



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: 4/1/2025

**= Mandatory, information must be provided*

Click or tap the boxes to enter text. If not applicable, indicate "N/A".

***Title:**

Pima County Code Title 17 Air Quality Control: Removal of affirmative defenses

***Introduction/Background:**

Pima County Code has 4 sections that create affirmative defenses for facilities whose air pollution has exceeded the limits allowed by their air permits. These sections allow facilities to raise affirmative defenses in civil court proceedings to prevent civil penalties from being enforced against them. They have never been used in Pima County or the United States as a whole. In 2 separate series of rulemakings and federal court cases beginning over a decade ago, the EPA declared these defenses are impermissible. PDEQ is removing these sections of code in compliance with EPA rulings, and to achieve consistency and clarity.

***Discussion:**

Pima County has authority under the federal Clean Air Act and Arizona laws and delegations to regulate air pollution in Pima County. One of the ways Pima County does this is by issuing permits to stationary sources that create certain types and quantities of air pollution. These permits contain limitations on the amount a source can pollute, and the source can be penalized if it exceeds these emissions limitations. Pima County Department of Environmental Quality exercises discretion in enforcing permit violations, and considers extenuating circumstances, with a primary goal of bringing sources back into compliance.

Pima County Code Title 17 contains Pima County's air quality rules. There are 4 sections of Pima County Code (PCC 17.12.040(E), PCC 17.12.180, PCC 17.13.020(C), and PCC 17.13.200) that provide affirmative defenses for sources that exceed their emissions limitations either during startup, shutdown, and malfunction ("S/S/M"), or due to emergency circumstances (also known as "acts of God").

Affirmative defenses were not originally part of the Clean Air Act, or its implementation, but were added in multiple local air quality codes beginning in the 1990's. The Pima County affirmative defense provisions have never been used.

The EPA has issued rulings and guidance that both affirmative defenses for S/S/M and due to emergency circumstances violate the Clean Air Act, for different reasons. EPA directed state and local permitting agencies to remove these clauses from permits as permits are renewed, and to update the respective federally approved rules to remove these defenses. PDEQ has been removing affirmative defenses from air quality permits since this direction as permits expire or are renewed.

The EPA set a deadline of August 2024 for permitting agencies to remove their impermissible affirmative defense rules or to request an extension. PDEQ request an extension until August 2025 to allow time for a complete rulemaking.

Read the full Notice of Proposed Rulemaking at <https://content.civicplus.com/api/assets/a188e9e6-2a10-488c-9492-5c2efea9f140>.

***Conclusion:**

7/14/2021

Pima County Department of Environmental Quality is proposing to remove PCC 17.12.040(E), PCC 17.12.180, PCC 17.13.020(C), and PCC 17.13.200, all affirmative defense provisions for stationary sources, to comply with EPA rules and ensure consistency and clarity in PDEQ rules and permits. This must be completed and in effect by August 2025.

***Recommendation:**

PDEQ recommends that the Board of Supervisors adopt this rulemaking.

***Fiscal Impact:**

None.

***Board of Supervisor District:**

1 2 3 4 5 All

Department: Environmental Quality

Telephone: 520-724-7400

Contact: Abigail Okrent

Telephone: 520-724-7325

Department Director Signature: _____



Date: _____

3/13/25

Deputy County Administrator Signature: _____



Date: _____

3/14/2025

County Administrator Signature: _____



Date: _____

3/14/2025

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, RELATING TO AIR QUALITY; REPEALING SECTIONS 17.12.040(E), 17.12.180, 17.13.020(C), AND 17.13.200 WHICH PROVIDE AFFIRMATIVE DEFENSE PROVISIONS FOR STARTUP/SHUTDOWN/MALFUNCTION AND EMERGENCIES; AND RENUMBERING SECTION 17.12.040(F) TO 17.12.040(E), AND 17.13.020(D) TO 17.13.020(C); EFFECTIVE MAY 1, 2025.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA

SECTION 1. Pima County Code Sections 17.12.040(E) and 17.12.180 are repealed and renumbered as follows:

**Chapter 17.12
Individual Permits and Permit Revisions for Class I Permits**

...

17.12.040 Permit contents for Class I permits

A. Each permit issued shall include the following elements:

...

~~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, that require immediate corrective action to restore normal operation and that causes the sources to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emission attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.~~
- ~~2. An emergency constitutes an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions of subsection (E)(3) are met.~~
- ~~3. 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 or causes of the emergency;~~~~

- ~~b. At the time of the emergency, the permitted facility was 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 two working days of the time when emission limitations were exceeded due to the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective action taken.~~
- 4. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
 - 5. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

~~F. E.~~ A Class I permit issued to a major source shall require that revisions be made under Section 17.12.130 to incorporate additional applicable requirements adopted by the administrator under the Act that become applicable to a source with a permit with a remaining permit term of three or more years. No reopening 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 subsection shall comply with provisions in Section 17.12.140 for permit renewal and shall reset the five-year permit term.

~~17.12.180 Affirmative defenses for excess emissions due to malfunctions, startup, and shutdown~~

~~A. Applicability. This rule establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for standards or limitations:~~

- ~~1. Promulgated pursuant to Section 111 or 112 of the Act,~~
- ~~2. Promulgated pursuant to Title IV or VI of the Clean Air Act,~~
- ~~3. Contained in any Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permit issued by the U.S. E.P.A. or,~~
- ~~4. Included in a permit to meet the requirements of Section 17.16.590(A)(5).~~

~~B. Affirmative Defense for Malfunctions. Emissions in excess of an applicable emission limitation due to malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 17.12.170 and has demonstrated all of the following:~~

- ~~1. The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;~~

- ~~2. The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;~~
- ~~3. If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to insure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;~~
- ~~4. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;~~
- ~~5. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;~~
- ~~6. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;~~
- ~~7. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article I of Chapter 17.08 that could be attributed to the emitting source;~~
- ~~8. The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;~~
- ~~9. All emissions monitoring systems were kept in operation if at all practicable; and~~
- ~~10. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.~~

~~C. Affirmative Defense for Startup and Shutdown.~~

- ~~1. Except as provided in subsection (C)(2), and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 17.12.170 and has demonstrated all of the following:
 - ~~a. The excess emissions could not have been prevented through careful and prudent planning and design;~~
 - ~~b. If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;~~
 - ~~c. The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;~~~~

- d. ~~The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;~~
- e. ~~All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;~~
- f. ~~During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article I of Chapter 17.08 that could be attributed to the emitting source;~~
- g. ~~All emissions monitoring systems were kept in operation if at all practicable; and~~
- h. ~~The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.~~

2. ~~If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to subsection B.~~

D. ~~Affirmative Defense for Malfunctions During Scheduled Maintenance. If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to subsection B.~~

E. ~~Demonstration of Reasonable and Practicable Measures. For an affirmative defense under subsection B or C, the owner or operator of the source shall demonstrate, through submission of the data and information required by this section and Section 17.12.170, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.~~

SECTION 2. Pima County Code Sections 17.13.020(C) and 17.13.200 are repealed and renumbered as follows:

Chapter 17.13

Individual and General Permits and Permit Revisions for Class II and Class III Permits

. . .

17.13.020 Permit contents for Class II and Class III permits

A. Each permit issued shall include the following elements:

. . .

C. ~~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 that require 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 preventive maintenance, careless or improper operation, or operator error.~~

2. ~~An emergency constitutes an affirmative defense to an action brought for noncompliance with the technology based emission limitations if the conditions of subsection (C)(3) are met.~~
3. ~~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 or causes of the emergency;~~
 - b. ~~At the time of the emergency, the permitted facility was 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 two working days of the time when emission limitations were exceeded due to the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective action taken.~~~~
4. ~~In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.~~
5. ~~This provision is in addition to any emergency or upset provision contained in any applicable requirement.~~

~~D-C.~~ A permit issued to a source shall require that revisions be made under Section 17.13.150 to incorporate additional applicable requirements that become applicable to a source with a permit with a remaining permit term of three or more years. No reopening 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 subsection shall comply with provisions in Section 17.13.160 for permit renewal and shall reset the five year permit term.

~~17.13.200 Affirmative defenses for excess emissions dues to malfunctions, startup, and shutdown.~~

- A. ~~Applicability. This rule establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for standards or limitations:

 1. ~~Promulgated pursuant to Sections 111 or 112 of the Act,~~
 2. ~~Promulgated pursuant to Titles IV or VI of the Clean Air Act,~~
 3. ~~Contained in any Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permit issued by the U.S. E.P.A, or~~
 4. ~~Included in a permit to meet the requirements of Section 17.16.590(A)(5).~~~~
- B. ~~Affirmative Defense for Malfunctions. Emissions in excess of an applicable emission limitation due to malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an~~

~~affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 17.13.190 and has demonstrated all of the following:~~

- ~~5. The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;~~
- ~~6. The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;~~
- ~~7. If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to insure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;~~
- ~~8. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;~~
- ~~9. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;~~
- ~~10. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;~~
- ~~11. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article I of Chapter 17.08 that could be attributed to the emitting source;~~
- ~~12. The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;~~
- ~~13. All emissions monitoring systems were kept in operation if at all practicable; and~~
- ~~14. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.~~

~~C. Affirmative Defense for Startup and Shutdown.~~

- ~~15. Except as provided in subsection (C)(2), and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 17.13.190 and has demonstrated all of the following:
 - ~~a. The excess emissions could not have been prevented through careful and prudent planning and design;~~
 - ~~b. If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or~~~~

~~severe damage to air pollution control equipment, production equipment, or other property;~~

- ~~e. The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;~~
- ~~d. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;~~
- ~~e. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;~~
- ~~f. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article I of Chapter 17.08 that could be attributed to the emitting source;~~
- ~~g. All emissions monitoring systems were kept in operation if at all practicable; and~~
- ~~h. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.~~

~~16. If excess emissions occur due to a malfunction during routine startup and shutdown, then these instances shall be treated as other malfunctions subject to subsection B.~~

~~D. Affirmative Defense for Malfunctions During Scheduled Maintenance. If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to subsection B.~~

~~E. Demonstration of Reasonable and Practicable Measures. For an affirmative defense under subsection B or C, the owner or operator of the source shall demonstrate, through submission of the data and information required by this section and Section 17.13.190, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.~~

SECTION 3. This ordinance is effective 30 days after the date of adoption.

PASSED AND ADOPTED by the Board of Supervisors, Pima County, Arizona, this _____ day of _____, 2025.

Chair, Pima County Board of Supervisors

ATTEST:

APPROVED AS TO FORM

Clerk of Board



Deputy County Attorney

3-13-25

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA, RELATING TO AIR QUALITY; REPEALING SECTIONS 17.12.040(E), 17.12.180, 17.13.020(C), AND 17.13.200 WHICH PROVIDE AFFIRMATIVE DEFENSE PROVISIONS FOR STARTUP/SHUTDOWN/MALFUNCTION AND EMERGENCIES; AND RENUMBERING SECTION 17.12.040(F) TO 17.12.040(E), AND 17.13.020(D) TO 17.13.020(C); EFFECTIVE MAY 1, 2025.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:

SECTION 1.

