

COUNTY NOTICES PURSUANT TO A.R.S. § 49-112(A) or (B)

DEMONSTRATION OF COMPLIANCE PURSUANT TO A.R.S. § 49-112(E)

and

NOTICE OF PUBLIC HEARING PURSUANT TO A.R.S. § 49-112

PINAL COUNTY AIR QUALITY CONTROL DISTRICT

In response to the petition filed under A.R.S. § 49-112(E) by the Arizona Chamber of Commerce on June 30, 1995, the Director of the Pinal County Air Quality Control District, acting on behalf of the Pinal County Board of Supervisors, makes the following proposed findings. Those findings constitute a demonstration that affirms compliance with the criteria set forth in A.R.S. § 49-112(A) and (B). This demonstration supplements, and may in part supplant, a notice published in the *Register* on May 17, 1996, regarding proposed repeal or revision of some or all of the same rule provisions. The need for this additional demonstration arises from a written verification from EPA, received on May 13, 1996, that certain of the County's rules have been approved as elements of the Arizona State Implementation Plan ("SIP").

1. Demonstration of Compliance

Generally Applicable Findings

The Board makes the following initial findings, which apply to the whole of the contents of the petition:

- Since A.R.S. § 49-112(E) only allowed a petition to be filed until June 30, 1995, the filing on June 30, 1995, was not timely, and the whole of the petition is a nullity.
- As to each and every air-quality related fee imposed by the county, or under consideration for adoption by the County, the whole of those current or proposed fees do not and will not exceed or even equal the cost of administering an air quality regulatory program. As to any portion of the County's air quality regulatory program that has a parallel under the program administered by ADEQ, the County's fees are capped at ADEQ-levels. Accordingly, these findings resolve any challenge based on the provisions of A.R.S. §§ 49-112(A)(3) or 49-112(B).
- By the express language of A.R.S. § 49-112(E), only rules adopted before July 15, 1994, fall subject to a petition challenge. To the extent the petition challenges provisions of the County's rules adopted on or after that date, the petition constitutes a nullity.
- Under A.R.S. § 49-112, a petition may raise a "stringency" challenge to rules that are more stringent than, or functionally in addition to, the provisions of A.R.S. Title 49 or ADEQ's rules implementing that Title. To the extent that such a petition-challenge omits, or mis-states part or all of the relevant provisions of benchmark statute or rule, the petition constitutes a nullity.
- To the extent the petition challenges rule provisions approved under the Clean Air Act ("CAA") as elements of the SIP, the CAA provides that a SIP revision requires the prior approval of the Administrator of the Environmental Protection Agency ("EPA"). The CAA precludes the Board, or a state, from unilaterally modifying the SIP. To the extent A.R.S. § 49-112 purports to render "unenforceable" locally adopted rules that constitute SIP elements, that Arizona statute would effectively modify the SIP without the concurrence of the EPA Administrator. When a State statute mandates a result that conflicts with federal law, and the State statute must yield.

Rule-specific Findings or Proposed Alternative Responses

With respect to the challenges to specific rule provisions, the Board makes the following responses, which in the alternative constitute either findings or proposals to make certain revisions with respect to the challenged provisions:

§1-3-140.2 The petition challenges the inclusion of a definition of "activity equipment," as inferentially extending the scope of County permitting beyond that defined in ADEQ's regulations. The only use of this phrase is as an element of the definition of "equipment" in §1-3-140.53.

Response - See the response following §3-1-040.B below.

§1-3-140.37 As one element of an overall challenge to the County's permitting thresholds for smaller sources, the petition challenges the definition of "*de minimis*".

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Response - See the response following §3-1-040.B below.

§1-3-140.74a The petition challenges various elements of Pinal County's definition of "insignificant activities."

Response - See the response following §3-1-040.B below.

§1-3-140.84a As another element of an overall challenge to the County's permitting thresholds for smaller sources, the petition challenges the definition of "Modification or Modify".

