PINAL COUNTY

Pinal County Air Quality Control District

Removal Affirmative Defenses

Pursuant to A.R.S. §§49-112 and 49-471.01 et. Seq.

Combined Notice of Proposed Rulemaking

And

Notice of Oral Proceeding

Pursuant to A.R.S. §49-479 and where applicable,

The requirements of 40 C.F.R. §51-102

And

Notice of Board of Supervisors Public Hearing

Pinal County Air Quality Control

Published online at

https://www.pinal.gov/403/Rulemaking

On March 27, 2025

Start of Public Comment Period: March 27, 2025

End of Public Comment Period: April 28, 2025

I. PREAMBLE

1. Statutory authority for the rulemaking (per A.R.S. § 49-471.05.(1))

A.R.S §§ 49-474, 49-479, 49-480

2. Name and address of department personnel with whom persons may communicate regarding the rulemaking (per A.R.S. § 49-471.05.(2))

Name: Rupesh Patel

Pinal County Air Quality Department

Address: 85 North Florence St.,

Florence, Arizona, 85132

Telephone: 520-866-6929

Email: rupesh.patel@pinal.gov

Online: https://www.pinal.gov/403/Rulemaking

3. Rulemaking process (per A.R.S. § 49-471.05.(3))

The rulemaking process will consist of an initial administrative rule development process, including this notice, a 30 day public comment period, a stakeholder meeting, an oral proceeding before the Control Officer or his designee and a Public Hearing with the Pinal County Board of Supervisors. The dates, times and location for the stakeholder meeting, oral proceeding and BOS public hearing are listed below. Written comments are due prior to the close of the comment period, which shall be the close-of-business on the day of the oral proceeding. The final step in the rule adoption process will be the hearing before the Board of Supervisors. The Board of Supervisors hearing will separately scheduled and noticed in accord with A.R.S § 49-479, and where applicable, the requirements of 40 C.F.R § 51.102.

Comments may be submitted to PCAQCD through the PCAQCD website rulemaking page at https://www.pinal.gov/403/Rulemaking or by mail to the above address from March 27, 2025 through April 28, 2025.

While the law states that an oral proceeding may be held upon a written request for one, PCAQCD is choosing to schedule on proactively on April 28, 2025.

After public comment period has closed and PCAQCD has taken into account all comment and made necessary changes, PCAQCD will be presenting the rulemaking to the Board of Supervisors on May 28, 2025.

All notices, related information, and presentations will be available on PCAQCD website at https://www.pinal.gov/403/Rulemaking throughout this rulemaking process. The website is compatible with accessibility options and language translation software.

4. Explanation of the rule, including the control officer's reasons for initiating the rulemaking (per A.R.S. § 49-471.05.(4))

The Pinal County Air Quality Control District (PCAQCD), an operating division of Pinal County, proposes that the Board of Supervisors (BOS) 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.

On August 21, 2023, the U.S. Environmental Protection Agency (EPA) removed the emergency affirmative defense provisions from Clean Air Act (CAA) operating permit program (title V) regulations. These provisions established an affirmative defense that sources could have asserted in enforcement cases brought for noncompliance with technology-based emission limitations in operating permits, provided that the exceedances occurred due to qualifying emergency circumstances. These provisions, which have never been required elements of state operating permit programs, are being removed because they are inconsistent with the EPA's interpretation of the enforcement structure of the Clean Air Act. In practice, the EPA has found no examples of these defenses being used, and Pinal County Air Quality Control District (PCAQCD) also has no record of them being used in Pinal County.

PCAQCD has a delegation agreement (EV22-0020) with the Arizona Department of Environmental Quality for the permitting and enforcement over all major sources of air pollution located within Pinal County. As the local permitting authority, Pinal County submits to remove title V affirmative defense provisions from their delegated title V program, and to remove similar provisions from individual operating permits.

The EPA rules mandate removal of these affirmative defenses as they apply to major sources only, and only regarding any enforcement actions under federal law. This could enable Pinal County to retain some of these affirmative defenses entirely, and some with caveats that they could only be used in state proceedings but not federal ones. For the sake of consistency and clarity, PCAQCD intends to remove these affirmative defenses across the board for all major and minor industrial sources.

In this rulemaking action Pinal County is removing the emergency affirmative defense provisions in Chapter 3, Article 1, Section 081 (§ 3-1-081) and the affirmative defense definition in Chapter 8, Article 1, Section 020 (§ 8-1-020) of the Pinal County Air Quality Control District Code of Regulations. In addition Pinal County seeks to correct a single topographical error (formatting of numbering and letter scheme) in § 3-1-081.14.[sic] to read § 3-1-081.14.f.