**Chapter 17.12
Individual Permits and Permit Revisions for Class I Permits**

...

17.12.040 Permit contents for Class I permits

A. Each permit issued shall include the following elements:

...

B. Federally Enforceable Requirements.

...

C. Each permit shall contain a compliance plan . . .

D. Each permit shall include the applicable permit shield provisions . . .

E. A Class I permit issued to a major source shall require that revisions be made under Section 17.12.130 to incorporate additional applicable requirements adopted by the administrator under the Act that become applicable to a source with a permit with a remaining permit term of three or more years. No reopening 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 subsection shall comply with provisions in Section 17.12.140 for permit renewal and shall reset the five-year permit term.

17.12.180 (Reserved)

Section 2.

Chapter 17.13

Individual and General Permits and Permit Revisions for Class II and Class III Permits

...

17.13.020 Permit contents for Class II and Class III permits

A. Each permit issued shall include the following elements:

...

B. Federally Enforceable Requirements.

...

C. A permit issued to a source shall require that revisions be made under Section 17.13.150 to incorporate additional applicable requirements that become applicable to a source with a permit with a remaining permit term of three or more years. No reopening 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 subsection shall comply with provisions in Section 17.13.160 for permit renewal and shall reset the five year permit term.

17.13.200 (Reserved)

SECTION 2. This ordinance is effective 30 days after the date of adoption.

PASSED AND ADOPTED by the Board of Supervisors, Pima County, Arizona, this _____ day of _____, 2025.

Chair, Pima County Board of Supervisors

ATTEST:

APPROVED AS TO FORM

Clerk of Board

3-13-25
Deputy County Attorney

3. Background Information

Clean Air Act and Affirmative Defenses

Affirmative defenses were not originally part of the Clean Air Act, or its implementation, but were added in multiple local air quality codes beginning in the 1990's to meet evolving EPA guidance. In theory, these provisions allow sources that exceed their emissions limitations to avoid liability for these exceedances in judicial proceedings by claiming that they resulted from either exceedances during the startup, shutdown, or malfunction of equipment (“S/S/M”); or through matters outside of the control of the source (“emergencies” or “Acts of God”). In practice, the EPA has found no examples of these defenses being used, and PDEQ also has no record of them being used in Pima County. This is because air control agencies generally, and PDEQ specifically, (1) focus primarily on compliance prior to taking violations to court, (2) utilize broad discretion when engaging in compliance and enforcement, including the ability to consider factors like circumstances outside of the source’s control in determining compliance plans and penalties. Rarely do exceedances even make it into court proceedings, and when they do, judges also retain discretion to consider fault and mitigating circumstances.

EPA rulings that affirmative defenses violate the Clean Air Act

The EPA has issued rulings and guidance that both affirmative defenses for S/S/M and due to emergency circumstances violate the Clean Air Act, for different reasons.

In the early 2010's, several environmental organizations challenged emissions exemptions related to S/S/M (Sierra Club petition for rulemaking in 2011; Natural Resources Defense Counsel lawsuit in 2014). As a result of this public engagement, the EPA issued a final rule¹ in 2015 finding multiple types of exemptions for S/S/M to be in violation of the Clean Air Act and requiring states that had these exemptions to update their federally approved air rules. This EPA rule was challenged in federal court, and in 2024 a federal court reaffirmed that affirmative defenses as to specific relief for actions for non-compliance were a violation of the Clean Air Act (Environmental Committee of Florida Electric Power v. EPA, 94 F.4th 77 (D.C. Cir. 2024)).

On July 12, 2023, the EPA announced the removal of the Title V affirmative defense provisions in 40 CFR 70.6(g) (state, local, and tribal permitting authorities) relating to emergency circumstances². The EPA rule noted that these affirmative defenses were inconsistent with the structure of the Clean Air Act, and impermissibly limited judicial discretion. EPA directed state and local permitting agencies to remove these clauses from permits as permits are renewed, and to

¹ 80 FR 33840, available at <https://www.govinfo.gov/content/pkg/FR-2015-06-12/pdf/2015-12905.pdf>

² 88 FR 47029, available at <https://www.epa.gov/system/files/documents/2023-07/8961-01-OAR%20Title%20V%20Affirmative%20Defense%20Final%20Rule.pdf>

update the respective federally approved rules to remove these defenses.

EPA set a deadline for August 2024 for air agencies to remove their impermissible affirmative defense rules, or to request an extension. PDEQ requested an extension until August 2025.

Pima County Code affirmative defense provisions

The Pima County Code contains both types of affirmative defenses: violations that occur during startup, shutdown, or malfunction of equipment (S/S/M); and emergency circumstances (also known as “acts of God”). These provisions allow sources to raise affirmative defenses during enforcement actions, including lawsuits, that would then prevent the judge from having any discretion to issue civil penalties. Pima County Code contains these defenses both for major stationary sources and minor stationary sources.

Pima County Department of Environmental Quality proposed rulemaking

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 Pima County to retain some of these affirmative defenses, and some with caveats that they could only be used in state proceedings but not federal ones. For the sake of consistency and clarity, PDEQ intends to remove these affirmative defenses across the board.

PDEQ’s rulemaking proposes revisions to the following sections of Pima County Code:

- [PCC 17.12.040\(E\)](#) (Emergency affirmative defense provision for Pima County Class I sources)
- [PCC 17.12.180](#) (Startup/shutdown/malfunction affirmative defense provision for Pima County Class I sources)
- [PCC 17.13.020\(C\)](#) (Emergency affirmative defense provision for Pima County Class II and III sources)
- [PCC 17.13.200](#) (Startup/shutdown/malfunction affirmative defense provision for Pima County Class II and III sources)

Impacts on residents, the environment, and businesses

Affirmative defense has been in Pima County Code since 1993 in the case of the “emergency,” and 2005 in the case of startup/shutdown/malfunctions, and have never been used by a permitted source. There are no anticipated economic impacts to people, the environment, or businesses from this proposed rulemaking.

The costs to Pima County are only the costs of staff time to engage in this rulemaking, including some PDEQ 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.

4. Public Notice Required and Completed

Pima County Department of Environmental Quality (PDEQ) follows all Arizona Revised Statutes and Pima County Code mandates on public notice. In addition, PDEQ follows an internal process to ensure meaningful public participation. This document summarizes all notice, including citations where it was legally required.

For this proposed rulemaking, PDEQ began by reaching out to all permitted stationary air sources in an early informal stakeholder email sent on December 9, 2024, over a month before the formal rulemaking process began. That email informed permitted sources about the upcoming rulemaking, where to get additional information, how to sign up for PDEQ newsletters, and contained an invitation to contact Abigail Okrent with questions. One permitted source requested a follow-up phone call, which was held prior to the opening of the formal rulemaking process; that source did not submit a comment.

PDEQ posted notice of the proposed rulemaking on the website at www.pima.gov/415 and sent an email to a subscriber list of over 6,500 email addresses at GovDelivery on January 13, 2025, pursuant to A.R.S. §49-471.04. PDEQ put a notice in the Arizona Daily Star on January 13 and again on January 20, 2025, pursuant to A.R.S. §11-251.05, A.R.S. §49-471.06, A.R.S. §49-498, P.C.C. 17.04.400. PDEQ emailed notice to other Air Control Districts, local governments, and the Pima Association of Governments on January 13, 2025, pursuant to P.C.C. 17.04.400.

PDEQ also emailed local tribal governments on January 13, 2025.

To accommodate non-English speakers and people with limited vision, PDEQ posted notices on our web pages within the main browser, so that they were compatible with reader and translation software. To reach Pima County's large Spanish-speaking population, PDEQ shared a print bilingual notice in all Pima County libraries (also a way to reach people with limited technology access) and a news blurb in the bilingual local online news source, Arizona Luminaria.

Although a public hearing for this rulemaking process was not mandatory unless requested, PDEQ chose to hold an informal stakeholder meeting on February 4, 2025 and an oral proceeding on February 18, 2025, with both open to the public and the same information to be presented. The hearings were held via Microsoft Teams, with one during regular business hours and the second after regular business hours, to try to accommodate more people. Three members of the public attended the first meeting. A video recording of that meeting was linked on www.pima.gov/415 and is still available. For the second meeting, only 1 person showed up, and since the materials were the same as the 1st meeting and that person had also attended the 1st meeting, the attendee decided to leave the meeting before it started. PDEQ closed the Teams link after 15 minutes and did not hold the meeting.

Attached are proof of public notices.

Website Screenshot from 1/13/25

Address: www.pima.gov/415

The screenshot shows a web browser window with the address bar displaying "pima.gov/415/Rules-Regulations". The browser's address bar includes navigation icons (back, forward, refresh) and a search icon. Below the address bar is a navigation menu with items: "PDEQ Websites", "Laws and Rules", "Westlaw Sign In | Th...", "Air Resources", "Stormwater", and "Other AZ Agencies".

On the left side of the page, there is a sidebar menu with two items: "Introduction to Rulemaking Process" and "State Implementation Plan".

The main content area features a breadcrumb trail: "Home | Departments & Offices | Health & Community Services | Environmental Quality | Rules & Regulations". Below this is the heading "RULES & REGULATIONS" and a sub-heading "Stay informed of PDEQ's rulemakings by signing up for our [Environmental Quality News and Alerts](#)."

A navigation menu on the left side of the main content area includes three items: "RULEMAKING OVERVIEW", "LOCAL, STATE & FEDERAL RESOURCES", and "CURRENT RULEMAKINGS" (which is highlighted in blue).

The main content area contains the following text:

This webpage will be updated regularly to provide information on current rulemakings. Please continue to check back here, and also sign up for [Environmental Quality News and Alerts](#) to be the first to learn about updates.

[NOTICE OF PROPOSED RULEMAKING – AIR QUALITY AFFIRMATIVE DEFENSE REMOVAL](#)

January 13, 2025 - Pima County

Pima County Department of Environmental Quality (PDEQ) proposes to remove **air quality stationary source affirmative defense** rules from Pima County Code Title 17. This rulemaking would fully redact, and not replace, the following sections of Pima County Code: [PCC 17.12.040\(E\)](#), [PCC 17.12.180](#), [PCC 17.13.020\(C\)](#), and [PCC 17.13.200](#).

This proposed change will have no impact on air quality or on regulated entities.

The public comment period runs from January 13, 2025 to February 27, 2025. Public meetings/hearings, open to anyone, will be as follows:

- February 4, 2025, 2:00 pm: Stakeholder meeting (online)
- February 18, 2025, 6:00 pm: Oral proceeding (online)
- April 1, 2025, 9:00 am or later: Tentative Board of Supervisors vote (130 W. Congress St, 1st Floor)

To stay up to date with this rulemaking, and PDEQ's other activities, please check PDEQ's website or subscribe to the [PDEQ newsletter](#). If you have any questions related to this rulemaking proposal please contact Abigail Okrent, PDEQ's Rules Manager, at abigail.okrent@pima.gov.

