

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

### NOTICE OF PUBLIC HEARING

#### MARICOPA COUNTY

#### ENVIRONMENTAL SERVICES DEPARTMENT, AIR QUALITY DIVISION

**1. Heading and number of the proposed rules, ordinance, or other regulations that are the subject to the public hearing:**

Rule 140 (Excess Emissions)

**2. Date, time, and location of public hearing scheduled:**

Date: Wednesday, September 5, 2001

Time: 9:00 a.m.

Location: Maricopa County Board of Supervisors Auditorium  
205 W. Jefferson St.  
Phoenix, Arizona

Nature Of Public Hearing: To discuss and approve the above listed rules

**3. County personnel to whom questions and comments may be addressed:**

Name: Johanna Kuspert, Air Quality Planner

Address: Maricopa County Environmental Services Department  
Air Quality Division  
1001 North Central Avenue, #695  
Phoenix, Arizona 85004

Telephone: (602) 506-6710

Fax: (602) 506-6179

**4. Any other pertinent information concerning the above described rules, ordinance, or other regulations:**

Please refer to the Notice of Proposed Rules that appears in this issue of the *Register* (below).

### NOTICE OF PROPOSED RULE

#### MARICOPA COUNTY

#### ENVIRONMENTAL SERVICES DEPARTMENT, AIR QUALITY DIVISION

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

Rule 140 (Excess Emissions)

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

Maricopa County revised the affirmative defense provisions in Rule 140 (Excess Emissions) in order to match amendments that the Arizona Department of Environmental Quality (ADEQ) made in its rule R18-2-310 (Affirmative Defense For Excess Emissions Due To Malfunctions, Startup, And Shutdown). Maricopa County's revisions are necessary to meet the State Implementation Plan (SIP) requirements under the Environmental Protection Agency's (EPA's) clarifying policy on affirmative defense mechanisms for SIPs ("State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, And Shutdown", August 11, 1999). When final, Rule 140 will continue the affirmative defense for certain excess emissions due to malfunctions, startups, and shutdowns, and will clarify when an affirmative defense can be used and the steps a source must take to utilize an affirmative defense.

Currently, Rule 140 allows an affirmative defense for certain types of excess emissions during scheduled maintenance, if "greater or more extended excess emissions would result unless scheduled maintenance is performed". In order to facilitate EPA approval of Rule 140 in the SIP, Maricopa County deleted the scheduled maintenance provision in Rule 140. While a scheduled maintenance affirmative defense will not be available, Maricopa County will still have enforcement action discretion, both in situations that would have previously allowed the defense and in situations that would not have.

The revisions to Rule 140 specify that an affirmative defense is available in any civil or administrative proceeding (other than a proceeding for injunctive relief) upon the owner or operator demonstrating and agreeing to specific conditions (affirmative defenses in criminal proceedings are contained in Arizona Revised Statutes § 49-464(P), (Q), and

County Notices Pursuant to A.R.S. § 49-112(A) or (B)

(R) and in A.R.S. § 49-514(O), (P), and (Q)). Rule 140 requires that before owners and/or operators are granted an affirmative defense, they must demonstrate that the source's equipment and operations during malfunction, startup, and shutdown provided maximum protection to public health and the ambient air quality.

In Rule 140, the majority of conditions for an affirmative defense relating to malfunction, startup, and shutdown are identical. Rule 140, while recognizing the inevitability of these events, requires owners and/or operators to maximize their planning efforts and to anticipate their responses, whether the event is a malfunction, startup, or shutdown.

Overall, the proposed revisions to Rule 140 clarify those conditions under which a source may obtain an affirmative defense if the source exceeds applicable emission limitations due to malfunction, startup, or shutdown.

The addition of Section 103 (Exemptions) should resolve the issue of providing an affirmative defense for noncompliance with Federal applicable requirements. The Federal emission standards or limits listed in Rule 140, Section 103 are excluded from Rule 140. Regarding the text of Rule 140, Subsection 103.3: "[Rule 140 does not apply to standards and limitations] Contained in any Prevention Of Significant Deterioration (PSD) or New Source Review (NSR) permit issued by the Environmental Protection Agency (EPA)", the exemption includes delegated permits. Consequently, Rule 140 does not apply to standards and limitations contained in PSD and NSR permits issued for EPA by the State or County. PSD permits are issued for EPA by Maricopa County, pursuant to a delegation agreement that Maricopa County has with EPA.

The revisions to Rule 140, Section 401 (Affirmative Defense for Malfunctions) and the revisions to Rule 140, Section 402 (Affirmative Defense for Startup and Shutdown) specify the criteria that an owner and/or operator must meet in order to obtain an affirmative defense in a civil or administrative enforcement proceeding.

The revisions to Rule 140, Section 500 (Monitoring and Records) are mainly formatting. Section 500 maintains the existing language that establishes a two-part reporting requirement for an owner and/or operator following an excess emissions event. The first reporting requirement requires notification by phone or fax within 24 hours of the event and the second reporting requirement requires that a written report be submitted to the Control Officer within 72 hours.

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

The Control Officer of the Maricopa County Environmental Services Department affirms the following:

Pursuant to A.R.S. § 49-112(A), as enacted in 1994, Maricopa County may adopt rules that are more stringent than or in addition to a provision of the State, provided that the rule is necessary to address a peculiar local condition; and if it is either necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible or if it is required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement with the federal government to enforce federal statutes or regulations if the county rule is equivalent to federal statutes or regulations; and if any fee adopted under the rule will not exceed the reasonable costs of the county to issue and administer that permit program.

