

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

NOTICE OF FINAL RULEMAKING

PINAL COUNTY AIR QUALITY CONTROL DISTRICT

<u>1. List of Sections Affected</u>	<u>Rulemaking Action</u>
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

2. Statutory authority:

Generally, see 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, 49-471, 49-479 and 49-480.

3. Effective date of the rules:

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

4. A list of all previous notices appearing in the Register addressing the final 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); 7 A.A.R. 3400 (08/03/01).

5. Name and address of the person with whom persons may communicate regarding the rulemaking:

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

6. An explanation of the rule, including the District's reasons for initiating the rule:

County rules are adopted by the Board of Supervisors. As explained below, the Control Officer finds that the actions 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 FR 55910, October 30, 1996. The only action 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.

7. Explanation of and justification for the rules and/or rule revisions

These revisions merely remove 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.

These revisions arise 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. 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 *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), 7 A.A.R. 3400 (08/03/01). 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, these current changes merely removes EPA SIP-approval as a condition precedent to those changes taking legal effect. This current action 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 FR 15717, April 9, 1996.

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 FR 55910, October 30, 1996.

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 recommended 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. The Board acted on September 5, 2001, to rescind that condition.

8. A list of all studies regarding evaluation of or justification for the proposed revisions.

Generally, see 61 FR 55910, October 30, 1996.

9. 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 in item #5.

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 CFR 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.

10. Summary of proposed rules and rule changes, any of which may be adopted in whole or part:

A. Description of the changes between the proposed rules and final rules:

No change

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 final rulemaking. The only change 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.

11. A summary of the principal comments and the agency responses to them:

The District did not receive any written or verbal comments on the rule action after publication of the Notice of Proposed Rulemaking.

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

Not applicable

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

None

14. Was the rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

Not applicable. There are no text changes associated with this final rulemaking. The only change 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.