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[MORE INFORMATION](#)

Read the complete Notice of Proposed Rulemaking here: [Notice of Proposed Rulemaking\(PDF\)](#)

All public hearings are open to all members of the public. To at

1. Stakeholder meeting, February 2, 2025 at 2:00 p.m.
 - [Link To Feb. 4 Teams Meeting](#)
 - Meeting id: 248 772 316 070 & Passcode: g8Aw3K4f



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CivilRights.PDEQ@pima.gov or 520-724-7400. To request interpretation services or other accessibility measures for any scheduled hearings, please contact PDEQ as soon as possible.

MORE INFORMATION

Read the complete Notice of Proposed Rulemaking here: [Notice of Proposed Rulemaking \(PDF\)](#)

All public hearings are open to all members of the public. To attend, see the information below:

1. Stakeholder meeting, February 2, 2025 at 2:00 p.m.
 - [Link To Feb. 4 Teams Meeting](#)
 - Meeting id: 248 772 316 070 & Passcode: g8Aw3K4f
 - Dial in by phone: 1-602-649-0382 & conference id: 895 153 017#

2. Oral proceeding/public hearing, February 18, 2025 at 6:00 p.m.
 - [Link to Feb. 18 Teams Meeting](#)
 - Meeting id: 211 577 162 729 & Passcode: nD9iD3AV
 - Dial in by phone: 1-602-649-0382 & conference id: 573 856 164#

3. Board of Supervisors meeting - vote on proposed rules, April 1, 2025 at 9:00 a.m. and later
 - In person at 130 W. Congress St., 1st Floor
 - Agenda, Schedule, In-person information, and online viewing options:
<https://www.pima.gov/2529/Board-of-Supervisors-Agenda-Schedule>

SUBMIT COMMENTS

Anyone may submit a public comment on this proposed rulemaking. Comments received between January 13 - February 27, 2025, will be considered and addressed in the final rulemaking package. You may submit a written comment 3 ways:

1. By using the fillable comment form: [Comments on Proposed Air Quality Rule – Removal of Affirmative Defenses Form](#)
2. By emailing abigail.okrent@pima.gov.
3. In writing mailed to PDEQ, Attn: Rules, 33 N. Stone Ave., 7th Floor, Tucson, AZ 85701

PDEQ Proposed Rulemaking - Air Quality

Pima County, Arizona sent this bulletin at 01/13/2025 10:40 AM MST

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PDEQ Proposed Rulemaking - Air Quality

PIMA COUNTY, Jan. 13, 2025 --

Pima County Department of Environmental Quality (PDEQ) proposes to remove **air quality stationary source affirmative defense** rules from Pima County Code Title 17. This rulemaking would fully redact, and not replace, the following sections of Pima County Code: [PCC 17.12.040\(E\)](#), [PCC 17.12.180](#), [PCC 17.13.020\(C\)](#), and [PCC 17.13.200](#).

This proposed change will have no impact on air quality or on regulated entities.

The public comment period runs from January 13, 2025 to February 27, 2025. Public meetings/hearings, open to anyone, will be as follows:

- February 4, 2025, 2:00 pm: Stakeholder meeting (online, see link below)
- February 18, 2025, 6:00 pm: Oral proceeding (online, see link below)
- April 1, 2025, 9:00 am or later: Tentative Board of Supervisors vote (130 W. Congress St, 1st Floor)

Additional information, including the full Notice of Proposed Rulemaking, how to submit comments, and registration for online public meetings/hearings, is at www.pima.gov/415/Rules-Regulations.

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Links for online meetings:

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 - [Meeting link Feb 4/Enlace para reunion 4 feb](#)
 - Meeting id: 248 772 316 070
 - Passcode: g8Aw3K4f
 - Dial in by phone
 - 1-602-649-0382
 - Phone conference id: 895 153 017#
- Feb. 18 @ 6pm Oral proceeding
 - [Meeting link Feb 18/Enlace para reunion 18 feb](#)
 - Meeting id: 211 577 162 729
 - Passcode: nD9iD3AV
 - Dial in by phone
 - 1-602-649-0382
 - Phone conference id: 573 856 164#
- Apr. 1 Board of Supervisors Meeting
 - Agenda, Schedule, In-person information, and online viewing options:
<https://www.pima.gov/2529/Board-of-Supervisors-Agenda-Schedule>

Propuesta de Reglamentación de la Calidad del Aire del Condado de Pima

CONDADO DE PIMA, 13 de enero, 2025-

El Departamento de Calidad Medioambiental del Condado de Pima (PDEQ) propone eliminar las reglas de calidad de aire para defensas afirmativas para fuentes estacionarias del Título 17 del Código de Condado de Pima. Esta reglamentación redactaría, y no reemplazaría, las siguientes secciones del Código do Condado de Pima: [PCC 17.12.040\(E\)](#), [PCC 17.12.180](#), [PCC 17.13.020\(C\)](#), and [PCC 17.13.200](#).

El cambio propuesto no afectara la calidad del aire ni las entidades reguladas.

El periodo para comentarios públicos es del 13 de enero al 27 de febrero, 2025. Las audiencias publicas, abiertas a todos, serán:

- 4 de febrero, 2025, 14:00 horas: Reunion de partes interesadas (en línea - abajo)
- 18 de febrero, 2025, 18:00 horas: Procedimiento oral (en línea - abajo)
- 1 de abril, 2025, 9:00 horas o mas tarde: el voto de la junta se supervisores del condado de Pima (tentativo) (130 W. Congress St, piso 1)

Mas información, incluido el Avido de Reglamentación Propuesta completo, como enviar comentarios, y la registración para las audiencias en línea, se encuentra en www.pima.gov/415/Rules-Regulations.

Para mantenerse actualizado con esta reglamentación, y las otras actividades de PDEQ, consulte el sitio web de PDEQ o suscríbese a las [Noticias PDEQ](#). Si tiene preguntas sobre esta reglamentación, comuníquese con Abigail Okrent, la gerenta de reglas de PDEQ, a abigail.okrent@pima.gov.

PDEQ no discrimina por motivos de raza, color, sexo, origen nacional (incluido idioma), edad o discapacidad. Si necesita ayuda en espanol o otro idioma o alguna modificacion para que nuestros servicios sean mas accesibles, comuníquese con nosotros a CivilRights.PDEQ@pima.gov o al 520-724-7400.

Enlaces para reuniones en línea:

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 - [Meeting link Feb 4/Enlace para reunion 4 feb](#)
 - ID de reunion: 248 772 316 070
 - Contraseña: g8Aw3K4f
 - Llamar por telefono
 - 1-602-649-0382
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 - [Meeting link Feb 18/Enlace para reunion 18 feb](#)
 - ID de reunion: 211 577 162 729
 - Contraseña: nD9iD3AV
 - Llamar por telefono
 - 1-602-649-0382

- ID de conferencia: 573 856 164#
- 1 de abril a 9:00 horas: Reunion de la junta de supervisores del Condado de Pima
 - Agenda, horario, informacion para ver en vivo or en linea:
<https://www.pima.gov/2529/Board-of-Supervisors-Agenda-Schedule>

[The Pima County Department of Environmental Quality](#) monitors air and water quality and hazardous and solid waste programs that minimize waste and prevent pollution. PDEQ also provides public outreach, education, and citizens' assistance; processes environmental permits; and responds to public complaints and inquiries with investigations and enforcement.

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 TOWN OF GILBERT
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Pima County Proposed Air Quality Rulemaking
 Pima County Department of Environmental Quality (PDEQ) proposes to remove air quality stationary source affirmative defense rules from Pima County Code Title 17. This rulemaking would fully redact, and not replace, the following sections of Pima County Code: PCC 17.12.040(E), PCC 17.12.180, PCC 17.13.020(C), and PCC 17.13.200.
 This proposed change will have no impact on air quality or on regulated entities.
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 January 13, 20 2025
 LTUCO216381

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Package:	General Package
Total payment:	332.72
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User ID:	L0073046
External User ID:	1447740

ACCOUNT INFORMATION	
Pima County Deq	
33 N Stone Ave #700	
Tucson, AZ 85701-1429	
520-724-7400	
Mark.Rogers@pima.gov	
Pima County Deq	
Contract ID:	

TRANSACTION REPORT	
Date	January 2, 2025 4:10:33 PM EST
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Subject: PDEQ Proposed Rulemaking - Air Quality
Date: Monday, January 13, 2025 11:27:00 AM

Hello,

Pursuant to PCC 17.04.400(A)(4), we are sending this email directly to you to notify you of a proposed air quality rulemaking from Pima County Department of Environmental Quality. Please consider signing up for [PDEQ News and Alerts](#) to make sure that you stay informed of all future PDEQ rulemakings and other actions requiring public notice.

Warm Regards,

Sarah Hite (She/Her)
Environmental Specialist – Rules & Policy
Pima County Department of Environmental Quality
33 N. Stone Ave, 7th Floor
Tucson, AZ 85701
520.724.7413

PDEQ Proposed Rulemaking - Air Quality

PIMA COUNTY, Jan. 13, 2025 --

Pima County Department of Environmental Quality (PDEQ) proposes to remove **air quality stationary source affirmative defense** rules from Pima County Code Title 17. This rulemaking would fully redact, and not replace, the following sections of Pima County Code: [PCC 17.12.040\(E\)](#), [PCC 17.12.180](#), [PCC 17.13.020\(C\)](#), and [PCC 17.13.200](#).

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- Apr. 1 Board of Supervisors Meeting
 - Agenda, Schedule, In-person information, and online viewing options:
<https://www.pima.gov/2529/Board-of-Supervisors-Agenda-Schedule>

Propuesta de Reglamentación de la Calidad del Aire del Condado de Pima

CONDADO DE PIMA, 13 de enero, 2025-

El Departamento de Calidad Medioambiental del Condado de Pima (PDEQ) propone eliminar las reglas de calidad de aire para defensas afirmativas para fuentes estacionarias del Título 17 del Código de Condado de Pima. Esta reglamentación redactaría, y no reemplazaría, las siguientes secciones del Código do Condado de Pima: [PCC 17.12.040\(E\)](#), [PCC 17.12.180](#), [PCC 17.13.020\(C\)](#), and [PCC 17.13.200](#).

El cambio propuesto no afectara la calidad del aire ni las entidades reguladas.

