

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

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NOTICE OF RULEMAKING DOCKET OPENING

MARICOPA COUNTY AIR QUALITY DEPARTMENT

[M08-377]

1. **Title and its heading:** Maricopa County Air Pollution Control Regulations
Rule and its heading: Rule 337 Graphic Arts
2. **The subject matter of the proposed rule(s):**
Maricopa County Air Quality Department (MCAQD) is amending Rule 337 Graphic Arts that limits the emissions of volatile organic compounds (VOC) to the ambient air stemming from the use of materials used in graphic arts operations in Maricopa County. This rule is being amended to meet the Environmental Protection Agency's (EPA's) 2006 Control Techniques Guideline (CTG) requirements. Also, as part of this rulemaking, the MCAQD may add, delete, or modify additional rules and ordinances as necessary.
3. **A citation to all published notices relating to this proceeding:**
None to date
4. **The name and address of department personnel with whom persons may communicate regarding the proposed rule:**
Name: Kathleen Sommer or Jo Crumbaker
Address: 1001 N. Central Ave., Suite 595
Phoenix, AZ 85004
Telephone: (602) 506-6706 or (602) 506-6705
Fax: (602) 506-6179
E-mail: KathleenSommer@mail.maricopa.gov or jcrumbak@mail.maricopa.gov
5. **The time during which the department will accept written comments and the time and place where oral comments may be made:**
To be announced in the Notice of Proposed Rulemaking
6. **A timetable for department decisions or other action on the proceeding, if known:**
To be announced in the Notice of Proposed Rulemaking

COMBINED NOTICE OF PROPOSED RULE MAKING

PURSUANT TO A.R.S. §§49-112 AND 49-471.01 *ET SEQ.*

AND

NOTICE OF ORAL PROCEEDING

PURSUANT TO A.R.S. § 49-471.06

PINAL COUNTY

[M08-378]

1. **Preamble**

A. Introduction

This involves a rule revision that will designate certain existing Pinal County air quality rules for inclusion in the EPA-approved Arizona State Implementation Plan ("SIP"). Pinal County's rules include §1-1-105, which constitutes a Board-of-Supervisor-approved "SIP List" designated which rules should be included in the SIP.

The revisions respond in part to a formal EPA notice disapproving certain Pinal County rules as SIP elements, which disapproval was coupled with a threat of sanctions under the Clean Air Act. See 72 FR 41897 (8/1/2007).

Chapter 4 of Pinal County's air quality rules addresses emissions from non-point sources, and Article 2 specifically addresses fugitive dust.

As adopted in 1993, Pinal's Chapter 4, Article 2 fugitive dust standards included §4-2-040, which among other things required that "[n]o person shall cause, suffer, allow or permit the performance of agricultural practices including but no limited to tilling of land and application of fertilizers without taking reasonable precautions to prevent particulate matter from becoming airborne." In substance, that reflected the prevailing ADEQ standard, A.A.C. R18-2-609., as renumbered on November 15, 1993 (Supp. 93-4).

Pinal's standard was prefaced by a general applicability provision, §4-2-020.B., which arguably exempted "normal farm cultural practice" from the standard quoted above. In addition, "normal farm cultural practice" was specifically defined in §4-2-030.2.

Both of the quoted versions of 4-2-020 and 4-2-030, including that aforementioned "agricultural exemption," were submitted in 1995 for EPA-approval as elements of the SIP. The EPA's 2007 action (72 FR 41897 (8/1/2007)) specifically cited that agricultural exemption as one of the grounds for disapproval of Pinal's rules.

However, while that original SIP submittal was pending before the EPA, on December 4, 2002, the Board of Supervisors amended those rules to delete the agricultural exemption as well as the definition of "normal farm cultural practice," with an effective date sixty days later on January 31, 2003. See 9 A.A.R. 186 (1/24/2003).

Having been apprised of that change, the EPA acknowledged in the 8/1/07 Notice that "[i]f PCAQCD submits the 2003 version of these rules as a SIP amendment, our objection to the agricultural exemption will be resolved." 72 FR 41897 (8/1/2007).

