

**MARICOPA COUNTY
AIR POLLUTION CONTROL REGULATIONS
REGULATION I – GENERAL PROVISIONS**

**RULE 120
CONDITIONAL ORDERS**

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**MARICOPA COUNTY
AIR POLLUTION CONTROL REGULATIONS
REGULATION I – GENERAL PROVISIONS**

**RULE 120
CONDITIONAL ORDERS**

SECTION 100 – GENERAL

101 PURPOSE: To specify procedures that shall apply to petitions for conditional orders filed with the Control Officer.

SECTION 400 – ADMINISTRATIVE REQUIREMENTS

401 GRANTING A CONDITIONAL ORDER: The Control Officer may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of ARS Title 49, Chapter 3, Article 3, these rules, for any non-federally enforceable requirement of a permit issued pursuant to these rules if the Control Officer makes each of the following findings:

401.1 Issuance of the conditional order will not endanger public health or the environment, impede attainment or maintenance of the national ambient air quality standards, or constitute a violation of the Act, and

401.2 Either of the following is true:

- a.** There has been a breakdown of equipment or upset of operations beyond the control of the petitioner which causes the source to be out of compliance with the requirements of these rules, the source was in compliance with the requirements of these rules before the breakdown or upset, and the breakdown or upset may be corrected within a reasonable time.
- b.** There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.

401.3 The source is not considered a Title V source.

401.4 The Control Officer may not issue a conditional order which allows a source to vary from the requirement to obtain a permit issued pursuant to Rules 200, 210, 220, or 230 of these rules.

402 PROCEDURES FOR FILING A PETITION FOR A CONDITIONAL ORDER: The following procedures shall apply to a person seeking a conditional order from the Control Officer:

402.1 The person shall file a petition for a conditional order with the Control Officer and pay the conditional order fee required by Rule 280 of these rules. The petition shall contain at a minimum:

- a. A description of any breakdown of equipment or upset of operations beyond the control of the petitioner, which causes the source to be out of compliance with the requirements of these rules.
- b. A description of corrective action being undertaken to bring the source back into compliance.
- c. An estimate of emissions related to the breakdown or upset.
- d. A compliance schedule with a date of final compliance and interim dates as appropriate.
- e. An explanation of any relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.

402.2 If the issuance of the conditional order requires a public hearing pursuant to ARS§49-491B, Rule 210, or Rule 220 of these rules, the Control Officer shall set the hearing date within 30 days after the filing of the petition and the hearing shall be held within 60 days after the filing of the petition.

402.3 Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in Rule 210 or Rule 220 of these rules and in ARS§49-498.

402.4 At the time the Control Officer publishes the first notice, the applicant shall post a notice containing the information required in Rule 210, Section 408 of these rules at the site where the source is or may be located. Consistent with federal, state, and local law, the posting shall be prominently placed at a location under the applicant's legal control, adjacent to the nearest public roadway, and visible to the public using the public roadway. The applicant shall place an additional posting providing notice of the hearing. Any posting shall be maintained until the public comment period is closed.

402.5 The Control Officer shall provide at least 30 days from the date of the first notice for public comment. The Control Officer shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the Control Officer's responses shall be made available to the applicant and all commenters.

403 DECISIONS ON A PETITION FOR A CONDITIONAL ORDER: Decisions on petitions for a conditional order shall be made as follows:

403.1 For any conditional order that requires a revision to the State Implementation Plan (SIP), the Control Officer shall comply with the requirements contained in 40 CFR 51, Subpart F and shall submit the conditional order to the Director.

403.2 For any other conditional order, the Control Officer shall grant or deny the petition on such terms and conditions as the Control Officer deems appropriate within 30 days after the conclusion of any required hearing, or, if no hearing is held, within 60 days after the filing of the petition.

- 404 PROCESSING FEE:** A fee to cover the costs of processing a conditional order may be prescribed pursuant to Rule 280 of these rules.
- 405 TERMS OF A CONDITIONAL ORDER:** The terms of a conditional order or its renewal shall conform to the following:
- 405.1** A conditional order issued by the Control Officer shall be valid for such period as the Control Officer prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to these rules and Title V of the Act, and three years in the case of any other source that is required to obtain a permit pursuant to these rules.
- 405.2** The terms and conditions which are imposed as a condition to the granting of or to the continued existence of a conditional order shall include, but not be limited to:
- a. A detailed plan for completion of corrective steps needed to conform to the provisions of this rule and to the requirements of any permit issued pursuant to this rule.
 - b. A requirement that necessary construction shall begin as specified in the compliance schedule.
 - c. Written reports as may be required.
 - d. Provisions regarding periodic inspections of the source for which the conditional order is granted.
- 405.3** A grantee of a conditional order may petition the Control Officer to renew the order. The total term of the initial period and all renewals shall not exceed three years from the date of initial issuance of the order. Petitions for renewal may be filed at any time not more than 60 days nor less than 30 days prior to the expiration of the order. The Control Officer, within 30 days of receipt of a petition, shall renew the conditional order for one year, if the petitioner is in compliance and is conforming with the terms and conditions of the conditional order. The Control Officer may refuse to renew the conditional order if, after a public hearing held within 30 days of receipt of a petition, the Control Officer finds that the petitioner is not in compliance and is not conforming with the terms and conditions of the conditional order. If, after a period of three years from the date of original issuance, the petitioner is not in compliance and is not conforming with the terms and conditions, the Control Officer may renew a conditional order for a total term of two additional years, only if the Control Officer finds that failure to comply and to conform is due to conditions beyond the control of such petitioner.
- 405.4** If the Board of Supervisors amends or adopts any rule imposing conditions on the operation of an air pollution source which have become applicable to the source by reason of the action of the Board of Supervisors or otherwise, and which require the implementation of control strategies necessitating the installation of additional or different air pollution control equipment, the Control Officer may renew a conditional order for an additional term. The term of the renewal shall be governed by this rule, except that the total term of the renewal shall not exceed two years.
- 405.5** A conditional order issued by the Control Officer shall be effective when issued unless:

- a. The conditional order varies from the requirements of the SIP, in which case the conditional order shall be submitted to the Director together with a request that the conditional order be submitted to the Administrator as a revision to the SIP pursuant to Section 110(L) of the Act, and shall become effective upon approval by the Administrator.
- b. The conditional order varies from the requirements of a permit issued for a source that is required to obtain a permit pursuant to Title V of the Act, in which case the conditional order shall be submitted to the Administrator if required by Section 505 of the Act, and shall be effective at the end of the review period specified in such section, unless objected to within such period by the Administrator.

406 NOTICE OF VIOLATION: If the terms and conditions of the conditional order are being violated, the Control Officer may seek to revoke or to suspend the conditional order. In such event, the Control Officer shall serve notice of such violation on the holder of the conditional order in the manner provided in ARS§49-498. The notice shall specify the nature of such violation and the date on which a hearing will be held to determine if a violation has occurred and whether the conditional order should be suspended or revoked. The date of the hearing shall be within 30 days from the date the notice is served upon the holder of the conditional order.