



Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Henry R. Darwin  
Director

Mr. Jared Blumenfeld, Regional Administrator  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street, Air-1  
San Francisco, CA 94105

RE: Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2);  
2008 Lead NAAQS

Dear Mr. Blumenfeld:

*Jared*

Consistent with the provisions of Arizona Revised Statutes (ARS) Title 49, §§ 49-104, 49-106, 49-404 and 49-406 (Enclosure 1) and the Code of Federal Regulations (CFR) Title 40, §§ 51.102-51.104, the Arizona Department of Environmental Quality (ADEQ) hereby adopts and submits to the U.S. Environmental Protection Agency (EPA) *Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2): Implementation of 2008 Lead National Ambient Air Quality Standards* as a revision to the Arizona State Implementation Plan (SIP).

Clean Air Act (CAA) Section 110(a)(1) requires states to submit SIPs within three years following the promulgation of new or revised National Ambient Air Quality Standards (NAAQS) to provide for implementation, maintenance, and enforcement of such standards. Each of these SIPs must address certain basic elements or the "infrastructure" of its air quality management programs under CAA Section 110(a)(2) including provisions for monitoring, emissions inventories, and modeling designed to assure attainment and maintenance of the NAAQS.

EPA promulgated revised NAAQS for Lead (Pb) effective October 15, 2008 (73 FR 66964; November 12, 2008), which requires states to submit Section 110(a)(2) SIPs by October 15, 2011. This SIP revision demonstrates that Arizona State and local air quality management programs meet the basic program elements required under CAA Sections 110(a)(1) and (2) (with the exception of Section 110(a)(2)(G)) for implementing the 2008 Pb NAAQS.

In addition to these required submittals, this SIP revision includes a commitment to adopt and submit Arizona's Emergency Episode Rule (R18-2-220) revision when it is developed and codified to meet the remaining requirement under CAA Section 110(a)(2)(G) for the 2008 Pb NAAQS. ADEQ also commits to a revision of the SIP to update its New Source Review/Prevention of Significant Deterioration program to fully meet the requirements of CAA

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Section 110 (a)(2)(c) for the 2008 Pb NAAQS. These revised rules will be submitted to EPA for approval into the Arizona SIP upon completion of the state rulemaking and SIP revision process.

ADEQ requests that EPA approve this revision to the Arizona SIP. Enclosure 2 contains the SIP Completeness Checklist; Enclosure 3 contains two paper copies and one official electronic copy of the SIP revision for your review and action.

If you have any questions, please do not hesitate to contact Eric Massey, Director, Air Quality Division, at (602) 771-2308.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Darwin', written over the printed name and title.

Henry Darwin  
Director

Enclosures (3)

cc: Rory Mays, w/enclosures, EPA  
Andrew Steckel, w/enclosures, EPA  
Colleen McKaughan, w/enclosures, EPA  
Eric Massey, w/o enclosures, ADEQ

**Arizona State Implementation Plan Revision under  
Clean Air Act Section 110(a)(1) and (2):  
Implementation of the  
2008 Lead National Ambient Air Quality Standards**



**Air Quality Division  
October 14, 2011**

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## **Enclosure 1**

### **Arizona Revised Statutes:**

- (1) Title 49, chapter 1, article 1, section 49-104;
- (2) Title 49, chapter 1, article 1, section 49-106;
- (3) Title 49, chapter 3, article 1, section 49-404;
- (4) Title 49, chapter 3, article 1, section 49-404.

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#### **49-104. Powers and duties of the department and director**

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to assure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Assure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Assist the department of health services in recruiting and training state, local and district health department personnel.
15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
5. Contract with other agencies including laboratories in furthering any department program.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.
8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.
9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.
10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.
11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:
  - (a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.
  - (b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.
12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection H, paragraph 10.
13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:
  - (a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.
  - (b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.
  - (c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation

systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules shall:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and title 26, chapter 2, article 3.

16. Approve remediation levels pursuant to article 4 of this chapter.

C. The department may charge fees to cover the costs of all permits and inspections it performs to insure compliance with rules adopted under section 49-203, subsection A, paragraph 6, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited in the water quality fee fund established by section 49-210.

D. The director may:

1. If he has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

**Recent legislative year:** Laws 1999, Ch. 295, § 40; Laws 2002, Ch. 251, § 1.

#### **49-106. Statewide application of rules**

The rules adopted by the department apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them. This section does not limit the authority of local governing bodies to adopt ordinances and rules within their respective jurisdictions if those ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the department, but this section does not grant local governing bodies any authority not otherwise provided by separate state law. 1987

**49-404. State implementation plan**

- A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.
- B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.
- C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

**Recent legislative year:** Laws 1999, Ch. 295, § 42.

**49-406. Nonattainment area plan**

- A. For any ozone, carbon monoxide or particulate nonattainment or maintenance area the governor shall certify the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for that area under 23 United States Code section 134 as the agency responsible for the development of a nonattainment or maintenance area plan for that area.
- B. For any ozone, carbon monoxide or particulate nonattainment or maintenance area for which no metropolitan planning organization exists, the department shall be certified as the agency responsible for development of a nonattainment or maintenance area plan for that area.
- C. For any ozone, carbon monoxide or particulate nonattainment or maintenance area, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall, by November 15, 1992, and from time to time as necessary, jointly review and update planning procedures or develop new procedures.
- D. In preparing the procedures described in subsection C of this section, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall determine which elements of each revised implementation plan will be developed, adopted, and implemented, through means including enforcement, by the state and which by local governments or regional agencies, or any combination of local governments, regional agencies or the state.
- E. The department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall enter into a memorandum of agreement for the purpose of coordinating the implementation of the procedures described in subsection C and D of this section.
- F. At a minimum, the memorandum of agreement shall contain:
1. The relevant responsibilities and authorities of each of the coordinating agencies.
  2. As appropriate, procedures, schedules and responsibilities for development of nonattainment or maintenance area plans or plan revisions and for determining reasonable further progress.
  3. Assurances for adequate plan implementation.
  4. Procedures and responsibilities for tracking plan implementation.

5. Responsibilities for preparing demographic projections including land use, housing, and employment.
6. Coordination with transportation programs.
7. Procedures and responsibilities for adoption of control measures and emissions limitations.
8. Responsibilities for collecting air quality, transportation and emissions data.
9. Responsibility for conducting air quality modeling.
10. Responsibility for administering and enforcing stationary source controls.
11. Provisions for the timely and periodic sharing of all data and information among the signatories relating to:
  - (a) Demographics.
  - (b) Transportation.
  - (c) Emissions inventories.
  - (d) Assumptions used in developing the model.
  - (e) Results of modeling done in support of the plan.
  - (f) Monitoring data.

G. Each agency that commits to implement any emission limitation or other control measure, means or technique contained in the implementation plan shall describe that commitment in a resolution adopted by the appropriate governing body of the agency. The resolution shall specify the following:

1. Its authority for implementing the limitation or measure as provided in statute, ordinance or rule.
2. A program for the enforcement of the limitation or measure.
3. The level of personnel and funding allocated to the implementation of the measure.

H. The state, in accordance with the rules adopted pursuant to section 49-404, and the governing body of the metropolitan planning organization shall adopt each nonattainment or maintenance area plan developed by a certified metropolitan planning organization. The adopted nonattainment or maintenance area plan shall be transmitted to the department for inclusion in the state implementation plan provided for under section 49-404.

I. After adoption of a nonattainment or maintenance area plan, if on the basis of the reasonable further progress determination described in subsection F of this section or other information, the control officer determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, the control officer shall issue a written finding to the person, and shall provide an opportunity to confer. If the control officer subsequently determines that the failure has not been corrected, the county attorney, at the request of the control officer, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

J. After adoption of a nonattainment or maintenance area plan, if, on the basis of the reasonable further progress determination described in subsection F of this section or other information, the director determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, and that the control officer has failed to act pursuant to subsection I of this section, the director shall issue a written finding to the person and shall provide an opportunity to confer. If the director subsequently determines that the failure has not been corrected, the attorney general, at the request of the director, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

K. Notwithstanding subsections A and B of this section, in any metropolitan area with a metropolitan statistical area population of less than two hundred fifty thousand persons, the governor shall designate an agency that meets the criteria of section 174 of the clean air act and that is recommended by the city that causes the metropolitan area to exist and the affected county. That agency shall prepare and adopt the nonattainment or maintenance area plan. If the governor does not designate an agency, the department shall be certified as the agency responsible for the development of a nonattainment or maintenance area plan for that area.

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## **Enclosure 2**

### **State Implementation Plan Checklist**

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**STATE IMPLEMENTATION PLAN COMPLETENESS CHECKLIST**

**SUBMITTAL OF STATE IMPLEMENTATION PLAN (SIP) REVISION**

***Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2):  
Implementation of 2008 Lead National Ambient Air Quality Standards, October 2011***

1. SUBMITTAL LETTER FROM GOVERNOR/DESIGNEE

See Cover Letter.

2. EVIDENCE OF ADOPTION

See Enclosure 3.

3. STATE LEGAL AUTHORITY

See Enclosure 1.

4. COMPLETE COPY OF STATUTE/REGULATION/DOCUMENT

See Enclosure 3.

5. WRITTEN SUMMARY OF RULE/RULE CHANGE

Not Applicable.

6. RULE CHANGES INDICATED BY UNDERLINING AND CROSS-OUTS

Not Applicable.

7. EVIDENCE THAT ARIZONA ADMINISTRATIVE PROCEDURE ACT REQUIREMENTS WERE MET FOR RULE/PLAN

See Enclosure 3, Appendix C.

8. EVIDENCE OF PUBLIC HEARING

See Enclosure 3, Appendix C.

9. PUBLIC COMMENTS AND AGENCY RESPONSE

See Enclosure 3, Appendix C.

10. IDENTIFICATION OF POLLUTANTS REGULATED BY RULE/PLAN

See Enclosure 3.

11. IDENTIFICATION OF SOURCES/ATTAINMENT STATUS

See Enclosure 3.

12. RULE'S/PLAN'S EFFECT ON EMISSIONS

Not Applicable.

13. DEMONSTRATION THAT NAAQS, PSD INCREMENTS AND RFP ARE PROTECTED

See Enclosure 3.

14. MODELING SUPPORT

Not Applicable.

15. EVIDENCE THAT EMISSIONS LIMITATIONS ARE BASED ON CONTINUOUS EMISSIONS REDUCTION TECHNOLOGY

Not Applicable.

16. IDENTIFICATION OF RULE SECTIONS CONTAINING EMISSION LIMITS, WORK PRACTICE STANDARDS, AND/OR RECORD KEEPING/REPORTING REQUIREMENTS

See Enclosure 3.

17. COMPLIANCE/ENFORCEMENT STRATEGIES

See Enclosure 3.

18. ECONOMIC TECHNICAL JUSTIFICATION FOR DEVIATION FROM EPA POLICIES

No known deviations.

**Enclosure 3**

**Arizona State Implementation Plan Revision under  
Clean Air Act Section 110(a)(1) and (2): Implementation of  
the 2008 Lead National Ambient Air Quality Standards**

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**Final**

**Arizona State Implementation Plan Revision under  
Clean Air Act Section 110(a)(1) and (2): Implementation of  
the 2008 Lead National Ambient Air Quality Standards**

**Air Quality Division  
October 14, 2011**

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- B. Applicable Arizona Revised Statutes
- C. State Implementation Plan Revision Public Comment and Hearing Documentation
  - C.1 Notice of Public Hearing
  - C.2 Public Hearing Agenda
  - C.3 Public Hearing Sign-In Sheet
  - C.4 Public Hearing Officer Certification and Transcript
  - C.5 Responsiveness Summary

## **1.0 INTRODUCTION**

This State implementation plan (SIP) revision demonstrates that Arizona State and local air quality management programs meet the basic program elements required under Clean Air Act (CAA) Sections 110(a)(1) and (2) for implementing the 2008 National Ambient Air Quality Standards (NAAQS) for Lead (Pb). The analyses and information contained in this document also fulfill several outstanding obligations under Section 110(a)(2) for the 1978 Pb NAAQS.

### **1.1 Regulatory Background**

CAA Section 110(a)(1) requires States to submit SIPs within three years following the promulgation of new or revised NAAQS to provide for implementation, maintenance, and enforcement of such standards. Each of these SIPs must address certain basic elements or the "infrastructure" of its air quality management programs under CAA Section 110(a)(2). These elements, detailed in CAA Sections 110(a)(2)(A) through (M), include provisions for monitoring, emissions inventories, and modeling designed to assure attainment and maintenance of the NAAQS.

Based on scientific studies regarding the effects of lead pollution, EPA subsequently revised the NAAQS for Pb upon the Administrator's signature October 15, 2008 to improve the protection of public health and welfare (73 FR 66964). This action requires States to submit Section 110(a)(2) SIPs by October 15, 2011, to provide for implementation, maintenance, and enforcement of the 2008 Pb standard. EPA's final rule promulgating the revised Pb NAAQS, effective January 12, 2009, stated that the county in which violations of the Pb NAAQS had occurred would be the default boundary for Pb Nonattainment Areas within a State.

