

**COUNTY NOTICES OF PROPOSED RULEMAKING
Pursuant to A.R.S. §§ 49-112(A) or 49-112(B)**

PIMA COUNTY DEPARTMENT OF ENVIRONMENTAL QUALITY

1. **Heading and number of the proposed rule, ordinance, or other regulation:**

Amendments to: 17.12.470, Activity Permits
Amendments to: 17.16.050, Visibility Limiting Standard

2. **Summary of the proposed rules, ordinance, or other regulations:**

Amendments to: 17.12.470, Activity Permits

Pima County is proposing amendments to clarify applicability of requirements to obtain an activity permit. Justification for the amended local ordinance is provided in Section 3.

Amendments to: 17.16.050, Visibility Limiting Standard

Pima County is proposing amendments to clarify the local standard for property boundary dust control requirements. Justification for the amended local ordinance is provided in Section 3.

3. **A demonstration of the grounds and evidence of compliance with A.R.S. §§ 49-112:**

Based on information and belief, the Control Officer of the Pima County Department of Environmental Quality affirms the following:

A. Pima County is in compliance with A.R.S. §49-112(A) in that Pima County Department of Environmental Quality is proposing to adopt ordinances that are not more stringent than nor are they in addition to any provisions of A.R.S. Title 49 or rules adopted by the Director of ADEQ or any Board or Commission authorized to adopt rules pursuant to A.R.S. Title 49 except for the ordinances specified in B of this section.

B. Pima County is proposing to adopt ordinances that are more stringent than or are in addition to any provisions of A.R.S. Title 49 or rules adopted by the Director of ADEQ or any Board or Commission authorized to adopt rules pursuant to A.R.S. Title 49, based on credible evidence that the ordinances are necessary to address a peculiar local condition and that the rules are required by law or are necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and are technically and economically feasible. Pima County proposes to adopt amendments to Pima County Code 17.12.470 and 17.16.050 pursuant to a written demonstration under A.R.S. §49-112.

Pima County has developed a Technical Support Document to accompany the proposed amendments to Pima County Code Title 17. The Technical Support Document contains the written demonstration discussing the peculiar local conditions, significant threat to public health and the environment, and the feasibility of the regulations that support amendments to Pima County Code 17.12.470, Activity Permits and 17.16.050, Visibility Limiting Standard.

Specifically, Pima County has made a finding that:

Pima County violated the National Ambient Air Quality Standards (NAAQS) for particulate matter (as measured by Total Suspended Particulates (TSP)) in the 1970's. Independent studies were conducted in Pima County by PEDCo-Environmental Specialists, Inc. entitled Investigation of Fugitive Dust - Sources, Emissions and Control under contract with the EPA, in 1973 that showed uncontrolled fugitive dust from land stripping, earth moving, blasting, trenching, or road construction activities were significant sources of particulate matter emissions.

Pima County submitted a Non-Attainment Area Plan to the Environmental Protection Agency (EPA) on September 29, 1978, entitled Technical Analysis for the Nonattainment Area Plan for Total Suspended Particulate, Pima County, Arizona. In a follow up submitted to EPA in October, 1983, entitled Supplementary Information on TSP Nonattainment Redesignation, Pima County determined that fugitive sources of dust emissions were contributing to significant air quality impacts in the Tucson metropolitan area.

Independent studies were conducted in 1987 regarding particulate matter emissions by Engineering-Science under contract to the EPA. In Engineering Sciences report entitled PM10 Emissions Inventory Data for the Maricopa and Pima Planning Areas, uncontrolled fugitive dust from land stripping, earth moving, blasting, trenching, or road construction activities were determined to be significant sources of particulate matter emissions.

The metropolitan Tucson area is bounded on the east by the Saguaro National Monument (East) and on the west by the Saguaro National Monument (West). Both of these monuments are designated as Class I areas pursuant to the sections 162 and 169 of the Clean Air Act and must be protected from manmade air pollutants that impair visibility.

The Pima County Air Quality Control District is an air quality control region as approved by the Governor of Arizona pursuant to section 107 of the Clean Air Act. The Pima County Air Quality Control District controls sources of air pollution in more densely populated areas than the Arizona Department of Environmental Quality.

Activities such as earth moving and land stripping are sources of particulate matter air pollution and are found in close proximity to populated areas in Pima County.

In 1971, the EPA developed the NAAQS for particulate matter (as measured by TSP) based upon air quality criteria that showed an increase in mortality and respiratory illness as well as impacts to property, wildlife, and visibility.

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The NAAQS for particulate matter was violated in Pima County numerous times in the 1970's exposing the population to a significant health threat.

In 1987, the NAAQS changed from the measurement of particulate matter as TSP to Particulate Matter with an aerodynamic diameter less than or equal to 10 microns (PM10).

In establishing the PM10 NAAQS, EPA specifically identified elderly persons and persons with pre-existing respiratory or cardiac disease at greatest risk and had hoped to establish a level at which these populations would be protected.