Response - See the response following §3-1-040.B below.

§1-3-140.102 The petition challenges the failure to include a list of specifically excluded products in defining "petroleum liquid."

Response - See the response following §3-1-040.B below.

§3-1-040.B The petition challenges the County's Class B permitting and permit modification thresholds, all of which refer to a universal "*de minimis*" quantity as a trigger. Stated conversely, it challenges the County's "failure" to offer permitting exemptions to as many sources as has ADEQ.

Response

The Board finds that:

- By Laws 1992, Ch. 299 (a.k.a. SB 1430), the Arizona legislature dictated the local adoption of a revised air quality regulatory system, including a system of "unitary" permits that authorize both installation and operation of a source.
- Pinal County's program for the regulation of the modification and construction of stationary sources, as embodied in the challenged rules, was adopted under those 1992 statutory revisions at least as early as November 3, 1993, and was modified on August 12, 1994, August 29, 1994, February 22, 1995, and October 12, 1995.
- Singly or in combination, those rules and revisions were all submitted, first to the Director of ADEQ as the Governor's designee and thence to EPA Region IX, as requested revisions to the EPA-approved SIP required by CAA §110. The first of those requests was received by EPA Region IX on August 16, 1994; the last was received on November 27, 1995.
- On April 9, 1996, the EPA formally proposed approval of the County's permit program, defined by the rules as revised through October 12, 1995, as a minor-source new source review program as required by CAA §110. No adverse comments were received prior to close of the comment period; on June 10, 1996, those affected rule provisions will vest as elements of the EPA-approved Arizona SIP.

Accordingly, the Board finds that:

- All of the rules newly approved as SIP elements under the proposed action of April 9, 1996, are necessary to address a peculiar local condition, namely that contrary to the mandate of CAA §110, Pinal county has never previously had an EPA-approved "program to provide for the ... regulation of the modification and construction of any stationary source within the area covered by the plan as necessary to assure that national ambient air quality standards are achieved"
- All of the rules covered by the April 9, 1996, SIP approval are necessary to address a peculiar local condition, namely that they have been approved as elements of the Arizona SIP. That approval creates a peculiar situation, in that Pinal County's SIP approval is unique in Arizona, in that these are the only rules implementing a "unitary" permit system, as required by the recent overhaul of Arizona's air quality statutes that began with Laws 1992, Ch. 299, that have been approved by the EPA Administrator as elements of the Arizona SIP.
- There is credible evidence that the rules covered by the April 9, 1996, SIP approval, including those that define the local permit thresholds, are required under a federal statute or regulation. Specifically, CAA §110(a)(2)(C) expressly requires that an affected air quality regulatory authority adopt a SIP that includes "a program to provide for the ... regulation of the modification and construction of any stationary source within the area covered by the plan as necessary to assure that national ambient air quality standards are achieved" Under 40 CFR 51, the Administrator has the authority to decide which, if any, locally adopted rules meet the standard set forth under the CAA. The Administrator has approved Pinal County's permit program as defined by these provisions; as explained more fully above, Pinal County's approval is unique among regulatory agencies in Arizona.

§3-2-180.B The petition challenges the County's rule, for failure to conform to an ADEQ policy proposal, and purported promise to change that agency's rules.

Response

The petition is flawed; to this day, the County's rule is identical to ADEQ's rule. See R18-2-317(C) (Supp. 95-4). In addition, see the response following §3-1-040(B), *supra*.

§3-8-710 The petition challenges Pinal County's imposition of a fee for a "temporary open burning" permit.

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Response

The petition is clearly defective for at least two reasons:

- A.R.S. § 49-112(E) allows a petitioner to challenge rules adopted "before July 15, 1994." The challenged rule was adopted on February 22, 1995.
- ADEQ and the County both administer a statutory open burning program. See A.R.S. § 49-501. ADEQ does not charge a fee. Provided a County has adequate statutory authority, A.R.S. § 49-112(B) expressly allows a County to impose a fee, provided the fee does not exceed cost-recovery. The County has general fee-for-service authority. See A.R.S. § 11-251.08. Program administration involves providing a range of services, including permit form preparation, permit issuance and inspection and enforcement, and all cost money.