El periodo para comentarios públicos es del 13 de enero al 27 de febrero, 2025. Las

audiencias publicas, abiertas a todos, serán:

- 4 de febrero, 2025, 14:00 horas: Reunion de partes interesadas (en línea - abajo)
- 18 de febrero, 2025, 18:00 horas: Procedimiento oral (en línea - abajo)
- 1 de abril, 2025, 9:00 horas o mas tarde: el voto de la junta se supervisores del condado de Pima (tentativo) (130 W. Congress St, piso 1)

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 - Llamar por telefono
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 - ID de reunion: 211 577 162 729
 - Contraseña: nD9iD3AV
 - Llamar por telefono
 - 1-602-649-0382
 - ID de conferencia: 573 856 164#
- 1 de abril a 9:00 horas: Reunion de la junta de supervisores del Condado de Pima
 - Agenda, horario, informacion para ver en vivo or en linea:
<https://www.pima.gov/2529/Board-of-Supervisors-Agenda-Schedule>

[The Pima County Department of Environmental Quality](#) monitors air and water quality and

hazardous and solid waste programs that minimize waste and prevent pollution. PDEQ also provides public outreach, education, and citizens' assistance; processes environmental permits; and responds to public complaints and inquiries with investigations and enforcement.

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To:

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"8885317699@onlinecapturecenter.com"; "a.north@borderland-inc.com"; "a@login.com";
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"blindsay@srmaterials.com"; "bmerrill@rockprosusa.com"; "bmontene@fmi.com";
"bmorczynski@globalsolar.com"; "bob.cramb@faa.gov"; "bob.linsell@gcinc.com";
"bob.mccaskey@westernemulsions.com"; "bob@westernemulsions.com"; "bob_partner@bd.com";
"bonnie.lo@honeywell.com"; "bpaul@silvermountainmining.com"; "brad.hovey.1@us.af.mil";
"brandon.roan@angelvalleyfuneralhome.com"; "Brandon@avenidascremation.com";
"brandon@superstitioncrushing.com"; "breeves@ensignservices.net"; "brenth@raytheon.com";
"bret.webster@honeywell.com"; "brett.chapman@northwestmedicalcenter.com";
"brett.lee@northwestmedicalcenter.com"; "brian.conte@tucsonaz.gov"; "Brian.Knapp@swgas.com";
"brian.riese@northwestmedicalcenter.com"; "brian.stumpe@us.af.mil"; "brian_morgan@tjx.com";
"brinehart@cap-az.com"; "bruce.miller@us.sasol.com"; "bruce.modrak@cgifederal.com";
"bruce@sensiblecf.com"; "bsexton@cimbar.com"; "bsircy@fmi.com"; "bstonehouse@asarco.com";
"bstyer@wm.com"; "bvarela@fmi.com"; "bwebster@skilesgroup.com"; "camie.overton@curahealth.com";
"candjcoatings@aol.com"; "capitalchrome508@gmail.com"; "carl.michler@slurry.com";
"carl.vonogden@cushwake.com"; "carlenchelmayer@afni.com"; "Carlos.DeLaTorre@tucsonaz.gov";
"carlos.figueroa@cgifederal.com"; "carolena.mork@sionpower.com"; "CarondeletStMarys-AP@tenethealth.com";
"cas.financeap@aero.bombardier.com"; "cathy.fiorelli@evergreen-tucson.com"; "CAZZATO ANTHONY@cat.com";
"cbrinvoices@cordblood.com"; "cbrownro@fmi.com"; "cdbaldwin1@cox.net"; "cdemordaunt@firstdigital.com";
"cedrob@amazon.com"; "chad.lapora@tucsonaz.gov"; "charles.barbier@tucsonaz.gov";
"charles.spencer2@orovalleyhospital.com"; "charles.tubbs@northwestmedicalcenter.com";
"charmayne.eriacho@americantower.com"; "cherylsmith@afni.com"; "chris.ward@sahuaritawater.com";
"chrisf@hgcinc.com"; "christina.woodling@imerys.com"; "christopher.brewster@us.af.mil";
"christopher.camilli@alorica.com"; Christopher Smith; "christopher.walker@uahealth.com";
"chromeshop@aol.com"; "chuck@perfectionindustrialfinishing.com"; "cksanche@us.ibm.com";
"clarkm@vmcmail.com"; "clinscott@klkcpa.com"; "clopez@DakotaPro.app"; "cmeyer@metrowater.com";
"cmfquote@gmail.com"; "cmonroy@cordblood.com"; "cmuhr@orovalleyaz.gov"; "cody.stockman@cbre.com";
"cody@outlawexcavating.com"; "colm.brady@egscorp.com"; "coni.king@tucsonaz.gov"; "cookki@vmcmail.com";
"corbin_hennick@kindermorgan.com"; "costco@barghausen.com"; "craig.lawson@aero.bombardier.com";
"craig.young@cornerstoneeg.com"; "craig_downing@tjx.com"; "cromney@plumh.com"; "cscaccounts@cox.net";
"cschickel@bop.gov"; "cshepherd@chghospitals.com"; "CSM675AP@tenethealth.com"; "cspencer@tep.com";
"cstevens@fmi.com"; "cwood@globalsolar.com"; "Cynthia.Leo@tucsonaz.gov"; "cynthia.miller@searshc.com";
"Czerwinski_Kristina_M@cat.com"; "Damon.Stalnaker@swgas.com"; "dan@csselectric.com";
"danam@trico.coop"; "daniel_pena@intuit.com"; "dave.hill@frysfood.com"; "davemcw@us.ibm.com";
"david.a.tincombe@citi.com"; "david.anway@cemex.com"; "david.argentati@orovalleyhospital.com";
"david.camacho@ch2m.com"; "david.e.risinger@faa.gov"; "david.elledge@curahealth.com"; David Garrett;
"david.koepf@bannerhealth.com"; "david.lickteig@asarco.com"; "david.martinson.4@us.af.mil";
"david_martin1@intuit.com"; "david_vanauker@tjx.com"; "dawn.whaley@imerys.com"; "dball@cordblood.com";
"Dbarnes1@fmi.com"; "DBearce@tep.com"; "dbearde2@wm.com"; "dbock@costco.com"; "dcaviglia@cap-az.com";
"ddefrates@wm.com"; "ddiemer@wm.com"; "ddiulus@srmaterials.com"; "deanna_plank@tjx.com";
"debbaldwin52@gmail.com"; "deborah.white@jacobs.com"; "dennis.mangino@sionpower.com";
"derek.batterham@scripps.com"; "dhults@paragonbp.us"; "dirck@HFCoors.com"; "djeskey@srsmith.com";
"dkimball@picor.com"; "dking@kalamazoomaterials.com"; "dkrafte@icagen.com"; "dl-chn-accounts@payable@tenethealth.com";
"dloch@firstdigital.com"; "dloftis@foundationpartners.com"; "dnakashima@costco.com"; "dnava@cimbar.com"; "dochoa@triangleindustrial.com";
"donald.pearson@roche.com"; "donald_cantrell@kindermorgan.com"; "dorothy.knight@honeywell.com";
"Doug.vfh@gmail.com"; "doug.wiggins@marriott.com"; "douglas.fisher@woodplc.com";
"douglas@maranamc.net"; "doug@autogold.com"; "drhoades@fmi.com"; "drlooker@gmail.com";

