



WASTEWATER RECLAMATION

**REGIONAL WASTEWATER RECLAMATION DEPARTMENT
DEPARTMENT PROCEDURE**

Procedure Number: PN0051

Responsible Division: Engineering Division

Effective Date: July 1, 2015

Date of Next Review: June 30, 2016

Approved: _____

Jackson Jenkins, Director

SUBJECT: REGULATORY BILL OF RIGHTS STAFF PROCEDURE

I. OVERVIEW, HISTORY AND AUTHORITY

The Regulatory Bill of Rights was first adopted in Arizona Senate Bill 1598 (fully implemented by December 31, 2012) and amended through House Bill 2443 (in effect on September 13, 2013). In 2015, the State Legislature imposed additional requirements that apply to application forms for all licenses covered by Administrative Procedure 3-32. This new legislation, House Bill 2212, is effective July 3, 2015.

Pima County Regional Wastewater Reclamation Department (RWRD) permit processes for public application, and the potential for denial, will comply with A.R.S. §11-1601 through §11-1610, collectively known as the "Regulatory Bill of Rights". Public communication and compliance is accomplished through a framework of posted ordinance, standards, policy, and permit application information and by providing notice of certain Regulatory Bill of Rights provisions to license applicants on all license applications.

Pima County is empowered by A.R.S. §11-264 to construct and maintain a sewerage system. Pima County Ordinance Title 13, Division II - Sewers, Chapter 13.12, 13.16, 13.20, and 13.24, authorized RWRD to assess fees, as well as to review and approve/accept sewer plans associated with the connection to or extension of the public sewer system.

RWRD is authorized by Pima County Administrative Procedure No. 3-32, dated December 31, 2012, to establish formal, written departmental procedures outlining its licensing time frames, system processes and requirements.

II. PURPOSE

The purpose of this Department Procedure is to outline practices which are common to all application reviews submitted to the Engineering Division, under A.R.S. §11-1601 through §11-1610. This procedure clarifies the Division's implementation of the Regulatory Bill of Rights.

III. PERSONS AFFECTED

The Engineering Division management, staff, and the public.

IV. GENERAL REQUIREMENTS AND RESPONSIBILITY

- A. Division Responsibility. The Division will conform to the licensing requirements set out in A.R.S. §11-1601 through §11-1610 by posting on-line:
- a. Information regarding the application process (A.R.S. §11-1606)
 - b. The contact names, time frames for the Administrative Review, Substantive Review, and Overall Time Frames (A.R.S. §11-1605)
 - c. A Directory of Documents with information regarding Arizona statute and regulations, Pima County Ordinance, RWRD Standards, and substantive policy that are used as a basis for review and to request corrections. The Request for Correction will be based solely on materials and references listed within the Directory of Documents posted on the RWRD website (A.R.S. §11-1607)
 - d. The RWRD website will contain at minimum:
 - i. The Directory of Documents used to review and make comments on applications submitted to the Division
 - ii. Application Process Notices for RWRD Engineering Division with information unique to each review (such as contact information, time frames, submittal requirements)
 - iii. Administrative Review Checklists
 - iv. Substantive Review Checklists
 - v. Application Forms, when used, including all required Regulatory Bill of Rights notice language pursuant to Section XII, below.
- B. Updates. The Division's Deputy Director will assign an individual to ensure that the RWRD Regulatory Bill of Rights website is updated as needed (as staff and responsibilities change) and reviewed yearly.
- C. Full Exemptions (A.R.S. §11-1610).
- a. RWRD will consider a full exemption of a **design-build** project.
 - b. The full exemption request will automatically be referred to the RWRD Director for final review and, if given, an approval.
 - c. A full exemption from the Regulatory Bill of Rights (A.R. S. §11-1601 to 11-1610) still requires all applicable reviews, permissions, acceptance and permits under RWRD authority.
 - d. The applicant's authorized representative and the RWRD Director or Director's authorized representative will agree on the terms of the exemption and submittal process.
- D. Prohibited Acts. Staff shall not request or initiate discussions with a person about waiving that person's rights.

V. TIME FRAMES A.R.S. §11-1605

- A. General Procedure Relating to Time Frames. *[Note: Time frame elements are discussed separately and redundantly as the requirements are comprehensive. See also relevant Review sections for further Review information]*
- a. Prior to acceptance and initiation of a review, a pre-application conference with project applicants will be recommended for any project. This conference will answer questions about the Pima County process or highlight special requirements that a project may have.
 - b. The Division will provide all reviews within the time frames posted on the Application Process Notices and consistent with the Administrative Procedure 3-32. Applicable

regulatory rights documents are posted on the Regulatory Rights page of the RWRD website.