Arizona's submitted its recommended nonattainment area boundaries on December 15, 2009, and recommended classifying all other portions of the State attainment. The recommendation consisted of the Hayden portion of southern Gila and eastern Pinal Counties that comprise the existing Hayden Sulfur Dioxide (SO<sub>2</sub>) Nonattainment Area and the de facto impact area of the ASARCO Ray Complex copper concentrating and smelting operations. EPA sent a 120-day letter to Governor Brewer on June 14, 2010, expressing intent to designate the Hayden area nonattainment on October 15, 2010 and extending the deadline; providing an opportunity for the Governor to submit additional information by August 16, 2010, and extending the designation process for another year for the remainder of the State. Governor Brewer responded in a letter dated August 12, 2010, noting concerns raised about ambient monitoring methods relied upon by EPA for the designation. EPA sent a letter to Governor Brewer dated November 16, 2010, explaining that EPA had decided to delay designation for the Hayden area for one year. EPA sent a 120-day letter to Governor Brewer on June 14, 2011, notifying her of EPA's intent to classify the entire State of Arizona as unclassifiable/attainment on October 15, 2011, and requesting that the Governor submit any additional relevant information by August 15, 2011.

In a letter dated August 15, 2011, ADEQ provided EPA with the most recent preliminary Pb monitoring data collected by samplers in Hayden and reiterated previous requests that if EPA designates the Hayden area nonattainment, that the boundaries be the same as the Hayden sulfur dioxide nonattainment area. EPA plans to complete its second round of Pb NAAQS designations on October 15, 2011, the deadline for submittal of the Pb NAAQS Infrastructure SIP.

## 1.2 Summary and Discussion of the Current Revision to Arizona's "Infrastructure" SIP

This document describes how the authorities and infrastructure of Arizona State and local air quality management programs will meet the basic program elements required under CAA Section 110(a)(2) for the 2008 Pb NAAQS.

The statutes and programs described in Section 2.0 are adequate to meet the following requirements of the CAA for the 2008 Pb air quality standards:

- 110(a)(2)(A), control measures and emission limits,
- 110(a)(2)(B), ambient air quality monitoring,
- 110(a)(2)(C), enforcement of all SIP measures and new source review and prevention of significant deterioration,
- 110(a)(2)(D), interstate transport,
- 110(a)(2)(E)(i), adequate funding,
- 110(a)(2)(E)(ii), conflicts of interest,
- 110(a)(2)(E)(iii), State responsibility for ensuring adequate implementation of plan provisions,
- 110(a)(2)(F), emissions monitoring and reporting,
- 110(a)(2)(H), plan revisions,
- 110(a)(2)(I), Part D nonattainment area plan requirements,
- 110(a)(2)(J), consultation with government officials and public notification of any exceedance of the air quality standards and prevention of significant deterioration and visibility protection,
- 110(a)(2)(K), air quality modeling,
- 110(a)(2)(L), permit fees, and
- 110(a)(2)(M), consultation/participation by affected local officials.

The only remaining obligation under CAA Section 110(a)(2) for the 2008 Pb NAAQS is Section 110(a)(2)(G) relating to emergency episodes. Section 110(a)(2)(G) requires States to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. Arizona Revised Statutes §49-465 authorizes State actions to alleviate or prevent an emergency health risk to the public due to air pollution or likely exceedance of the NAAQS. Arizona Administrative Code R18-2-220, "Air Pollution Emergency Episodes," approved into the SIP numbered as R9-3-219 at 47 FR 42572 on September 28, 1982, prescribes procedures to prevent the occurrence of ambient air pollution concentrations which would cause significant harm to public health. The rule, however, is being considered for revisions to incorporate the most recent air quality standards. A revised rule would be submitted to EPA for approval as a revision to the SIP upon completion of the State rulemaking and public review process.

Although Arizona's air quality programs are sufficient at this time to assure attainment and maintenance of the 2008 Pb NAAQS in all areas of the State, certain future updates to the federally approved SIP are needed. Several of the applicable air quality sections of Arizona Revised Statutes have been amended and the numbering system has changed since the most recent approval of the SIP. These statutes, however, continue to meet the requirements of the law.

The following statutes and rules are being submitted to EPA for approval into the Arizona SIP:

<b>Table 1</b>	
<b>Statutes to be Approved into the Arizona Lead Infrastructure SIP</b>	
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49-401.01	Definitions
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49-474	County control boards
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49-480.01	Permits; fees; changes within a source; revisions
49-487	Classification and reporting; confidentiality of records
49-488	Hearings on orders of abatement
49-490	Hearings on orders of abatement
49-495	Suspension and revocation of conditional order
49-501	Unlawful open burning; exceptions; civil penalty; definition
49-502	Violation; classification
49-510	Violations; production of records
49-511	Violations; order of abatement
49-512	Violations; injunctive relief
49-513	Violation; civil penalties
49-514	Violation; classification; definition
49-544	Air quality fee; air quality fund; purpose
49-551	Emissions inspection fund; composition; authorized expenditures; exemptions; investment

## **2.0 ANALYSIS OF CLEAN AIR ACT SECTION 110(a)(2) AIR QUALITY CONTROL PROGRAM ELEMENTS FOR ARIZONA**

Arizona Revised Statutes, Title 49, "Environment," divides responsibility and encourages cooperation for meeting the requirements of the Clean Air Act (CAA) among the State, county agencies, and regional planning organizations. Currently the State and three county agencies operate air quality control programs under direct or delegated authority. These air pollution control agencies are: Arizona Department of Environmental Quality (ADEQ), Maricopa County Air Quality Department (MCAQD), Pima County Department of Environmental Quality (PDEQ), and the Pinal County Air Quality Control District (PCAQCD). Figure 1 is a map showing Arizona counties with air quality control agencies.

ADEQ has primary responsibility for air pollution control and abatement, and as such, is required to "maintain a State implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the Clean Air Act" (ARS §49-404). ADEQ is also responsible for coordinating, along with local officials, the development, adoption, and enforcement of control measures and permits where no local air quality control agency exists. In addition, ADEQ has original jurisdiction in all areas of the State for certain stationary and portable, and all mobile sources, including petroleum refineries, coal fired electrical generating stations, and the motor vehicle emissions inspection program (ARS §49-402).

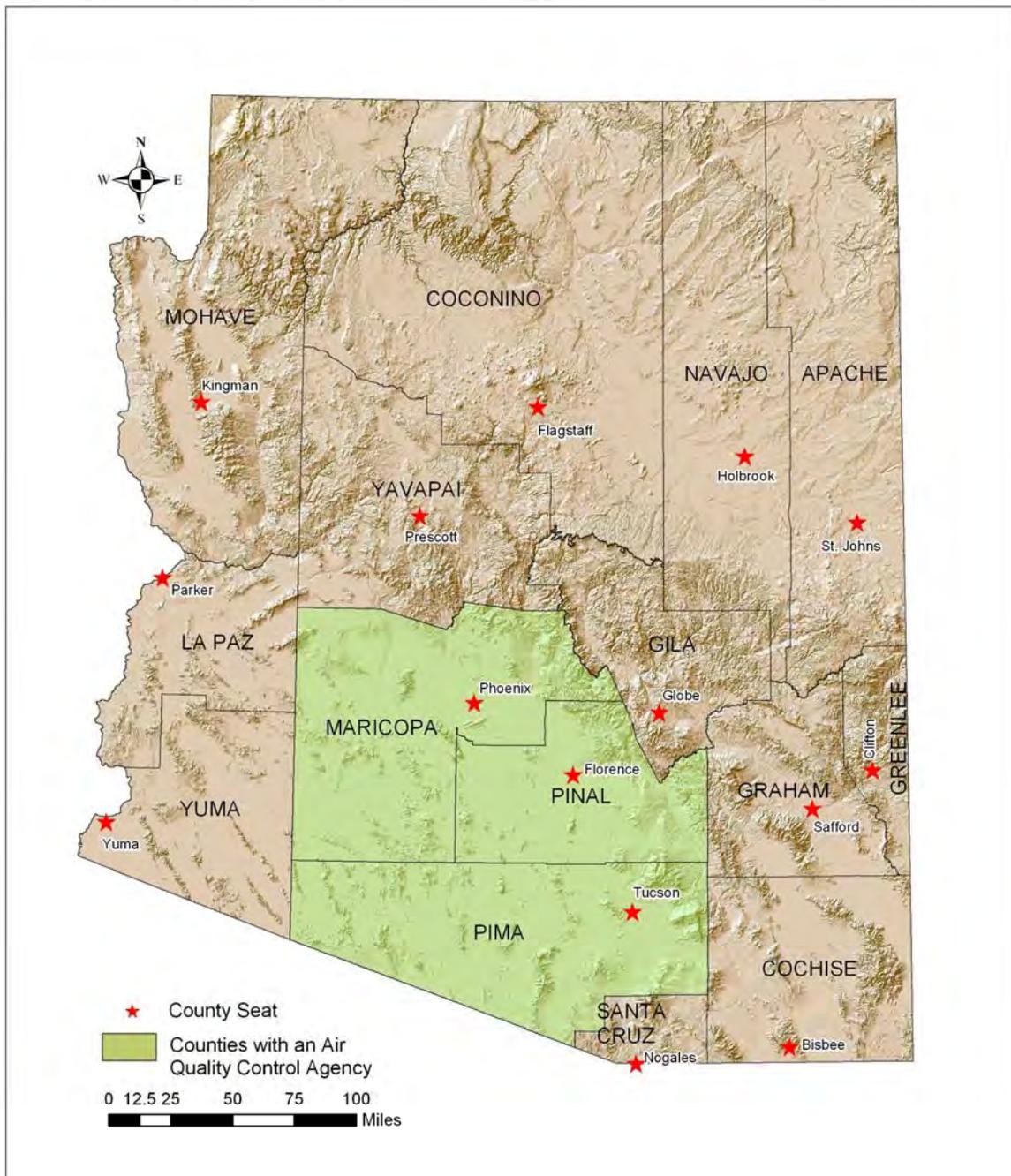
Except for the sources noted above, the county agencies have original jurisdiction for the issuance, administration, and enforcement of permits (ARS §49-402). The State may, however, assert jurisdiction where the local agency is unable to fulfill any function or duty as required. State law also provides direct county authority to adopt and enforce programs, rules, and ordinances for the prevention, control and abatement of air pollution (ARS Title 49, Chapter 3, Article 3).

Two metropolitan planning organizations, the Maricopa Association of Governments (MAG) and the Pima Association of Governments (PAG), are certified for the development of nonattainment and maintenance area plans within their respective jurisdictions (ARS §49-406). MAG and PAG submit their plans to ADEQ for adoption and inclusion in the State implementation plan (SIP) pursuant to ARS §49-406.H.

The following sections summarize the requirements of CAA Sections 110(a)(2)(A) through (M) and present information that demonstrates Arizona's State and local air pollution control programs, and commitments to update emergency episode provisions, meet these basic elements and are adequate to ensure attainment and maintenance of the Pb NAAQS.

Figure 1

# Arizona Counties with Air Quality Control Agencies



## **2.1 CAA Section 110(a)(2)(A) – Control Measures and Emission Limits**

Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques, as well as schedules for compliance necessary to meet applicable requirements of the CAA.

The timing of submittals for specific nonattainment area control measures and plans is subject to the requirements of CAA, Title 1, Part D, "Plan Requirements for Nonattainment Areas;" therefore, the demonstration of compliance with CAA Section 110(a)(2)(A) includes the necessary authority for State and local air quality management programs to adopt and implement control measures and plans to assure attainment and maintenance of the Pb air quality standard. The State's enforceable emission limitations and other control measures are authorized by the following Arizona Revised Statutes:

For ADEQ Programs:

- 49-106. Statewide application of rules
- 49-107. Local delegation of state authority
- 49-401.01. Definitions
- 49-402. State and county control
- 49-404. State implementation plan
- 49-406. Nonattainment area plan
- 49-421. Definitions
- 49-424. Duties of department
- 49-425. Rules; hearing
- 49-426. Permits; duties of director; exceptions; applications; objections; fees

For County Programs:

- 49-471. Definitions
- 49-473. Board of supervisors
- 49-479. Rules; hearing
- 49-480. Permits; fees

## **2.2 CAA Section 110(a)(2)(B) – Ambient Air Quality Monitoring**

Section 110(a)(2)(B) requires SIPs to include provisions for establishment and operation of ambient air quality monitors, to compile and analyze ambient air quality data, and make these data available to EPA upon request.

Arizona maintains an extensive monitoring network operated by State and county agencies designed to collect, compile, and analyze ambient air quality data in attainment and nonattainment areas of the State. Operating agencies track data recovery, quality control and quality assurance parameters for all instruments operated at various network sites. Criteria pollutant concentrations, such as Pb, are measured with instruments meeting EPA certification as Federal Reference or Equivalent Methods. All data collected by Pb monitors are compared to the NAAQS, statistically analyzed for trends, and recorded quarterly in EPA's Air Quality System.

Per Code of Federal Regulations (CFR), Title 40, Part 58, State and county agencies (ADEQ, MCAQD, PDEQ, and PCAQCD) are required to annually submit network monitoring plans to EPA. These plans identify the purpose of each monitor and provide evidence that both the siting and the operation of each monitor meets the network design, quality assurance, and other federal requirements of 40 CFR Part 58.

The results of air quality monitoring conducted throughout Arizona, are contained in ADEQ's Air Quality Annual Reports available <http://www.azdeq.gov/function/forms/reports.html>.