"drogers@sahuaritaaz.gov"; "dshacklett@jensenprecast.com"; "dsharp@orovalleyaz.gov"; "dsplan@fritzinc.com";
"dtpippins@quiktrip.com"; "dtorgerson@triangleindustrial.com"; "dwarner@warnerpropeller.com";
"dweyer@pima.edu"; "dwight.e.albright@cbp.dhs.gov"; "dyoung@kalilbottling.com";
"earl@qualitasindustries.com"; "echapm@amazon.com"; "ed.zedaker@Imerys.com";
"ed@andersonpaintingco.com"; "ed4coolnez@aol.com"; "eder.r.delgadillo.nfg@mail.mil";
"edson.kemper@bayer.com"; "edward.gast@us.sasol.com"; "egenova@polyprint.com"; "egsd-
payables@tucsonaz.gov"; "ehawkins@trico.coop"; "ehud.gavron@login.com"; "elitecoatings32@aol.com";
"enninf@vmcmail.com"; "environmental@uastp.com"; "envirosearchsolutions@gmail.com";
"eric.burkett@gwresources.com"; "eric.m.shepherd@lowes.com"; "eric.parks@honeywell.com";
"Eric.Smith0@walmart.com"; "erica@rayreadymix.com"; "erika.maldonado@foundationpartners.com";
"erin.brady@aero.bombardier.com"; "eroudebush@flytucson.com"; "eroudebush@tucsonairport.org";
"evelyn.pope@sci-us.com"; "ezedaker@cimbar.com"; "fabian.campa@oldcaslte.com"; "ffregoso@azpm.org";
"figueroai@vmcmail.com"; "finance@dakotapro.biz"; "FKuhn@5SSL.COM"; "fpstucsonaz@gmail.com";
"frank.billas@tucsonaz.gov"; "franklin.marek@us.abb.com"; "frankp@hhs1.com";
"fraromero@ensignservices.net"; "frederick.vega@alorica.com"; "Fred.Chacon@marriott.com";
"g43913@att.com"; "gabany@msn.com"; "gabriel@rayreadymix.com"; "garland@murrietavalleyfh.com";
"gary.abrams@abrams.com"; "gary@tucsoniron.net"; "Gay.Jarvis@cassidyturley.com";
"gaylynn.dapper@naihizon.com"; "gcooper@fmi.com"; "ge3232@ATT.com"; "gegginto@fmi.com";
"gene.laramee@cbre.com"; "geneamt@yahoo.com"; "genevra.golden@us.af.mil";
"geoff.caron@sahuaritawater.com"; "geoff.fehr@asarco.com"; "gleipart@kalamazoomaterials.com";
"glondon@kltv.com"; "gpproto@aol.com"; "gprolita@us.ibm.com"; "GranadoR@kindermorgan.com"; Greg Hess;
"greg.scheu@us.abb.com"; "gregdonovan@afni.com"; "gregory.jones@ca.abb.com";
"Greta.Isbell@us.sasol.com"; "griffin@ibm.com"; "gsd@redarling.com"; "GSD-Payables@tucsonaz.gov";
"gvm@dakotacom.net"; "gvmazbilling@gmail.com"; "gvost@pacificahospital.com";
"hank@adairfuneralhomes.com"; "hazmat.compliance@americantower.com";
"Heather.M.Spitzer@raytheon.com"; "Hector.samaniego@tmcaz.com"; "Heidi.Gregory@nsmg.com";
"Henry.Digidigan@honeywell.com"; "hep-accountspayable@hollyfrontier.com"; "herman.ellis@us.sasol.com";
"Herman.Johannesmeyer@bannerhealth.com"; "hinoon@us.ibm.com"; "hiram_avila@comcast.com";
"hlasham@sahuaritaaz.gov"; "hmonazzami@kalilbottling.com"; "howard@cariocaco.com";
"hslee1113@gmail.com"; "hyte@rtx.com"; "Ian.Thompson@colliers.com"; "icorlis@involta.com";
"info@autogold.com"; "info@hudgetswan.com"; "intuit437@capturis.com"; "Invoice-Ckreg@Sci-us.com";
"irvin.bilsky@gmail.com"; "isag.cmf@gmail.com"; "isanchez@rockprousa.com"; Jackson Jenkins;
"jacob.linhart@carondelet.org"; "jacque@cariocaco.com"; "jacqueline.parks@bannerhealth.com"; Jaime Rivera;
"jacob.less@kdrp.com"; "james.d.edwards@aps.com"; "James.Frazier@tranformco.com"; "james.gibson2@sci-
us.com"; "james.gomes@marriott.com"; "james.larose@honeywell.com"; "james.r.prewitt@cbp.dhs.gov";
"james.shuler@ips.us"; "james.shuler@us.abb.com"; "Janelle.Kishbaugh@fmi.com";
"janet@andersonpaintingco.com"; "jaredk.rehm@cemex.com"; "jarnold@jrn.com";
"jashernandez@univision.net"; "jason.musfelt@oremusmaterial.com"; "jason.stubbs2@cox.com";
"jay.pullis@cbp.dhs.gov"; "jbritt@globalsolar.com"; "jbrunner@fmi.com"; "jburwell@jimclick.com";
"jcharb@kalamazoomaterials.com"; "jcheak@DakotaPro.app"; "jchristensen@firstdigital.com";
"jdivijak@arizona.edu"; "jdorsey@asarco.com"; "jeanne.nordstrom@va.gov"; "jeff.johnson@slurry.com";
"jeff.prevatt@wvm.pima.gov"; "jeff.rackow@aeacom.com"; "jeff.roberts@slurry.com"; "jeff.rock@tucsonaz.gov";
"jeff@paragonbp.us"; "jeff@westernemulsions.com"; "jeff_bordelon@kindermorgan.com";
"jeffrey.butler@us.af.mil"; "jeffrey.pinsonneault@target.com"; Jeffrey Zenan; "jekholm@asarco.com";
"jennifer.bachman@directv.com"; "jennifer.g.turner@cbp.dhs.gov"; "jennifer.gutowski@va.gov";
"jennifer.rinehart@tucsonaz.gov"; "jennifer.ruth@americantower.com"; "jessica.boerner@aero.bombardier.com";
"jessica.hansbury@foundationpartners.com"; "jessica.king@cbre.com"; "Jessica.Luzader@mhirj.com";
"jessica.rodriguez@foundationpartners.com"; "jessica@andersonpaintingco.com"; "jfaust@roadmachinery.com";
"jfrazier@triangleindustrial.com"; "jchrist@arizona.edu"; "jhernandez@jensenprecast.com";
"jill.german@roche.com"; "jim.arnold@kgun9.com"; "jim.dowling@abrams.com";
"jim.regelbrugge@cordiaenergy.com"; "jim@allegretico.com"; "jim@mcDowellaz.com";
"jjohnson@redarling.com"; "jkalil@kalilbottling.com"; "jkmiec@maranaaz.gov"; "jkolopanis@wm.com";
"jLinhart@carondelet.org"; "jmartinez@roadmachinery.com"; "jmcguffi@quiktrip.com"; "jimmyers@us.ibm.com";
"jmonical@faribaultfoods.com"; "jnaut@quiktrip.com"; "Joanna.Mahon@chghospitals.com";
"joe.ayers@imerys.com"; "joe@allegretico.com"; "joe_mclaughlin@kindermorgan.com"; "joebrossart@cox.net";
"joey.cupp@pilottravelcenters.com"; "joey.felix@fbmsales.com"; Johanna O'Dell; "john.a.warren@cgi.com";
"john.ferrante@kdrp.com"; "john.gorey@fbmsales.com"; "john.hillman@us.af.mil"; "john.li2@va.gov";
"john.loughrey@kindred.com"; "john.muir@tUSD1.org"; "john.scherpf@bannerhealth.com";
"john.schoffstall@cbp.dhs.gov"; "john.shoffstall@cbp.dhs.gov"; "John.Tharp@NortonLifeLock.com";
"John.Traynor@Marriott.com"; "john_banchy@intuit.com"; "john_pannell@kindermorgan.com";
"john_parsons@intuit.com"; "johnnames@amesco.com"; "johnny.thomasson@kindermorgan.com";
"JohnShartz@TecFusions.com"; "johnsonsc@vmcmail.com"; "jolsen@metrowater.com";
"jon.corwin@gwreaources.com"; "jonathan.gardner@va.gov"; "joselyne.iriui@marriott.com";
"joseph.auricchio@northwestmedicalcenter.com"; "joseph.felts@cemex.com"; "joseph.fico@loginbusiness.com";
"joseph.penny@us.sasol.com"; "Joseph.Torres@gsa.gov"; "joseph.turnham@us.af.mil"; Joshua Schiro;
"joyann_brice@fmi.com"; "jpinon@faribaultfoods.com"; "jroberts@fmi.com"; "jrohlk@tucson.com";
"jross@missionlinen.com"; "jsmith@maranaaz.gov"; "jteachout@orovalleyaz.gov";
"julie.gordon@angelvalleyfuneralhome.com"; "julie.williams@swgas.com";
"justin_morgan2@cable.comcast.com"; "gildardo_toscano@kindermorgan.com";
"duncan_sinclair@kindermorgan.com"; Justin Schilling; "jvadnais@missionlinen.com"; "jwilkins@orovalleyaz.gov";
"jwright@5ssl.com"; Karen Beck; "katherine.sangiorqi@vzw.com"; "katherine.williamson@us.abb.com";
"Kathryn.Blackwood@MHIRJ.com"; "Katie.Landwehr@va.gov"; "katsumi_kuga@mhl.co.jp";
"kcathers@trico.coop"; "keith.nicholson@alorica.com"; "kelly@larsenbaker.com";
"Kelly_Williams3@comcast.com"; "ken.hakes@oldcastle.com"; "ken.wertman@icagen.com";
"kenlee49@hotmail.com"; "kenneth_grubb@kindermorgan.com"; "kent.goggan@aa.com";
"kevin.ballent@swgas.com"; "kevin.bryant@cgi.com"; "kevin.fowler@jci.com"; "kevin.smmopaz@gmail.com";

