



**PIMA COUNTY**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
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April 30, 2013

EPA Docket Center  
Attention Docket ID Number EPA-HQ-OAR-2012-0322  
U.S. Environmental Protection Agency  
EPA West (Air Docket)  
1200 Pennsylvania Avenue, NW  
Mail code: 6102T  
Washington, DC 20460

Dear Reader:

On February 22, 2013, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking regarding State Implementation Plan (SIP) provisions related to Startup, Shutdown and Malfunction (78 FR 12535). In that notice, EPA solicits Pima County Department of Environmental Quality's comments on their evaluation that Pima County SIP Rule 706 (D) does not preclude EPA or citizens from enforcing that SIP provision. Pima County Department of Environmental Quality reviewed EPA's evaluation and concurs with EPA's conclusion.

Pima County SIP Rule 706 covers the treatment of excess emissions by sources during periods of Startup, Shutdown and Malfunction (SSM). Specifically Pima County SIP Rule 706 (D) gives the Control Officer discretion to defer prosecution of an issued Notice of Violation under specified circumstances. In June 2011, the Sierra Club filed a Petition with the EPA requesting that 39 SIPs be found inadequate because of non-compliant SSM or scheduled maintenance provisions. A small part of that petition objected to Pima County SIP Rule 706(D) on the grounds that it might be read to preclude either EPA or citizen suit enforcement. In February 2013, the EPA issued a proposed rule in response to the Petition (78 FR 12460), in which EPA proposed denial of the Petition in relation to Pima County SIP Rule 706(D) and solicited comment from both the Pima County Department of Environmental Quality and the State of Arizona on its proposed action. Pima County Department of Environmental Quality is submitting this comment as requested.

Pima County SIP Rule 706(D) gives the Control Officer discretion to defer prosecution under limited circumstances. Rule 706(D) does not mention the EPA nor does it mention citizen suits. Federal court decisions show that to interpret a SIP Rule the plain meaning of the SIP Rule must be applied.

Letter to U.S. EPA

RE: Notice of Proposed Rulemaking SIP Provisions (78 FR 12535)

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Therefore, Pima County Department of Environmental Quality has determined, through consultation with the Pima County Attorney's Office, that the EPA has correctly concluded that Pima County SIP Rule 706(D) "could not reasonably be read by a court to foreclose enforcement by the EPA or through a citizen suit."

Sincerely,



Ursula Kramer, P.E.

Control Officer, Pima County Department of Environmental Quality

UK/SW/vb

cc: John Bernal, Deputy County Administrator for PW  
Richard Grimaldi, Deputy Director, PDEQ  
Sarah Walters, Program Manager, PDEQ