

# WHITE PAPER

**FROM:** Scott McDonald and Phillip F. Fargotstein  
**DATE:** September 13, 2010  
**RE:** Air Quality Permit Processing in Pima County, Arizona

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## EXECUTIVE SUMMARY

As part of its plan to construct and operate a mine, milling and leaching facility southeast of Tucson, Rosemont Copper Company ("Rosemont") submitted an application and more than 250 pages of supporting documentation to the Pima County Department of Environmental Quality ("PDEQ") for a Class II Air Quality Permit. In processing that permit application, PDEQ, and all county officials, are required to comply with the law.

- 1. The Director of PDEQ, as the control officer, has the exclusive authority over individual air quality permits under PDEQ jurisdiction.** The control officer has the exclusive responsibility to review, issue and administer individual air quality permits. Neither the Board of Supervisors nor the County Administrator has authority over such permits.
- 2. The control officer must make a completeness determination within 60 days.** The control officer must first determine if the application is administratively complete. The failure to make that determination within 60 days will result in the application automatically being deemed complete. The Pima County Code specifies what must be included in an application to be complete. The control officer is prohibited from finding the application incomplete for any reasons other than as specified in the regulations.
- 3. The control officer must publish a proposed permit decision within nine months and must take final action within 18 months of completeness.**
- 4. The contents of the air permit must be authorized under the law.** Pima County regulations list what must be included in the final air permit. The control officer must specify and reference the origin and authority for each term or condition in the permit and cannot require conditions not specifically authorized by law.
- 5. Public comments are authorized only after the control officer has made a permit decision and prepared a proposed permit.** The public comment period must be for at least 30 days and must include a public hearing, if one is requested in writing.
- 6. The control officer's decision can be challenged administratively and in court.** The applicant or any person who submitted comments during the public comment period can file an appeal with the Air Quality Hearing Board ("Hearing Board") within 30 days of the control officer issuing a final permit. The Hearing Board has the authority to sustain, modify or reverse the control officer's decision and that decision can be judicially appealed.
- 7. The control officer can be sued for failing to comply with deadlines.** If the application is not processed within legally established deadlines, the control officer can be sued

by any person having an interest or who may be adversely affected. The court has the authority to require the control officer to act without additional delay.

Arizona law establishes that the control officer (the Director of PDEQ) is the exclusive authority with respect to individual air quality permits under PDEQ's jurisdiction. This was intended to remove decisions relating to individual air quality permits from the political arena. The separation of individual permit decisions from the political process has served Pima County citizens well in the past and should be honored in the present case.