"kfouquet@inter-fab.com"; "kfrancis@minresource.com"; "kiley_dabb@cable.comcast.com";
"kim.smyre@faa.gov"; "kim.stone@icagen.com"; Kimberly Baeza; "Kirsten.Milkulski@transformco.com";
"kkatz@costco.com"; "kkremer@involta.com"; "kluckett@oremusmaterial.com"; "kmarcus@uatechpark.org";
"knichols@flytucson.com"; "krhea@fmi.com"; "Kristie.Mendoza@tucsonaz.gov"; "kswingle@cordblood.com";
"kyle.b.smith@monsanto.com"; "kyle.sherburne@fbmsales.com"; "Kyle_Kelley@comcast.com";
"laguachavilla@hotmail.com"; "laguilera@costco.com"; "Lance.Peterson@tucsonaz.gov";
"landerson@idahoasphalt.com"; "Larry.Baer@northwestmedicalcenter.com"; "laura.terro@us.sasol.com";
"lawrence.teichert@vzw.com"; "L.Balmer@superstitioncrushing.com"; "lbogen@bourncompanies.com";
"lcampos@srsmith.com"; "lcapmandi@abts.net"; "lcarrera@klkcpa.com"; "l Cassidy@chghospitals.com";
"leah.proffitt@us.af.mil"; "lee@perfectionindustrialfinishing.com"; "Leigh_Branston@cable.comcast.com";
"leo.lujan@perpetualpetsllc.com"; "Leon.Berenji@cox.com"; "leon.clark@kgun9.com"; "leon.clark@scripps.com";
"leslie_nolting@kindermorgan.com"; "leticia.alfonso@directv.com"; "levans@metrowater.com";
"licensing@5ssl.com"; "lillie.savage@us.sasol.com"; "lisa.bettters@orovalleyhospital.com";
"lisa@hslproperties.com"; "liz.hagan@marriott.com"; "liz.haibeck@abrams.com"; "loydw@email.arizona.edu";
"lnewcomb@5sqc.com"; Lonnie Vega; "lori.ehman@tucsonaz.gov"; "lorne.earle@kold.com";
"louis.e.payton@cbp.dhs.gov"; "lowther2@arizona.edu"; "lrobes@univision.net"; "lsmith@jensenprecast.com";
"lthompson@quiktrip.com"; "luis.navarro@tucsonaz.gov"; "luz.almazan@swissport.com";
"mairaalonzodrycleaner@gmail.com"; "manuel.smmopaz@gmail.com"; "marc.beaudette@aero.bombardier.com";
"marc.gomez@swissport.com"; "marc.lemon@kindred.com"; "marcellac@hgcinc.com";
"marco.melancon@aero.bombardier.com"; "maria.nguyen3@va.gov"; "marian@ranchosahuarita.com";
"marie.bauer@tusd1.org"; "marina.estrella@aps.com"; "mario_ramirez@kindermorgan.com";
"mark.arancia@tucsonaz.gov"; "mark.bourdeau@delta.com"; "mark.bradshaw@cgi.com";
"Mark.cunningham@hollyenergy.com"; "mark.neuman1@bayer.com"; "mark@superstitioncrushing.com";
"martin.bey@tucsonaz.gov"; "Martin.Stupka@cushwake.com"; "martin_lamont@ti.com";
"marvin_fields@northwestmedicalcenter.com"; "Materials@outlawexcavating.com"; "Matthew.beverly@us.af.mil";
"matthew.brunkow@centurylink.com"; "matthew.brunkow@centurylink.com.com";
"matthew.brunkow@lumen.com"; "matthew.deel@cushwake.com"; "matthew.lingard@bayer.com";
"matthew.lingard@monsanto.com"; "Matthew.Maynard@Bannerhealth.com";
"matthew.ramsey@loginbusiness.com"; Max DiSante; "mcdermottfuneralhome@gmail.com";
"mcdermottgroupaz@gmail.com"; "mcrabtree@skilesgroup.com"; "mdawson@sionpower.com";
"MDeDona@srsmith.com"; "mdelgado1@arizona.edu"; "mdickey@bourncompanies.com";
"mdickey@bournpartners.com"; "mdowney@ensignservices.net"; "megan.dickens@bayer.com";
"Megan.Garvey@TEP.com"; "megan.orr@naihorizon.com"; "melanie.rice@swgas.com";
"melissadominguez@tmcaz.com"; "mfredericksen@trico.coop"; "mgerlach@azadc.gov"; "micaskey@arizona.edu";
"michael.bowlden@tucsonaz.gov"; Michael Bowlden; "michael.dieckhaus@roche.com";
"michael.dieckhaus@roche.com"; "michael.drowley@us.af.mil"; "michael.drowley@us.af.mil";
"michael.knutson@ang.af.mil"; Michael Lambden; "michael.moyer@us.sasol.com";
"michael.orcutt@angelvalleyfuneralhome.com"; "michael.schellar@tucsonaz.gov"; "michael.toriello@us.af.mil";
"michael.tripp@cemex.com"; "michael_eastman@comcast.net"; "michael_pitta@kindermorgan.com";
"michelle.love@kold.com"; Michelle Varner; "mike.berry@sionpower.com"; "mike.brandibur@tmcaz.com";
"mike.buter@cordiaenergy.com"; "Mike.Hart@marriott.com"; "mike.menard@aero.bobardier.com";
"mike.murdock@abrams.com"; "mike@angelvalleyfuneralhome.com"; "Mike_maddocks@homedepot.com";
"mike_welliver@symantec.com"; "mikeb@hgcinc.com"; "mikel.cole@aps.com"; "misael.figueroa@comcast.com";
"misenberger@picor.com"; "mitchell.pribble@dhs.gov"; "mjacobs@orovalleyaz.gov"; "mkleccka@hhs1.com";
"mklinger@involta.com"; "mlampman@cimbar.com"; "mlyders@fmi.com"; "mmansana@amazon.com";
"MMaser@DIRECTV.com"; "mona.deane@cbre.com"; "mongerg@vmcmail.com";
"morgan.stmaria@foundationpartners.com"; "mosborne@maranaaz.gov"; "Moss_Jarrold@cat.com";
"mrichardson@univision.net"; "msaposnik@missionlinen.com"; "msmith@calportland.com"; "mstilb@mas-res.com";
"mtorres@cimbar.com"; "murman@dmyl.com"; "mwheeler@calportland.com";
"nadingn@vmcmail.com"; "nancy.petersen@tucsonaz.gov"; "natalie.kirchner@level3.com";
"nate.anderson@fbmsales.com"; "nate.anderson@fmsales.com"; "Nathan.Saxton@bannerhealth.com";
"nathaniel_gracejr@kindermorgan.com"; "nathen.nigro@bannerhealth.com"; "ncullen@ensignservices.net";
"nicholas.germanos@us.af.mil"; "nichole.cline@colliers.com"; "nickensa@amazon.com";
"nicolas.lopez@western.emulsions.com"; "nicole.sweeney@rtx.com"; "Nicolette.Farley@va.gov";
"nina_mcafee@kindermorgan.com"; "njohannesmeyer@asarco.com"; "nnunez@fmi.com";
"nockebyj@vmcmail.com"; "nocklebyj@vmcmail.com"; "normalinvoices@scripps.com"; "nov@lowes.com";
"nsmgapsupport@cognizant.com"; "nulmer@kold.com"; "ochuffemoscoso@pima.edu";
"Omar.Jacobo@jacobs.com"; "onur.demirkaya@fbmsales.com"; "oscar.aponte@verizonwireless.com";
"ozunam@vmcmail.com"; "papkab@vmcmail.com"; "parkavetucson@cox.net"; "Parks_Keri_D@cat.com";
"pat.tapia@tucsonaz.gov"; "patrick@superstitioncrushing.com"; "Paul.Navarez@tucsonaz.gov";
"paul.neville@bringfuneralhome.com"; "Paul.Stidham@westinlapaloma.com"; "paul.torrie@level3.com";
"Paul_Salcido@kindermorgan.com"; "payables@kallibotting.com"; "pcoady@mas-res.com"; "pcolker@5ssl.com";
"peary.polley@faa.gov"; "peggman@borderland-inc.com"; "penny.grandon@cox.com";
"permits@foundationpartners.com"; "petcemetrytuc@aol.com"; "peter.callaghan@evergreen-tucson.com";
"pgebell@tep.com"; "Phil.skinner@westinlapaloma.com"; "phillip.cottam@dhs.gov";
"phillip_baca@kindermorgan.com"; "philyder@amesco.com"; "pkelly@arizonacanning.com";
"pmartinez@picor.com"; "pneville@bringfuneralhome.com"; "POC@target.com"; "pqalls@chghospitals.com";
"ptrenary@orovalleyaz.gov"; "qtenviro@quiktrip.com"; "rachel.hamlyn@us.af.mil"; "randy.ghezzi@slurry.com";
"randy.lujan@perpetualpetsllc.com"; "randy.zimmerman@aero.bombardier.com"; "ray.cashen@tucsonaz.gov";
"ray.wilson@tucsonaz.gov"; "Raymi@avenidascremation.com"; "raywagner@aol.com";
"rbieber@oremusmaterial.com"; "rblevin@directv.com"; "rbukala@foundationpartners.com";
"rroley@roclatie.com"; "reardonm@vmcmail.com"; "reardonm@vmcmail.com";
"regbusinessolutions@3eco.com"; "relliott@ghvaz.com"; "renewals@ensignservices.net";
"rflores@orovalleyaz.gov"; "rgenova@polyprint.com"; "rgossett@fmi.com"; "rgossett@fmi.com";
"rhott@idahoasphalt.com"; "richard.byrd@tucsonaz.gov"; "RICHARD.GURGOS@MHIRJ.COM";
"richard.hill@egscorp.com"; "richard.i.goodman@lowes.com"; "richard.prevallet@tmcaz.com";

"richard@hslproperties.com"; "richard_liddle@tjx.com"; "richard_w_murphy@raytheon.com"; "RJECCHER@DIRECTV.COM"; "rknight@roadmachinery.com"; "rlpeters@email.arizona.edu"; "Robert.cutter@cemex.com"; "Robert.Ducy@westinlapaloma.com"; "robert.huth@cemex.com"; "robert.kendall@citi.com"; "Robert.LaBlue"; "robert.linsell@gcinc.com"; "Robert@azseq.com"; "robin.coachman@DHS.gov"; "robin.kennedy@cordiaenergy.com"; "robrien@carondelet.org"; "roblyene.seapno@asarco.com"; "ron.michaels@westernemulsions.com"; "ronald.peterson@cbre.com"; "ronh@autogold.com"; "rorozco@flytucson.com"; "ross.adelman@tucsonaz.gov"; "Roxann.Smith@northwestmedicalcenter.com"; "roxanne.wright@sci-us.com"; "royalplating1@gmail.com"; "romero@fmi.com"; "rrussell@jrn.com"; "rwilliams@faribaultfoods.com"; "ryan.oler@scripps.com"; "ryan.pease@swgas.com"; "ryan.roler@scripps.com"; "samantha.balland@honeywell.com"; "samuel.kinghorn@bringfuneralhome.com"; "sandi.carretero@tucsonaz.gov"; "Santiago.MirandaJr@Bannerhealth.com"; "sarah.frost@bannerhealth.com"; "sarah.reitmeyer@us.af.mil"; "Sarina.martinez@asarco.com"; "sbeyer@trico.coop"; "sbowen@ci.sahuarita.us"; "sbrooks@roadmachinery.com"; "scanizales@cordblood.com"; "scbaker@carondelet.org"; "schobrett@cordblood.com"; "schoonma@email.arizona.edu"; "sclaasen@azpm.org"; "Scot.Sandefur@americantower.com"; "Scott.Cambell@us.af.mil"; "scott.hughes@cemex.com"; "scott.mills@us.af.mil"; "scott.northrup@tep.com"; "sdean@maranaaz.gov"; "sean.carney@foundationpartners.com"; "selene.tibbits@tucsonaz.gov"; "sevilletuc@cox.net"; "sgesbeck@arizonacanning.com"; "sguinn@fmi.com"; "shannon.tyndall@gwresources.com"; "sharla_miller@tjx.com"; "sharv.kondamudi@aero.bombardier.com"; "shaun.tilley@tucsonaz.gov"; "shaunah.haranczak@cemex.com"; "shawn.mahon@aero.bombardier.com"; "shawn.noonan@cushwake.com"; "Shelli Toms"; "sholland@arizona.edu"; "sholland@email.arizona.edu"; "shughes@calportland.com"; "sierramining@live.com"; "sleverty@azcorrections.gov"; "smcwilliams@trico.coop"; "smiklosi00@msn.com"; "smithef@vmcmail.com"; "smithjef@vmcmail.com"; "sneihart@comcast.net"; "snlyund@sahuaritaaz.gov"; "sreis@tucson.com"; "sromero@cap-az.com"; "srottas@cap-az.com"; "sschlinger@dakotapro.biz"; "ssh Shepard@metrowater.com"; "ssimmons@flytucson.com"; "ssipe@bop.gov"; "ssomerville@kvoa.com"; "ssturgill1@azadc.gov"; "stacey.webb@howmet.com"; "Stanley_Gilbert@fmi.com"; "stauffers@vmcmail.com"; "stephanie.baldner@bayer.com"; "stephen.rubyor@gsa.gov"; "steve.baker@imerys.com"; "steve.grzovic@searshc.com"; "steve.levar@verizonwireless.com"; "steve.michael@mhij.com"; "steve@amcepmetals.com"; "steven.kimmehea@ge.com"; "steven.kimmehea@howmet.com"; "Steven Richey"; "stevenr.knudsen@cemex.com"; "stevens@vmcmail.com"; "stevensj@vmcmail.com"; "stolson.s01291.us@wal-mart.com"; "sundria.ridgley@foundationpartners.com"; "susan.fuller@searshc.com"; "susan.heffley@carondelet.org"; "susan.i.torguson@cbp.dhs.gov"; "Susan_Walsh@tjx.com"; "susan_wash@tjx.com"; "SWGFacilitiesAP@swgas.com"; "swortman@azadc.gov"; "sylvia.estrada@tucsonaz.gov"; "tanyab@hgcinc.com"; "tbehrens@fmi.com"; "ted_meinhold@kindermorgan.com"; "teri.merical@monsanto.com"; "terri.freckleton@faa.gov"; Terri Powelson; "terry.vergon@alorica.com"; "tfonze@carondelet.org"; "tfoyn@univision.net"; "therese_tuazon@kindermorgan.com"; "thomas.duggan@honeywell.com"; "thomas.hughes@directv.com"; "thomas.mohr@tusd1.org"; "thomas.ryan@tucsonaz.gov"; "thurlocker@costco.com"; "tim_Eastep@fmi.com"; "Timothy.McGuire@mhij.com"; "titus.thomas@azdeq.gov"; "tkelley@sionpower.com"; "tmancuso@missionlinen.com"; "tmiller10@wm.com"; "tmoulin@asarco.com"; "todd.didier@swgas.com"; "todd.hill@gcinc.com"; "todd.keller@gcinc.com"; Todd Mailloux; "todd.mencke@bannerhealth.com"; "togley@srsmith.com"; "tom.moore@westinlapaloma.com"; "toni@perfectionindustrialfinishing.com"; Tony Cisneros; "tphillips@asarco.com"; "traci.stooks-dermer@aps.com"; "travis_anderton@bd.com"; "tregg.white@kgun9.com"; "trinka@tucsoniron.net"; "TRThomas42@yahoo.com"; "tsheddan@ti.com"; "ttang@calportland.com"; "tteich@globalsolar.com"; "Tucson_Invoices@aero.bombardier.com"; "tucsonaccountspayable@us.sasol.com"; "tucsoncleaners@gmail.com"; "TucsonManagement@NAIHorizon.com"; "Twitchell_lauren@cat.com"; "tyler.moody@bannerhealth.com"; "urs.schoop@sionpower.com"; "valerie.herman@tucsonaz.gov"; "vandenbergd@vmcmail.com"; "vasquezp@kindermorgan.com"; "vferrante@carondelet.org"; "vhensley@quiktrip.com"; "vincent.rea@us.af.mil"; "vincent.rosales@va.gov"; "vippenenterprise@gmail.com"; "visalli@us.ibm.com"; "vitaliy.rusakov@alcoa.com"; "vlewis@pima.edu"; "vtixier@icagen.com"; "w01079mgr@costco.com"; "w407mgr@costco.com"; "w431mgr@costco.com"; "walmartpmsupport@aptim.com"; "warrenja2@state.gov"; "warrent@hgcinc.com"; "wcobb@fmi.com"; "wcrane@trico.coop"; "we.lee@cgifederal.com"; "weeche@vmcmail.com"; "weiben_daly@kindermorgan.com"; "wendy.taylor@vzw.com"; "wendy.williamson@gsa.gov"; "william.caron@va.gov"; "william.mugg@aero.bombardier.com"; "william_biggs@kindermorgan.com"; "william_sprandlin@fmi.com"; "winskevi@amazon.com"; "wward@pima.edu"; "ycy9115@yahoo.com"; "ylee15@cox.net"; "youngchel@hotmail.com"; "zachary.d.feingold@verizon.com"; "zachary.evans@dhs.gov"; "zachary@fentoninvestco.com"; "zane.w.avalos@cbp.dhs.gov"; "z-broadhead@ti.com"; "zellis@orovalleyaz.gov"; "zenizoj@email.arizona.edu"; "zfox@sionpower.com"; "zitalic.sanchez@aero.bombardier.com"

