

**NOTICE OF PROPOSED RULE, ORDINANCE, OR OTHER REGULATION**

**ADOPTED PURSUANT TO A.R.S. ' 49-112 (A) OR (B)**

**Pima County**

**Department of Environmental Quality**

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

Amendments to: PCC 17.12.470, Activity Permits

Amendments to: PCC 17.12.540, Activity Permit Fees

Amendments to: PCC 17.16.050, Visibility Limiting Standard

2. Summary of the proposed rules, ordinances, or other regulations

**Amendments to: 17.12.470, Activity Permits**

The Pima County Department of Environmental Quality (PDEQ) is proposing amending the term of activity permits from three months to one year. Based upon stakeholder input, this change will reduce the economic burden placed on permittees by increasing the permit term without having to document the length of the project or requiring more than one permit if the project is not completed within three months or the original contract length. PDEQ believes permit terms longer than one year will not recover sufficient costs to maintain adequate Departmental staffing levels to ensure compliance with the standard. Existing language that requires permittees to notify PDEQ of commencement and completion of the project will remain unchanged, which will provide PDEQ the necessary information to conduct inspections.

**Amendments to: 17.12.540, Activity Permit Fees**

PDEQ is proposing amending the activity permit fee schedule to support additional compliance and outreach staff. PDEQ is also proposing to delay implementation of the new fee schedule to allow sufficient time for contractors to modify existing project contracts and allow a transition to provide certainty with respect to fees for future contracts.

**Amendments to: 17.16.050, Visibility Limiting Standard**

PDEQ is proposing to adopt one of two alternatives to the visibility limiting standard. Both alternatives apply to eastern Pima County as defined as east of the eastern boundary of the Tohono O’odham reservation.

Alternative one amends the 40% opacity limit to a 20% opacity limit for all fugitive dust sources. Alternative two, proposed by the Arizona Mining Association, amends the 40% opacity limit to a 20% opacity limit for fugitive dust sources except coarse metallic ore storage piles and stackers and metallic mineral process tailing impoundments which shall meet a 40% opacity standard and be subject to an approved dust management plan.

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

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

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

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

Pima County has developed a Technical Support Document to accompany the proposed amendments to Pima County Code Title 17. The Technical Support Document contains the written demonstration

discussing the peculiar local conditions, significant threat to public health and the environment, and the feasibility of the regulations that support amendments to Pima County Code 17.12.470, Activity Permits and 17.16.050, Visibility Limiting Standard.

Specifically, Pima County has made a finding that:

Pima County experienced six exceedances of the 24-hour National Ambient Air Quality Standard (NAAQS) concentration limit for Particulate Matter 10 microns or less (PM<sub>10</sub>) during 1999 as recorded by monitors operated by the Pima County Department of Environmental Quality (PDEQ). The number of days with exceedances constituted a violation of the federal PM<sub>10</sub> NAAQS. The PDEQ's analysis of wind data and other information indicated that the exceedances were caused by high winds, which transport particulate matter from anthropogenic and non-anthropogenic sources.

On June 12, 2000, PDEQ submitted the analysis entitled "An Analysis of High Wind PM<sub>10</sub> Natural Events Contributing to PM<sub>10</sub> NAAQS Exceedances and Violation during 1999 in Pima County Arizona, Final Report and Appendices" to the Arizona Department of Environmental Quality (ADEQ) for submittal to U. S. Environmental Protection Agency (EPA). ADEQ requested that the exceedances and resulting NAAQS violation be "flagged" as natural events under the EPA's policy memorandum entitled: Areas Affected by PM<sub>10</sub> Natural Events, addressed to EPA Regional Offices' Air Division Directors on May 31, 1996 (Natural Events Policy). On August 8, 2000 EPA concurred with PDEQ and ADEQ analysis and "flagged" the exceedances.

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

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

In establishing the PM<sub>10</sub> NAAQS, EPA specifically identified elderly persons and persons with pre-existing respiratory or cardiac disease at greatest risk and had hoped to establish a

level at which these populations would be protected.

EPA could not find a lower concentration limit for PM<sub>10</sub> at which no health impacts would occur. EPA stated that " ... in cases such as the present one, the evidence suggests that there is a continuum of effects, with risk of incidence, or severity of harm decreasing, but not necessarily vanishing as the level of pollution is decreased..." (52 FR 24634, July 1, 1987).

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

The NAAQS for particulate matter was violated in Pima County six times in 1999 exposing the population to a significant health threat.

Pursuant to EPA's Natural Events Policy, PDEQ was required to submit a Natural Events Action Plan (NEAP) to the U.S. Environmental Protection Agency (EPA) by June 23, 2001. Because the exceedances of NAAQS occurred in eastern Pima County, PDEQ's NEAP addresses the portion of the county east of the eastern boundary of the Tohono O'odham reservation.