EPA's November 2008 Final Rule for the revised Pb NAAQS established requirements for the placement of monitors near sources expected to exceed one ton of Pb emissions annually and in non-source urban areas with populations greater than 500,000 (73 FR 66964). In a December 2010 Final Rule, EPA revised Pb monitoring requirements to include Pb sources with annual Pb emissions expected to exceed 0.5 tons per year (75 FR 81126). EPA also revised the requirement for non-source monitoring from urban areas with populations exceeding 500,000 to Ncore monitoring sites in urban areas with a population exceeding 500,000; one monitoring site in the Phoenix metropolitan area that meets that criterion.

Pb monitoring near the Hayden and Miami copper smelters began in October 2010, prior to the December 2010 deadline established by EPA's final rule. ADEQ is exploring options for Pb monitoring methods at the JLG Supersite in central Phoenix and will have a monitor installed by the December 2011 deadline.

The Pb monitoring final rule also clarified that Pb monitoring will not be required in the Prescott area, because EPA's final Pb monitoring rule retained a 1.0 tpy threshold for airports.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

49-404. State implementation plan

49-406. Nonattainment area plan

49-422. Powers and duties; definition

49-424. Duties of department

For County Programs:

49-473. Board of supervisors

### **2.3 CAA Section 110(a)(2)(C) – Enforcement of Control Measures**

Section 110 (a)(2)(C) requires States to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet prevention of significant deterioration (PSD) and nonattainment new source review (NSR) permitting requirements.

Arizona State and local agencies implement control and enforcement programs for permitted sources of air contaminants and those sources that are not regulated through permits programs (open uncontrolled burns, construction, vacant land, etc.). As part of the SIP enforcement program, ADEQ and local agencies track all committed SIP control measures and work with the entities responsible for those measures to provide any needed assistance and ensure timely implementation. Each agency that commits to implement emission limitations or other control measures contained in the SIP is required to specify, in a resolution adopted by the governing body of the agency, its authority for implementing the measure and a program for enforcement of the limitation or measure. If any agency or entity fails to implement a committed measure, the county is authorized to file an action in superior court for injunction or any other relief provided by law. Similarly, if the county fails to ensure implementation of measures, the ADEQ Director is authorized through the State Attorney General to seek relief provided by law to ensure implementation of all measures.

ARS Title 49, Chapter 3, Articles 1, 2, and 3 establish ADEQ and local agency authority for preconstruction review and permitting. Under the air permits program, sources that emit regulated pollutants, including Pb, are required to obtain a permit before constructing, changing, replacing, or operating any equipment or process which may cause air pollution. This includes equipment designed to

reduce air pollution. Permits are also required if an existing facility that causes air pollution transfers ownership, relocates, or otherwise changes operations.

ADEQ and county permitting agencies operate air quality permit compliance programs to ensure implementation of emission limits and other control measures for permitted sources. These programs include scheduled and unscheduled inspections conducted at major sources annually as well as compliance assistance initiatives. Permit and SIP enforcement authority is also provided in ARS §§49-460 through 464, and 49-510 through 514, under which the State or county may issue orders of abatement, and, through the Attorney General or County Attorney, seek injunctive relief for any violations of the air quality provisions of the law.

Per the authority noted above, all new sources and modifications to existing sources in Arizona are subject to State requirements for preconstruction review and permitting pursuant to Arizona Administrative Code (AAC), Title 18, Chapter 2, Articles 2 and 4 or relevant county rules. All new major sources and major modifications to existing major sources are also subject to the NSR provisions of these rules in nonattainment areas or PSD provisions in attainment areas.

EPA last approved Arizona's PSD program and related rules into the SIP in 1984, before ADEQ was created. The relevant regulations are therefore those promulgated by the Arizona Department of Health Services as Chapter 3 of Title 9 of the Arizona Administrative Code.

Section R9-3-304(A)(4)(a) of the approved SIP provides that:

*no Class A permit shall be issued to a person proposing to construct a new major source or make a major alteration to a major source (or to construct or modify a stationary source that emits 5 or more tons of lead per year) that would be constructed in an area designated as attainment or unclassifiable for any pollutant and for which construction commenced after May 15, 1982 unless the source or alteration meets the following conditions:*

....

*4. The person applying for the permit performs the air impact analysis and monitoring required by R9-3-305 and such analysis and monitoring demonstrates that allowable emission increases from the proposed new major source or major alteration in conjunction with all other applicable emissions increases or reductions (including secondary emissions):*

*a. Would not cause or contribute to air pollution in violation of any applicable maximum allowable increase over the baseline concentration in R9-3-217.B for any attainment or unclassified area;....*

Subsection (1) of R9-3-217(B) establishes the increments for sulfur dioxide and particulate matter. Subsection (2) then provides that:

The maximum allowable concentration of any air pollutant in any area to which the preceding paragraph applies shall not exceed a concentration for each pollutant or exposure equal to the concentration permitted under the Arizona State Ambient Air Quality Standards contained in this Article-(Article 2).

The Arizona State Ambient Air Quality Standards in Article 2 consist of Arizona's incorporation of the NAAQS. Thus, the prohibition against causing a violation of a maximum allowable increase in R9-3-304(A)(4)(a) of the PSD program includes a prohibition of emissions that cause a violation of the NAAQS. The version of Article 2 approved at the time included R9-3-207, which incorporated the then-

current lead NAAQS of 1.5 micrograms per cubic meter into Arizona's standards. The approved SIP therefore authorizes enforcement of the former lead NAAQS through the PSD program.

The approved SIP also includes the authority to impose nonattainment NSR requirements against any major source or modification "located in any nonattainment area for the pollutant(s) for which the source is classified as a major source or the alteration [i.e. modification] is classified as a major alteration." R9-3-302(A); see also R9-3-303 (offset requirements). Thus, in any area in Arizona classified as nonattainment for Pb, nonattainment NSR would apply to any source or modification classified as Pb for that pollutant.

ADEQ plans to publish a proposed rule updating the State's NSR rules to meet federal requirements in September 2011, and to adopt and submit the rules for approval into the SIP by the end of 2011 or early in 2012. The proposed rules include amendments to Arizona State Ambient Air Quality Standard for lead to match the current NAAQS of 0.15 micrograms per cubic meter.

EPA guidance requires that the State's PSD program includes regulations for greenhouse gases in accordance with EPA's Tailoring Rule. Arizona is not including GHGs in its revised NSR/PSD program but has been delegated federal authority effective March 30, 2011.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

- 49-103. Department employees; legal counsel
- 49-106. Statewide application of rules
- 49-107. Local delegation of state authority
- 49-402. State and county control
- 49-404. State implementation plan
- 49-406. Nonattainment area plan
- 49-422. Powers and duties; definition
- 49-424. Duties of department
- 49-425. Rules; hearing
- 49-426. Permits; duties of director; exceptions; applications; objections; fees
- 49-426.01. Permits; changes within a source; revisions
- 49-433. Special inspection warrant
- 49-435. Hearings on orders of abatement
- 49-441. Suspension and revocation of conditional order
- 49-460. Violations; production of records
- 49-461. Violations; order of abatement
- 49-462. Violations; injunctive relief
- 49-463. Violations; civil penalties
- 49-464. Violation; classification; penalties; definition
- 49-501. Unlawful open burning; exceptions; civil penalty; definition

For County Programs:

- 49-473. Board of supervisors
- 49-480. Permits; fees
- 49-480.01. Permits; changes within a source; revisions
- 49-488. Special inspection warrant
- 49-490. Hearings on orders of abatement
- 49-495. Suspension and revocation of conditional order
- 49-501. Unlawful open burning; exceptions; civil penalty; definition

- 49-502. Violation; classification
- 49-510. Violations; production of records
- 49-511. Violations; order of abatement
- 49-512. Violations; injunctive relief
- 49-513. Violations; civil penalties
- 49-514. Violation; classification; definition

## **2.4 CAA Section 110(a)(2)(D) – Interstate Transport**

Section 110 (a)(2)(D)(i) requires adequate provisions to ensure that any source or other emissions activity within a State does not contribute significantly to the nonattainment of, or interfere with maintenance of, the NAAQS in any other State. These requirements, from Subsection (2)(D)(i)(I), respectively refer to what EPA terms prongs 1 and 2.

As EPA notes in its June 2011 memo, *“the physical properties of Pb prevent Pb emissions from experiencing the same travel or formation phenomena as PM<sub>2.5</sub> or ozone...there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases.”* The guidance goes on to explain that while it may be possible for a source within a State to emit Pb in quantities that could contribute significantly to nonattainment or interfere with maintenance in another State, it would require a large source *“within two miles”* of State boundaries.

EPA identified two potential sources of lead in the default nonattainment area boundary recommendations for the Pb NAAQS, ASARCO’s copper smelter and concentrator in Hayden and Freeport McMoRan’s copper smelter in Miami. In a letter from the Governor dated December 15, 2009, a smaller nonattainment area boundary was recommended and only one potential source of lead was identified. The location of this source is depicted in Figure 2; as shown, this region of Arizona is defined by complex terrain. Rugged mountain ranges and canyons define airflow patterns in the area. The mountainous terrain surrounding the sources prevents Pb emissions from affecting nearby areas. In addition, approximately 105 miles of rugged terrain separates the smelters from the Arizona/New Mexico border. Hundreds of miles separate these sources from the borders Arizona shares with New Mexico, Utah, Nevada, California, and Mexico. It is highly unlikely that Pb emissions from the sources in Hayden and Miami could impair air quality in neighboring States. Most recently, in a letter dated June 14, 2011, EPA advised the Governor that it was designating the entire State as unclassifiable/attainment.

**Figure 2**  
**Topographical Features of Southern Gila and Pinal Counties**



Subsection (2)(D)(i)(II), known as prong 3, requires the State to ensure Pb emissions do not interfere with any other State's required applicable implementation plan to prevent significant deterioration (PSD) of air quality or to protect visibility. EPA's memorandum for this SIP (see Appendix A) notes that the State can meet prong 3 requirements by confirming that new major sources and major modifications to an existing source are subject to PSD and NSR programs that implement the Pb NAAQS.

ADEQ is currently revising its NSR/PSD program to address the 2008 Pb NAAQS. The revised program is expected to be submitted soon as a SIP revision.

Subsection (2)(D)(i)(II), prong 4, addresses the protection of visibility. EPA notes in its guidance that Pb is not directly regulated under Sections 169(A) and (B) (visibility program) of the CAA, and that studies have determined that the impact of Pb emissions on visibility is insignificant. Furthermore, there are no Class I areas in close enough proximity to be affected by Pb emissions from the Hayden and Miami copper smelters. In addition, EPA's regional haze program addresses visibility-impairing pollutants; therefore, EPA is not requiring Pb infrastructure SIPs to address prong 4.

#### **2.4.1 CAA Section 110(a)(2)(D)(ii): Interstate and International Transport Provisions**

*“Each such plan shall [ . . . ] contain adequate provisions insuring compliance with the applicable requirements of Sections 115 or 126 (b) that involve Pb emissions (relating to interstate and international pollution abatement).” EPA has no reason to approve or disapprove any existing state rules with regard to these provisions.*

Section 126(a) of the CAA directs each SIP to include provisions requiring a new or modified source to notify neighboring States of potential impacts from the source. Arizona’s approved PSD program requires the State to notify neighboring States and/or nations if a new or modified source may potentially impact the area’s air quality.

#### **2.5 CAA Section 110(a)(2)(E) – Adequate Resources**

Section 110 (a)(2)(E) requires that each SIP shall provide: (i) necessary assurances that adequate personnel, funding, and legal authority are available to carry out the SIP; (ii) that any board which approves permits or enforcement orders represents the public interest and any conflict of interest by board members or an executive agency head be adequately disclosed; and (iii) necessary assurances that where the State has relied on a local or regional government agency, or instrumentality for implementation of any plan provision the State has responsibility for ensuring adequate implementation of such plan provision.

The following Arizona Revised Statutes grant ADEQ primary regulatory authority for air pollution control and abatement in Arizona as well as responsibility for ensuring adequate implementation of SIP provisions. Copies of the following applicable Statutes are included in Appendix B.

- 49-402. State and county control
- 49-404. State implementation plan
- 49-406. Nonattainment area plan
- 49-501. Unlawful open burning; exceptions; civil penalty; definition

Funding to staff and administer Arizona air quality control programs consists of fees that are collected from regulated emissions sources, including fees collected to administer permitting programs and the motor vehicle emissions inspection program, as well as Federal grants.

State, county and regional agency funding levels and personnel resources are currently adequate to meet federal and State obligations to manage Arizona air resources to protect public health and welfare and administer the air quality programs necessary to attain and maintain the Pb air quality standards. The need for additional staff for the five year period following this submittal is not anticipated. ADEQ submitted funding statutes ARS §§49-544 and 49-551 on July 6, 2001, and §49-455<sup>1</sup> on October 14, 2009, to meet adequate resource requirements under Section 110(a)(2)(E)(i).

In accordance with EPA's regulations at Subpart O, the SIP submittal includes copies of rules that show that the State has adopted the emission limitations and other measures necessary for attainment and maintenance of the 2008 Pb NAAQS.