Maricopa County is in compliance with A.R.S. § 49-112(A) in that Maricopa County is proposing to adopt revisions to Rule 140 that are not more stringent than nor are in addition to, but rather are consistent with, a provision 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.

The Section 112(B) demonstration does not apply because this particular rule is in that portion of Maricopa County's air quality program, which is administered under direct statutory authority. Therefore, this rule is not being adopted/revised in lieu of a state program.

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

Name: Johanna Kuspert, Air Quality Planner  
Address: Maricopa County Environmental Services Department  
Air Quality Division  
1001 North Central Avenue, #695  
Phoenix, AZ 85004  
Telephone: (602) 506-6710  
Fax: (602) 506-6179

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

Name: Maricopa County Environmental Services Department  
Air Quality Division

County Notices Pursuant to A.R.S. § 49-112(A) or (B)

Address: 1001 North Central Avenue #201  
Phoenix, AZ 85004  
Telephone: (602) 506-6010  
Fax: (602) 506-6179

**NOTICE OF PROPOSED RULE ADOPTION AND PUBLIC HEARING**

**PINAL QUALITY AIR QUALITY CONTROL DISTRICT**

**1. Statutory Authority**

Generally, see Arizona Revised Statutes (“A.R.S.”) Title 49, Chapter 3, Article 3, which affords the Board of Supervisors authority to adopt rules and implement a permitting program. Specifically, see A.R.S. §§ 49-112, 49-479 and 49-480.

**2. Contact for Further Information**

See Sections 11 and 12 below.

**3. Description of the Rulemaking Process; Finding Regarding Expedited Rulemaking**

County rules are adopted by the Board of Supervisors. See Section 13.B below for a scheduled oral proceeding/workshop to publicly discuss these changes, and Section 13.A below for the date of the hearing before the Board of Supervisors.

As more fully explained below, the Control Officer finds that the actions proposed here merely conform to the requisites of federal law, as those requisites were set forth in the EPA’s interim approval notice pertaining to the County’s Title V permit program; see 61 Fed. Reg. 55910 (10/30/96). The only action proposed here is to change the effective date of the County’s already adopted changes, in order to meet a deadline for EPA action. Accordingly, the Control Officer finds that this action is necessary and does not alter the sense, meaning or effect of the federal law from which it is derived. Since the County’s permit fee rules effectively cap County fees at the levels imposed by ADEQ, the Control Officer further finds that any associated fees do not exceed limits established in A.R.S. § 49-112.

**4. Explanation of and Justification for the Rules and/or Rule Revisions**

4.A List of Sections Affected

Chapter 1 - General Provisions and Definitions, Article 3. Definitions.

§ 1-3-140(79)(b)(i) and (c). Definitions (Major Source) Amend

Chapter 3 - Permits and Permit Revisions, Article 1. General Provisions Relating to Permits and Permit Revisions,

§ 3-1-040.C. Applicability and Classes of Permits (Exemptions). Amend

§ 3-1-045. Transition from Installation and Operating Permit Program. Amend

§ 3-1-050. Permit Application Requirements Amend

§ 3-1-081.A.10 Permit Conditions. Amend

§ 3-1-081.A.14 Permit Conditions. Amend

Chapter 3 - Permits and Permit Revisions, Article 4. Conditional Orders

§ 3-4-420. Conditional Orders. Amend

Chapter 3 - Permits and Permit Revisions, Article 5. General Permits

§ 3-5-490.C Application for Coverage Under General Permit. Amend

§ 3-5-550.C Revocations of Authority to Operate Under a General Permit. Amend

4.B Background

This revision proposal merely removes EPA SIP-program approval as a condition precedent to the effectiveness of a number of rules that have previously been adopted subject such a condition.

This revision proposal arises as a result of litigation involving the EPA and other third parties. That litigation resulted in a judicial decree that requires that by approximately December 1, 2001, the EPA must take final action with regard to “Title V program” approvals. Apparently, lack of EPA approval by that date will result in imposition of an EPA-administered “Part 71 operating permit program.” That deadline applies to final approval of Pinal County’s “Title V

program,” which currently enjoys interim approval from the EPA.

Over the course of the last several years, the Board of Supervisors has already adopted conditional rule revisions that should resolve the various interim approval issues raised by the EPA.

The substance of each of those underlying revisions, as well as the need for those changes, has already been explained at length in prior notices published in the Arizona Administrative Register (“A.A.R.” or “Register”). For information regarding the substance of the already-adopted rules, see 1 A.A.R. 17 (1/20/95); 1 A.A.R. 1564 (9/8/95); 3 A.A.R. 1062 (4/11/97); 4 A.A.R. 962 (4/24/98); 4 A.A.R. 1512 (6/26/98); 6 A.A.R. 1677 (5/5/00); 6 A.A.R. 1939 (5/26/00); 7 A.A.R. 1782 (4/27/01). Also see Section 8 below. To the extent necessary, each of those explanations is hereby incorporated by reference.

The effectiveness of each of the changes embodied in those prior actions by the Board of Supervisors was conditioned upon EPA approval of corresponding “program” changes. Specifically, the prior changes were conditioned upon EPA approval of corresponding revisions to the County’s “Title V operating permit program” and “SIP-approved construction permitting program.” Both of those programs are explained below.

In effect, this current proposal merely removes EPA SIP-approval as a condition precedent to those changes taking legal effect. This current proposal does not change the substance of the revisions previously adopted by the Board of Supervisors.

In the United States, air quality regulation has evolved into a two-tiered regulatory structure.