The proposed amended rules are identified below and include amendments to § 1-1-105 (not to be included with the SIP submittal) with the final step in this rulemaking being the submittal through ADEQ to EPA (and EPA approval) of the adopted rules in § 3-1-081 and § 8-1-020 for inclusion in the State Implementation Plan (SIP).

Section Affected		**Rulemaking Action**
§ 1-1-105.	SIP List	Amended
§ 3-1-081.	Permit Conditions	Revised
§ 8-1-020.	Violation; classification; definition	Revised

Those wishing further information regarding any aspect of this proposal may contact Rupesh Patel, Pinal County Air Quality, 85 North Florence St., Development Services Building,

Florence, Arizona, 85132, (520) 866-6915, rupesh.patel@pinal.gov. To the extent possible, the District will also post information on the County's website: https://www.pinal.gov/305/Air-Quality.

The proposed rule revisions include the following:

a. Amendment of § 1-1-105 to include the amend date for Chapter 3, Article 1, Section 081. § 1-1-105 is a list designating which Board approved rules (and their corresponding adoption dates) are 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. § 1-1-105 is not to be included in the SIP submittal.

b. Revision to § 3-1-081. Propose revision to remove the emergency provision element of required permit conditions specifically related to actions brought for noncompliance with such technology-based emission limitations.

c. Revision to § 8-1-020. Propose revision to remove the affirmative defense provision element of the definitions.

Persons may obtain a full copy of the proposed rules or existing rules at:

Pinal County Air Quality Control District
85 North Florence St., Development Services Building
P.O. Box 987
Florence, AZ. 85132
https://www.pinal.gov/403/Rulemaking

5. Studies relied on in the control officer's evaluation of or justification for the rule and where the public may obtain or review the studies, all data underlying the studies, any analysis of the studies and other supporting material (A.R.S. § 49-471.05(5)):

None

6. An economic, small business and consumer impact statement that includes those elements prescribed in section A.R.S. § 41-1055, subsections A, B and C. (A.R.S. § 49-471.05(6))

a. A.R.S. § 41-1055(A)

The proposed rulemaking removes the sections of Pinal County Code that relate to affirmative defenses for emissions exceedances for stationary sources.

The conduct and frequency of the occurrence that the rule is designed to change is nonapplicable and non-existent, because PCAQCD has no record of them ever being used.

PCAQCD is following federal guidance and the Arizona Rulemaking Manual in the proposal to remove these rules. The proposed rulemaking is to attain consistency among different types of sources.

There will be no change in frequency of the targeted conduct from the rule change because affirmative defenses have not been used.

This preamble contains the entirety of the economic, small business, and consumer impact statement. There is no separate statement.

b. A.R.S. § 41-1055(B)

Considering the affirmative defense has been in Pinal County Code since 1993 in the case of the "emergency," and have never been used by a permitted source, there are no anticipated economic impacts to persons or businesses from this proposed rulemaking. Therefore, no costs and benefits analysis was conducted.

Pinal County
The costs to Pinal County are only the costs of staff time to engage in this rulemaking, including some PCAQCD staff time and the time of the Board of Supervisors and their administrators in advancing this rulemaking, and the costs of publishing notices regarding the rulemaking.

c. A.R.S. § 41-1055(C)

Not applicable

7. The proposed effective date of the rule or ordinance (A.R.S. § 49-471.05(7))

May 28, 2025

8. Such other matters as are prescribed by statue and that are applicable to the county or to any specific rule or ordinance or class of rules or ordinances. (A.R.S. § 49-471.05(8))

Not applicable.

9. For a final rule or ordinance, a list of all previous notices appearing in the register addressing the proposed rule or ordinance and a concise explanatory statement prescribed in section A.R.S. § 49-471.07, subsection B (A.R.S. § 49-471.05(9))

Not applicable

10. Date, time and location of scheduled stakeholder meeting, oral proceeding and Board of Supervisors Public Hearing:

This rulemaking follows procedures identified in state statutes, Pinal County Air Quality Control District Code of Regulations. All of the following are open to all:

Public Comment Period ..... March 27, 2025 through April 28, 2025

Stakeholder Meeting (online only) ..... April 21, 2025
Monday, April 21 · 9:00 – 10:00am
Time zone: America/Phoenix
Google Meet joining info
Video call link: https://meet.google.com/fjp-evsw-qvn
Or dial: (US) +1 405-534-5960 PIN: 131 212 778#
More phone numbers: https://tel.meet/fjp-evsw-qvn?pin=3858131889296

Oral Proceeding/Public Hearing (online only) ..... April 28, 2025
Monday, April 28 · 9:00 – 10:00am
Time zone: America/Phoenix
Google Meet joining info
Video call link: https://meet.google.com/nhg-knsz-oqn
Or dial: (US) +1 978-806-4156 PIN: 255 664 271#
More phone numbers: https://tel.meet/nhg-knsz-oqn?pin=3436591454448

Nature of meeting: 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.