EPA could not find a lower concentration limit for PM10 at which no health impacts would occur. EPA stated that "... in cases such as the present one, the evidence suggests that there is a continuum of effects, with risk of incidence, or severity of harm decreasing, but not necessarily vanishing as the level of pollution is decreased..." (52 FR 24634, July 1, 1987).

Current health literature supports EPA's position that health effects occur below the NAAQS level for particulate matter.

In 1977, EPA issued a "Fugitive Dust" policy that directs efforts to control particulate matter in urban areas as the first priority. (Fugitive Dust Policy, August 1, 1977, USEPA, Office of Air Quality Planning and Standards.)

EPA believed that fugitive dust in urban areas posed potentially greater risk due to the larger population exposed.

EPA believed that the fugitive dust problem was "more pronounced within urban areas and thus more conducive to development of an implementable control program."

EPA determined that "urban areas should receive the highest priority for development of a comprehensive and reasonable program to control fugitive dust."

In 1987, EPA reviewed its "Fugitive Dust" policy and determined that this policy was effective and re-affirmed the policy making modifications with respect to the designation of rural areas.

EPA's "Fugitive Dust" policy was re-affirmed in Section 190 of the Clean Air Act Amendments of 1990 which required EPA to establish "reasonably available control measures" and "best available control measures" for state and local governments to control urban fugitive dust.

EPA guidance documents entitled Guidelines for Development of Control Strategies in Areas with Fugitive Dust Problems (1977), "Control of Open Fugitive Dust Sources" (1988), Fugitive Dust Background Document and Technical Information Document For Best Available Control Measures (1992) all recommend a permit system and the use visible emissions at the property line as a trigger for follow-up investigation as compliance tools.

EPA guidance documents recommend the submittal of a detailed "dust control plan" for each activity permit.

Pima County has not adopted a requirement for a "dust control plan" based upon the use of visible emissions at the property line standard that triggers evaluation of the control strategies in place at the site. Pima County's approach determine whether adequate dust controls are being implemented at the site based upon observation of actual emissions.

Pima County's regulatory approach provides a flexible framework by which a person can adapt control strategies to each specific site as well as through the course of the operations.

Pima County was classified as "non-attainment" for particulate matter (as measured by TSP) pursuant to the Clean Air Act in 1978. Pima County submitted a control strategy to bring the non-attainment area into compliance with the NAAQS for particulate matter and maintain the standard once it was achieved. As part of this plan, activity permits (Rule 202) and visible limiting standard (Rule 343) were submitted as compliance tools.

The Non-Attainment Area Plan was incorporated into the State Implementation Plan (SIP) which was approved by the EPA in 1982.

The SIP provisions for activity permits (SIP Rule 202) and the visible limiting standard (SIP Rule 343) are federally enforceable requirements pursuant to the Clean Air Act section 113(a)(3).

Pima County was designated "un-classified" with respect to the NAAQS for particulate matter (as measured by PM10) in 1990 by the EPA.

Activity permits and the visibility limiting standard are still part of the SIP for Pima County as a mechanism to control fugitive dust in order to maintain the NAAQS for particulate matter (as measured by PM10).

Pursuant to the Clean Air Act section 193, each regulation, standard, rule, notice, order, and guidance in the SIP for Pima County prior to November 15, 1990 remains in effect unless revised by the EPA.

Failure to enforce provisions of the SIP is a violation of the Clean Air Act section 113(a)(2).

Pima County's rule for activity permits and the visibility limiting standard have been in effect since 1978 and are thus believed not to have a significant economic impact on the regulated community including small entities. The dust control requirements associated with the visibility limiting standard include only those requirements that are "necessary and feasible." Control measures which are not technically or economically feasible are not required.

Pima County's requirement for an activity permit (SIP Rule 202) is found in Pima County Code 17.12.470. Pima County's visibility limiting standard (SIP Rule 343) is found in Pima County Code 17.16.050.

C. Pima County is in compliance with A.R.S. § 49-112(B) in that Pima County Department of Environmental Quality is proposing to adopt rules that are as stringent as a provision of A.R.S. Title 49 or a rule adopted by the Director of ADEQ or any Board or Commission authorized to adopt rules pursuant to A.R.S. Title 49. The cost of obtaining permits or other approvals from

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Pima County will approximately equal or be less than the fee or cost of obtaining similar permits or approvals under A.R.S. Title 49. If the state has not adopted a fee or tax for similar approvals, Pima County fees do not exceed the reasonable cost of the county to issue and administer the permit or plan approval program.

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

Name: Richard Grimaldi, Technical Services Manager
Address: Pima County Department of Environmental Quality
130 West Congress, 3rd Floor
Tucson, Arizona 85701-1317
Telephone: (520) 740-3340
Fax: (520) 882-7709

5. Where persons may obtain a full copy of the proposed rules, ordinance, or other regulations

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Address: 130 West Congress, 3rd Floor
Tucson, Arizona 85701-1317
Telephone: (520) 740-3340
Fax: (520) 882-7709

All interested persons may submit written comments on the summary of proposed rules, the proposed rules, ordinance or regulations, described above within 30 days of the publication of this notice in the Register.