For many years, states, exercising their inherent police powers, have regulated air pollution in order to protect the health, safety and welfare of local citizens.

More recently, apparently acting under authority of the Commerce Clause of the United States Constitution, the federal government has adopted a number laws pertaining to air quality, collectively known as the Clean Air Act (“CAA”). The CAA includes standards that directly apply to affected sources. The CAA also requires that states adopt a number of programs. Those obligatory programs include “state implementation plans” or “SIPs,” as well as a “Title V permit program.”

Even without the benefit of federal mandates, the Arizona legislature developed air quality regulatory programs for the benefit of the citizens of Arizona. Generally, see Arizona Revised Statutes Title 49, Chapter 3.

Acting under the authority granted by the legislature, the Pinal County Board of Supervisors has adopted rules establishing a permitting program for certain classes of stationary sources. See A.R.S. §§ 49-479 and 49-480, and the Pinal County Air Quality Control District Code of Regulations. Permits issued under that county program constitute “unitary” permits, conferring authority to construct as well as operate a source.

In defining the obligatory SIP program, the CAA requires states, acting either directly or through empowered political subdivisions, to develop and implement an EPA-approved “new source review” or construction permitting program for major emitting sources. Regarding attainment area requirements, see CAA § 161 et seq., and notably CAA § 165, and 40 C.F.R. § 51.166, which collectively define the requirements for a “PSD permit program.” Regarding non-attainment area requirements, see CAA § 171 et seq., and notably CAA § 173, as well as 40 C.F.R. § 51.165, which collectively define the requirements for a “nonattainment NSR program.” Together, the “PSD permitting program” and the “nonattainment NSR program” are referred to as a “major NSR program.”

In defining the obligatory SIP program, the CAA also requires states to develop and implement an EPA-approved “program to provide for... regulation of the modification and construction of any stationary source... to assure that national ambient air quality standards are achieved ....” See CAA § 110(a)(2)(C). Such a preconstruction review program is referred to as a “minor NSR program,” in that it affects sources and changes that do not themselves trigger “major NSR.”

Approval as a SIP program element is achieved when the underlying local rules are adopted by reference by the EPA by publication in the Federal Register. That action makes the local programs independently enforceable as a matter of federal law. Correspondingly, a subsequent change in local rules, without a corresponding change in the SIP-approved program, will produce differing, but still enforceable, versions of the same set of rules. Obviously, having different sets of enforceable rules would constitute a less-than-ideal situation.

The CAA also requires states to either directly or indirectly develop and implement an EPA-approved operating permit program, commonly referred to as a “Title V operating permit program.” See CAA Subchapter 5, also commonly referred to as “CAA Title V” by virtue of its adoption as Title V of the Clean Air Act Amendments of 1990. See CAA § 501 et seq., and 40 C.F.R. Part 70, which in combination define the requirements for an approvable program. All sources subject to a major NSR permit requirement must obtain a Title V permit. So must “major sources” defined

under either CAA § 302(j), as well as a number of other sources.

Changing the locally enforceable provisions of an approved Title V permit program, without obtaining a corresponding EPA-approval for a program revision, potentially constitutes grounds for the EPA to revoke or rescind the approval of that local program. Aside from any possible adverse action by the EPA, having an EPA-approved program that does not comport with the prevailing local program would again constitute a less-than-ideal situation.

Since Pinal County has but one “unitary” permitting program, there exists substantial overlap amongst the rules submitted for EPA approval as elements of the major NSR construction permit program, the minor NSR construction permit program, and the Title V operating permit program. As a result, a single change in the local rules potentially requires separate EPA approvals of revisions to both the SIP construction programs and the Title V operating permit program.

The EPA approved the County’s PSD and minor NSR permitting programs in 1996, covering rules and changes adopted through 10/12/95. See 61 Fed. Reg. 15717 (4/9/96).

The EPA also conferred interim approval on Pinal County’s Title V permitting program in 1996, covering rules and changes adopted through 2/22/95. See 61 Fed. Reg. 55910 (10/30/96).

Since those 1996 EPA approval actions, the Board of Supervisors has continued to periodically consider and approve conditional revisions to local rules, including those rules affected by either or both of the interim Title V approval and the SIP NSR approvals. Those changes responded to the issues noted by the EPA in the Title V interim approval notice, addressed other changes in federal law, and also addressed the requirements of A.R.S. §§ 49-479 and 49-480 to substantially track ADEQ’s rule changes.

To assure that the county has but only one set of enforceable rules at a given time, and thereby avoid the problems that would inherently arise if the county had multiple sets of different but still legally enforceable rules, actions by the Board of Supervisors since 1995 have consistently conditioned the effectiveness of those rule revision changes upon EPA approval of corresponding revisions to the SIP-approved permit programs, as well as EPA approval of corresponding revisions to the County’s Title V permit program.

With the exception of the changes adopted by the Board of Supervisors on July 12, 2000 and May 30, 2001, each of the changes was assembled with the requisite supporting materials, and submitted through the designee of the Governor of the State of Arizona, namely the ADEQ Director, with a request that the EPA approve corresponding SIP and Title V program revisions. Pinal County is currently preparing a submittal package to convey those last two revision actions to the EPA, again for approval as both Title V program changes and as NSR program changes.

With those most recent changes, Pinal County believes that all of the issues noted in the EPA’s 10/30/96 Title V interim approval notice have been addressed. Of course, by the terms of the resolutions-of-adoption, each of those changes remains contingent upon EPA approval of corresponding Title V and SIP-approved NSR program revisions.