Board of Supervisors Meeting to vote on rules ..... May 28, 2025
Wednesday, May 7 · 9:30am
Pinal County Board of Supervisors Hearing Room
135 N. Pinal St., Florence, AZ. 85132
Event Details: https://www.pinal.gov/396/Meeting-Videos

Notice of Final Rulemaking
To be posted at a later date

11. The full text of the proposed changes:

Pinal County Air Quality Control District Code of Regulations can be found at:
https://www.pinal.gov/403/Rulemaking

The proposed changes are reflected below in strikethroughs to indicate proposed removal, and underline to indicate proposed new language being added to the existing rule.

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, 07/23/14, 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).
      b. Article 2. (As amended 5/14/97), excluding:
         i. § 2-2-090 (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, as amended 1/7/09).
   3. Chapter 3
      a. Article 1. (As amended 5/14/97, and 5/27/98, 7/12/00, ~~and~~ 7/1/20 and 5/28/25), excluding:
         i. § 3-1-020
         ii. § 3-1-045
         iii. § 3-1-080
         iv. § 3-1-100
         v. § 3-1-150 (as amended 5/14/97)
         vi. § 3-1-160 (as amended 5/14/97)
         vii. § 3-1-170 (as amended 5/14/97)
         viii. § 3-1-173 (as amended 5/14/97)
      b. Article 2. (As amended 10/12/95, 5/27/98 and 7/29/98).
      c. Article 3. (As amended 10/12/95, 5/27/15).
      d. Article 8. (As amended 10/12/95 and 10/27/04).
   4. Chapter 4
      a. Article 1. (As amended 2/22/95, 10/28/15, 1/25/23).
      b. Article 2. (As amended 5/14/97, 7/12/00, 12/4/02 and 10/27/04).
      c. Article 3, limited to:
         i. § 4-3-160 (As amended 10/28/15, 1/25/23)
         ii. § 4-3-170 (As amended 10/28/15, 1/25/23)
         iii. § 4-3-180 (As amended 10/28/15, 1/25/23)
      d. Article 4 (As amended 6/3/09).
      e. Article 5 (As amended 6/3/09).
      f. Reserved.
      g. Article 7 (As amended 6/3/09)
      h. Reserved.
      i. Article 9, limited to:
      i. § 4-9-310 (As added 1/25/23)
      ii. § 4-9-320 (As amended 6/3/09)

iii. § 4-9-340 (As amended 6/3/09)

5. Chapter 5
   a. Article 13. (as amended 8/5/20, excluding:
      i. § 5-13-390 (as amended 10/12/95)
   b. Article 20. (as amended 8/5/20)

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 1/7/09) 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
   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

CHAPTER 3. PERMITS AND PERMIT REVISIONS

ARTICLE 1. GENERAL PROVISIONS RELATING TO PERMITS AND PERMIT REVISIONS

3-1-081. Permit conditions

A. Each permit issued shall include the following elements:

1. The date of issuance and the permit term.

2. Enforceable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance.

    a. The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

    b. The permit shall state that, where an applicable requirement of the Clean Air Act (1990) is more stringent than an applicable requirement of regulations promulgated under Title IV of the Clean Air Act (1990), both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

    c. Any permit containing an equivalency demonstration for an alternative emission limit submitted pursuant to §3-1-050.D. shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

    d. The permit shall specify applicable requirements for fugitive emission limitations, regardless of whether the source category in question is included in the list of sources contained in the definition of major source in §1-3-140.

    e. Emission limitations for batch processors shall be based on worst-case operational scenarios as adequately demonstrated by the permit applicant.