Title 40 CFR Part 51, Subpart M, requires the State to identify organizations that will participate in the development of the SIP. The one potential Pb nonattainment area of the State is under ADEQ’s jurisdiction; therefore ADEQ will be responsible for the development, implementation, and enforcement of the SIP. ADEQ will consult with the Central Arizona Association of Governments, ADOT, elected officials, and other stakeholders during the SIP development process.

Relevant sections of Arizona Revised Statutes:

49-455. Permit administration fund

49-544. Emissions inspection fund; composition; authorized expenditures; exemptions; investment

49-551. Air quality fee; air quality fund; purpose

For County Programs:

49-476. Authorization to accept funds or grants

49-480. Permits; fees

49-101. Definitions

Authority for permit approvals and enforcement orders is provided to the ADEQ Director and county control officers. Arizona law, applicable to "all public officers and employees of incorporated cities or towns, of political subdivisions and of the State and any of its departments, commissions, agencies, bodies or boards," contains provisions for adequate disclosure of any conflict of interest. To meet the conflict of interest requirements under Section 110(a)(2)(E)(ii), ADEQ submitted ARS Title 38, Chapter 3, Article 8, Conflict of Interest of Officers and Employees on October 14, 2009.<sup>1</sup>

Relevant sections of Arizona Revised Statutes:

Title 38, Chapter 3, Article 8, Conflict of Interest of Officers and Employees

## **2.6 CAA Section 110(a)(2)(F) – Emissions Monitoring and Reporting**

Section 110 (a)(2)(F) requires provisions for emissions monitoring by owners or operators of stationary sources and periodic reports on the nature and amounts of emissions as well as correlation of such reports by the State agency with any emission limitations or standards.

Arizona Revised Statutes provide authority to require any sources of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may be reasonably attributable to that source.

40 CFR Part 51, Subpart K requires the SIP to include record keeping requirements for stationary sources, and provide for the installation, maintenance, and proper operation of continuous emissions monitoring systems. Arizona Revised Statutes Title 49, Chapter 3, Article 2 provides ADEQ with the authority to adopt rules or revise operating permits to ensure any source takes reasonable steps to quantify released emissions. In order to quantify emissions coming from a source, ADEQ has the authority to require the installation, use, and maintenance of continuous emissions monitoring systems, requirements for record keeping and reporting, and requirements for violation and equipment failure notification.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

49-422. Powers and duties; definition

49-426. Permits; duties of director; exceptions; applications; objections; fees

49-432. Classification and reporting; confidentiality of records

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<sup>1</sup> ARS Title 38, Chapter 3, Article 8, and §49-455 Permit Administration Fund (except Section (B)(1)) were included as appendices in ADEQ's October 14, 2009, submittal of the *Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2): Implementation of 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards, 1997 PM<sub>2.5</sub> National Ambient Air Quality Standards, and 1997 8-hour Ozone National Ambient Air Quality Standards (September 2009)*.

For County Programs:  
49-476.01. Monitoring  
49-480. Permits; fees  
49-487. Classification and reporting; confidentiality of records

## **2.7 CAA Section 110(a)(2)(G) – Emergency Powers**

Section 110(a)(2)(G) requires States to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

Arizona Revised Statutes §49-465 authorizes State actions to alleviate or prevent an emergency health risk to the public due to air pollution or likely exceedance of the NAAQS. The Governor "may, by proclamation, declare that an emergency exists and may prohibit, restrict, or condition" any and all activity that contributes to the emergency. Arizona Administrative Code R18-2-220, "Air Pollution Emergency Episodes" (approved into the SIP as AAC R9-3-219 at 47 FR 42572; September 28, 1982), prescribes the procedures the ADEQ Director shall implement in order to prevent the occurrence of ambient air pollution concentrations which would cause significant harm to public health. Procedures include governmental and public notification of the nature of the episode and, at the directive of the Governor's office, possible curtailment of industrial and commercial activities. According to EPA records, ADEQ submitted a revised Emergency Episode rule on March 26, 1990, that EPA did not act on.

ADEQ is currently revising its NSR/PSD program to address the 2008 Pb NAAQS. The revised program is expected to be submitted soon. Arizona Revised Statute §49-422 authorizes ADEQ to provide emergency services at chemical or other toxic fire events that jeopardize human health and the environment. ADEQ provides air sampling and analysis, forecasts smoke dispersion, and advises authorities about the health risks posed by airborne hazardous air pollutants.

Similar provisions for determining air pollution emergency episodes, advisory procedures, and control actions are contained in the Maricopa, Pima, and Pinal County codes listed below. Revised county regulations will be submitted to EPA upon completion of any required updates, subsequent to ADEQ's rule revision.

- Maricopa County Air Pollution Control Regulations, Regulation VI - Emergency Episodes, Rule 600, Emergency Episodes
- Pima County Municipal Code, Title 17. Air Quality Control, Chapter 17.32, Emergency Episodes and Public Awareness, Article I. Emergency Episodes
- Pinal County Air Quality Control District Code of Regulations, Chapter 2. Ambient Air Quality Standards, Article 7. Air Pollution Emergency Episodes

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:  
49-422. E and F. Powers and duties; definitions,  
49-462. Violations; injunctive relief  
49-464. Violation; classification; penalties; definition  
49-465. Air pollution emergency

For County Programs:  
49-512. Violations; injunctive relief

49-514. Violation; classification; definition

## **2.8 CAA Section 110(a)(2)(H) – Plan Revisions**

Section 110(a)(2)(H) requires States to have authority to revise their SIPs in response to changes in the NAAQS or availability of improved methods for attaining the NAAQS. This section also requires States to provide for plan revisions to ensure the adequacy of the plan to attain the air quality standards or to otherwise comply with any additional requirements established under the CAA.

Arizona Revised Statutes contain authority to revise the Arizona SIP to comply with the requirements of the CAA including changes in the NAAQS. Under ARS §49-404, ADEQ is required to "maintain a State implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act."

Relevant sections of Arizona Revised Statutes:

49-404. State implementation plan

49-406. Nonattainment area plan

## **2.9 CAA Section 110(a)(2)(I) – CAA Title 1, Part D Nonattainment Area Requirements**

Section 110(a)(2)(I) requires nonattainment area plans to meet the applicable requirements of CAA Title 1, Part D relating to nonattainment areas. EPA's June 17, 2011, guidance (see Appendix A) notes that EPA does not expect infrastructure SIP submissions to include regulations or emission limits developed specifically for attaining the Pb NAAQS. Nonattainment area plans required under part D will be due 18 months following designation.

## **2.10 CAA Section 110(a)(2)(J) – Consultation with Government Officials, Public Notification, PSD and Visibility Protection**

Section 110(a)(2)(J) requires States to: (1) provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to Section 121 relating to consultation, (2) notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances per Section 127 relating to public notification, and (3) meet applicable requirements of Part C related to prevention of significant deterioration of air quality and visibility protection.

Arizona agencies maintain appropriate consultation procedures with local governments, CAA Section 174 and metropolitan planning agencies, and federal land managers regarding implementation of CAA requirements. ARS §49-406 requires the State, the metropolitan planning agency on behalf of affected local governments, county agencies, and the Department of Transportation to enter into a memorandum of agreement for the purpose of coordinating the development, implementation, and enforcement of nonattainment and maintenance plans. Additionally, opportunity for comment is provided through stakeholder meetings and public hearings held to solicit testimony from the public as well as federal and local air quality planning agencies prior to adoption of any revision to the Arizona SIP.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

49-405. A. and B. Attainment area designations

- 49-406. Nonattainment area plan
- 49-424. Duties of department
- 49-425. Rules; hearing
- 49-426. Permits; duties of director; exceptions; applications; objections; fees

For County Programs:

- 49-473. Board of supervisors
- 49-474. County control boards
- 49-479. Rules; hearing
- 49-480. Permits; fees

CAA Section 127 requires measures to notify the public of instances or areas in which any air quality standard is exceeded during the preceding calendar year, to advise the public of health hazards associated with air pollution, and to enhance public awareness of measures that can be taken to improve air quality. The results of air quality monitoring conducted throughout Arizona, including ambient Pb data, are published in ADEQ's Air Quality Annual Reports. Air quality forecasts, which include actual ambient air quality data for the preceding day, are made available to the public daily. The annual reports, daily forecasts, and other air quality information including tips for reducing pollution are available on the ADEQ Web site.

Relevant sections of Arizona Revised Statutes:

- 49-422. E. Powers and duties; definition
- 49-424. Duties of department

CAA, Title 1, Part C includes provisions relating to prevention of significant deterioration (PSD) of air quality and visibility protection. PSD provisions are discussed in Section 2.3 above. In its June 2011 Pb Infrastructure memo, EPA notes that requirements for visibility protection are not necessary for the purposes of this infrastructure SIP because States are already subject to visibility protection and regional haze program requirements under Part C of the CAA. EPA also notes that the implementation of a new NAAQS does not change the existing requirements of Part C, therefore no further visibility obligations under Section 110(a)(2)(J) are required for the purposes of this SIP. As discussed previously, EPA Region IX and ADEQ have a delegation agreement effective March 30, 2011, that establishes ADEQ as the primary responsibility for issuing new and modified PSD permits for major sources that emit or potentially emit Greenhouse Gas.

Relevant sections of Arizona Revised Statutes:

- 49-458. Regional haze program; authority
- 49-458.01 State implementation plan revision; regional haze; rules

## **2.11 CAA Section 110(a)(2)(K) – Air Quality Modeling**

Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling for estimating the effect of emissions on ambient air quality and to submit data related to the modeling to EPA upon request.

ADEQ staff can perform air quality modeling for estimating the effect of Pb emissions on ambient air quality. Where applicable, all modeling analyses for demonstrating attainment and maintenance of the NAAQS meet EPA's most recent guidance on air quality models. All information and data are made available to EPA as required.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

49-406. Nonattainment area plan

49-422. Powers and duties; definition

49-424. Duties of department

49-426. Permits; duties of director; exceptions; applications; objections; fees

For County Programs:

49-473. Board of supervisors

49-474. County control boards

49-480. Permits; fees

## **2.12 CAA Section 110(a)(2)(L) – Permit Fees**

Section 110(a)(2)(L) provides that SIPs must require the owner or operator of a major stationary source to pay fees to the permitting authority to cover the cost of reviewing, approving, implementing and enforcing a permit.

Arizona permitting agencies are responsible for assessing fees sufficient to recover the costs of administering the permitting program. Assessments include fees for permit actions, administrative and emission-based fees for Title V sources, inspection fees for non-Title V sources, and fees for general permits.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

49-426(E). Permits; duties of director; exceptions; applications; objections; fees

For County Programs:

49-480(D). Permits; fees

## **2.13 CAA Section 110(a)(2)(M) – Consultation/Participation by Affected Local Entities**

Section 110(a)(2)(M) requires States to provide for consultation and participation in SIP development by local political subdivisions affected by the plan.

Arizona air quality agencies consult with and maintain frequent and regular communication with all local and political subdivisions affected by plan revisions. Local entities participate in plan development and the review process and often provide needed data and information for analyses contained in the plan as well as implementation assistance. Opportunity for comment is also provided through stakeholder meetings and public hearings conducted to solicit testimony from the public, local planning agencies, and other local political entities prior to adoption of any plan revisions.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

49-405. A. and B. Attainment area designations

49-406. Nonattainment area plan

49-424. Duties of department

49-425. Rules; hearing

49-426. Permits; duties of director; exceptions; applications; objections; fees

For County Programs:

49-473. Board of supervisors

49-474. County control boards

49-479. Rules; hearing

49-480. Permits; fees

Although ARS 49-406.A. requires that the governor certify the metropolitan area as the agency responsible for the development of a nonattainment or maintenance plan for ozone, carbon monoxide or particulate nonattainment areas or maintenance areas, the pollutant Pb is not mentioned. The two potential point sources of Pb in Arizona are not in metropolitan areas. ADEQ would consult with the Central Arizona Association of Governments, ADOT, elected officials, and other stakeholders during the SIP development process.

### **3.0 COMMITMENTS**

ADEQ commits to a revision of the SIP to meet the remaining requirement of CAA Section 110(a)(2)(G) relating to emergency episodes for the 2008 Pb NAAQS.

ADEQ commits to a revision of the SIP to update its NSR/PSD program to fully meet the requirements of CAA Section 110 (a)(2)(c) for the 2008 Pb NAAQS. These revised rules will be submitted to EPA for approval into the Arizona SIP upon completion of the State rulemaking and SIP revision process.

#### **4.0 CONCLUSION**

This revision to the Arizona SIP demonstrates that, with the exception of 110(a)(2)(G), the existing authorities and infrastructure of Arizona State and local air quality management programs, in conjunction with the federal PSD program, meet the basic program elements required under CAA Section 110(a)(2) for the 2008 Pb NAAQS.

## **APPENDIX A**

*Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb)  
National Ambient Air Quality Standard*

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MEMORANDUM

SUBJECT: Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)

FROM: Scott Mathias  
Interim Director, OAQPS

TO: Regional Air Division Directors, Regions 1 – 10

This guidance addresses the “infrastructure” elements for State Implementation Plans (SIPs) to meet the requirements of sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA) for the 2008 Pb NAAQS (see 73 FR 66964). <http://69.175.53.6/register/2008/nov/12/E8-25654.pdf>. On October 15, 2008, EPA revised the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to  $0.15 \mu\text{g}/\text{m}^3$ . Pursuant to sections 110(a)(1) and 110(a)(2) of the CAA, each State is required to submit a plan to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS.