However, the EPA has indicated to the County that before December 1, 2001, the EPA will not have time to process the SIP revisions required to make those conditional adoptions fully effective. Such a SIP-approval is necessary, because EPA approval of the corresponding Title V program revisions would satisfy only one of the two conditions adopted by the Board of Supervisors in proposing those changes.

Therefore, if Pinal County does not act to remove the SIP-approval conditions, the necessary rule changes will not be fully effective prior to the December 1, 2001 deadline for the EPA to act to fully approve the County’s Title V program. That lack of SIP approval would require disapproval of the County’s Title V program, even though the rules themselves would otherwise satisfy all of the requirements for Title V program approval.

Thus, Pinal County must either remove the SIP-approval condition, or risk almost certain disapproval of the County’s Title V permit program.

Given that Hobson’s choice, Pinal County’s staff is recommending that the Board of Supervisors re-adopt identical versions those specific changes required in order to resolve the specific issues raised in the 10/30/96 interim approval notice, without conditioning those changes upon a prior EPA-approval of corresponding revisions to the SIP.

**5. A List of all Studies Regarding Evaluation of or Justification for the Proposed Revisions.**

Generally, see 61 Fed. Reg. 55910 (10/30/96).

**6. Economic, Small Business and Consumer Impact Statement**

Requests for additional information or comment regarding the economic, small business or consumer impact of this action may be directed to the contact person listed below in Section 11.

Persons affected by this action will be those individuals and entities that require a permit under the provisions of

County Notices Pursuant to A.R.S. § 49-112(A) or (B)

“Title V” of the Clean Air Act, and the implementing federal regulations, namely 40 C.F.R. Part 70.

The costs to the County, as a political subdivision, will be those continuing costs required to administer the “Title V” aspect of the County’s permitting program. On the other hand, the County has corresponding authority to collect permit fees, which will balance out the costs to the County. Hence, the costs and benefits of this action should balance.

The costs to affected businesses will reflect the permit fees imposed by the County. On the other hand, if the County was not administering this program, ADEQ would be. And since the County’s rules effectively cap local fees at the level imposed by ADEQ, in the long run there will be no net additional fee impact on affected sources, and those sources may in fact benefit where the County’s fees are lower than those of ADEQ. Whether administered by the County or by others, an approved permit program will enable sources to stay in compliance with the requirement to have a current and valid permit.

Affected small businesses are those which must have a “Title V” air quality permit. To the extent that the underlying federal regulations are prescriptive in defining who must have a Title V permit, and A.R.S. § 49-480 effectively requires that the County’s Title V permit program substantially conform to that of ADEQ, the County has very limited authority to attempt to mitigate or reduce program costs as they may affect small businesses.

This action will have no effect on state revenues.

Given the underlying mandate for a “Title V” permit program, the County does not know of any less intrusive or less costly alternative methods of achieving the purpose of this action.

**7. Proposed Effective Date**

These changes shall be effective upon the EPA’s approval of corresponding revisions to the County’s “Title V” permitting program.

**8. A list of all previous notices appearing in the Register addressing the proposed rules:**

See 1 A.A.R. 17 (1/20/95); 1 A.A.R. 1564 (9/8/95); 3 A.A.R. 1062 (4/11/97); 4 A.A.R. 962 (4/24/98); 4 A.A.R. 1512 (6/26/98); 6 A.A.R. 1677 (5/5/00); 6 A.A.R. 1939 (5/26/00); 7 A.A.R. 1782 (4/27/01).

**9. Summary of Proposed Rules and Rule Changes, any of which may be adopted in whole or part:**

9.A Summary of Proposed Rules and Rule Changes

See Sections 4 and 8 above.

9.B Text of Proposed Rules and Rule Changes

Relative to the rules already conditionally adopted by the Board of Supervisors, there are no text changes associated with this proposed revision. The only change under this proposal deals with elimination of the requirement for EPA-approval of a corresponding SIP revision as a condition precedent to the effectiveness of the already adopted revisions discussed above.

**10. A demonstration of the grounds and evidence of compliance with A.R.S. § 49-112 (A) or (B):**

Based on information and belief, the Director of the Pinal County Air Quality Control District affirms the following:

A. Initially, the total of the fees and other charges currently assessed in connection with the administration of the County’s air quality program do not now equal the cost of program administration. The County and ADEQ impose substantially parallel fees. To the extent that they differ, the County’s fees are capped by rule at ADEQ’s rates, which implicitly affirms that the County’s fees are reasonable.

B. Based on a review of the operating costs of the Pinal County Air Quality Control District, and any reasonable projection of total of revenues resulting from the fees and other charges that would be assessed under any or all of the rule revisions proposed above, the Control Officer finds that there is no real risk that revenues will exceed the cost of program administration. The continuing fee-cap, defined by ADEQ’s fee rates, continues to implicitly assure the reasonableness of the County’s fees. Thus, implementation of any or all of the rule changes proposed above will still not violate the fee-limitations of either A.R.S. §§ 49-112(A)(3) or 49-112(B).

**11. Name and address of the person to whom persons may address questions, requests for information or comments:**

Name: Donald P. Gabrielson, Director  
Address: Pinal County Air Quality Control District  
P.O. Box 987  
Florence, AZ 85232  
Telephone: (520) 868-6929  
Fax: (520) 868-6967

**12. Where persons may obtain a full copy of the proposed rule or existing rules:**

Name: Pinal County Air Quality Control District  
Address: P.O. Box 98731 N. Pinal Street, Building F  
Florence, AZ 85232  
Telephone: (520) 868-6929  
Fax: (520) 868-6967

Note: The District has the proposed revisions, as well as supporting materials, available in hard-copy or on disk.