3. Each permit shall contain the following requirements with respect to monitoring:

    a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to §§114(a)(3) or 504(b) of the Clean Air Act (1990);

    b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit as reported pursuant to Subdivision A.4. of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph; and

    c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

4. With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

    a. Records of required monitoring information that include the following:

i. The date, place as defined in the permit, and time of sampling or measurements;

ii. The date(s) analyses were performed;

iii. The company or entity that performed the analyses;

iv. The analytical techniques or methods used;

v. The results of such analyses; and

vi. The operating conditions as existing at the time of sampling or measurement;

b. Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

5. With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

a. Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements shall be clearly identified in such reports. All required reports shall be certified by a responsible official consistent with §§3-1-175 and 3-1-083.A.5.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Within a permit the Control Officer shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements, provided that no report under this subparagraph shall be due sooner than two days after the upset event, nor later than ten days after the upset event.

6. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Clean Air Act (1990) or the regulations promulgated thereunder and incorporated pursuant to §3-6-565.

a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

b. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to non compliance with any other applicable requirement.

c. Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Clean Air Act (1990).

d. Any permit issued pursuant to the requirements of this chapter and Title V of the Clean Air Act (1990) to a unit subject to the provisions of Title IV of the Clean Air Act (1990) shall include conditions prohibiting all of the following:

i. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators.

ii. Exceedances of applicable emission rates.

iii. The use of any allowance prior to the year for which it was allocated.

iv. Contravention of any other provision of the permit.

7. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.

8. Provisions stating the following:

    a. The permittee shall comply with all conditions of the permit. The permit shall contain all applicable requirements of Arizona air quality statutes and the air quality rules. Any permit noncompliance constitutes a violation of the Clean Air Act (1990) and is grounds for enforcement action; for a permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

    b. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

    c. The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

    d. The permit does not convey any property rights of any sort, or any exclusive privilege.

    e. The permittee shall furnish to the Control Officer, within a reasonable time, any information that the Control Officer may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Control Officer copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee shall furnish such records directly to the Administrator along with a claim of confidentiality.

9. A provision to ensure that the source pays fees to the Control Officer pursuant to Article 7 of this chapter.

10. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Control Officer. Such terms and conditions:

    a. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

    b. Shall extend the permit shield described in §3-1-102 to all terms and conditions under each such operating scenario; and

    c. Shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this chapter.

12. Terms and conditions, if the permit applicant requests them, as approved by the Control Officer, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

    a. Shall include all terms required under Subsections A. and C. of this section to determine compliance;

b. May extend the permit shield described in Subsection D. of this section to all terms and conditions that allow such increases and decreases in emissions; and

c. Shall meet all applicable requirements and requirements of this chapter.

13. Terms and conditions, if the permit applicant requests them and they are approved by the Control Officer, setting forth intermittent operating scenarios including potential periods of downtime. If such terms and conditions are included, the county's emissions inventory shall not reflect the zero emissions associated with the periods of downtime.

14. If a permit applicant requests it, the Control Officer shall issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap that is established in the permit independent of otherwise applicable requirements.

    a. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable.

    b. The Control Officer shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades.

    c. The permit shall also require compliance with all applicable requirements.

    d. The permit terms and conditions shall provide for notice that conforms with section 3-2-180(D) and (E), and describes how the increases and decreases in emissions will comply with the terms and conditions of the permit, as per 40 CFR Chapter 1, Part 70, §70.4(b)(12).

    e. Changes made under this subparagraph shall not include modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit.

    ~~[sic]~~f. The permit terms and conditions shall provide for notice that conforms with section 3-2-180(D) and (E), as per 40 CFR Chapter 1, Part 70, §70.4(b)(12).

B. Federally-enforceable requirements.

1. All terms and conditions in a Class I permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Clean Air Act (1990).

2. Notwithstanding Subdivision B.1. of this section, the Control Officer shall specifically designate as not being federally enforceable under the Clean Air Act (1990) any terms and conditions included in the permit that are not required under the Clean Air Act (1990) or under any of its applicable requirements, provided that no such designation shall extend to any provision electively designated as federally enforceable pursuant to §3-1-084.

C. All permits shall contain a compliance plan that meets the requirements of §3-1-083.

D. Each permit shall include the applicable permit shield provisions set forth in §3-1-102.

E. Emergency provision

1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

~~2. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of Subdivision 3. of this subsection are met.~~

~~3.~~2. The ~~affirmative defense of~~ emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An emergency occurred and that the permittee can identify the cause(s) of the emergency;

b. The permitted facility was at the time being properly operated;

c. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements in the permit; and

d. The permittee submitted notice of the emergency to the Control Officer by certified mail or hand delivery within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of Paragraph A.5.b. of this section. The notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective action taken.