The CAA directs states to address basic SIP requirements (see Attachment A), to ensure attainment and maintenance of the NAAQS. The CAA provides that states are to submit SIPs addressing the requirements of sections 110(a)(1) and 110(a)(2) within 3 years of promulgation of a new or revised standard.<sup>1</sup> EPA recognizes that many of the required section 110(a)(2) elements relate to the general information and authorities that constitute the infrastructure of a State’s air quality management program – elements that have been in place since the initial SIPs were submitted in response to the Clean Air Act of 1970 and some required element may have been adopted to satisfy the infrastructure SIP requirements for the 1997 PM 2.5, 1997 8-hour ozone, and 2006 PM 2.5 NAAQS. It is the responsibility of each State to review its air quality management program's infrastructure SIP provisions in light of each new or revised NAAQS.

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<sup>1</sup> Although the effective date of the Federal Register notice for the final rule was January 12, 2009, the rule was signed by the Administrator and publicly disseminated on October 15, 2008. Therefore, the deadline for submittal of infrastructure SIPs for the 2008 Pb NAAQS is October 15, 2011. <http://www.epa.gov/oaqps001/lead/fr/20081112.pdf>

## Determining Completeness of State Submittals

Pursuant to section 110(a)(1), States will have to review and revise, as appropriate, their existing Pb NAAQS SIPs to ensure that the SIPs are adequate to address the 2008 Pb NAAQS. States should, in consultation with EPA Regional Offices, refer to applicable EPA regulations governing SIP submittals per 40 CFR Part 51. [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr51\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr51_main_02.tpl)

These regulations include, but are not limited to:

- Subpart I – Review of New Sources and Modifications
- Subpart J – Ambient Air Quality Surveillance
- Subpart K – Source Surveillance
- Subpart L – Legal Authority
- Subpart M – Intergovernmental Consultation
- Subpart O – Miscellaneous Plan Content Requirements
- Subpart P – Protection of Visibility
- Subpart Q – Reports.

If a State determines that its existing SIP is adequate, then the State's SIP submittal may be a certification that the existing SIP contains provisions addressing all requirements of the section 110(a)(2) infrastructure elements as applicable for the 2008 Pb NAAQS. Such certification (*e.g.*, in the form of a letter to EPA from the Governor or her/his designee) should cite the applicable provisions in the existing SIP. As for all SIP submittals, section 110(l) directs the state to provide reasonable public notice and opportunity for public hearing on a certification letter prior to submission to EPA.

Section 110(a)(2) specifies the elements and sub-elements that are required In order for EPA to determine that an infrastructure SIP submittal is complete. Specifically, each State should include documentation demonstrating a correlation between each infrastructure element and an equivalent State statutory or regulatory authority in the existing or submitted SIP. At a minimum, a complete submittal is a letter from an appropriate State official (*e.g.*, Governor or designee) certifying compliance with each element which has gone through state notice and hearing procedures. Furthermore, the State should provide a specific description of how compliance with each element is achieved. Submittals lacking a detailed explanation for how the State's SIP meets each applicable requirement of section 110(a)(2) **should be found incomplete** and a letter should be sent to the state notifying it of the finding of incompleteness. EPA's criteria for determining the completeness of a SIP submittal are set out in EPA's regulations at 40 CFR Part 51, Appendix V. <http://ecfr.gpoaccess.gov/cgi/t/text/text->

[idx?c=ecfr&sid=efccd778ba0879113d39b8894d179d4a&rgn=div9&view=text&node=40:2.0.1.1.2.2.11.14.36&idno=40](http://www.ecfr.gov/ecfr/sid=efccd778ba0879113d39b8894d179d4a&rgn=div9&view=text&node=40:2.0.1.1.2.2.11.14.36&idno=40)

EPA has determined that the elements and sub-elements of section 110(a)(2) with respect to the 2008 Pb NAAQS are, for the most part, severable.<sup>2</sup> For example:

- SIP submittals that address some but not all elements or sub-elements of section 110(a)(2) **should be found incomplete** for the unaddressed elements or sub-elements.
- If EPA makes a finding of failure to submit a SIP, that finding will only apply to the elements or sub-elements that were not addressed by the state's SIP revision. In order for EPA to make a determination as to whether a subsequent SIP submittal is complete, the state only be required to submit those elements that were earlier found not to have been submitted.
- A State's obligation to make a SIP submittal that addresses one or more infrastructure SIP elements cannot be fulfilled through a letter from the State that merely promises a future submittal.

A finding that a SIP submittal is complete does not necessarily mean that the submittal is approvable, because the completeness review only addresses whether the State has provided information sufficient to warrant formal EPA review for approvability. Section 110(k) directs EPA to take final action on a SIP submittal within 1 year after the SIP is determined to be complete. If EPA makes an affirmative finding that a SIP submittal is complete, the date of the finding establishes the "completeness date" for the submittal; if EPA makes no finding, the submittal is deemed complete, by operation of law, on the date 6 months after the submittal date. Actions on a SIP submittal may include approval (full, partial, or conditional) and disapproval (full or partial).

The obligations of EPA to promulgate a Federal Implementation Plan (FIP) are set out in section 110(c) of the CAA. EPA's obligation to promulgate a FIP for a state is triggered if EPA takes any of the following actions associated with the required SIP: 1) EPA makes a finding that a State has failed to make a SIP submittal; 2) EPA makes a finding that a state has made an incomplete submittal; or 3) EPA disapproves a SIP submittal. If EPA takes one of these actions, Section 110(c) directs EPA to take further action within 2 years, under what is commonly

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<sup>2</sup> Please see Attachment A for clarification of "severable" versus "non-severable" infrastructure elements.

Draft as of 6/17/11

referred to as the "FIP clock. In order to remove EPA from the FIP obligation, a state SIP submittal must meet the applicable requirements and be approved by EPA.

**For Further Information**

If you have any questions concerning this guidance, please contact Mia South by telephone at (919) 541-5550 or by email at [south.mia@epa.gov](mailto:south.mia@epa.gov). Please ensure that the appropriate air agency officials for states in your Region are made aware of this guidance.

Attachments

cc:

DRAFT

## **Attachment A: Required Section 110 Infrastructure SIP Elements**

The Clean Air Act (CAA) directs states to address basic State Implementation Plan (SIP) requirements to implement, maintain and enforce the standards. Under CAA sections, By law, sections 110(a)(1) and 110(a)(2) states are to submit these SIPs within 3 years after promulgation of a new or revised standard. Many of the section 110(a)(2) SIP elements relate to the general information and authorities that constitute the "infrastructure" of a state's air quality management program, and these have been in place since the initial SIPs were submitted in response to the 1970 CAA. It is the responsibility of each state to review its air quality management program's infrastructure SIP provisions in light of each new or revised NAAQS.

States should review and revise, as appropriate, their existing SIPs to ensure that they are adequate to address the 2008 NAAQS. States should, in consultation with EPA Regional Offices, follow applicable EPA regulations governing SIP submittals in 40 CFR Part 51 - e.g., Subpart I ("Review of New Sources and Modifications"), Subpart J (Ambient Air Quality Surveillance), Subpart K (Source Surveillance), Subpart L (Legal Authority), Subpart M ("Intergovernmental Consultation"), Subpart O (Miscellaneous Plan Content Requirements), Subpart P ("Protection of Visibility"), and Subpart Q ("Reports").

For many infrastructure SIP elements, a SIP submittal should refer to and include citations to relevant state regulations. See, e.g., our guidance below regarding elements (F), (H), (J), and (M). For EPA's general criteria for SIP submittals, refer to 40 CFR Part 51, Appendix V, "Criteria for Determining the Completeness of Plan Submissions." <http://cfr.vlex.com/vid/51-criteria-determining-completeness-19784745>. For example, in accordance with Appendix V,

paragraph 2.1(d), a SIP submittal would include a copy of the actual regulation that the state is submitting for approval and incorporation by reference into its SIP.

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submittals. Pursuant to EPA's regulations at 40 CFR Part 51, a SIP submittal will include a certification by the state that the public hearing was held in accordance with EPA's procedural requirements for public hearings. See paragraph 2.1(g) of Appendix V to Part 51 and 40 CFR 51.102. <http://cfr.vlex.com/vid/51-102-public-hearings-19784894>.

If a state believes that its existing approved infrastructure SIP is adequate, then the state's SIP submission may be a certification that the existing SIP contains provisions addressing all requirements of the section 110(a)(2) infrastructure elements as applicable for the 2008 Pb NAAQS. Such certification (e.g., in the form of a letter to EPA from the Governor or her/his designee) should cite the applicable provisions in the existing SIP and provide a specific description of how compliance with each element is achieved.

Section 110(a)(2) of the CAA directs all states to develop and maintain an air quality management infrastructure that includes enforceable emission limitations, an ambient monitoring program, an enforcement program, air quality modeling capabilities, and adequate personnel, resources, and legal authority. Section 110(a)(2)(D) also directs SIPs to prevent emissions from within the state that contribute significantly to nonattainment in any other state, or that interfere with maintenance in any other state, or that interfere with programs under part C of the CAA to prevent significant deterioration of air quality or to protect visibility in any other state.

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1). The elements pertain to part D, in title I of the CAA, which addresses plan requirements for nonattainment areas. Therefore, the following section 110(a)(2) elements are considered by EPA to be outside the scope of infrastructure SIP actions:

(1) section 110(a)(2)(C) to the extent it refers to permit programs (known as "nonattainment new source review") under part D; and (2) section 110(a)(2)(I) in its entirety. EPA does not expect infrastructure SIP submittals to include regulations or emission limits developed specifically for attaining the relevant standard. Those submittals are due at the time the nonattainment area planning elements are due (18 months following designation).

Except as described above, subsections (A) through (M) of section 110(a)(2) set forth the infrastructure elements that a SIP should address, in order to be approved by EPA. The elements are presented below in context of the 2008 Pb NAAQS.

**Section 110(a)(2)(A): Emission limits and other control measures**

*“Each such plan shall [. . .] include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.”*

EPA would not expect infrastructure SIP submission to identify nonattainment emission controls. Emissions limitations and other control measures to attain the 2008 NAAQS in areas designated nonattainment for the 2008 Pb NAAQS are due on a different

schedule from the section 110 infrastructure elements and will be reviewed and acted upon through a separate process. However, the infrastructure SIP submission should include a list or table referencing all Pb emission reduction measures adopted and relied on by the state to meet other CAA requirements, such as maintenance of the 2008 NAAQS.

SIP submittals such as for the 2008 Pb NAAQS should be consistent with EPA's longstanding policy on SSM and director's discretion, which policy is briefly summarized as follows<sup>3</sup> See page 25652 <http://69.175.53.6/register/2011/may/05/2011-10995.pdf>. Because excess emissions might aggravate air quality so as to prevent attainment and maintenance of the NAAQS and compliance with other CAA requirements, EPA views all periods of excess emissions as violations of the applicable emission limitation. Therefore, an approvable SIP submittal cannot exempt from enforcement excess emissions that may occur at a facility during a period of startup or shutdown. Further, an approvable SIP submittal cannot automatically exempt from enforcement excess emissions claimed to result from an equipment malfunction. In addition, an approvable SIP submittal cannot allow a state air director the discretion to determine whether an instance of excess emissions is a violation of an emission limitation, because such a determination could bar EPA and citizens from enforcing applicable requirements.

**Section 110(a)(2)(B): Ambient air quality monitoring/data system**

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<sup>3</sup> For further description of EPA's policy on SSM and director's discretion, see, *e.g.*, a memorandum dated September 20, 1999, entitled, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation.

*“Each such plan shall [. . .] provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to  
(i) monitor, compile, and analyze data on ambient air quality, and  
(ii) upon request, make such data available to the Administrator.”*

To meet section 110(a)(2)(B) requirements for this NAAQS, the state’s SIP monitoring system should:

- Monitor air quality for Pb at appropriate locations throughout the state using EPA approved Federal Reference Method or equivalent monitors. States would need to install new Pb monitors in accordance with recent revisions to the Pb monitoring network requirements. See the Lead Ambient Air Monitoring Requirements, December 14, 2010 <http://origin.www.gpo.gov/fdsys/pkg/FR-2010-12-27/pdf/2010-32153.pdf#page=1>.
- Submit data to EPA’s Air Quality System (AQS) in a timely manner. AQ data reporting 51.320, <http://cfr.vlex.com/vid/51-320-annual-air-quality-data-report-19785104>
- Submit approvable annual monitoring plans to EPA that describe how the state has complied with monitoring requirements and explain any proposed changes to the network.
- Provide the EPA Regional Office prior notification of any planned changes to monitoring sites or to the network plan.

**Section 110(a)(2)(C): Programs for enforcement, PSD, and NSR**

“Each such plan shall [. . .] include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter.”

The Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NNSR) programs contained in parts C and D of Title I of the CAA, and collectively referred to as the major New Source Review (NSR) program, govern preconstruction review and permitting of any new or modified major stationary sources of air pollutants regulated under the CAA as well as any precursors to the formation of that pollutant when identified for regulation by the Administrator.<sup>4</sup> The EPA rules addressing these programs can be found generally at 40 CFR 51.166 and 52.21 (for PSD), and 51.165, 52.24, and Part 51, Appendix S (for NNSR).