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

13.A. Public Hearing

Date: September 5, 2001  
Time: 10:00 a.m.  
Location: Board of Supervisor's Hearing Room  
Administration Building No. 1  
31 North Pinal Street  
Florence, AZ

Nature of meeting: Public hearing as an element of the regular meeting of the Pinal County Board of Supervisors, to consider formal adoption of some, all or none of the proposed revisions

13.B. Public Stakeholder Workshop

Date: August 21, 2001  
Time: 1:00 p.m.  
Location: Board of Supervisor's Hearing Room  
Administration Building No. 1  
31 North Pinal Street  
Florence, AZ

Nature of meeting: PCAQCD has scheduled a stakeholder's workshop to allow the public to offer comment on and discuss the rules and revisions identified above before they are considered in a formal hearing before the Board of Supervisors.

**NOTICE OF PUBLIC INFORMATION**

**PINAL QUALITY AIR QUALITY CONTROL DISTRICT**

- 1. Title and its heading:** Pinal County Air Quality Control District Code of Regulations  
**Chapter and its heading:** 1, General Provisions and Definitions  
3, Permits and Permit Provisions  
**Articles and their headings:** 1, General Provisions Relating to Permits and Permit Revisions  
4, Conditional Orders  
5, General Permits  
**Section Numbers:** §§ 1-3-140(79)(b)(i), 1-3-140(79)(c), 3-1-040.C.1, 3-1-045.F.1, 3-1-050.C.2,  
3-1-081.A.10, 3-1-081.A.14, 3-4-420, 3-5-490.C., and 3-5-550.C.

**2. The public information relating to the listed sections:**

This provides notice that a public hearing has been scheduled for **Wednesday, September 5, 2001, to begin at 10:00 a.m.** at the following location: Pinal County Board of Supervisor's Hearing Room, Administration Building No. 1, 31 North Pinal Street, Florence, Arizona 85232.

Public Hearing:

Date: September 5, 2001  
Time: 10:00 a.m.  
Location: Pinal County Board of Supervisor's Hearing Room  
Administration Building No. 1  
31 North Pinal Street  
Florence, AZ 85232

County Notices Pursuant to A.R.S. § 49-112(A) or (B)

**3. The name and address of agency personnel with whom persons may communicate regarding the public information:**

Name: Don Gabrielson, Director  
Telephone: (520) 868-6929  
Address: Pinal County Air Quality Control  
P.O. Box 987  
Florence, AZ 85232  
Fax: (520) 868-6967

**4. The time during which the agency will accept written comments or questions about the public information and the time and place where oral comments or questions may be made:**

Individuals interested in providing public comment can attend the public hearing in Florence, Arizona on the date and at the time and address provided in question #2. PCAQCD has scheduled a **stakeholders workshop** to allow the public to offer comment on and discuss the rules and revisions identified above before they are submitted in final draft form to the Board of Supervisors. The **workshop is scheduled at 1:00 p.m. on August 21, 2001, and will be held at the Pinal County Complex in Florence, Arizona, Board of Supervisor's Hearing Room, Administration Building No. 1, 31 North Pinal Street, Florence, Arizona.** Written comments shall be submitted not later than 5:00 p.m., Wednesday, September 5, 2001, to the following person:

Name: Don Gabrielson, Director  
Address: Pinal County Air Quality Control  
P.O. Box 987  
Florence, AZ 85232  
Telephone: (520) 868-6929  
Fax: (520) 868-6967

**NOTICE OF PUBLIC INFORMATION**

**PINAL QUALITY AIR QUALITY CONTROL DISTRICT**

- 1. Title and its heading:** Pinal County Air Quality Control District Code of Regulations  
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4, Conditional Orders  
5, General Permits  
**Section Numbers:** §§ 1-3-140(79)(b)(i), 1-3-140(79)(c), 3-1-040.C.1, 3-1-045.F.1, 3-1-050.C.2, 3-1-081.A.10, 3-1-081.A.14, 3-4-420, 3-5-490.C., and 3-5-550.C.

**2. The public information relating to the listed sections:**

This provides notice that a public hearing has been scheduled for **Wednesday, September 5, 2001, to begin at 10:00 a.m.** at the following location: Pinal County Board of Supervisor's Hearing Room, Administration Building No. 1, 31 North Pinal Street, Florence, Arizona 85232.

Public Hearing:  
Date: September 5, 2001  
Time: 10:00 a.m.  
Location: Pinal County Board of Supervisor's Hearing Room  
Administration Building No. 1  
31 North Pinal Street  
Florence, AZ 85232

**3. The name and address of agency personnel with whom persons may communicate regarding the public information:**

Name: Don Gabrielson, Director  
Address: Pinal County Air Quality Control  
P.O. Box 987  
Florence, AZ 85232  
Telephone: (520) 868-6929



Fax: (520) 868-6967

**4. The time during which the agency will accept written comments or questions about the public information and the time and place where oral comments or questions may be made:**

Individuals interested in providing public comment can attend the public hearing in Florence, Arizona on the date and at the time and address provided in question #2. PCAQCD has scheduled a **stakeholders workshop** to allow the public to offer comment on and discuss the rules and revisions identified above before they are submitted in final draft form to the Board of Supervisors. The **workshop is scheduled at 1:00 p.m. on August 21, 2001, and will be held at the Pinal County Complex in Florence, Arizona, Board of Supervisor's Hearing Room, Administration Building No. 1, 31 North Pinal Street, Florence, Arizona.** Written comments shall be submitted not later than 5:00 p.m., Wednesday, September 5, 2001, to the following person:

Name: Don Gabrielson, Director  
Address: Pinal County Air Quality Control  
P.O. Box 987  
Florence, AZ 85232  
Telephone: (520) 868-6929  
Fax: (520) 868-6967

**NOTICE OF PROPOSED RULE ADOPTION AND PUBLIC HEARING**

**PINAL QUALITY AIR QUALITY CONTROL DISTRICT**

**1. Statutory Authority**

Generally, see Arizona Revised Statutes ("A.R.S.") Title 49, Chapter 3, Article 3, which affords the Board of Supervisors authority to adopt rules and implement a permitting program. Specifically, see A.R.S. §§ 49-112, 49-479 and 49-480.