Accordingly, the proposed changes will revise the "SIP List" to acknowledge the 2002 changes as proposed SIP elements. To achieve that end, the amendment also eliminates the current exclusion of §§4-2-020 and 4-2-030 from the SIP List.

B. Proposal.

(1) Authority. The District proposes that the Board of Supervisors adopt or amend certain rules under authority of A.R.S. §§49-479 and 49-480, which respectively authorize the board to adopt rules to control air pollution and to adopt a stationary source permit program.

(2) Sections Affected.

Section Affected	Rulemaking Action
§1-1-105	Amend

C. Rulemaking Process.

(1) Procedure. The rule making process will consist of an initial administrative rule development process, including this notice, a 30 day public comment period, and an oral proceeding before the Control Officer or his designee. The date and location for the oral proceeding are set forth below. Written comments are due prior to the close of the comment period and the close of the record, which shall be the close-of-business on the day of the oral proceeding. The final step in the rule adoption process will be a hearing before the Board of Supervisors, which hearing will be separately scheduled and noticed in accord with A.R.S. §49-479, and, where applicable, the requirements of 40 C.F.R. §51.102. That hearing before the Board of Supervisors is tentatively scheduled for December 10, 2008.

(2) Access to Copies of Proposal; Communications. Persons may obtain a full copy of the proposed rules, existing rules, or other relevant information from Scott DiBiase, Planning Manager, Pinal County Air Quality, 31 North Pinal St., Building F, Florence, Arizona, 520-866-6929. To the extent possible, the District will also post information on the County's website, www.pinalcountyaz.gov, under the "air quality" link.

(3) Date, time, and location of further proceedings: scheduled public workshops and hearings:

a. Oral Proceeding. An oral proceeding is scheduled for November 6, 2008, 9:00 a.m. at the Emergency Operations Center Hearing Room, Administration Building F, 31 North Pinal Street, Florence, Arizona. The nature of the meeting will be an oral proceeding before the Control Officer or his designee, in accord with A.R.S. §49-471.06(C) to consider public comments upon any or all of this proposal.

b. Board of Supervisors Hearing (Tentative). A hearing before the Board of Supervisors is tentatively scheduled for December 10, 2008, 9:30 a.m., at the Board of Supervisors Hearing Room, Administration Building A, 31 North Pinal Street, Florence, Arizona. The nature of the meeting will be a public hearing pursuant to A.R.S. §49-471.07 and 49-479 to consider adoption or rejection of any or all of this proposal.

(4) Proposed Effective Date. In accord with A.R.S. §49-471.07(F), except as specifically provided otherwise, the proposed changes will take effect upon approval by the Board of Supervisors.

D. Supporting Studies. There are no specific studies relied upon to justify the proposed changes.

E. Economic, Small Business and Consumer Impact Statement. A.R.S. §49-471.05.6; A.R.S. §41-1055(A), (B) and (C).

(1) This Impact Statement is included within the notice of proposed rulemaking, and identifies those who may be burdened by the proposed rules. Given the supervening mandate from the EPA to adopt these revisions, this statement makes no attempt to engage in detailed conjecture about the actual future economic impact of the proposal. Lastly, if any person wishes to request or submit further information regarding this Impact Statement, they

may contact the District's Planning Manager, identified above.