<http://cfr.vlex.com/vid/51-166-prevention-significant-deterioration-19784998>,

<http://cfr.vlex.com/vid/124-41-definitions-applicable-psd-permits-19811787>,

<http://cfr.vlex.com/vid/51-165-permit-requirements-19784994>

<http://www.federalregister.gov/articles/2007/03/08/E7-3888/nonattainment-new-source-review-nsr>

To meet section 110(a)(2)(C) requirements for this NAAQS, the SIP submitted should:

- Reference relevant state and federal regulations that provide for enforcement of Pb emission limits and control measures.
- Identify the various state regulations that govern permitting of new and modified stationary sources (minor and major) of Pb in the state.
- Revise its PSD program regulations to address any applicable EPA amendments to Pb PSD rules within 3 years from the date of such amendments.

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<sup>4</sup> The terms “major” and “minor” categorize a stationary source, for NSR applicability purposes, in terms of an annual emissions rate (tons per year, tpy) for a pollutant. Generally, a minor source is any source that is not “major.” “Major” is defined in the applicable NSR regulations—PSD or nonattainment NSR.

For areas subject to a state's SIP-approved PSD program, the state should demonstrate that it is authorized to implement its existing PSD permit program to ensure that the construction and modification of major stationary sources does not cause or contribute to a violation of the Pb NAAQS.

For areas subject to a state's SIP-approved PSD program, the state should demonstrate that it is authorized to implement its existing PSD permit program to ensure that the construction and modification of major stationary sources does not cause or contribute to a violation of Pb NAAQS. The state's PSD program should ensure that new or modified sources will apply the Best Available Control Technology to reduce Pb emissions in accordance with CAA sections 165 (a)(3) and (4).

The state's PSD program should apply to sources that emit greenhouse gases (GHG) in accordance with EPA's Tailoring Rule.<sup>5</sup> Among other things, the state's PSD program must either: (i) limit PSD applicability to GHG-emitting sources by adopting the applicability thresholds included in the Tailoring Rule; or (ii) adopt lower GHG thresholds and show that the state has adequate personnel and funding to administer and implement those lower thresholds. Otherwise, the state is directed to remove from EPA's consideration for approval that portion of the SIP (or SIP submission) for which EPA rescinded our previous approval of the PSD program

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<sup>5</sup> Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514 (June 3, 2010).

(in a rulemaking referred to as the "GHG PSD SIP Narrowing Rule").<sup>6</sup> To request such removal, a state may choose to follow the example of the letter request submitted by South Carolina.<sup>7</sup>

If a state lacks a SIP-approved PSD program, it is subject to a federal implementation plan (FIP), and major stationary sources within its jurisdiction are subject to the federal PSD requirements in 40 CFR 52.21. Some states are subject to a FIP for PSD permitting of all regulated NSR pollutants, and fewer states are subject to a FIP for PSD permitting that is limited to GHG. Note that a state subject to a FIP for PSD permitting, whether applicable to all regulated NSR pollutants or limited to GHG, remains obligated to adopt and submit a PSD program for EPA approval that applies to all regulated NSR pollutants, including GHG. Until a state provides such a program, its SIP would not be approvable with respect to section 110(a)(2)(C).

Minor NSR programs are subject to the statutory requirements in section 110(a)(2)(C) of the CAA which requires "...regulation of the modification and construction of any stationary source ...as necessary to assure that the [NAAQS] are achieved." These programs should be established in each state within 3 years of the promulgation of a new or revised NAAQS.

EPA has not proposed to amend the PSD regulations with regard to the Pb NAAQS. EPA is planning to issue Pb modeling guidance to supplement the guidance contained in EPA's Guideline on Air Quality Models (40 CFR Part 51 Appendix S), which will assist states and prospective sources in carrying out the analyses necessary to satisfy the PSD requirements for Pb.

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<sup>6</sup> Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas-Emitting Sources in State Implementation Plans; Final Rule, 75 FR 82536 (December 30, 2010).

<sup>7</sup> South Carolina's letter request can be found at <http://www.regulations.gov>, at EPA-R04-OAR-2010-0721-0006.

**Section 110(a)(2)(D)(i): Interstate transport provisions**

*“Each such plan shall [...] contain adequate provisions: prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or interfere with measures required to be included in the applicable implementation plan for any other state under part C of this subchapter to prevent significant deterioration of air quality to protect visibility.”*

Section 110(a)(2)(D)(i) provides for SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. (The preceding requirements, from subsection (2)(D)(i)(I), respectively refer to what may be called prongs 1 and 2.) Further, this section directs SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality, or from interfering with measures required to protect visibility (*i.e.*, measures to address regional haze) in any state. (The preceding requirements, from subsection (2)(D)(i)(II), respectively refer to what may be called prongs 3 and 4.)

The physical properties of Pb prevent Pb emissions from experiencing the same travel or formation phenomena as PM<sub>2.5</sub> or ozone. More specifically, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases.<sup>8</sup> Accordingly, while it may be possible for a source in a state to emit Pb in a location and in quantities that may contribute significantly to nonattainment in, or interfere with maintenance by,

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<sup>8</sup> Reference forthcoming

any other state, EPA anticipates that this would be a rare situation, e.g., where large sources are in close proximity to state boundaries.

EPA believes that requirements of subsection (2)(D)(i)(I) (prongs 1 and 2) could be satisfied through a state's assessment as to whether or not emissions from Pb sources located in close proximity to their state borders (e.g., within 2 miles) have emissions that impact the neighboring state such that they contribute significantly to nonattainment by having a emissions threshold of 0.5 tons per year or greater or interfere with maintenance in that state.<sup>9</sup> The states' conclusions could be supported by the technical information or data used to support the initial area designations for Pb.

Therefore, to address prongs 1 and 2 of section 110(a)(2)(D)(i)(I) the state's submission should include an explanation in support of the state's conclusion and, if applicable, should address the impact in their submittal.

Under section 110(a)(2)(D)(i)(II), the PSD sub-element (prong 3) may be met by the state's confirmation in a SIP submission that new major sources and major modifications in the state are subject to PSD and (if the state contains a nonattainment area for the relevant pollutant) NNSR programs that implement the 2008 Pb NAAQS.<sup>10</sup>

With regard to the requirement of prong 4, *i.e.*, visibility under subsection (2)(D)(i)(II), significant impacts from Pb emissions from stationary sources are expected to be limited to short

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<sup>9</sup> Reference forthcoming

<sup>10</sup> Memorandum issued by William T. Harnett, Director, OAQPS/AQPD, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)," dated September 25, 2009.

distances from the source and most, if not all Pb stationary sources are located at distances from Class I areas such that visibility impacts would be negligible. In addition, Pb is not directly regulated under sections 169(A) and (B) (visibility program) of the CAA. Although Pb can be a component of coarse and fine particles, Pb comprises a small fraction of coarse and fine particles. Furthermore, when evaluating the extent that Pb could impact visibility, Pb-related visibility impacts were found to be insignificant (e.g., less than 0.10%).<sup>11</sup> Since all areas are currently subject to the regional haze program which addresses visibility-impairing pollutants, at this time EPA would not expect infrastructure SIP submissions for the Pb NAAQS to address prong 4.

**Section 110(a)(2)(D)(ii): Interstate and International transport provisions**

*“Each such plan shall [. . .] contain adequate provisions insuring compliance with the applicable requirements of sections 115 or 126 (b) that involve Pb emissions (relating to interstate and international pollution abatement).” EPA has no reason to approve or disapprove any existing state rules with regard to these provisions.*

Section 126(a) of the CAA directs each SIP to include provisions requiring a new or modified source to notify neighboring states of potential impacts from the source. States with SIP-approved PSD programs should have a regulatory provision in place, consistent with 40 CFR 51.166(q)(2)(iv), that requires such notification of other state and local agencies.

<http://cfr.vlex.com/vid/51-166-prevention-significant-deterioration-19784998>. States relying on the federal program requirements of 40 CFR 52.21(q), which provide for notification of affected

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<sup>11</sup> Ambient Pb's Contribution to Class 1 Area Visibility Impairment, 6/17/2011, Mark Schmidt, OAQPS.

state and local air agencies, to satisfy this requirement have programs that are technically deficient and not approvable. [http://edocket.access.gpo.gov/cfr\\_2010/julqtr/pdf/40cfr124.41.pdf](http://edocket.access.gpo.gov/cfr_2010/julqtr/pdf/40cfr124.41.pdf).

Although, these programs are deficient and these States have not “submitted” anything to EPA, EPA would not be required to take further action with respect to this element because the federal rules represent a FIP which fully addresses the notification issue. In addition, mandatory sanctions would not apply because the deficiencies are neither with regard to a required submittal under part D nor in response to a SIP call under Section 110 (k) (5).

<http://www.epa.gov/air/caa/caaa.txt>. As described in this infrastructure SIP guidance for element (c), such states remain obligated to adopt and submit a PSD program for EPA approval that applies to all regulated NSR pollutants, including, GHG. Until a state provides such a program, its SIP would not be approvable with respect to section 110 (a) (2) (D) (ii).

**Section 110(a)(2)(E): Adequate personnel, funding, and authority**

*“Each such plan shall [. . .] provide:*

*(i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof),*

*(ii) requirements that the state comply with the requirements respecting state boards under section 128, (See section 40 CFR 52.1182,*

[http://edocket.access.gpo.gov/cfr\\_2004/julqtr/pdf/40cfr52.1180.pdf](http://edocket.access.gpo.gov/cfr_2004/julqtr/pdf/40cfr52.1180.pdf)

*(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.”*

The SIP should assure that the state has adequate authority under its rules and regulations to carry out the state's SIP obligations with respect to the 2008 Pb NAAQS and to revise the SIP as necessary. See EPA's regulations at 40 CFR Part 51, subpart L ("Legal Authority") and subpart O ("Miscellaneous Plan Content Requirements"). For example:

- In accordance with EPA's regulations at subpart L, the SIP should show that the state has the legal authority to carry out the plan; the provisions of the state's laws or regulations that provide that authority are to be specifically identified in the SIP, and copies of the laws or regulations should be included in the SIP submittal. See 40 CFR sections 51.230 through 51.231. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=b458b0027fa357aba560ed3fc0cbd3ef&rgn=div8&view=text&node=40:2.0.1.1.2.9.8.1&idno=40>
- A state may assign responsibility for carrying out a portion of a SIP to a state government agency other than the state air pollution control agency, if the SIP demonstrates that such other agency has the necessary legal authority. Similarly, the state may authorize a local agency to carry out a SIP or portion of a SIP within the local agency's jurisdiction, if the SIP demonstrates that the local agency has the necessary legal authority; however, the authorizing state is not relieved of responsibility for carrying out the SIP. See 40 CFR 51.232, "Assignment of legal authority to local agencies." <http://cfr.vlex.com/vid/51-232-assignment-legal-local-agencies-19785032>

- In accordance with EPA's regulations at subpart O, the SIP submittal should include copies of rules and regulations that show that the state has adopted the emission limitations and other measures necessary for attainment and maintenance of the 2008 Pb NAAQS. See 40 CFR 51.281, "Copies of rules and regulations."  
<http://cfr.vlex.com/vid/51-281-copies-rules-and-regulations-19785057>

Further, the SIP should assure that the state has adequate funding and personnel to implement the Pb NAAQS. See EPA's regulations at 40 CFR Part 51, subpart M ("Intergovernmental Consultation") and subpart O ("Miscellaneous Plan Content Requirements"). For example:

- In accordance with EPA's regulations at subpart M, the SIP should identify the organizations that will participate in developing, implementing, and enforcing the SIP. The SIP should identify the responsibilities of such organizations and include related agreements among the organizations. See 40 CFR 51.240, "General plan requirements."  
<http://cfr.vlex.com/vid/51-240-general-plan-requirements-19785034>
- In accordance with EPA's regulations at subpart O, the SIP should describe resources for carrying out the SIP. Resources to be described include: (1) those available to the state (and local agencies, where appropriate) as of the date of SIP submittal; (2) those considered necessary during the 5 years following SIP submittal; and (3) projections regarding acquisition of the described resources. See 40 CFR 51.280, "Resources." <http://law.justia.com/cfr/title40/40-2.0.1.1.2.12.9.1.html>

**Section 110(a)(2)(F): Stationary source monitoring and reporting**

*“Each such plan shall [. . .] require, as may be prescribed by the Administrator:*  
*(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,*  
*(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such source*  
*(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.”*

The SIP should provide citations to the state's regulations for source monitoring, recordkeeping, and reporting requirements applicable to Pb. For example: The Air Emission Reporting Rule (AERR). <http://www.federalregister.gov/articles/2008/12/17/E8-29737/air-emissions-reporting-requirements>.

