct response to precipitation.
21. “Existing use” means a use attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards.
22. “Fish consumption (FC)” means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
23. “Full-body contact (FBC)” means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
24. “Geometric mean” means the n th root of the product of n items or values. The geometric mean is calculated using the following formula:

$$GM_y = \sqrt[n]{(Y_1)(Y_2)(Y_3) \dots (Y_n)}$$

25. “Hardness” means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO₃) in milligrams per liter.
26. “Igneous lake” means a lake located in volcanic, basaltic, or granite geology and soils.
27. “Intermittent water” means a surface water or portion of surface water that flows continuously during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, elevated groundwater table or another surface source, such as melting snowpack.
28. “Mixing zone” means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
29. “Oil” means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
30. “Outstanding Arizona water (OAW)” means a surface water that is classified as an outstanding state resource water by the Director under R18-11-112.
31. “Partial-body contact (PBC)” means the recreational use of a surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
32. “Perennial water” means a surface water or portion of surface water that flows continuously throughout the year.
33. “Pollutant” means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance. ~~A.R.S § 49-201(29)~~ A.R.S § 49-201(35).
34. “Pollutant Minimization Program” means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.
35. “Practical quantitation limit” means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
36. “Reference condition” means a set of abiotic physical stream habitat, water quality, and site selection criteria established by the Director that describe the typical characteristics of stream sites in a region that are least disturbed by environmental stressors. Reference biological assemblages of macroinvertebrates and algae are collected from these reference condition streams for calculating the Arizona Indexes of Biological Integrity thresholds.
37. “Regional Administrator” means the Regional Administrator of Region IX of the U.S. Environmental Protection Agency.
38. “Regulated discharge” means a point-source discharge regulated under an AZPDES permit, a discharge regulated by a § 404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under § 401 of the Clean Water Act.

39. “Riffle habitat” means a stream segment where moderate water velocity and substrate roughness produce moderately turbulent conditions that break the surface tension of the water and may produce breaking wavelets that turn the surface water into white water.
40. “Run habitat” means a stream segment where there is moderate water velocity that does not break the surface tension of the water and does not produce breaking wavelets that turn the surface water into white water.
41. “Sedimentary lake” means a lake or reservoir in sedimentary or karst geology and soils.
42. “Shallow lake” means a lake or reservoir, excluding an urban lake, with a smaller, flatter morphology and an average depth of less than 3 meters and a maximum depth of less than 4 meters.
43. Significant degradation” means:
 - a. The consumption of 20 percent or more of the available assimilative capacity for a pollutant of concern at critical flow conditions, or
 - b. Any consumption of assimilative capacity beyond the cumulative cap of 50 percent of assimilative capacity.
44. “Surface water” means “WOTUS” as defined in A.R.S. § 49-201(53).
45. “Total nitrogen” means the sum of the concentrations of ammonia (NH₃), ammonium ion (NH₄⁺), nitrite (NO₂), and nitrate (NO₃), and dissolved and particulate organic nitrogen expressed as elemental nitrogen.
46. “Total phosphorus” means all of the phosphorus present in a sample, regardless of form, as measured by a persulfate digestion procedure.
47. “Toxic” means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
48. “Urban lake” means a manmade lake within an urban landscape.
49. “Use attainability analysis” means a structured scientific assessment of the factors affecting the attainment of a designated use including physical, chemical, biological, and economic factors.
50. “Variance” means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the variance.
51. “Wadable” means a surface water can be safely crossed on foot and sampled without a boat.
52. “Wastewater” does not mean:
 - a. Stormwater,
 - b. Discharges authorized under ~~the a De Minimis Minimis~~ General Permit, or
 - c. Other allowable non-stormwater discharges permitted under ~~the a~~ Construction General Permit or ~~the~~ Multi-sector General Permit, or Stormwater discharges from a municipal separate storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
53. “Wetland” means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.

54. “Zone of initial dilution” means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

R18-11-301. Definitions

The terms in this Article have the following meanings:

“Direct reuse” has the meaning prescribed in ~~R18-9-701(1)~~R18-9-A701(2).

“Disinfection” means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

“Filtration” means a treatment process that removes particulate matter from wastewater by passage through porous media.

“Gray water” means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

“Industrial wastewater” means wastewater generated from an industrial process.

“Landscape impoundment” means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

“NTU” means ~~nephelometric~~ nephelometric turbidity unit.

“On-site wastewater treatment facility” has the meaning prescribed in ~~A.R.S. § 49-201(24)~~-A.R.S. § 49-201(29).

“Open access” means that access to reclaimed water by the general public is uncontrolled.

“Reclaimed water” has the meaning prescribed in ~~A.R.S. § 49-201(31)~~-A.R.S. § 49-201(41).

“Recreational impoundment” means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

“Restricted access” means that access to reclaimed water by the general public is controlled.

“Secondary treatment” means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

“Sewage” means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.