

NOTICE OF FINAL RULEMAKING
PIMA COUNTY CODE
TITLE 17 – AIR QUALITY CONTROL
CHAPTER 14 ACTIVITY PERMITS

PREAMBLE

<u>1.</u>	<u>Sections Affected</u>	<u>Rulemaking Action</u>
	PCC 17.14.080	Amend
	PCC 17.14.090	Amend

2. **Statutory authority for the rulemaking:**

Authorizing Statutes: Arizona Revised Statutes (A.R.S.) §§ 49-471.04, 49-501, and 49-479

Implementing Statutes: A.R.S. §§ 11-251.13, 49-112, and 49-479

3. **The effective date of the rule**

January 15, 2021

4. **A list of all previous notices addressing the rule:**

Pursuant to A.R.S. § 49-471.08 PDEQ published notice of the Notice of Proposed Rulemaking on the Pima County Homepage on September 11, 2020 and October 12, 2020. Due to the open burn permit fee changes associated with this rulemaking PDEQ also published the Notice of Proposed Rulemaking on the Pima County Proposed Taxes and Fees webpage. PDEQ also published the notice on the PDEQ Homepage and the PDEQ Draft, Proposed, and Final Rules webpage on September 11, 2020 and October 12, 2020. Public Notices were published in two local newspapers (Arizona Daily Star and the Daily Territorial Newspaper) on September 11, 2020, and October 12/13, 2020. The first publication of the Notice of Proposed Rulemaking coincided with a sixty day (60-day) public notice pursuant to A.R.S. § 11-251.13 due to the open burning permit fee changes associated with this rulemaking. The first public notice allowed for thirty days (30-days) for PDEQ to accept public comment on the proposed ordinance. In addition, PDEQ e-mailed a notice of the proposed ordinance amendments to interested parties who had requested rulemaking notifications in the past.

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Sarah Reitmeyer

Address: Pima County DEQ
33 N. Stone Avenue, Suite 700
Tucson, AZ 85701

Telephone: (520) 724-7437

Fax: (520) 838-7432

E-mail: sarah.reitmeyer@pima.gov

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

The Pima County Board of Supervisors (PC-BOS) as the governing body for the Pima County Air Quality Control District adopts rules for Pima County Code (PCC). The Pima County Air Quality Control District operates within the Pima County Department of Environmental Quality (PDEQ). PDEQ proposed these updates to PCC by and through the rulemaking process set forth by the PC-BOS. The control officer initiated this rule in order to simplify the fee schedule for residential, construction, and agriculture open burning permits, and to clarify terms of residential, construction, and agricultural burning permits. These updates include changes to PCC Sections 17.14.080 and 17.14.090.

7. Reference to any study relevant to the rule that the control officer reviewed and either relied or did not rely on in its evaluation of or justification for the rule, where the public may review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed in reference to this rulemaking action.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not Applicable.

9. Summary of the economic, small business, and consumer impact:

This rulemaking was conducted to clarify the terms of residential, construction, and agriculture open burning permits and has simplified the previous fee schedule by modifying the previous computational fee schedule for open burning permits issued by PDEQ proposing a comparable flat rate fee schedule for all open burning permits. The adopted amendments will have minimal economic impact on the regulated community in Pima County beyond that already incurred by reason of federal or state rule or law. The costs of compliance for the Air Quality Permitting programs have already occurred, and were considered when the federal and state rule or law was proposed and adopted.

10. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Sarah Reitmeyer

Address: 33 N. Stone Avenue, Suite 700
Tucson, AZ 85701-1429

Telephone: (520) 724-7437

Fax: (520) 838-7432

E-mail: sarah.reitmeyer@pima.gov

11. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

There were no changes between the proposed rule and the final rule.

12. A summary of the comments made regarding the rule and PDEQ response to them:

During the 30-day public comment period PDEQ received one (1) written comment on the proposed amendments through the PDEQ Online Public Comment Form. PDEQ also received one (1) written comment outside of the public comment period.

The following presents a summary of written comments received and PDEQ responses.