In accordance with EPA regulations at 40 CFR Part 51, subpart K ("Source Surveillance"), the SIP should provide for monitoring the status of sources' compliance with the Pb NAAQS. <http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&sid=0dd0e4252c33076cd2cbb6b9423d9006&rgn=div6&view=text&node=40:2.0.1.1.2.8&idno=40> For example, the SIP should include provisions for owners or operators of stationary sources to maintain records of emissions and other information as may be necessary to enable the state to determine whether the sources are in compliance, and the SIP should further include provisions for the sources to periodically report that information to the state. See 40 CFR 51.211, "Emission reports and recordkeeping." <http://cfr.vlex.com/vid/51-211-emission-reports-recordkeeping-19785011>

The SIP should include provisions for stationary sources subject to the Pb NAAQS to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions, and the SIP should further include provisions for the sources to maintain the

monitoring data and periodically submit it to the state. See 40 CFR 51.214, "Continuous emission monitoring." <http://cfr.vlex.com/vid/51-214-continuous-emission-monitoring-19785021>

In accordance with EPA regulations at 40 CFR Part 51, subpart A ("Air Emissions Reporting Requirements")

[http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr51\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr51_main_02.tpl)

and subpart Q ("Reports"), the responsible state agency should analyze the Pb emissions data and correlate such data with applicable emission limitations or standards. The SIP should provide for periodic reporting of emissions inventory data by the state to the Administrator (through the appropriate Regional Office). See *e.g.*, 40 CFR 51.321. <http://cfr.vlex.com/vid/51-321-annual-source-emissions-report-19785106>. All reports should be made available to the public.

#### **Section 110(a)(2)(G): Emergency episodes**

*"Each such plan shall provide for authority comparable to that in section 303 of this title and adequate contingency plans to implement such authority."*

Section 303 of the CAA provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an "imminent and substantial endangerment to public health or welfare, or the environment. As directed under section 110(a)(2)(G), each SIP submittal should specify authority, rested in an appropriate official, to restrain any source from causing or controlling Pb emissions. The SIP should also contain a plan determined adequate by the state to implement the authority to constrain sources of Pb emissions, as necessary, in an emergency situation. As part of the infrastructure SIP submittal, the plan

should be comply with regulations at 40 CFR 51.150 through 51.153 as applicable.

<http://cfr.vlex.com/vid/51-150-classification-regions-episode-19784960>

For Pb, EPA regulations do not specify priority region classifications or other specific requirements for the content of contingency plans. Therefore, states should determine the content of an adequate plan. Example regulations that states could choose to adopt to satisfy the element (G) are presented in Appendix L to 40 CFR Part 51. <http://cfr.vlex.com/vid/appendix-51-example-pollution-episodes-19784732>

**Section 110(a)(2)(H): Future SIP revisions**

*“Each such plan shall [. . .] provide for revision of such plan—  
(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and  
(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter (CAA).”*

The SIP should provide citations to the state regulatory provisions requiring the state to 1) revise its section 110 plan from time to time as may be necessary to take into account revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standards; and 2) revise its section 110 plan in the event the Administrator finds the plan to be substantially inadequate to attain the NAAQS. See 40 CFR 51.104, “Revisions”.

<http://cfr.vlex.com/vid/51-104-revisions-19784899>

**Section 110(a)(2)(I): Nonattainment area plan or plan revision Under Part D**

*“Each such plan shall [. . .] in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).”*

As noted in the inductor text of this infrastructure SIP guidance document, EPA would not expect infrastructure SIP submissions to address subsection 110(a)(2)(I). Nonattainment area plans required under part D are required on a different schedule from the section 110 infrastructure elements and will be reviewed and acted upon through a separate process.

**Section 110(a)(2)(J): Consultation with government officials, public notification, PSD and visibility protection**

*“Each such plan shall [. . .] meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection).”*

The SIP should reference the state rules that provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments, and any federal land manager having authority over federal land to which the plan applies, consistent with the requirements of CAA § 121.

The SIP should provide citations to regulations requiring the state to regularly notify the public of: instances or areas in which any primary NAAQS was exceeded; the associated health hazards; and ways in which the public can participate in regulatory and other efforts to improve

air quality. See 40 CFR 51.285, “Public notification”. <http://cfr.vlex.com/vid/51-285-public-notification-19785060>

Pursuant to the CAA, a SIP should allow a state to implement any new PSD requirements that are triggered upon the effective date of any new NAAQS. However, sources in a state may be subject to the federal PSD requirements pursuant to 40 CFR 52.21, if a state does not have a SIP-approved PSD program. <http://cfr.vlex.com/vid/52-prevention-significant-deterioration-19785934>. As described in this infrastructure SIP guidance for element (C), such states remain obligated to adopt and submit a PSD program for EPA approval that applies to all regulated NSR pollutants, including GHG. Until a state provides such a program, its SIP would not be approvable with respect to section 110(a)(2)(J).

With regard to the requirement of the plan to meet the applicable requirements for visibility protection, EPA would not expect to treat this provision as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under Part C of the Act (which includes sections 169A and 169B). However, in the event of the establishment of a new primary NAAQS, the visibility protection and regional haze program requirements under part C do not change. Thus, EPA concludes there are no new applicable visibility protection obligations under section 110(a)(2)(J) as a result of the 2008 Pb NAAQS.

**Section 110(a)(2)(K): Air quality modeling/data**

*“Each such plan shall [. . .] provide for—*

- (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and*
- (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.”*

The SIP should demonstrate that the state has the authority and technical capability to conduct air quality modeling in order to assess the effect on ambient air quality of relevant pollutant emissions; and that the state can provide relevant data as part of the permitting and NAAQS implementation processes. The SIP should also provide that, upon request, the state will submit current and future data relating to such air quality modeling to the Administrator. EPA anticipates that the predominant type of air quality modeling to be conducted with respect to implementing the Pb NAAQS will be source-oriented dispersion modeling with models such as AERMOD.

**Section 110(a)(2)(L): Permitting fees**

- “Each such plan shall require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—*
- (i) the reasonable costs of reviewing and acting upon any application for such a permit, and*
  - (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator’s approval of a fee program under subchapter (title) V of this chapter.”*

The SIP should provide citations to the regulations providing for collection of permitting fees under the state’s EPA-approved Title V permit program. See 40 CFR 70.9 (“Fee determination and certification”), <http://cfr.vlex.com/vid/70-9-fee-determination->

[certification-19801429](#), 40 CFR Part 70, Appendix A, “Approval Status of State and Local Operating Permits Programs”, <http://law.justia.com/cfr/title40/40-15.0.1.1.7.0.1.12.14.html>.

**Section 110(a)(2)(M): Consultation/participation by affected local entities**

*“Each such plan shall [. . .] provide for consultation and participation by local political subdivisions affected by the plan.”*

To satisfy this element (M), and in accordance with EPA's regulations at 40 CFR Part 51, subpart M ("Intergovernmental Consultation"), <http://cfr.vlex.com/vid/51-240-general-plan-requirements-19785034> the SIP should identify the organizations that will participate in developing, implementing, and enforcing the SIP. Further, the SIP should identify the responsibilities of such organizations and include related agreements among the organizations. See 40 CFR 51.240, "General plan requirements." <http://cfr.vlex.com/vid/51-240-general-plan-requirements-19785034>

The SIP should identify policies or procedures requiring consultation and participation by local political subdivisions affected by the SIP. For example, the SIP should provide a citation to the state regulations that provide notice and opportunity for public hearing in accordance with EPA regulations at 40 CFR Part 51, subpart F ("Procedural Requirements") <http://ecfr.gpoaccess.gov/cgi/t/text/textidx?c=ecfr&rgn=div8&view=text&node=40:2.0.1.1.2.3.8.1&idno=40>. Prior to submitting a SIP revision or a compliance schedule, a state must provide notice, provide the opportunity to submit written comments, and allow the public the opportunity to request a public hearing. See 40 CFR 51.102, "Public hearings." <http://cfr.vlex.com/vid/51-102-public-hearings-19784894>.

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**APPENDIX B**

**APPLICABLE ARIZONA REVISED STATUTES**

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**ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL QUALITY**

**49-101. Definitions**

In this title, unless the context otherwise requires:

1. "Approximately equal" means, for purposes of fees adopted pursuant to section 49-480, excluding per ton emissions fees, an amount that is not greater than ten per cent more than the fees or costs charged by the state for similar state permits or approvals.

2. "Department" means the department of environmental quality.

**CHAPTER 1**

**GENERAL PROVISIONS**

**ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL QUALITY**

Section	
49-101.	Definitions.
49-102.	Department of environmental quality; director; deputy director; division directors; divisions.
49-103.	Department employees; legal counsel.
49-104.	Powers and duties of the department and director.
49-105.	[Repealed.]
49-106.	Statewide application of rules.
49-107.	Local delegation of state authority.
49-108.	Hazardous materials emergency response operations.
49-109.	Certificate of disclosure of violations; remedies.
49-110.	Compliance order; hearing; judicial review; enforcement.

3. "Director" means the director of environmental quality who is also the director of the department. 2000

Recent legislative year: Laws 2000, Ch. 353, § 2.

**49-102. Department of environmental quality; uirector; deputy director; division directors; divisions**

A. The department of environmental quality is established.

B. The governor shall appoint a director of environmental quality pursuant to section 38-211. The director shall administer the department and serve at the pleasure of the governor. The director is entitled to receive compensation as determined under section 38-611. The director shall appoint a deputy director and, subject to legislative appropriation, may appoint division directors if necessary. The positions of director and deputy director are exempt from title 41, chapter 4, articles 5 and 6 relating to state service.

C. To be eligible for appointment as director a person must have a background or experience in one or more of the following areas:

1. Public administration.
2. Planning.
3. Personnel management.
4. Law.
5. Environmental science.

D. The director may organize the department into divisions as he deems appropriate. 1994

**49-103. Department employees; legal counsel**

A. The director, subject to title 41, chapter 4, articles 5 and 6, shall employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical employees as he deems necessary.

B. The attorney general shall be the legal advisor of the department and shall give legal services as the department requires. Compensation for personnel assigned by the attorney general to perform such services shall be a charge against appropriations to the department. The attorney general shall prosecute and defend in the name of this state all actions necessary to carry out the provisions of this title. 1986

**49-104. Powers and duties of the department and director**

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to assure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Assure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Assist the department of health services in recruiting and training state, local and district health department personnel.

15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This provision shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law. 2010

**Recent legislative year:** Laws 1999, Ch. 26, § 3; Laws 2000, Ch. 225, § 2; Laws 2001, Ch. 21, § 3; Laws 2001, Ch. 231, § 12; Laws 2001, Ch. 400, § 1; Laws 2003, Ch. 104, § 37; Laws 2010, 2nd Reg. Sess., Ch. 265, § 1; Laws 2010, 2nd Reg. Sess., Ch. 309, § 14.

**49-105. Annual report on violations and enforcement**

Repealed by Laws 2003, Ch. 104, § 38.

**49-106. Statewide application of rules**

The rules adopted by the department apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them. This section does not limit the authority of local governing bodies to adopt ordinances and rules within their respective jurisdictions if those ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the department, but this section does not grant local governing bodies any authority not otherwise provided by separate state law. 1987

**49-107. Local delegation of state authority**

A. The director may delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers or duties which the director believes can be competently, efficiently and properly performed by the local agency if the local agency accepts the delegation and agrees to perform the delegated functions, powers and duties according to the standards of performance required by law and prescribed by the director.

B. Monies appropriated or otherwise made available to the department for distribution to local agencies may be allocated or reallocated in a manner designed to assure that the recognized local activities and the delegated functions, powers and duties are accomplished according to the applicable standards of performance.

C. The director may terminate, for cause, all or part of the delegation and reallocate all or part of any monies that may have been conditioned on the further performance of the delegated functions, powers and duties. 2000

**Recent legislative year:** Laws 2000, Ch. 11, § 20.

**49-108. Hazardous materials emergency response operations**

The director of environmental quality shall establish a hazardous materials emergency response and recovery organizational unit in the department to function as the scientific support, health, safety and environmental element of the hazardous materials emergency man-

agement program pursuant to section 26-305.02. On request from the department of health services and at the direction of the director of environmental quality, the unit shall perform appropriate soil and water sampling for toxic and other harmful effects on the public health and the environment in areas that have been affected by a chemical or other toxic fire. 2007

**Recent legislative year:** Laws 2007, Ch. 153, § 5.

**49-109. Certificate of disclosure of violations; remedies**

A. The following persons shall file a certificate of disclosure with the department as prescribed by this section:

1. A person who is engaged in an activity subject to regulation under this title and who has been convicted of a felony involving laws related to solid waste, special waste, hazardous waste, water quality or air quality in any state or federal jurisdiction or for a violation of 42 United States Code section 9603 within the five year period immediately preceding execution of the certificate.

2. Except in proceedings in which the department, or this state on behalf of the department, is or was a party, a person who is engaged in an activity subject to regulation under this title and who is or has been subject in any civil proceeding to an injunction, decree, judgment or permanent order of any state or federal court within the five year period immediately preceding the execution of the certificate that involved a violation of laws of that jurisdiction relating to solid waste, special waste, hazardous waste, used oil or used oil fuel, petroleum, water quality or air quality, except for a misdemeanor violation of section 49-550, or a violation of 42 United States Code section 9603.

B. The certificate of disclosure prescribed by subsection A of this section shall contain the following:

1. Identification of that person, including without limitation present full name, all prior names or aliases, including full birth name, present house address and all prior addresses for the immediately preceding five year period, date and location of birth and social security number.

2. The nature and description of each conviction or judicial action, the date and location, the court and public agency involved and the file or cause number of the case.