- i. Time Frames are in business or "working" days (Monday-Friday excluding legal holidays) (A.R.S. §11-1601.9).
 - ii. The Administrative Review time frame is initiated the first business day after a triggering event (such as an application received).
 - iii. The Substantive Review and all other applicable time frames (extensions, Significant Change) are initiated the same day of the triggering event.
- c. If the review is not completed within the posted time frame, the applicant has a right to a reimbursement or waiver of any assessed review fees.
- d. All formal Notice of Deficiencies and Requests for Corrections will be written (electronic or hard copy) and contain the date of the transmittal.
- e. Time frames will be formally tracked in order to document the:
- i. Conformance to the Administrative, Substantive and overall timeframes.
 - ii. Suspension of an applicable time frame.
 - iii. Date for a deemed withdrawal and if withdrawn:
 1. the reapplication window
 2. date of application destruction
 - iv. Applicant's right to have a fee refunded if time frames are not met.

B. Time Frames Suspended.

- a. **Administrative Time Frames.** (See also Administrative Review section)
 - i. Time Frames are suspended upon the date the reviewer issues a written Notice of Deficiencies to the applicant.
- b. **Substantive Time Frames** (See also Substantive Review section). Time frames are suspended upon the date issuing :
 - i. The written Request for Corrections.
 - ii. Any written Supplemental Request for Corrections.
 - iii. Any written Amended Request for Corrections.
- c. **Significant Change Time Frame** (See also Significant Change section). Time frames are suspended upon the date issuing:
 - i. The written Request for Corrections.
 - ii. Any written Supplemental Request for Corrections.
 - iii. Any written Amended Request for Corrections.
- d. **Other reasons for substantive and overall time frame suspension** (A.R.S. § 11-1606 C. 9):
 - i. Delays due to public hearings, state or federal licenses, or approvals from public utilities.
 - ii. The time required to participate in meetings as required by law.

C. Time Frame Extensions.

- a. **Substantive Review.** The Division and the applicant may mutually agree to extend the Substantive review time frame up to 50% of the posted time frame.
- b. **Significant Change.** (See section on Significant Change) If the Division determines there has been a significant change, the Division may extend the time frame by up to 50% of the **posted** Substantive Review time frame. The extended time frame is interpreted as ***in addition to*** any prior time frames or time frame extensions.

- D. Time Frames for Deemed Withdrawal (see section on Deemed Withdrawal).
 - a. Administrative Review. The Engineering Division may consider an application withdrawn if a response is not made within 45 days of the written Notice of Deficiencies.
 - b. Substantive Review. The Engineering Division may consider an application withdrawn if a response is not made within 180 days of the written Request for Corrections.
- E. Resubmittal Time Frame (See section on Resubmittals of Applications).
 - a. The Engineering Division will keep application documents for a period of 5 years.
 - b. If a permit is withdrawn, or deemed withdrawn the applicant can reapply at no more than 50% of the original fee for the period in which the application is on file (5 years).
- F. Time Frame Exemptions (A.R.S. §11-1605 M, N).
 - a. A Subdivision, Master Planned Community or single lot connection is exempt from time frames.
 - b. A time frame exemption from the Regulatory Rights (A.R.S. §11-1601 to 11-1610) still requires all applicable reviews, permissions, acceptance and permits under RWRD authority.

VI. ADMINISTRATIVE COMPLETENESS REVIEW; A.R.S. §11-1605

- A. No Notice of Deficiencies Required. If no notice is given by the Division to the applicant prior to the end of the Administrative Review Time Frame, the application will be considered complete.
- B. Incomplete Application.
 - a. If the submittal package is deemed incomplete the:
 - i. Application will not be accepted at the time of submittal or
 - ii. Applicant will be issued a written (hard copy or electronic) response within the administrative completeness time frame.
 - b. The Administrative completeness time frame and the overall time frame are suspended from the date of the written Notice of Deficiencies until missing items are submitted.
- C. Verbal Requests. Informal verbal Notice of Deficiencies can be made, however the time frame is not suspended nor is there an obligation by the applicant to provide the material requested.
- D. Written Response. A written (hardcopy or electronic) Notice of Deficiencies listing deficiencies will:
 - a. Be based solely on the materials and references listed within the Directory of Documents (A.R.S. §11-1607).
 - b. Include:
 - i. A list of any deficiencies with the legal basis for the request.
 - ii. Contain the date of the Notice of Deficiencies, contact information for questions.
 - iii. Information on the 45 day limit that is required for a response.
- E. Withdrawal. If there is a deemed withdrawal, or an application withdrawal, see the deemed withdrawal section for further requirements.