On June 23, 2001, PDEQ submitted a NEAP that met the requirements of EPA's natural events policy as indicated in EPA's response on July 9, 2001. The final step in the EPA's natural event policy is implement the NEAP by December 23, 2002. To meet the December 2002 date, Pima County must develop and implement an outreach and education program and adopt Best Available Control Measures (BACM) for contributing controllable sources of PM<sub>10</sub> for eastern Pima County. In addition to federal requirements, Arizona has developed specific guidelines for the development of plans regarding natural events. Pursuant to state law (Arizona Revised Statutes § 49-424 (3)), the Arizona Department of Environmental Quality developed Technical Policy 0159.000 (Air Quality Exceptional and Natural Events Policy). This policy "sets forth the requirements and procedures that are to be followed in the event of occurrences of air quality exceptional and natural events in Arizona." Following this policy, PDEQ began a series of stakeholder meetings in June 2001 to discuss the selection of BACM for contributing controllable sources. The starting point for this analysis is ADEQ's "Air Quality Exceptional and Natural Events Policy, PM<sub>10</sub> Best Available

Control Measures” dated June 5, 2001.

Based upon stakeholder input and ADEQ’s BACM list, a 20% opacity limit for fugitive dust sources and increased activity permit fees to provide additional compliance staff to educate and enforce the new standard was selected as BACM. In the June 5, 2001 ADEQ BACM list, a “20% Opacity Limit for Fugitive Dust Sources” is identified for “Area Source Control Measures.” ADEQ identified Maricopa Rule 310 as the origin of this standard. PDEQ researched Maricopa Rule 310 and believes that 20% opacity for fugitive sources is BACM when viewed in conjunction with adequate resources to educate the regulated community and enforce the opacity standard (see August 4, 1997, Federal Register, Approval and Promulgation of Implementation Plans; Arizona – Maricopa County PM10 Nonattainment Area, Final Rule). PDEQ is proposing to increase activity fees to support four additional compliance inspectors who will be assigned to fugitive dust inspections. One additional staff member would be funded through the fees for education and outreach regarding the health impacts of PM<sub>10</sub>.

On May 10, 2002, the Arizona Mining Association (AMA) submitted an alternative proposal for BACM for coarse metallic ore storage piles and stackers and metallic mineral process tailing impoundments. PDEQ is presently evaluating the AMA’s analysis entitled “Technical Support Document” dated May 10, 2001 submitted by the AMA and ADEQ’s June 5, 2001 BACM list. The AMA’s analysis discusses the technical and economic infeasibility of meeting a 20% opacity limit at coarse metallic ore storage piles and stackers and metallic mineral process tailing impoundments. The 20% opacity limit would apply to their other fugitive dust sources. The AMA believes this approach is consistent with ADEQ’s June 5, 2001 BACM list which specifically identifies copper mining facilities under “Industrial Sources.” The BACM lists states that “for crushing, screening, loading/unloading, handling operations and storage piles, tailing, and haulroads/roadways. Measures may include application of water, wetting agents or dust suppressants, minimizing material drop, wind break and fences, enclosures, skirting, maintaining inherent moisture content, limit vehicle access and speed, covering or capping.” ADEQ references “Draft ADEQ Title V permits” as the origin of these

requirements.

Consistent with ADEQ's BACM list and based upon stakeholder input, PDEQ is requesting public comment on two alternative proposals regarding the selection of BACM for contributing controllable sources. Pima County intends to adopt one of the following alternatives:

1. A 20% opacity limit for fugitive dust sources and increase activity permit fees to provide additional compliance staff for education and enforcement of the new standard.

OR

2. A 20% opacity limit for fugitive dust sources, except for coarse metallic ore storage piles and stackers and metallic mineral process tailing impoundments, which shall meet a 40% opacity standard and be subject to an approved dust management plan. Activity permit fees would increase to provide additional compliance staff for education and enforcement of the new standard.

Both proposals include the same increase in activity permit fees and the extension of the term of activity permits from three months to one year. A portion of the activity permit fee increase would fund an additional staff member for education and outreach regarding the health impacts of PM<sub>10</sub>. Pima County's rule for activity permits and the visibility limiting standard have been in effect since 1978 and thus have not had a significant economic impact on the regulated community including small entities. By amending the visibility limiting standard from 40% to 20% only those dust control measures that are "necessary and feasible", as determined by the source, are required to meet the 20% opacity standard. Control measures, which are not technically or economically feasible, are not required.

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

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

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

Name: Marian Conrad, Program Coordinator

Address: Pima County Department of Environmental Quality

130 W. Congress, 3rd floor

Tucson, AZ 85701-1317

Telephone: (520) 740-3978

Fax: (520) 882-7709

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

Name: Pima County Department of Environmental Quality

Address: 130 W. Congress, 3rd floor, Tucson, AZ 85701-1317

Website: [www.deq.co.pima.az.us](http://www.deq.co.pima.az.us)

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Fax: (520) 882-7709

All interested persons may submit written comments on the summary of proposed rules, the proposed rules, ordinance or regulations, described above within 60 days of the publication of this notice in the *Register*.