

COUNTY NOTICES PURSUANT TO A.R.S. § 49-112

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NOTICE OF PROPOSED RULEMAKING

PIMA COUNTY AIR QUALITY CONTROL REGULATIONS PIMA COUNTY CODE

TITLE 17. AIR QUALITY CONTROL

CHAPTER 12. PERMITS AND PERMIT REVISIONS

[M07-86]

PREAMBLE

1. Sections Affected

PCC 17.12.465
PCC 17.12.470
PCC 17.12.470
PCC 17.12.475
Table 17.12.540

Rulemaking Action

New Section
Amend
Re-number
New Section
Amend

2. Statutory authority for the rulemaking:

Authorizing Statute: A.R.S. §§ 49-402, 49-479, and 11-251.08.

Implementing Statute: A.R.S. §§ 49-480, 49-112, and 11-251.08.

3. List of all previous notices appearing in the register addressing the proposed rule or ordinance and a concise explanatory statement:

None

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Jessica O'Brien
Regulatory Planner

Address: Pima County DEQ
50 W. Congress
Tucson, AZ 85701

Telephone: (520) 740-3340

Fax: (520) 882-7709

E-mail: Jessica.Obrien@deq.pima.gov

5. An explanation of the rule, including the Control Officer's reasons for initiating the rule:

The Pima County Department of Environmental Quality (PDEQ) is proposing to modify the air quality activity permit rules. The activity permit rules will be amended to allow the option for sources to obtain a single permit that authorizes multiple activities per project site rather than obtaining numerous permits for the same site. This permit will be categorized as a Multiple Activity Permit (MAP). The associated fees with this activity permit option will be commensurate to the current fee schedule.

6. 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:

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 rule adopted by the Director of ADEQ or any Board or Commission authorized to adopt rules pursuant to A.R.S. Title 49. Whereas the state has not adopted a fee or tax for fugitive dust activity permits, fees proposed by Pima County do not exceed the reasonable costs of the county to issue and administer the activity permit program.

7. Reference to any study relevant to the rule that the Control Officer reviewed and either relied or did or did not rely

on in its evaluation of or justification for the rule, where the public may review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

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

Not applicable

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

This rulemaking amends into Pima County's air quality ordinances dealing with air quality activity permits. Due to exceedances of the National Ambient Air Quality Standard for particulate matter 10 microns or less in diameter during 1999, Pima County was required to implement a Natural Events Action Plan (NEAP) to avoid non-attainment status. As a part of the NEAP, sources conducting fugitive dust producing activities above established thresholds are required to obtain fugitive dust activity permits authorizing such activities. Currently, sources are required to obtain a permit for each fugitive dust producing activity at a project location. PDEQ is proposing a multiple activity permit option that will allow sources to obtain one permit authorizing all dust producing activities at a project location. The cost of the multiple activity permits is commensurate with the current cost of obtaining numerous single activity permits for one project. The new fees are separated into categories based upon project acreage. Businesses will also have the additional benefit of increasing the permit term of their fugitive dust activity permit term from one to two years. Additionally, PDEQ has developed clear terminology, as well as, improving the organization of the activity permit section. Although the requirements to obtain an activity permit have been in effect for many years, lack of clarification regarding exemptions left many businesses unsure of the permit thresholds. Additional definitions and expanded exemption language clearly defines the permitting thresholds and will reduce agency enforcement due to administrative violations.

10. Name and address of department personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Jessica O'Brien
Regulatory Planner

Address: Pima County DEQ
50 W. Congress
Tucson, AZ 85701

Telephone: (520) 740-3340

Fax: (520) 882-7709

E-mail: Jessica.Obrien@deq.pima.gov

11. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules and or ordinance:

Written comments will be accepted if received between the date of this publication and **April 2, 2007 by 5:00 p.m.** Written comments may be mailed or hand delivered to the Pima County Department of Environmental Quality (see #10 above). Written comments received during the comment period will be considered formal comments to the proposed rule or ordinance, and will be responded to in the notice of final rulemaking.

12. Any other matters prescribed by the statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

Not applicable

14. The proposed effective date for the rule or ordinance:

The proposed rule or ordinance will go into effect 31 days after the date the Board adopts the final rule or ordinance. The rule or ordinance will be scheduled for a **public hearing/oral proceeding before the Board on:**

Oral Proceeding: Tuesday, May 1, 2007, 9:00 a.m.

Location: Board of Supervisors Hearing Room
Pima County Administration Building
130 W. Congress, 1st Floor
Tucson, AZ 85701

15. The full text of the rule follows:

CHAPTER 17.12. PERMITS AND PERMIT REVISIONS

Sections:

Article IV. Activity Permits.

17.12.465 **Definitions**

17.12.470 **Fugitive Dust** Activity permits.

17.12.475 **NESHAP** Activity permits.

Table 17.12.540 **Fugitive Dust** Activity Permit Fee Schedule

17.12.465 **Definitions**

In addition to the definitions contained in Section 17.04.340, words, phrases and terms used in this Article shall have the following meanings:

1. “Demolition” means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.
2. “Earthmoving” means the movement of earthen material which causes or has the potential to cause fugitive dust.
3. “Fugitive Dust” means the particulate matter not collected by a capture system that is entrained in the ambient air and is caused from human, animal, and/or natural activities, such as, but not limited to, movement of soil, vehicles, equipment, blasting, and wind.
4. “Project” means the specific plan, design or phase of the plan for which the person obtains a permit.
5. “Regulated asbestos containing material” or “RACM” means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by 40 CFR 61, Subpart M.
6. “Renovation” means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.
7. “Trenching” means the construction of a narrow excavation, in relation to its length, made below the surface of the ground for purposes of facilitating the installation and repair of underground utilities.