VII. SUBSTANTIVE REVIEW; A.R.S. §11-1605

- A. Approved Application. If an application is considered approved or accepted:
 - a. A written (electronic or hard copy) letter/permit will be sent to the applicant stating the

- RWRD acceptance, approval or issuance of a permit.
- b. In addition to other information needed, the correspondence will contain the date, and contact name, address and phone information of Engineering Staff for any questions.
- B. Application Corrections. If an application cannot be approved because it needs additional information or corrections the:
 - a. Applicant will receive a written (hard copy or electronic) Request for Corrections within the Substantive Review time frame.
 - b. Substantive Review time frame and overall time frame are suspended from the date of the written Request for Corrections until missing corrections are submitted by the applicant.
 - C. Verbal Discussions. Verbal clarifications and discussions can be held with the applicant. This may be in the applicant's interest. *However, note that the time frame is not suspended.*
 - D. Written Request for Corrections. One comprehensive written Request for Corrections will be made and:
 - a. Be based solely on the materials and references listed within the Directory of Documents (A.R.S. §11-1607).
 - b. Include (in addition to other information needed):
 - i. A list of any deficiencies with the legal basis for the request.
 - ii. Contain the date of the request, staff contact name, address, phone number and e-mail for further information and for questions.
 - iii. Information on the 180 day limit that is required for a response (see Deemed Withdrawal section).
 - iv. If there is a deemed withdrawal or a withdrawal (see the Deemed Withdrawal section for further requirements).
 - c. Supplemental Request for Corrections. Supplemental Requests based on previously identified issues may be made:
 - i. If the applicant fails to resolve issues identified in the Request for Corrections.
 - ii. Items are limited to those addressed in the original Request for Corrections.
 - iii. The Substantive review time frame and overall time frame are suspended from the date of the supplemental written Request for Corrections until corrections are submitted by the applicant.
 - d. Amended Request for Corrections. The original written substantive response can be amended *once* if:
 - i. There are legal requirements identified that are not addressed in the initial Request for Corrections.
 - ii. Legal authority for the requirements must be conveyed in writing.
 - iii. The Substantive Review time frame and overall time frame are suspended from the date of the amended written Request for Corrections until corrections are submitted by the applicant.

VIII. SIGNIFICANT CHANGE REVIEW

- A. Significant Change: The Engineering Division may determine that an applicant's alteration of plans constitutes a significant change. The determination is by Best Professional Judgment of the Unit Manager or the Manager's delegate.
- B. If a significant change, alteration or amendment is submitted by the applicant:
 - a. It must be consistent with the purpose of the original application.

- b. The Unit Manager or the Manager's delegate must agree that the changes are significant.
- c. Given a significant change the staff reviewer may:
 - i. Extend the time frame for 50% of the posted Substantive review time frame. The extended time frame is interpreted as *in addition to* any prior time frame extensions
 - ii. Have one additional comprehensive written Request for Corrections.
- C. Written Request for Corrections. One comprehensive written Request for Corrections will:
 - a. Be based solely on the materials and references listed within the Directory of Documents (A.R.S. §11-1607)
 - b. Include (in addition to other information needed):
 - i. A list of any deficiencies with the legal basis for the request.
 - ii. Contain the date of the request, staff contact name, address, phone number and e-mail for further information and for questions.
 - iii. Information on the 180 day limit that is required for a response (see Deemed Withdrawal Section).
 - iv. If there is a deemed withdrawal, or a withdrawal, (see the Deemed Withdrawal section for further requirements).
- D. Supplemental Request for Corrections. Supplemental Requests based on previously identified issues may be made:
 - a. If the applicant fails to resolve issues identified in the Request for Corrections.
 - b. Items are limited to those addressed in the original Request for Corrections.
 - c. The Significant Change time frame is suspended from the date of the supplemental written request until corrections are submitted by the applicant.
- E. Amended Request for Corrections. The original written Significant Change response can be amended *once* if:
 - a. There are legal requirements identified that are not addressed in the initial Request for Corrections.
 - b. Legal authority for the requirements must be conveyed in writing.
 - c. The Significant Change time frame is suspended from the date of the amended written Request for Corrections until corrections are submitted by the applicant.