**1. Amanda McGennis, Arizona Chapter Associated General Contractors
Written Comment. Received via PDEQ Online Public Comment Form October 12, 2020**

The Arizona Chapter Associated General Contractors (AZAGC) is the oldest construction association in Arizona, representing highway, heavy civil, industrial and utility contractors statewide including their service suppliers since 1934. AZAGC is generally not in favor of fee increases for permits pertaining to construction. However, after reviewing the proposed revisions to the ordinance and the fees for construction/agricultural open burning, we believe the proposed revisions simplify the terms of the permit, including calculation of fees. Amanda McGennis AZAGC 1825 W. Adams Phoenix, AZ 85007 (602) 252-3926

Pima County Response:

Thank you for your participation in the rulemaking process with Pima County Department of Environmental Quality. We have received and reviewed your comment and we appreciate your time, attention, and positive feedback on the open burn permit fee and language clarification revisions proposed for PCC Title 17.

2. Written Comment. Received via e-mail October 13, 2020

Thank you for the opportunity to comment. With respect to fee's the fee seems reasonable to me.

However, I don't see any conditions or restrictions on the Opacity or other consequence from open burning, which is presumably much more toxic than most. The US Department of Defense estimates they will pay hundreds of millions of dollars over the next decade adjudicating the consequence of open burn pits in Iraq, and other occupations (Military Health Services mhs.mil/burn pits). Wild fire is increasing across the US an the consequence from its smoke, has been and continues to be studied, with very little if any positive results, epa.gov/wildfire.

Thus if the conditions under which open burning are being allowed or the monitoring required for the burn, I would propose the use of imagery (digital cameras) to monitor burns for Public Awareness, Health and Safety. E.g. I think everybody would say no tires should be burned ! and a cell phone used as an opacity meter would make monitoring easy, and verify the burn.

That's my two cents.

Thank you so much for the opportunity to comment.

*Shawn Dolan
801 309 3626*

Sdolan50@msn.com

Pima County Response:

Thank you for your participation in the rulemaking process with Pima County Department of Environmental Quality. We have received and reviewed your comment. Limitations on materials which can be burned under an open burning permit are defined and governed by Arizona Revised Statutes § 49-501 and Pima County Code Section 17.14.080. Open burn permits prohibit the burning of household waste or prohibited materials. Prohibited materials include “ ... nonpaper garbage from the processing, storage, service, or consumption of food; chemically treated wood; lead-painted wood; linoleum flooring, and composite counter-tops; tires; explosives or ammunition; oleanders; asphalt shingles; tar paper; plastic and rubber products, including bottles for household chemicals; plastic grocery and retail bags; waste petroleum products, such as waste crankcase oil, transmission oil, and oil filters; transformer oils; asbestos; batteries; anti-freeze; aerosol spray cans; electrical wire insulation; thermal

insulation; polyester products; hazardous waste products such as paints, pesticides, cleaners and solvents, stains and varnishes, and other flammable liquids; plastic pesticide bags and containers; and hazardous material containers including those that contained lead, cadmium, mercury, or arsenic compounds.” Currently there is no opacity limitation for open burning, nor is there any limitation on what methods that can be used to find, determine, and enforce illegal open burning.

13. The full text of the rule follows:

Chapter 17.14 – ACTIVITY PERMITS

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Article IV. - Open Burning

17.14.080 - Open burning permits.

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I. The term of any open burning permit shall . . .

1. The term of a ~~temporary~~residential open burning permit shall not exceed ~~three~~3 consecutive or nonconsecutive days within a ~~thirty~~30-day period; and
2. The term of an ~~extended~~construction or agricultural open burning permit shall expire as specified on the original application, and shall in no case exceed ~~ninety~~90 days, with no limitation on days of burning within the 90-day term.

17.14.090 - Open burning permit fees.

Open Burning Permit Fee Schedules.

S.S. ¹	Permit Activity	Rate Components	Minimum Permit Fee
A	Residential Burning ²	\$16.13 base, plus \$3.53 per day of burning	\$19.66 <u>\$30</u>
B	Construction/Agricultural Burning ³	\$26.50 base, plus \$5.00 per day of burning	\$31.50 <u>\$100</u>

1. S.S. - Sub-schedule for identification only.
2. The term of a residential burning permit shall not exceed ~~three~~3 consecutive or ~~non-consecutive~~nonconsecutive days within a ~~thirty~~30-day period. The term of a construction ~~or agricultural~~ burning permit shall not exceed ~~ninety~~90 days, with no limitation on days of burning within the 90-day term.
3. The term of a construction ~~or agricultural~~ burning permit shall not exceed ~~ninety~~90 days, with no limitation on days of burning within the 90-day term.

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