**2. Contact for Further Information**

See Sections 11 and 12 below.

**3. Description of the Rulemaking Process: Finding Regarding Expedited Rulemaking**

County rules are adopted by the Board of Supervisors. See Section 13.B below for a scheduled oral proceeding/workshop to publicly discuss these changes, and Section 13.A below for the date of the hearing before the Board of Supervisors.

As more fully explained below, the Control Officer finds that the actions proposed here merely conform to the requisites of federal law, as those requisites were set forth in the EPA's interim approval notice pertaining to the County's Title V permit program; see 61 Fed. Reg. 55910 (10/30/96). The only action proposed here is to change the effective date of the County's already adopted changes, in order to meet a deadline for EPA action. Accordingly, the Control Officer finds that this action is necessary and does not alter the sense, meaning or effect of the federal law from which it is derived. Since the County's permit fee rules effectively cap County fees at the levels imposed by ADEQ, the Control Officer further finds that any associated fees do not exceed limits established in A.R.S. § 49-112.

**4. Explanation of and Justification for the Rules and/or Rule Revisions**

**4.A List of Sections Affected**

Chapter 1 - General Provisions and Definitions, Article 3. Definitions.

§ 1-3-140(79)(b)(i) and (c). Definitions (Major Source). Amend

Chapter 3 - Permits and Permit Revisions, Article 1. General Provisions Relating to Permits and Permit Revisions,

§ 3-1-040.C. Applicability and Classes of Permits (Exemptions). Amend

§ 3-1-045. Transition from Installation and Operating Permit Program. Amend

§ 3-1-050. Permit Application Requirements. Amend

§ 3-1-081.A.10 Permit Conditions. Amend

§ 3-1-081.A.14 Permit Conditions. Amend

Chapter 3 - Permits and Permit Revisions, Article 4. Conditional Orders

§ 3-4-420. Conditional Orders. Amend

Chapter 3 - Permits and Permit Revisions, Article 5. General Permits

§ 3-5-490.C Application for Coverage Under General Permit. Amend

§ 3-5-550.C Revocations of Authority to Operate Under a General Permit. Amend

4.B Background

This revision proposal merely removes EPA SIP-program approval as a condition precedent to the effectiveness of a number of rules that have previously been adopted subject such a condition.

This revision proposal arises as a result of litigation involving the EPA and other third parties. That litigation resulted in a judicial decree that requires that by approximately December 1, 2001, the EPA must take final action with regard to "Title V program" approvals. Apparently, lack of EPA approval by that date will result in imposition of an EPA-administered "Part 71 operating permit program." That deadline applies to final approval of Pinal County's "Title V program," which currently enjoys interim approval from the EPA.

Over the course of the last several years, the Board of Supervisors has already adopted conditional rule revisions that should resolve the various interim approval issues raised by the EPA.

The substance of each of those underlying revisions, as well as the need for those changes, has already been explained at length in prior notices published in the Arizona Administrative Register ("A.A.R." or "Register"). For information regarding the substance of the already-adopted rules, see 1 A.A.R. 17 (1/20/95); 1 A.A.R. 1564 (9/8/95); 3 A.A.R. 1062 (4/11/97); 4 A.A.R. 962 (4/24/98); 4 A.A.R. 1512 (6/26/98); 6 A.A.R. 1677 (5/5/00); 6 A.A.R. 1939 (5/26/00); 7 A.A.R. 1782 (4/27/01). Also see Section 8 below. To the extent necessary, each of those explanations is hereby incorporated by reference.

The effectiveness of each of the changes embodied in those prior actions by the Board of Supervisors was conditioned upon EPA approval of corresponding "program" changes. Specifically, the prior changes were conditioned upon EPA approval of corresponding revisions to the County's "Title V operating permit program" and "SIP-approved construction permitting program." Both of those programs are explained below.

In effect, this current proposal merely removes EPA SIP-approval as a condition precedent to those changes taking legal effect. This current proposal does not change the substance of the revisions previously adopted by the Board of Supervisors.

In the United States, air quality regulation has evolved into a two-tiered regulatory structure.

For many years, states, exercising their inherent police powers, have regulated air pollution in order to protect the health, safety and welfare of local citizens.

More recently, apparently acting under authority of the Commerce Clause of the United States Constitution, the federal government has adopted a number laws pertaining to air quality, collectively known as the Clean Air Act ("CAA"). The CAA includes standards that directly apply to affected sources. The CAA also requires that states adopt a number of programs. Those obligatory programs include "state implementation plans" or "SIPs," as well as a "Title V permit program."

Even without the benefit of federal mandates, the Arizona legislature developed air quality regulatory programs for the benefit of the citizens of Arizona. Generally, see Arizona Revised Statutes Title 49, Chapter 3.