Cc: Abigail Okrent; Scott DiBiase
Subject: Early informal stakeholder notice of proposed air rulemaking
Date: Monday, December 9, 2024 1:43:00 PM

Affirmative Defense Removal Rulemaking: Early Informal Notice

Pima County Department of Environmental Quality (PDEQ) practices early and meaningful engagement with County residents, businesses, advocacy groups, and others who might be impacted by, or interested in, our decisions and practices. As

such, we are reaching out to inform you of an upcoming rulemaking that may pertain to your air permit(s).

Tentative Dates:

- January 13, 2025
 - Notice of Proposed Rulemaking to be posted online
 - Start of public comment period
- February 4, 2025 – Stakeholder meeting
- February 19, 2025 – Oral proceeding
- February 27, 2025- Close of public comment period
- April 1, 2025 – Board of Supervisors Public Hearing/vote on proposed rulemaking

Proposed Rulemaking Background:

PDEQ is proposing to remove the air quality stationary source affirmative defense clauses from Pima County Code, of which there are two types: emissions exceedances resulting from emergency circumstances (also known as “acts of God”) and exceedances that occur during startup, shutdown, or malfunction of equipment. These provisions theoretically allow stationary sources to raise affirmative defenses during enforcement actions, including lawsuits, that would then prevent the judge from having any discretion to issue civil penalties. Both types of affirmative defenses have been declared by the EPA to be in violation of the Clean Air Act (CAA), as they apply to Part 70 sources. For consistency and clarity, PDEQ is proposing to remove these clauses as to all permitted stationary sources.

This rulemaking would fully redact, and not replace, the following sections of Pima County Code:

- [PCC 17.12.040\(E\)](#)
- [PCC 17.12.180](#)
- [PCC 17.13.020\(C\)](#)
- [PCC 17.13.200](#)

Permitted stationary sources will have these clauses removed from their permits, and may have already noticed their removal if their permit was renewed since August 2023. This change to Pima County Code will have no impact on air quality or on regulated entities. The EPA has found that the defenses have rarely been used, if ever; PDEQ has no record of them being used in Pima County. Judges in civil penalty hearings retain the discretion to consider all circumstances when assigning fines. Furthermore, PDEQ retains broad discretion to consider mitigating and extenuating circumstances in compliance actions prior to the rare occasions in which enforcement actions are

undertaken.

We are reaching out to all PDEQ's permitted sources that may have had affirmative defenses in their permits to inform them about this rulemaking and answer any initial questions that may arise.

How to stay informed:

If you have any questions prior to the opening of the public comment period in January, please contact Abigail Okrent, PDEQ's Rules Manager, at abigail.okrent@pima.gov. You can also check the PDEQ Regulatory page, which will be updated throughout this process, at <https://www.pima.gov/415/Rules-Regulations>.

If you would like to stay up to date with information regarding this rulemaking, and PDEQ's other activities, please continue to check our website or subscribe to [our newsletter here](#). This is the best way to stay informed about changes or news regarding PDEQ. You will not get further updates about this rulemaking unless you subscribe.

Sarah Hite (She/Her)

Environmental Specialist – Rules & Policy
Pima County Department of Environmental Quality
33 N. Stone Ave, 7th Floor
Tucson, AZ 85701
520.724.7413

Pima County DEQ does not discriminate on the basis of race, color, sex, national origin (including limited English proficiency), age, or disability. If you need assistance in another language or any modifications to make our services more accessible to you, please contact us at CivilRights.PDEQ@pima.gov or 520-724-7400.

El Departamento de Calidad Medioambiental del Condado de Pima (PDEQ) no discrimina por motivos de raza, color, sexo, origen nacional (incluido idioma), edad or discapacidad. Si necesita ayuda en otro idioma o alguna modificacion para que nuestros servicios sean mas accesibles, comuniquese con nosotros a CivilRights.PDEQ@pima.gov o al 520-724-7400.

From: [Sarah Hite](#)
To: [Abigail Okrent](#)
Bcc: Julian.hernandez@pascuayaqui-nsn.gov; Ryan.eberle@gric.nsn.us; benjamin.davis@srpmic-nsn.gov; contactus@tonation-nsn.gov
Subject: PDEQ Proposed Rulemaking - Air Quality
Date: Monday, January 13, 2025 2:43:00 PM

Hello,

Pima County Department of Environmental Quality is sharing this notice regarding a proposed air quality rulemaking with you as a courtesy. Please consider signing up for [PDEQ News and Alerts](#) to make sure that you stay informed of all future PDEQ rulemakings and other actions requiring public notice.

Warm Regards,

Sarah Hite (She/Her)
Environmental Specialist – Rules & Policy
Pima County Department of Environmental Quality
33 N. Stone Ave, 7th Floor
Tucson, AZ 85701
520.724.7413

PDEQ Proposed Rulemaking - Air Quality

PIMA COUNTY, Jan. 13, 2025 --

Pima County Department of Environmental Quality (PDEQ) proposes to remove **air quality stationary source affirmative defense** rules from Pima County Code Title 17. This rulemaking would fully redact, and not replace, the following sections of Pima County Code: [PCC 17.12.040\(E\)](#), [PCC 17.12.180](#), [PCC 17.13.020\(C\)](#), and [PCC 17.13.200](#).

This proposed change will have no impact on air quality or on regulated entities.

The public comment period runs from January 13, 2025 to February 27, 2025. Public meetings/hearings, open to anyone, will be as follows:

- February 4, 2025, 2:00 pm: Stakeholder meeting (online, see link below)
- February 18, 2025, 6:00 pm: Oral proceeding (online, see link below)
- April 1, 2025, 9:00 am or later: Tentative Board of Supervisors vote (130 W. Congress St, 1st Floor)

Additional information, including the full Notice of Proposed Rulemaking, how to submit comments, and registration for online public meetings/hearings, is at www.pima.gov/415/Rules-Regulations.

To stay up to date with this rulemaking, and PDEQ's other activities, please check PDEQ's website or subscribe to the [PDEQ newsletter](#). If you have any questions related to this rulemaking proposal please contact Abigail Okrent, PDEQ's Rules Manager, at abigail.okrent@pima.gov.

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Links for online meetings:

- Feb. 4 @ 2pm Stakeholder meeting
 - [Meeting link Feb 4/Enlace para reunion 4 feb](#)
 - Meeting id: 248 772 316 070
 - Passcode: g8Aw3K4f
 - Dial in by phone
 - 1-602-649-0382
 - Phone conference id: 895 153 017#
- Feb. 18 @ 6pm Oral proceeding
 - [Meeting link Feb 18/Enlace para reunion 18 feb](#)
 - Meeting id: 211 577 162 729
 - Passcode: nD9iD3AV
 - Dial in by phone
 - 1-602-649-0382
 - Phone conference id: 573 856 164#
- Apr. 1 Board of Supervisors Meeting
 - Agenda, Schedule, In-person information, and online viewing options:
<https://www.pima.gov/2529/Board-of-Supervisors-Agenda-Schedule>

Propuesta de Reglamentación de la Calidad del Aire del Condado de Pima

CONDADO DE PIMA, 13 de enero, 2025-

El Departamento de Calidad Medioambiental del Condado de Pima (PDEQ) propone eliminar las reglas de calidad de aire para defensas afirmativas para fuentes estacionarias del Título 17 del Código de Condado de Pima. Esta reglamentación redactaría, y no reemplazaría, las siguientes secciones del Código do Condado de Pima: [PCC 17.12.040\(E\)](#), [PCC 17.12.180](#), [PCC 17.13.020\(C\)](#), and [PCC 17.13.200](#).

El cambio propuesto no afectara la calidad del aire ni las entidades reguladas.

El periodo para comentarios públicos es del 13 de enero al 27 de febrero, 2025. Las audiencias publicas, abiertas a todos, serán:

- 4 de febrero, 2025, 14:00 horas: Reunion de partes interesadas (en línea - abajo)
- 18 de febrero, 2025, 18:00 horas: Procedimiento oral (en línea - abajo)
- 1 de abril, 2025, 9:00 horas o mas tarde: el voto de la junta se supervisores del condado de Pima (tentativo) (130 W. Congress St, piso 1)

Mas información, incluido el Avido de Reglamentación Propuesta completo, como enviar comentarios, y la registración para las audiencias en línea, se encuentra en www.pima.gov/415/Rules-Regulations.

Para mantenerse actualizado con esta reglamentación, y las otras actividades de PDEQ, consulte el sitio web de PDEQ o suscríbese a las [Noticias PDEQ](#). Si tiene preguntas sobre esta reglamentación, comuníquese con Abigail Okrent, la gerenta de reglas de PDEQ, a abigail.okrent@pima.gov.