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17.12.470 **Fugitive Dust Activity permits.**

- A. ~~Except as exempted in Table 17.12.540, no~~ No person shall conduct, cause or allow land stripping, earthmoving, blasting (~~except blasting associated with an individual source permit issued for mining~~), trenching or road construction, ~~or commence demolition or renovation of any NESHAP facility~~ without first obtaining an activity permit from the Control Officer.
- B. There shall be two types of activity permits as follows:
1. A single activity permit shall be obtained by persons conducting any one of the following activities:
- a. Land stripping and/or earthmoving activities totaling more than one acre in size;
- b. Trenching activities totaling more than 300 feet in length;
- c. Road construction activities totaling more than 50 feet in length; and
- d. Blasting activities.
2. A multiple activity permit may be obtained by persons conducting more than one dust producing activity to include, but not limited to, land stripping, earthmoving, trenching, blasting, and road construction at a single project site covering an acre or greater.
- ~~BC.~~ In the case of an emergency, action may be taken to stabilize the situation before obtaining an activity permit. Upon stabilizing the emergency situation, an activity permit shall be obtained.
- ~~C.~~ ~~An activity permit is valid for a period of one year from the date of issue.~~
- D. Permittees shall notify the control officer within five working days of the start and completion of the project.
- E. ~~This section shall not apply to sources which obtain a Class I or Class II air quality permit from the director pursuant to ARS § 49-426 or from the control officer pursuant to Section 17.12.140 for any activity allowed by the Class I or Class II permit, except for asbestos NESHAP activities.~~ The following terms apply to the duration of the activity permit:
1. An activity permit is valid for one year from the date of issue.
2. Upon approval by the control officer, two permits covering the same scope of work or identical project may be obtained and will be valid for a period of two years from the date of issue.
3. Permit coverage shall not be transferred from the original permit holder.
4. Permits may be voluntarily terminated pursuant to Section 17.12.275.

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F. ~~Sourees are not required to obtain an activity permit pursuant to this section for activities involving asbestos cement pipe; however, such sources shall comply with all other local, state and federal requirements applicable to such materials.~~ The following exemptions will apply to this Section:

1. Class I, II, or III air quality permit holders pursuant to Section 17.12.140 whose permit authorizes the above described activities in subsection B.1.a thru d.
2. Trenching activities associated with the installation of irrigation lines for landscaping purposes that disturbs less than the first foot of topsoil.
3. Trenching activities located beneath a road for which a current fugitive dust activity permit for road construction has been issued.

17.12.475 NESHAP Activity permits.

A. No person shall allow or commence demolition or renovation of any NESHAP facility as defined in 40 CFR 61 Subpart M without first obtaining an activity permit from the control officer.

B. A NESHAP activity permit shall be obtained by persons conducting the following activities:

1. Demolition of load supporting structural members.
2. Renovation of more than 260 linear feet of RACM on pipes.
3. Renovation of more than 160 square feet of RACM on other facility components.
4. Renovation of more than 35 cubic feet of RACM off facility components.

(Ord. 2006-9 § 1 (part), 2006; Ord. 2002-108 § 1, 2002; Ord. 1999-11 § 1, 1999; Ord. 1995-87 § 21, 1995; Ord. 1994-83 § 41, 1994; Ord. 1993-128 § 3 (part), 1993)

Table 17.12.540			
FUGITIVE DUST ACTIVITY PERMIT FEES SCHEDULE (effective July 1, 2003 June 1, 2007)			
S.S. ¹	ACTIVITY	RATE COMPONENTS	EXEMPTIONS
A	Land stripping and/or Earthmoving	>1-2 Acres \$ 100.00 >2-10 Acres \$ 500.00 >10-40 Acres \$ 1,500.00 >40+ Acres \$ 3,000.00	<1 Acre
B	Trenching	300-500 Ft. \$ 75.00 501-1500 Ft. \$ 200.00 1501-5000 Ft. \$ 400.00 5001+ Ft. \$ 800.00	<300 Ft., Trenching for Landscaping
C	Road Construction	50-1000 Ft. \$ 50.00 1001-3000 Ft. \$ 250.00 3001-6000 Ft. \$ 500.00 6001+ Ft. \$ 1,000.00	<50 Ft.

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D	Demolition or Renovation of NESHAP-Facility	\$420.00	See Exemption Note
ED	Blasting	\$18.00 plus \$3.53 per day of blasting \$ <u>25.00</u>	None
E	<u>Multiple Activity Permit</u>	<u>>1-10 Acres \$ 625.00</u> <u>>10-40 Acres \$ 2,000.00</u> <u>>40+ Acres \$ 4,000.00</u>	
<u>NESHAP Activity Permit</u>			
E	Demolition or Renovation of NESHAP Facility	\$420.00	
<p>Exemption Note: <260 linear feet on pipes; <160 square feet on other facility components; <35 cubic feet off facility components</p> <p>-----</p> <p>¹Sub-schedule for identification only. (Ord. 2006-9 § 1 (part), 2006; Ord. 2002-108 § 2 (part), 2002; Ord. 1995-87 § 26 (part), 1995; Ord. 1994-83 § 44, 1994; Ord. 1993-128 § 3 (part), 1993)</p>			