Acting under the authority granted by the legislature, the Pinal County Board of Supervisors has adopted rules establishing a permitting program for certain classes of stationary sources. See A.R.S. §§ 49-479 and 49-480, and the Pinal County Air Quality Control District Code of Regulations. Permits issued under that county program constitute "unitary" permits, conferring authority to construct as well as operate a source.

In defining the obligatory SIP program, the CAA requires states, acting either directly or through empowered political subdivisions, to develop and implement an EPA-approved "new source review" or construction permitting program for major emitting sources. Regarding attainment area requirements, see CAA § 161 et seq., and notably CAA § 165, and 40 C.F.R. § 51.166, which collectively define the requirements for a "PSD permit program." Regarding non-attainment area requirements, see CAA § 171 et seq., and notably CAA § 173, as well as 40 C.F.R. § 51.165, which collectively define the requirements for a "nonattainment NSR program." Together, the "PSD permitting program" and the "nonattainment NSR program" are referred to as a "major NSR program."

In defining the obligatory SIP program, the CAA also requires states to develop and implement an EPA-approved "program to provide for... regulation of the modification and construction of any stationary source... to assure that national ambient air quality standards are achieved..." See CAA § 110(a)(2)(C). Such a preconstruction review program is referred to as a "minor NSR program," in that it affects sources and changes that do not themselves trigger

“major NSR.”

Approval as a SIP program element is achieved when the underlying local rules are adopted by reference by the EPA by publication in the Federal Register. That action makes the local programs independently enforceable as a matter of federal law. Correspondingly, a subsequent change in local rules, without a corresponding change in the SIP-approved program, will produce differing, but still enforceable, versions of the same set of rules. Obviously, having different sets of enforceable rules would constitute a less-than-ideal situation.

The CAA also requires states to either directly or indirectly develop and implement an EPA-approved operating permit program, commonly referred to as a “Title V operating permit program.” See CAA Subchapter 5, also commonly referred to as “CAA Title V” by virtue of its adoption as Title V of the Clean Air Act Amendments of 1990. See CAA § 501 et seq., and 40 C.F.R. Part 70, which in combination define the requirements for an approvable program. All sources subject to a major NSR permit requirement must obtain a Title V permit. So must “major sources” defined under either CAA § 302(j), as well as a number of other sources.

Changing the locally enforceable provisions of an approved Title V permit program, without obtaining a corresponding EPA-approval for a program revision, potentially constitutes grounds for the EPA to revoke or rescind the approval of that local program. Aside from any possible adverse action by the EPA, having an EPA-approved program that does not comport with the prevailing local program would again constitute a less-than-ideal situation.

Since Pinal County has but one “unitary” permitting program, there exists substantial overlap amongst the rules submitted for EPA approval as elements of the major NSR construction permit program, the minor NSR construction permit program, and the Title V operating permit program. As a result, a single change in the local rules potentially requires separate EPA approvals of revisions to both the SIP construction programs and the Title V operating permit program.

The EPA approved the County’s PSD and minor NSR permitting programs in 1996, covering rules and changes adopted through 10/12/95. See 61 Fed. Reg. 15717 (4/9/96).

The EPA also conferred interim approval on Pinal County’s Title V permitting program in 1996, covering rules and changes adopted through 2/22/95. See 61 Fed. Reg. 55910 (10/30/96).

Since those 1996 EPA approval actions, the Board of Supervisors has continued to periodically consider and approve conditional revisions to local rules, including those rules affected by either or both of the interim Title V approval and the SIP NSR approvals. Those changes responded to the issues noted by the EPA in the Title V interim approval notice, addressed other changes in federal law, and also addressed the requirements of A.R.S. §§ 49-479 and 49-480 to substantially track ADEQ’s rule changes.

To assure that the county has but only one set of enforceable rules at a given time, and thereby avoid the problems that would inherently arise if the county had multiple sets of different but still legally enforceable rules, actions by the Board of Supervisors since 1995 have consistently conditioned the effectiveness of those rule revision changes upon EPA approval of corresponding revisions to the SIP-approved permit programs, as well as EPA approval of corresponding revisions to the County’s Title V permit program.

With the exception of the changes adopted by the Board of Supervisors on July 12, 2000 and May 30, 2001, each of the changes was assembled with the requisite supporting materials, and submitted through the designee of the Governor of the State of Arizona, namely the ADEQ Director, with a request that the EPA approve corresponding SIP and Title V program revisions. Pinal County is currently preparing a submittal package to convey those last two revision actions to the EPA, again for approval as both Title V program changes and as NSR program changes.

With those most recent changes, Pinal County believes that all of the issues noted in the EPA’s 10/30/96 Title V interim approval notice have been addressed. Of course, by the terms of the resolutions-of-adoption, each of those changes remains contingent upon EPA approval of corresponding Title V and SIP-approved NSR program revisions.

However, the EPA has indicated to the County that before December 1, 2001, the EPA will not have time to process the SIP revisions required to make those conditional adoptions fully effective. Such a SIP-approval is necessary, because EPA approval of the corresponding Title V program revisions would satisfy only one of the two conditions adopted by the Board of Supervisors in proposing those changes.

Therefore, if Pinal County does not act to remove the SIP-approval conditions, the necessary rule changes will not be fully effective prior to the December 1, 2001 deadline for the EPA to act to fully approve the County’s Title V program. That lack of SIP approval would require disapproval of the County’s Title V program, even though the rules themselves would otherwise satisfy all of the requirements for Title V program approval.

Thus, Pinal County must either remove the SIP-approval condition, or risk almost certain disapproval of the County’s

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Title V permit program.