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Enlaces para reuniones en línea:

- 4 de febrero, 14:00 horas: Reunion de partes interesadas
 - [Meeting link Feb 4/Enlace para reunion 4 feb](#)
 - ID de reunion: 248 772 316 070
 - Contraseña: g8Aw3K4f
 - Llamar por telefono
 - 1-602-649-0382
 - ID de conferencia: 895 153 017#
- 18 de febrero, 18:00 horas: Procedimiento oral
 - [Meeting link Feb 18/Enlace para reunion 18 feb](#)
 - ID de reunion: 211 577 162 729
 - Contraseña: nD9iD3AV
 - Llamar por telefono
 - 1-602-649-0382
 - ID de conferencia: 573 856 164#
- 1 de abril a 9:00 horas: Reunion de la junta de supervisores del Condado de Pima
 - Agenda, horario, informacion para ver en vivo or en linea: <https://www.pima.gov/2529/Board-of-Supervisors-Agenda-Schedule>

The Pima County Department of Environmental Quality monitors air and water quality and hazardous and solid waste programs that minimize waste and prevent pollution. PDEQ also provides public outreach, education, and citizens' assistance; processes environmental

permits; and responds to public complaints and inquiries with investigations and enforcement.

AZ Luminaria “Flicker” or short notice, posted 01/16/25

Luminaria Webpage: [Homepage - AZ Luminaria](#)

The **Pima County Department of Environmental Quality** is proposing to remove air quality stationary source affirmative defense rules from Pima County Code Title 17. This proposed change will have no impact on air quality or on regulated entities. The public comment period is Jan. 13 - Feb. 27, with public hearings on Feb. 4 and 18, and a tentative Board of Supervisors vote on the proposed rules on April 1. [Learn more.](#)

Library Notices (English and Spanish) and Confirmation of Distribution 01/13/25



Pima County Proposed Air Quality Rulemaking

Pima County Department of Environmental Quality (PDEQ) proposes to remove **air quality stationary source affirmative defense** rules from Pima County Code Title 17. This rulemaking would fully redact, and not replace, the following sections of Pima County Code: [PCC 17.12.040\(E\)](#), [PCC 17.12.180](#), [PCC 17.13.020\(C\)](#), and [PCC 17.13.200](#).

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Additional information, including the full Notice of Proposed Rulemaking, how to submit comments, and registration for online public meetings/hearings, is at www.pima.gov/415/Rules-Regulations.

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Propuesta de Reglamentación de la Calidad del Aire del Condado de Pima

El Departamento de Calidad Medioambiental del Condado de Pima (PDEQ) propone eliminar las reglas de calidad de aire para defensas afirmativas para fuentes estacionarias del Título 17 del Código de Condado de Pima. Esta reglamentación redactaría, y no reemplazaría, las siguientes secciones del Código do Condado de Pima: [PCC 17.12.040\(E\)](#), [PCC 17.12.180](#), [PCC 17.13.020\(C\)](#), and [PCC 17.13.200](#).

El cambio propuesto no afectara la calidad del aire ni las entidades reguladas.

El periodo para comentarios públicos es del 13 de enero al 27 de febrero, 2025. Las audiencias publicas, abiertas a todos, serán:

- 4 de febrero, 2025, 14:00 horas: Reunion de partes interesadas (en línea)
- 18 de febrero, 2025, 18:00 horas: Procedimiento oral (en línea)
- 1 de abril, 2025, 9:00 horas o mas tarde: el voto de la junta se supervisores del condado de Pima (tentativo) (130 W. Congress St, piso 1)

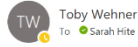
Mas información, incluido el Avido de Reglamentación Propuesta completo, como enviar comentarios, y la registración para las audiencias en línea, se encuentra en www.pima.gov/415/Rules-Regulations.

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Title 17 Air Quality Control: Removal of Affirmative Defenses

PDEQ Flyers Distribution at Joel D. Valdez Main Library



Hi Sarah,

Thank you for taking my call.

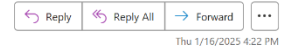
I put the PDEQ flyers out on our distribution table at Joel D. Valdez Main Library on Monday, January 13th.

Please let me know if you have any questions or if I can assist you with anything further.

Hope you are having a great day!

- Toby

Tobias Wehner | Library Associate | pronouns: He/Him/His
Joel D. Valdez Main Library | 101 N Stone Ave
520.594.5500 | tobias.wehner@pima.gov | www.library.pima.gov



From: Holly Schaffer <Holly.Schaffer@pima.gov>
Sent: Friday, January 17, 2025 10:01 AM
To: Sarah Hite <Sarah.Hite@pima.gov>
Cc: Abigail Okrent <Abigail.Okrent@pima.gov>
Subject: RE: Library Distribution of Materials

Hi Sarah,

I sure can! When materials are dropped off, they immediately get placed in delivery bins and taken to branches the next morning. It can take a day or two for materials to be received and put out (there's usually a staff person assigned to the task, so it can depend on their schedule).

Kindly,
Holly

--

Holly Schaffer (she/her/hers) | Community Relations Manager
Pima County Public Library | 101 N Stone Ave Tucson AZ 85701
520-594-5610 | holly.schaffer@pima.gov | www.library.pima.gov

From: Sarah Hite <Sarah.Hite@pima.gov>
Sent: Thursday, January 16, 2025 2:49 PM
To: Holly Schaffer <Holly.Schaffer@pima.gov>
Cc: Abigail Okrent <Abigail.Okrent@pima.gov>
Subject: RE: Library Distribution of Materials

Hi Holly,

I was wondering if you are able to confirm that our notices were distributed to the libraries. We are just trying to track our noticing as much as possible, so just a confirmation that they got distributed would be amazing!

Thanks!

Sarah Hite (She/Her)
Environmental Specialist – Rules & Policy

Stakeholder Meeting and Oral Proceeding Information

Stakeholder Meeting held virtually on February 4, 2025 at 2pm via Microsoft Teams

- Hosted this stakeholder meeting during business hours to give those whose work may intersect with this rulemaking to attend during working hours.
- Hosted the meeting virtually to increase accessibility.
- Recorded and posted this meeting to the rulemakings webpage (www.pima.gov/415) for those who may not have been able to attend, with contact information listed below for anyone who might have additional questions or concerns.
- Representatives from PDEQ included:
 - PDEQ Director, Scott DiBiase,
 - Deputy Director, Judy Tovar,
 - Environmental Manager (Rules), Abigail Okrent,
 - Environmental Specialist (Rules), Sarah Hite,
 - Environmental Manager (Air Permits), Kristen Randall,
 - Engineering Assistant (Air Permits), Mark Rogers
 - Engineering Assistant (Air Permits), James Jones
- Attendees:
 - Casandra Beaty (City of Tucson)
 - Zigang Fang (TEP)
 - Cheyenne McChesney (Pima County)

Oral Proceeding held virtually on February 18, 2025 at 6pm via Microsoft Teams

- Hosted after business hours to give opportunity for those who work a 9-5 job to be able to attend outside of work hours
- Hosted the meeting virtually to increase accessibility.
- Representatives from PDEQ included:
 - PDEQ Director, Scott DiBiase,
 - Environmental Manager (Rules), Abigail Okrent,
 - Environmental Specialist (Rules), Sarah Hite
- Attendees:
 - None.
 - One attendee joined this meeting who had also joined for the Stakeholder Meeting. PDEQ informed them that it would be the same presentation as the Stakeholder Meeting and they chose to leave. PDEQ did not present due to lack of attendees.

5. Public Comment Received and Responses

PDEQ received 1 comment.

Comment sent via email, 1/20/25

Abigail,

Good morning and thanks for the response! Here is Trico's comment and response:

While Trico has not been subject to an enforcement action, Trico has grave concerns about such an action being held over the Cooperative and putting Trico at risk of liability.

For instance, Trico's extended use of its Mt. Lemmon generator was crucial to the coordinated efforts of Pima County, the State of Arizona, and the Federal government to effectively fight the Big Horn Fire of 2020 as well as providing critical power to equipment to prevent the loss of life and property on Mt. Lemmon and the surrounding area. As I witnessed personally and was later confirmed by officials, the Big Horn Fire was started by lightning, aka "an act of God."

Without this important defense, if legal action is taken or threatened against the Cooperative, Trico could be left in the untenable position of

- 1) use its emission-generating equipment to help fight a wildfire but face a potential lawsuit for using said equipment for its long-time purpose, or
- 2) refrain from using said equipment and exceeding emissions allowances but not provide assistance and a resource that could help during an emergency.

This proposed change is a lose-lose-lose for Trico and its Member/owners, property owners in wildfire-prone areas, and the agencies and community groups working to protect and preserve these precious resources.

Sincerely,
Wesley

Wesley Crane
Manager, Land Services & Environmental

Response sent via email, 1/28/25

Good afternoon, Mr. Crane,

Thank you for your comment. It will become part of the rulemaking record for review. I am responding now, in hopes of elucidating this matter a little further.

The example you provided of a forest fire requiring additional power to fight is **not** an emergency circumstance/act of God that would cause Trico's emissions to exceed a permit limitation. The affirmative defenses would not be applicable to this hypothetical situation.

Emergency circumstances/acts of God as contemplated in the affirmative defense rules are ones that impact the permitted facility directly, either by increasing its emissions or causing the control measures to fail, outside of the control of the facility operators. Choosing to operate beyond permitted hours to address an outside crisis is a different matter.

The following is a hypothetical of what might be an emergency circumstance, and how the Department would handle it: If lightning struck equipment at a permitted electricity generator, causing all the diesel fuel to catch fire, causing excess emissions over the permit limitations, this might be an emergency circumstance/act of God. If this happened even though the equipment had been situated in a good, not particularly lightning-prone, location, and had been grounded, the Department would exercise enforcement discretion. This means while a Notice of Violation may be issued, it would likely not include fines or penalties, and not go beyond that letter and a Letter of Compliance closing the matter once it was resolved. It is extremely unlikely that the Department would take the permitted source to court over this, and indeed, the Department has never done so with any source for similar emergency circumstances.

This sort of thing happens regularly. In the past year, one of the Department's permitted sources had PM exceedances above their permit limitations due to strong and unexpected winds, and even though the source had done an excellent job of spraying down their dust to control for this, that unexpected wind overcame their control measures. The Department learned of this from a phone call by the source (as required in the permit). The Department issued a Notice of Compliance with no fines or penalties, and closed the matter immediately.

Your example is a valid concern, especially as conditions grow hotter and drier, but it has no nexus to the current rulemaking. Perhaps there would be a time when some form of emergency might prompt Trico and other energy generators to violate their permit limitations to address the crisis. I'm not sure how this works, but I suspect that a phone call to the Department with a request to waive the emissions limitations for a discrete and short period of time would be the best way to get started. As stated in the above example of the source which exceeded its PM limitations, the Department learned about this immediately in a phone call from the source.

We value your communication. Please let me know if you have additional questions or comments. The Department's [Rules webpage](#) has additional information on this rulemaking, as well as links to our upcoming public meetings (a Stakeholder meeting on February 4, and an Oral Proceeding on February 18) if you would like to attend.