



**Fw: Docket No. EPA-HQ-OAR-2010-0107; comment from Pinal County , Arizona**

**Andrew Chew** to: Laura Yannayon, Gerardo Rios

10/04/2010 05:47 PM

Cc: Shirley Rivera

Today, Don Gabrielson stated to me that in lieu of a letter in hard copy, this e-mail would serve as his agency's response to the proposed rulemaking for the SIP Call (75 FR 53892, 9/2/10).

- Andrew

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From: "Don Gabrielson" <[Don.Gabrielson@pinalcountyaz.gov](mailto:Don.Gabrielson@pinalcountyaz.gov)>  
To: Group A-AND-R-DOCKET@EPA  
Cc: "Eric Massey" <[Massey.Eric@azdeq.gov](mailto:Massey.Eric@azdeq.gov)>, Jared Blumenfeld/R9/USEPA/US@EPA, Andrew Chew/R9/USEPA/US@EPA, Colleen McKaughan/R9/USEPA/US@EPA  
Date: 10/04/2010 04:04 PM  
Subject: Docket No. EPA-HQ-OAR-2010-0107; comment from Pinal County, Arizona

United States Environmental Protection Agency

c/o [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov)

Re: Docket ID No. EPA-HQ-OAR-2010-0107

To whom it may concern:

This responds to the EPA's proposed rule (75 FR 53892 [9/2/10]) as well as communication from EPA Region IX staff.

The EPA has identified Pinal County as a having a SIP-approved PSD permitting program that does not mandate application of PSD-permitting limitations to the newly defined category of greenhouse gas (GHG) pollutants.

Pinal's rules certainly do not include the EPA's new definition of GHG.

Whatever definitions prevail under our SIP-approved rules, the EPA's revision of its own definitions does not ipso facto revise the substance and meaning of Pinal County's air quality rules. An Arizona county is a creature of statute, and has only that authority conferred by the legislature or necessarily implied therefrom. *Bone v. Bowen*, 20 Ariz. 592 (1919).

Long-standing legal precedent in Arizona precludes delegation of the legislative prerogative. *Tillotson v. Frohmiller*, 24 Ariz. 294, 271 P. 867 (1928).

Accordingly, Pinal County's prevailing PSD-permitting rules do not regulate GHG emissions,

nor do the EPA's recent regulatory actions revise those rules beyond their scope as adopted.

This response addresses two issues, which are framed in numbered quotes taken from an e-mail inquiry from EPA Region IX. Pinal County's responses are embedded below the EPA's questions.

#1) Will Pinal County AQCD respond to the FIP rulemaking and ask the PSD program to be FIP'ed (i.e., 40 CFR 52.21) immediately, rather than wait 12 months? This will prevent a construction ban from going into effect if any PSD applications are received.

- In keeping with the focus of Pinal County government generally, our principal focus is on serving the public. A construction ban sounds like the antithesis of public service. To the extent a prompt FIP will enable the avoidance of a construction ban, Pinal County Air Quality sees no choice but to ask for such a FIP.

#2) Assuming it is FIP'ed right away only for GHG, will PCAQCD seek a delegation agreement for GHG such that Pinal can continue to issue the entire PSD permit for a project; or because of AZ state issues regarding GHG, will PCAQCD rely on EPA to issue a separate PSD permit for GHG for a new PSD project?

- Again in keeping with the customer service focus, Pinal County Air Quality is interested in taking whatever action it can to avoid obligating anyone to engage in duplicative permitting from both Pinal County and the EPA. Since two Arizona counties, namely Maricopa and Pima County, have previously accepted PSD-related delegations from the EPA, clear precedent exists for a PSD-related delegation in favor of Pinal County. Therefore, please accept this as a request for a delegation whenever such action becomes timely.

- Pinal County Air Quality understands that a PSD delegation from the EPA involves a couple of administrative elements that differ from those under our SIP-approved program, most notably the ESA consultation requirement and the prospect that at least the delegated portions of a permit could be appealed to the EAB. To the extent the alternative would be requiring sources to obtain dual permits from Pinal and the EPA, we see no choice but to accede to whatever additional administrative requirements would attach to those elements of a permit issued under such a delegation.

- Lastly, Pinal County Air Quality also plans to ask the Board of Supervisors to amend our rules to address several practical issues. First, we will propose addition of a new definition of "pollutants regulated under the Act" to include coverage for GHG. (Currently, that actual phrase is not used anywhere in our rules.) Second, we will request revision of our synthetic minor rule to allow for federally enforceable limitations with respect to the newly defined "pollutants regulated under the Act." To the extent that rule allows sources to request federally enforceable limitations, which are reviewed by the EPA, that rule would actually allow sources to voluntarily request both synthetic minor as well as PSD (i.e. BACT) limitations in a permit. Third, we will request revision of our fee rule to clarify that pollutants regulated ONLY by

virtue of regulation under the new definition of "regulated under the Act" will not have any emission-based fee consequence. Those changes will all be processed as proposed SIP amendments, and we would appreciate the EPA's prompt processing of those proposed SIP revisions when they reach your agency.

If you have any questions, you may reach me at 520-866-6915, or Barbara Cenalmor at 520-866-6860.

Sincerely,

Don Gabrielson  
Director  
Pinal County Air Quality