Given that Hobson's choice, Pinal County's staff is recommending that with respect to those changes required to resolve the specific issues raised in the 10/30/96 interim approval notice, the Board rescind SIP-revision-approval by the EPA as a condition precedent to those changes taking full legal effect. Rescinding that condition will allow the EPA to confer full approval upon the County's Title V Program.

**5. A List of all Studies Regarding Evaluation of or Justification for the Proposed Revisions.**

Generally, see 61 Fed. Reg. 55910 (10/30/96).

**6. Economic, Small Business and Consumer Impact Statement**

Requests for additional information or comment regarding the economic, small business or consumer impact of this action may be directed to the contact person listed below in Section 11.

Persons affected by this action will be those individuals and entities that require a permit under the provisions of "Title V" of the Clean Air Act, and the implementing federal regulations, namely 40 C.F.R. Part 70.

The costs to the County, as a political subdivision, will be those continuing costs required to administer the "Title V" aspect of the County's permitting program. On the other hand, the County has corresponding authority to collect permit fees, which will balance out the costs to the County. Hence, the costs and benefits of this action should balance.

The costs to affected businesses will reflect the permit fees imposed by the County. On the other hand, if the County was not administering this program, ADEQ would be. And since the County's rules effectively cap local fees at the level imposed by ADEQ, in the long run there will be no net additional fee impact on affected sources, and those sources may in fact benefit where the County's fees are lower than those of ADEQ. Whether administered by the County or by others, an approved permit program will enable sources to stay in compliance with the requirement to have a current and valid permit.

Affected small businesses are those which must have a "Title V" air quality permit. To the extent that the underlying federal regulations are prescriptive in defining who must have a Title V permit, and A.R.S. § 49-480 effectively requires that the County's Title V permit program substantially conform to that of ADEQ, the County has very limited authority to attempt to mitigate or reduce program costs as they may affect small businesses.

This action will have no effect on state revenues.

Given the underlying mandate for a "Title V" permit program, the County does not know of any less intrusive or less costly alternative methods of achieving the purpose of this action.

**7. Proposed Effective Date**

These changes shall be effective upon the EPA's approval of corresponding revisions to the County's "Title V" permitting program.

**8. A list of all previous notices appearing in the Register addressing the proposed rules:**

See 1 A.A.R. 17 (1/20/95); 1 A.A.R. 1564 (9/8/95); 3 A.A.R. 1062 (4/11/97); 4 A.A.R. 962 (4/24/98); 4 A.A.R. 1512 (6/26/98); 6 A.A.R. 1677 (5/5/00); 6 A.A.R. 1939 (5/26/00); 7 A.A.R. 1782 (4/27/01).

**9. Summary of Proposed Rules and Rule Changes, any of which may be adopted in whole or part:**

9.A Summary of Proposed Rules and Rule Changes

See Sections 4 and 8 above.

9.B Text of Proposed Rules and Rule Changes

Relative to the rules already conditionally adopted by the Board of Supervisors, there are no text changes associated with this proposed revision. The only change under this proposal deals with elimination of the requirement for EPA-approval of a corresponding SIP revision as a condition precedent to the effectiveness of the already adopted revisions discussed above.

**10. A demonstration of the grounds and evidence of compliance with A.R.S. § 49-112 (A) or (B):**

Based on information and belief, the Director of the Pinal County Air Quality Control District affirms the following:

A. Initially, the total of the fees and other charges currently assessed in connection with the administration of the County's air quality program do not now equal the cost of program administration. The County and ADEQ impose substantially parallel fees. To the extent that they differ, the County's fees are capped by rule at ADEQ's rates, which implicitly affirms that the County's fees are reasonable.

B. Based on a review of the operating costs of the Pinal County Air Quality Control District, and any reasonable projection of total of revenues resulting from the fees and other charges that would be assessed under any or all of the

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rule revisions proposed above, the Control Officer finds that there is no real risk that revenues will exceed the cost of program administration. The continuing fee-cap, defined by ADEQ's fee rates, continues to implicitly assure the reasonableness of the County's fees. Thus, implementation of any or all of the rule changes proposed above will still not violate the fee-limitations of either A.R.S. §§ 49-112(A)(3) or 49-112(B).

**11. Name and address of the person to whom persons may address questions, requests for information or comments:**

Name: Donald P. Gabrielson, Director  
Address: Pinal County Air Quality Control District  
P.O. Box 987  
Florence, AZ 85232  
Telephone: (520) 868-6929  
Fax: (520) 868-6967

**12. Where persons may obtain a full copy of the proposed rule or existing rules:**

Name: Pinal County Air Quality Control District  
Address: P.O. Box 987  
31 N. Pinal Street, Building F  
Florence, AZ 85232  
Telephone: (520) 868-6929  
Fax: (520) 868-6967

Note: The District has the proposed revisions, as well as supporting materials, available in hard-copy or on disk.

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

13.A. Public Hearing

Date: September 5, 2001  
Time: 10:00 a.m.  
Location: Board of Supervisor's Hearing Room  
Administration Building No. 1  
31 North Pinal Street  
Florence, Arizona

Nature of meeting: Public hearing as an element of the regular meeting of the Pinal County Board of Supervisors, to consider formal adoption of some, all or none of the proposed revisions

13.B. Public Stakeholder Workshop

Date: August 21, 2001  
Time: 1:00 p.m.  
Location: Board of Supervisor's Hearing Room  
Administration Building No. 1  
31 North Pinal Street  
Florence, AZ

Nature of meeting: PCAQCD has scheduled a stakeholder's workshop to allow the public to offer comment on and discuss the rules and revisions identified above before they are considered in a formal hearing before the Board of Supervisors.