- (2) Economic, Small Business and Consumer Impact Statement.
 - a. Identification of the proposed rulemaking; see ¶1 of this Preamble.
 - b. Identification of persons affected by, bearing costs as a result of, or benefitting from the proposed rule. Those engaging in "agricultural practices" and the implementing agency will potentially be affected by, and bear costs, as a result of this proposal. Citizens should benefit from cleaner air. The community at large should benefit by avoiding the threatened sanctions under the Clean Air Act. However, since the underlying rule is already in place, and inclusion in the SIP will not in and of itself impose any additional burdens, the incremental costs and benefits of this change are not expected to be large.
 - c. A cost benefit analysis follows, projecting:
 - i. Costs and benefits to the implementing agency and other agencies. Pinal County Air Quality is an operating division of Pinal County, a political subdivision of the State of Arizona. As such, the implementing department is not technically an "agency." Still, from the perspective of the implementing department, no significant change is expected as a result of this revision.
 - ii. Costs and benefits to political subdivisions. This revision is not expected to impact political subdivisions.
 - iii. Costs and benefits to businesses. Since the underlying rule is an existing provision, additional costs, burdens or benefits should not be significant. Also see community-wide benefits, below.
 - iv. Community-wide benefits. The principal benefit to citizens, businesses and the community at large from this change will involve avoiding sanctions and direct regulation under a FIP promulgated by the EPA.
 - d. A projection of impact on private and public employment among affected public and private entities. No impact is anticipated.
 - e. A projection of probable impact on small businesses, including consideration of possible exemption of or cost mitigation for such businesses, as well as a projection of costs and benefits to consumers. Given that A.R.S. §49-479 requires that Pinal County's rules be at least as stringent as those of ADEQ, Pinal County lacks discretion to relax the underlying standard. And the EPA's mandate to incorporate the rule into the SIP left no room for exemption. Accordingly there does not appear to be a viable window for exempting small businesses. As to consumer costs and benefits, see ¶ c. above.
 - f. A projection of probable effect on state revenues. No impacts are anticipated.
 - g. A description of less intrusive ways to achieve the stated objective. Given that the nature of the mandate from the EPA, there is no way to respond to that mandate with a less intrusive program.
- (3) Data Limitations. Aside from the obvious conclusion that inclusion of the underlying rule as a SIP element will open the door to potential enforcement by the EPA Administrator and/or citizen suit, Pinal County lacks any means to project detailed future costs for implementation of these revisions. On the other hand, since the EPA has threatened to impose BACM by means of a FIP if the County does not act, it would seem that the inevitable burdens on affected persons and parties will not differ substantially whether these requirements are imposed by a local governing body or by the EPA.

F. Other Matters

- (1) Justification for "As Stringent" Rules; A.R.S. §49-112. To the extent the underlying rule reflects ADEQ's rules, Pinal County's election to formally designate SIP provisions by rule does still not make the rule "more stringent" than the equivalent ADEQ rule.
- (2) Compliance With the Fee-limitations of A.R.S. §49-112 (A) or (B). Based on information and belief, the Director of the Pinal County Air Quality Control District affirms that implementation of the underlying rule does not involve fees, and the SIP-submittal of that rule therefore does not implicate fee-issues under A.R.S. §49-112.
- (3) Prior AAR Notices. The underlying rules were revised in 2002. 9 A.A.R. 186 (1/24/2003).

2. The full text of the proposed changes follows:

1-1-105. SIP list

- A. As a declaration of Board policy rather than a rule, and subject to the limitations of paragraphs B. and C. of this section, the Board of Supervisors expressly designates the following list of sections within this Code, to be presented to the Governor of Arizona for transmittal to the Administrator of the EPA with a request that they be included as elements in the Arizona SIP:
 1. Chapter 1
 - a. Article 1.(As amended 5/14/97 and 5/27/98), except for §§1-1-105 and 1-1-107.
 - b. Article 2 (As amended 5/14/97 and 7/12/00) except for §1-2-110.
 - c. Article 3. (As amended 5/14/97, 5/27/98 and 10/27/04, except for §1-3-130 and the definition in §1-3-140.82 (10/12/95) of "maximum achievable control technology.")
 2. Chapter 2
 - a. Article 1. (As amended 10/12/95).

