OFFICE OF THE PINAL COUNTY ATTORNEY
Brad Miller
Pinal County Attorney

MEMORANDUM FROM THE OFFICE OF THE PINAL COUNTY ATTORNEY

To: Pinal County Citizens
From: Ian Daranyi, Deputy County Attorney – Civil Division
Date: May 5, 2025
Subject: Authority to Adopt Resolution No. 052825-AQ

Authority of the Pinal County Board of Supervisors to Adopt Air Quality Rules

Pursuant to A.R.S. § 49-479(A), the Pinal County Board of Supervisors (Pinal County BOS) shall adopt such rules as it determines are necessary and feasible to control the release into the atmosphere of air contaminants originating within the territorial limits of the county or multi-county air quality control region in order to control air pollution.

Certain statutory prerequisites must be satisfied prior to the adoption of such rules. A.R.S. § 49-471.01, *et seq.* One such prerequisite requires the County to provide notice to the public of the proposed rule or ordinance and include an opportunity to provide written or oral comments on the proposed rule or ordinance. A.R.S. § 49-471.01(A)(3) and (4). The statutory prerequisites also include a requirement to justify any rule more stringent than that of the Arizona Department of Environmental Quality (ADEQ) and a limitation that the fee or cost for any permit or approval must not exceed the fee or cost of obtaining a similar permit or approval from the ADEQ. A.R.S. §§ 49-112(A) and (B).

In addition, the Pinal County BOS has authority to authorize a department to carry out the necessary investigations, inspections, and enforcement of any rules adopted pursuant to prevailing statutory authority. A.R.S. §§ 49-473(B), 49-502, 49-510, 49-511, 49-512, 49-513, 49-514 and 49-515.

P.O. BOX 887, FLORENCE, ARIZONA 85132 PHONE: (520) 866-6271 FAX: (520) 866-6423

Authority to Adopt and Implement Resolution No. 052825-AQ

Pinal County BOS Resolution No. 052825-AQ contains recitals reflecting compliance with statutory notification requirements for adoption.

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 CAA. In practice, the EPA has found no examples of these defenses being used, and the Pinal County Air Quality Control District (PCAQCD) also has no record of them being used in Pinal County.

The PCAQCD has a delegation agreement (EV22-0020) with ADEQ 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 proceedings. For the sake of consistency and clarity, the 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 PCAQCD Regulations. In addition, Pinal County seeks to correct a single typographical error (formatting of numbering and letter scheme) in § 3-1-081.14.[sic] to read § 3-1-081.14.f.

P.O. BOX 887, FLORENCE, ARIZONA 85132 PHONE: (520) 866-6271 FAX: (520) 866-6423

The PCAQCD has complied with the notice-publication and other public notification requirements of A.R.S. §§ 49-471.04 and 49-479, and 40 C.F.R. § 51-102, including a combined notice of proposed rulemaking and oral proceeding published online at https://www.pinal.gov/403/Rulemaking on March 27, 2025 and in local newspapers. Because the adopted rule does not directly impose or establish a fee, the statutory limits on fee imposition do not apply.

Based on the above, it is the opinion of the Pinal County Attorney's Office that the Pinal County BOS had the authority to adopt and has the continuing authority to implement the rule revisions contained in Resolution No. 052825-AQ.

Ian Daranyi, Deputy County Attorney
Pinal County Attorney's Office

P.O. BOX 887, FLORENCE, ARIZONA 85132 PHONE: (520) 866-6271 FAX: (520) 866-6423