§5-4-160 The petition challenges the County's imposition of a 40% opacity limitation with respect to abrasive blasting activity.

Response

The Board proposes to modify the challenged provision, to accurately reflect the provisions of law that ADEQ is obligated to follow.

Chapter 5, Article 17

The petition challenges the County's regulation of emissions from soil remediation operations.

Response

The Board proposes to repeal the entire article.

§5-23-1015 The petition apparently challenges the County's exemption of a limited degree of usage, for certain engines, from the otherwise applicable performance standard.

Response

The petition drafter failed to understand the rule. This constitutes an exemption provision. Its repeal would expand the application of the parent emission standard, making that standard applicable to all engines. Accordingly the Board proposes to leave the provision intact.

§7-1-060 The petition challenges Pinal County's imposition of a fee in conjunction with a notification under the Asbestos NESHAP, 40 CFR 61, Subpart M.

Response

The petition is clearly defective for at least two reasons:

- A.R.S. § 49-112(E) allows a petitioner to challenge rules adopted "before July 15, 1994." The challenged rule was adopted on February 22, 1995.
- The County and ADEQ both administer an identical program, namely the Asbestos NESHAP, 40 CFR 61, Subpart M. ADEQ does not charge a fee. Provided a County has adequate statutory authority, A.R.S. § 49-112(B) expressly allows a County to impose a fee, provided the fee does not exceed cost-recovery. The County has general fee-for-service authority. See A.R.S. § 11-251.08. Program administration involves services, including advising affected parties, receiving and cataloging notifications, and performing inspections. All cost money.

PGCAQCD R7-3-2.2 & R7-3-2.5

The petition identifies as objectionable two 1975-vintage sections of the Pinal Gila Counties Air Quality Control District ("PGCAQCD") regulations. The petition identifies the challenged provisions both by number and by functional content. Only one of those rules includes the emission limitation identified as objectionable, namely the limit on sulfur dioxide emissions determined as a function (*i.e.* 10%) of the sulfur content of the process feed stream.

Response

Both of the subject provisions constitute SIP elements, and therefore exist pursuant to "a peculiar local condition" and are "required under a federal statute or regulation."

As a matter of comity, the Board of Supervisors has already scheduled a hearing to consider conditionally repealing the cited "10%" provision, which repeal would be conditioned upon the EPA's approval of a corresponding SIP revision.

2. Name and address of the person to whom persons may address questions or comments:

Name: Donald P. Gabrielson, Director
Address: Pinal County Air Quality Control District
P.O. Box 987
Florence, Arizona 85232
Telephone: (520) 868-6760
Fax: (520) 868-6754

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3. Where persons may obtain a full copy of the rules challenged under the petition:

Name: Pinal County Air Quality Control District
Address: P.O. Box 987
574 South Central
Florence, Arizona 85232
Telephone: (520) 868-6760
Fax: (520) 868-6754

4. Date, time, and location of scheduled public workshops and hearings:

A. Public Workshop

Date: June 5, 1996
Time: 1:30 p.m.
Location: Board of Supervisor's Hearing Room
Administration Building No. 1.,
31 North Pinal Avenue
Florence, Arizona
Nature of meeting: Public workshop to explain, discuss, and accept comment on the proposed demonstration.

B. Public Hearing

Date: June 20, 1996
Time: 2 p.m.
Location: Board of Supervisor's Hearing Room
Administration Building No. 1.,
31 North Pinal Avenue
Florence, Arizona
Nature of meeting: The Board is already scheduled to review the rules covered by the subject challenge, in a public hearing to be held as an element of the regular meeting of the Pinal County Board of Supervisors. The Board may formally endorse all or part of the demonstration set forth above.