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- b. Article 2. (As amended 5/14/97).
 - c. Article 3. (As amended 10/12/95).
 - d. Article 4. (As amended 10/12/95).
 - e. Article 5. (As amended 10/12/95).
 - f. Article 6. (As amended 10/12/95).
 - g. Article 7. (As amended 10/12/95).
 - h. Article 8. (As amended 5/18/05).
3. Chapter 3
- a. Article 1. (As amended 5/14/97, and 5/27/98 and 7/12/00), excluding:
 - i. §3-1-020
 - ii. §3-1-045
 - iii. §3-1-080
 - iv. §3-1-100
 - b. Article 2. (As amended 10/12/95, 5/27/98 and 7/29/98).
 - c. Article 3. (As amended 10/12/95).
 - d. Article 8. (As amended 10/12/95 and 10/27/04).
4. Chapter 4
- a. Article 1. (As amended 2/22/95).
 - b. Article 2. (As amended 5/14/97, 7/12/00, 12/4/02 and 10/27/04, ~~excluding §§4-2-020 and 4-2-030~~).
- B. Notwithstanding the approval as elements of the SIP of those provisions of the Code identified in paragraph A of this section, those provisions, save §3-1-084 which shall be expressly exempted from the limitation of this paragraph, shall operate as elements of the SIP only insofar as they pertain to:
- 1. "construction," as defined in Nov. '93 Code §1-3-140.28; or
 - 2. "modification," as defined in Nov. '93 Code §1-3-140.85; and
- C. Notwithstanding the approval as elements of the SIP of those provisions of the Code identified in paragraph A of this section, neither those provisions nor any permit conditions imposed pursuant to those provisions shall:
- 1. Operate as elements of the SIP insofar as they pertain to other than "conventional pollutants," as defined in §1-3-140.33;
 - 2. Operate as elements of the SIP insofar as they pertain only to a requirement arising under, or pertain to a source subject to regulation exclusively by virtue of a requirement arising under:
 - a. §111 of the Clean Air Act; or
 - b. Title IV of the 1990 amendments to the Clean Air Act; or
 - c. Title VI of the 1990 amendments to the Clean Air Act; or
 - d. Any section of this Code that is not a part of the SIP;
 - 3. Operate as an element of the SIP, at least insofar as they impose a "fee";
 - 4. Operate as an element of the SIP, at least insofar as they require a "certification";
 - 5. Operate as an element of the SIP, at least insofar as they impose obligations pertaining to "renewals";
 - 6. Operate as an element of the SIP, at least insofar as they impose requirements regarding "excess emissions"; or
 - 7. Operate as an element of the SIP, at least insofar as they impose requirements regarding "compliance plans."
- D. As a renumbering and reconciliation of previously approved SIP provisions as elements of this Code, the Board of Supervisors additionally designates the following list of sections within this Code, to be presented to the Governor of Arizona for transmittal to the Administrator of the EPA with a request that they be included as elements in the Arizona SIP without operational limitation:
- 1. §§1-1-010.C (2/22/95) and 1-1-010.D (2/22/95) *Declaration of Policy*
 - 2. Chapter 2, Article 8 (As amended 5/14/97) *Visibility Limiting Standard*
 - 3. Chapter 3, Article 8 (2/22/95) *Open Burning*
 - 4. [Reserved]
 - 5. [Reserved]
 - 6. [Reserved]
 - 7. [Reserved]
 - 8. [Reserved]
 - 9. [Reserved]
 - 10. [Reserved]
 - 11. [Reserved]
 - 12. §5-18-740 (2/22/95) *Storage of Organic Compounds - Organic Compound Emissions*
 - 13. §5-19-800 (2/22/95) *Loading of Volatile Organic Compounds - Organic Compound Emissions*
 - 14. §5-21-920 (2/22/95) *Fossil Fuel Fired Industrial and Commercial Equipment Standard Applicability*
 - 15. §5-21-930 (2/22/95 and 7/12/00) *Fossil Fuel Fired Industrial and Commercial Equipment Particulate Emission Standard*

16. §5-22-950 (2/22/95) *Fossil Fuel Fired Steam Generator Standard Applicability*
17. §5-22-960 (2/22/95) *Fossil Fuel Fired Steam Generator Sulfur Dioxide Emission Limitation*
18. §5-24-1030.F (2/22/95) *Generally Applicable Federally Enforceable Minimum Standard of Performance - Organic Compound Emissions*
19. §5-24-1030.I (2/22/95) *Generally Applicable Federally Enforceable Minimum Standard of Performance - Carbon Monoxide*
20. §5-24-1032 (2/22/95) *Federally Enforceable Minimum Standard of Performance - Process Particulate Emissions*
21. §5-24-1040 (2/22/95) *Carbon Monoxide Emissions - Industrial Processes*
22. §5-24-1045 (2/22/95) *Sulfite Pulp Mills - Sulfur Compound Emissions*
23. §5-24-1050 (2/22/95, as amended June 20, 1996) *Reduced Sulfur Emissions - Default Limitation*
24. §5-24-1055 (2/22/95) *Pumps and Compressors - Organic Compound Emissions*