IX. WITHDRAWAL, DEEMED WITHDRAWAL, OR DENIAL DURING A REVIEW (A.R.S. §11-1605)

- A. Once the Division makes a written request regarding deficiencies or a Request for Corrections; if there is no response from the applicant, or a *written explanation* for a lack of response; the application will be "deemed" withdrawn within:
 - a. 45 days in an Administrative Review.
 - b. 180 days in a Substantive Review.
 - c. 180 days from the date a request is made during a Significant Change.
- B. If an application is deemed withdrawn, or denied by the Division, the Division will:
 - a. Justify the action with references to relevant statutes, ordinances, standards and substantive policy.
 - b. Provide the name and contact number of the RWRD reviewer. Provide the applicant with an explanation of the right to resubmit, the total amount of fees that will be assessed if the applicant resubmits, and the method in which those fees were calculated.

X. REAPPLICATION REQUEST (A.R.S. §11-1605 L)

If an application has been denied, withdrawn, or deemed withdrawn:

- A. The Division will retain the application for a period of five (5) years prior to the "Time of Destruction" of the original application file pursuant to A.R.S. §41-151.15 (A.R.S. §11-1605 L).
- B. The applicant shall have those 5 years in which the copy is retained to reapply.
- C. Fees for a reapplication will not exceed 50% of the original fees assessed.

XI. CLARIFICATION, VARIANCES, APPEALS, COMPLAINTS (A.R.S. § 11-1609)

Under A.R.S. § 11-1609, the applicant may request that the County clarify its interpretation or application of a statute, ordinance, regulation, delegation agreement or authorized substantive policy statement.

A. Clarification of technical requirements:

- a. An applicant may seek to clarify a standard or technical requirement of RWRD. If a verbal explanation is not sufficient, the applicant will follow the process described in A.R.S. §11-1609 initiating the written request for clarification.
- b. On receipt of a written (hard copy or e-mail) request, Staff will offer to meet with the applicant to discuss the request.
- c. Staff will respond within 30 days of receipt of the request with a written explanation of the interpretation or application raised in the request for clarification conforming to the requirements of A.R.S. § 11-1609.
- d. Staff will provide the requestor with an opportunity to meet and discuss the written explanation provided by RWRD Engineering Staff.
- e. The unit supervisor will be present for the discussion of the written explanation.

B. Clarification of RWRD code, policy or procedure requirements:

- a. An applicant or interested party may seek to clarify a code, policy or procedure requirement. The applicant or interested party will follow the process described in A.R.S. §11-1609 initiating the written request for clarification.
- b. On receipt of a written (hard copy or e-mail) request, Staff will refer the appropriate clarifications to the RWRD Director or the RWRD Director's Delegate.
- c. The unit supervisor will facilitate the response within 30 days of the receipt of the request and be present for any discussion of the written explanation.

C. Variances and Appeals:

Applicant requests for design variances and permit appeals will follow those outlined within the [**Pima County Regional Wastewater Reclamation Department's Engineering Design Standards 2012**](#), currently within Section 2 of that document. For contact information pertaining to a specific process, please refer to the RWRD Regulatory Bill of Rights webpage and the specific application process notice. All variance and appeal requests must be received in writing (hard copy or e-mail)

D. Complaints:

- a. If a written (hard copy or e-mail) complaint is received that the RWRD Engineering Division is not complying with the Regulatory Bill of Rights law, RWRD Engineering will forward it through the RWRD Director's office to the Clerk of the Pima County Board of Supervisors (see C.H. Huckelberry Memorandum June 23, 2011).
- b. The Clerk of the Board will distribute the written complaint to the members of the Board.

XII. LICENSING NOTICE

- A. All license application forms will include the following language in a prominent place on the form:
 - a. A county shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, ordinance or delegation agreement. A general grant of authority does not constitute a basis for imposing a licensing requirement or condition unless the authority specifically authorizes the requirement or condition.
 - b. Unless specifically authorized, a county shall avoid duplication of other laws that do not enhance regulatory clarity and shall avoid dual permitting to the maximum extent practicable.
 - c. This section does not prohibit county flexibility to issue licenses or adopt ordinances or codes.
 - d. A county shall not request or initiate discussions with a person about waiving that person's rights.
 - e. This section may be enforced in a private civil action and relief may be awarded against a county. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against a County for a violation of this section.
 - f. A County employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the County's adopted personnel policy.
 - g. This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.
- B. If there is no form for the license, the language of Section XII (A) (a) through (g) will be posted prominently posted at the RWRD service counter and on the RWRD web site.