~~4.~~3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

~~5.~~4. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

F. A Class I permit issued to a major source shall require that revisions be made pursuant to §3-1-087 to incorporate additional applicable requirements adopted by the Administrator pursuant to the Clean Air Act (1990) that become applicable to a source with a permit with a remaining permit term of three or more years. No revision shall be required if the effective date of the applicable requirement is after the expiration of the permit. The revisions shall be made as expeditiously as practicable, but not later than eighteen months after the promulgation of such standards and regulations. Any permit revision required pursuant to this section shall comply with provisions in §3-1-089 for permit renewal and shall reset the permit term.

G. Any permit issued by the Control Officer to any person burning used oil, used oil fuel, hazardous waste, or hazardous waste fuel under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.

2. The frequency and type of fuel testing to be conducted by the person.

3. The frequency and type of emissions testing or monitoring to be conducted by the person.

4. Requirements for record keeping and reporting.

5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning used oil, used oil fuel, hazardous waste or hazardous waste fuel.

H. The Control Officer may waive specific requirements of this section for Class II permits if the Control Officer determines that the conditions would be unnecessary or unreasonable for a particular source or category of sources.

CHAPTER 8. ENFORCEMENT PROCEDURES

ARTICLE 1. VIOLATIONS

8-1-020. Violation; classification; definition

From and after October 31, 1994:

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 U.S.C. §11002(a)(2) (1990) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the Administrator, ADEQ Director or Control Officer has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.

2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant. Notwithstanding Subdivisions 1. and 2. of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this Code and under Title V of the Clean Air Act (1990) and who knowingly operates such source without a permit issued by the Control Officer and without having filed a complete application for renewal of an existing permit in accordance with Title V of the Clean Air Act (1990) and this Code is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source' s permit both under this Code and under Title V of the Clean Air Act (1990), and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued pursuant to this Code and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the Control Officer pursuant to this Code to conduct performance tests and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the Control Officer to maintain any monitoring device pursuant to this Code, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this Code and that is subject to a material permit condition other than an emission standard identified in Subsection C. of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition as defined in §3-1-109.

H. A person who is required to obtain a permit before commencing construction of a source both under this Code and under Title V of the Clean Air Act (1990), and who knowingly commences construction of such source without a permit issued by the Control Officer is guilty of a class 6 felony.

I. A person who operates a source that is not identified in Subsection B. of this section and that requires a permit under this Code, and who knowingly operates such source without a permit issued by the Control Officer and without having filed a complete application for renewal of an existing permit in accordance with this Code is guilty of a class 6 felony.

J. A person who is required by the Control Officer pursuant to this Code to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this Code but not under Title V of the Clean Air Act (1990), and who acting with criminal negligence commences construction of such source without a permit issued by the Control Officer is guilty of a class 1 misdemeanor.

L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:

1. Violates a permit condition not described in Subsections C. or G. of this section.
2. Violates an opacity standard, unless the opacity standard is required by §111 or Title I, Part C or D, of the Clean Air Act (1990).
3. Violates a fee or filing requirement established both under this Code and under Title V of the Clean Air Act (1990).
4. Violates any other provision of this Code for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, that results from a single act or series of related acts, constitutes the commission of a single offense.

N. In determining the amount of a fine under this section, the court, in accordance with A.R.S. §49-514 (1992), shall consider all of the following:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of that violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty of the violator.
6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.
7. Payment by the violator of penalties previously assessed for the same violation.
8. Other aggravating and mitigating factors, as the court deems relevant.

O. It shall be an affirmative defense to any prosecution under Subsection A. of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.
2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

~~P. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under Subsections C . or G. or Subsection L. , Subdivisions 1. , 2. or 4. of this section that both of the following conditions were satisfied:~~

~~1. The violation was reported by verbal or facsimile notification to the Control Officer within twenty four hours after the source first learned of the violation.~~

~~2. The owner or operator of the source provided written notification to the control officer containing all of the following information within seventy-two hours following the verbal or facsimile notification:~~

~~a. Confirmation of the violation for which verbal or facsimile notification was provided.~~

~~b. Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved. In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.~~

~~Q.~~P. It shall be an affirmative defense to any prosecution under Subsections B., H., I. or K. of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by the District, the defendant obtained and relied upon the written advice of the District that no permit was necessary. Failure of the District to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described above shall be deemed to be advice that no permit was necessary for purposes of this subsection.

~~R.~~Q. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

~~S.~~R. Under this section, to prove a knowing violation the County must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

~~T.~~S. For purposes of this section, the term "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. The term emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the Administrator or the ADEQ Director or Control Officer.