3. A written declaration that each signer swears to its contents under penalty of perjury.

C. The certificate of disclosure submitted on behalf of a corporation shall be executed by any two executive officers or directors of that corporation.

D. For purposes of subsection A of this section, "person" means a natural person, any public or private corporation, its officers, directors, trustees, incorporators and persons controlling or holding over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation, a partnership, including all general partners and limited partners controlling a ten per cent or more beneficial interest in the partnership, association or society of persons, the federal government and any of its departments or agencies, this state and any of its agencies, depart-

Section	
49-512.	Violations; injunctive relief.
49-513.	Violations; civil penalties.
49-514.	Violation; classification; definition.
49-515.	Precedence of actions.
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#### ARTICLE 5. ANNUAL EMISSIONS INSPECTION OF MOTOR VEHICLES

49-541.	Definitions.
49-542.	Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition.
49-542.02.	Mechanic education program.
49-542.03.	Motor vehicle dealer; emissions testing; remedies; definition.
49-542.04.	Off-road vehicle and engine standards.
49-542.05.	Alternative fuel vehicles.
49-542.06.	Roadside testing of diesel vehicles; contract; test standards; cut points.
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#### ARTICLE 1. GENERAL PROVISIONS

##### 49-401. Declaration of policy

A. The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated statewide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the department of environmental quality and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

B. It is further declared to be the policy of this state that no further degradation of the air in the state of Arizona by any industrial polluters shall be tolerated. Those industries emitting pollutants in the excess of the emission standard set by the director of environmental quality shall bring their operations into conformity with the standards with all due speed. A new industry hereinafter established shall not begin normal operation until it has secured a permit attesting that its operation will not cause pollution in excess of the standards set by the director of environmental quality.

1986

##### 49-401.01. Definitions

*Text of section presently effective. For section conditionally effective, see the following version.*

In this chapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the United States environmental protection agency.

2. "Adverse effects to human health" means those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely toxic, chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. "Adverse environmental effect" means any significant and widespread adverse effect which may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. "Arizona Grand Canyon visibility transport commission class I areas" means the following four man-

andatory federal class I areas in this state that were the subject of recommendations made by the Grand Canyon visibility transport commission pursuant to the clean air act:

- (a) Grand Canyon national park.
- (b) Petrified Forest national park.
- (c) Sycamore Canyon Wilderness.
- (d) Mount Baldy Wilderness.

5. "Arizona mandatory federal class I areas" means the following eight national parks and wilderness areas that are designated as mandatory federal class I areas in this state pursuant to the clean air act and does not include the Arizona Grand Canyon visibility transport commission class I areas:

- (a) Pine Mountain Wilderness.
- (b) Mazatzal Wilderness.
- (c) Sierra Ancha Wilderness.
- (d) Superstition Wilderness.
- (e) Saguaro Wilderness.
- (f) Galiuro Wilderness.
- (g) Chiricahua Wilderness.
- (h) Chiricahua National Monument Wilderness.

6. "Attainment area" means any area in this state that has been identified in regulations promulgated by the administrator as being in compliance with national ambient air quality standards.

7. "Begin actual construction" means initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. For purposes of title I, parts C and D and section 112 of the clean air act, these activities include installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. For purposes other than title I, parts C and D and section 112 of the clean air act, these activities do not include installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures.

8. "Building", "structure", "facility" or "installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties and are under the control of the same person or persons under common control except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group which has the same two digit code, as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement.

9. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42 United States Code sections 7401 through 7671) as amended by the clean air act amendments of 1990 (P.L. 101-549).

10. "Commence" means, as applied to construction of a source:

(a) For purposes other than title IV of the clean air act, that the owner or operator has obtained all necessary preconstruction approval or permits required by federal law and this chapter and has done either of the following:

(i) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time.

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to

undertake a program of construction of the source to be completed within a reasonable time.

(b) For purposes of title IV of the clean air act, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

11. "Construction" means any physical change in a source or change in the method of operation of a source including fabrication, erection, installation or demolition of a source that would result in a change in actual emissions.

12. "Conventional air pollutant" means any pollutant for which the administrator has promulgated a primary or secondary national ambient air quality standard.

13. "Federally listed hazardous air pollutant" means any air pollutant adopted pursuant to section 49-426.03, subsection A and not deleted pursuant to that subsection.

14. "Grand Canyon visibility transport commission" means the visibility transport commission established pursuant to section 169B of the clean air act for the region affecting the visibility of the Grand Canyon national park.

15. "Grand Canyon visibility transport commission class I areas" means the following sixteen mandatory federal class I areas in the region of Grand Canyon national park that were the subject of recommendations by the Grand Canyon visibility transport commission pursuant to the clean air act:

- (a) Grand Canyon national park in Arizona.
- (b) Sycamore Canyon Wilderness in Arizona.
- (c) Petrified Forest national park in Arizona.
- (d) Mount Baldy Wilderness in Arizona.
- (e) San Pedro Parks Wilderness in New Mexico.
- (f) Mesa Verde national park in Colorado.
- (g) Weminuche Wilderness in Colorado.
- (h) Black Canyon of the Gunnison Wilderness in Colorado.
- (i) West Elk Wilderness in Colorado.
- (j) Maroon Bells-Snowmass Wilderness in Colorado.
- (k) Flat Tops Wilderness in Colorado.
- (l) Arches national park in Utah.
- (m) Canyonlands national park in Utah.
- (n) Capitol Reef national park in Utah.
- (o) Bryce Canyon national park in Utah.
- (p) Zion national park in Utah.

16. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the director has designated as a hazardous air pollutant pursuant to section 49-426.04, subsection A and has not deleted pursuant to section 49-426.04, subsection B.

17. "Hazardous air pollutant reasonably available control technology" means an emissions standard for hazardous air pollutants which the director, acting pursuant to section 49-426.06, subsection C, or the control officer, acting pursuant to section 49-480.04, subsection C, determines is reasonably available for a source. In making the foregoing determination the director or control officer shall take into consideration the estimated actual air quality impact of the standard, the cost of complying with the standard, the demonstrated reliability and widespread use of the technology required to meet the standard and any non-air quality

health and environmental impacts and energy requirements. For purposes of this definition, an emissions standard may be expressed as a numeric emissions limitation or as a design, equipment, work practice or operational standard.

18. "Maintenance area" means any nonattainment area that has been redesignated by the administrator to attainment status.

19. "Major source" means a stationary source or a group of stationary sources that is located within a contiguous area, that is under common control and that is defined as a major source in section 501(2) of the clean air act or that is a major emitting facility as defined in title I, part C of the clean air act or that is defined in department rules as a major source consistent with the clean air act.

20. "Mandatory federal class I areas" means those national parks, monuments and wilderness areas that are included in 40 Code of Federal Regulations sections 81.400 through 81.436 pursuant to the clean air act.

21. "Maximum achievable control technology" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this chapter, including a prohibition on such emissions where achievable, and that the director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by an affected source to which such standard applies, through application of measures, processes, methods, systems or techniques including measures which:

(a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications.

(b) Enclose systems or processes to eliminate emissions.

(c) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point.

(d) Are design, equipment, work practice, or operational standards, including requirements for operator training or certification.

(e) Are a combination of the above.

22. "Minor source" means any stationary or portable source that is not a major source.

23. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest.

24. "Modification" or "modify" means a physical change in or change in the method of operation of a source which increases the emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or which results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount. An increase in emissions at a minor source shall be determined by comparing the source's potential to emit before and after the modification. The following exemptions apply:

(a) A physical or operational change does not include routine maintenance, repair or replacement.

(b) An increase in the hours of operation or if the production rate is not considered an operational change unless such increase is prohibited under any federally

enforceable permit condition or other permit condition that is enforceable as a practical matter.

(c) A change in ownership at a source is not considered a modification.

25. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the administrator pursuant to 42 United States Code section 7409.

26. "Nonattainment area" means any area in this state that is designated as prescribed by section 49-405 and where violations of national ambient air quality standards have been measured.

27. "Nonattainment area plan" means an air pollution control plan developed in accordance with 42 United States Code sections 7501 through 7515.

28. "Permitting authority" means the department or a county department or agency that is charged with enforcing a permit program adopted pursuant to section 49-480, subsection A.

29. "Planning agency" means an organization designated by the governor pursuant to 42 United States Code section 7504.

30. "Portable source" means any stationary source that is capable of being transported and operated in more than one county of this state.

31. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as a practical matter.

32. "Primary standard attainment date" means the date defined within a nonattainment area plan in accordance with 42 United States Code sections 7401 through 7515 or applicable regulations adopted by the United States environmental protection agency by January 1, 1999 and after which date primary national ambient air quality standards may not be violated.

33. "Reasonable further progress" means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.

34. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution.

35. "State implementation plan" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the director and submitted to the administrator pursuant to 42 United States Code section 7410.

36. "Stationary source" means any facility, building, equipment, device or machine that operates at a fixed location and that emits or generates air contaminants.

37. "Unclassifiable area" means all areas of this state for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

**49-401.01. Definitions**

*Text of section conditionally effective; see notes. For section presently effective, see the preceding version.*

In this chapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the United States environmental protection agency.

2. "Adverse effects to human health" means those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely toxic, chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. "Adverse environmental effect" means any significant and widespread adverse effect that may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. "Arizona Grand Canyon visibility transport commission class I areas" means the following four: mandatory federal class I areas in this state that were the subject of recommendations made by the Grand Canyon visibility transport commission pursuant to the clean air act:

- (a) Grand Canyon national park.
- (b) Petrified Forest national park.
- (c) Sycamore Canyon Wilderness.
- (d) Mount Baldy Wilderness.

5. "Arizona mandatory federal class I areas" means the following eight national parks and wilderness areas that are designated as mandatory federal class I areas in this state pursuant to the clean air act and does not include the Arizona Grand Canyon visibility transport commission class I areas:

- (a) Pine Mountain Wilderness.
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- (d) Superstition Wilderness.
- (e) Saguaro Wilderness.
- (f) Galiuro Wilderness.
- (g) Chiricahua Wilderness.
- (h) Chiricahua National Monument Wilderness.

6. "Attainment area" means any area in this state that has been identified in regulations promulgated by the administrator as being in compliance with national ambient air quality standards.

7. "Begin actual construction" means initiation of physical on-site construction activities on an emissions unit that are of a permanent nature as follows:

(a) For purposes of title I, parts C and D and section 112 of the clean air act and for purposes of applicants that require permits containing limits designed to avoid the application of title I, parts C and D and section 112 of the clean air act, these activities include installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures but do not include any of the following, subject to section 49-247, subsection D:

(i) Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil.

(ii) Installation of access roads, driveways and parking lots.

(iii) Installation of ancillary structures, including fences, office buildings and temporary storage structures, that are not a necessary component of an emissions unit or associated air pollution control equipment for which the permit is required.

(iv) Ordering and on-site storage of materials and equipment.

(b) For purposes other than for those applicants prescribed in subdivision (a) of this paragraph, these activities do not include the following, subject to section 49-247, subsection D:

(i) Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil and earthwork cut and fill for foundations.

(ii) Installation of access roads, parking lots, driveways and storage areas.

(iii) Ordering and on-site storage of materials and equipment.

(iv) Installation of underground pipework, including water, sewer, electric and telecommunications utilities.

(v) Installation of ancillary structures, including fences, warehouses, storerooms and office buildings, if none of these structures impact the design of any emissions unit or associated air pollution control equipment.

(vi) Installation of building and equipment supports, including concrete forms, footers, pilings, foundations, pads and platforms, if none of these structures impact the design of and [sic] emissions unit or associated air pollution control equipment.

8. "Building", "structure", "facility" or "installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties and are under the control of the same person or persons under common control except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group that has the same two digit code, as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement.

9. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42 United States Code sections 7401 through 7671) as amended by the clean air act amendments of 1990 (P.L. 101-549).

10. "Commence" means, as applied to construction of a source:

(a) For purposes other than title IV of the clean air act, that the owner or operator has obtained all necessary preconstruction approval or permits required by federal law and this chapter and has done either of the following:

(i) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time.

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.

(b) For purposes of title IV of the clean air act, that the owner or operator has undertaken a continuous program of construction or that an owner or operator

has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

11. "Construction" means any physical change in a source or change in the method of operation of a source including fabrication, erection, installation or demolition of a source that would result in a change in actual emissions.

12. "Conventional air pollutant" means any pollutant for which the administrator has promulgated a primary or secondary national ambient air quality standard.

13. "Federally listed hazardous air pollutant" means any air pollutant adopted pursuant to section 49-426.03, subsection A and not deleted pursuant to that subsection.

14. "Grand Canyon visibility transport commission" means the visibility transport commission established pursuant to section 169B of the clean air act for the region affecting the visibility of the Grand Canyon national park.

15. "Grand Canyon visibility transport commission class I areas" means the following sixteen mandatory federal class I areas in the region of Grand Canyon national park that were the subject of recommendations by the Grand Canyon visibility transport commission pursuant to the clean air act:

- (a) Grand Canyon national park in Arizona.
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- (c) Petrified Forest national park in Arizona.
- (d) Mount Baldy Wilderness in Arizona.
- (e) San Pedro Parks Wilderness in New Mexico.
- (f) Mesa Verde national park in Colorado.
- (g) Weminuche Wilderness in Colorado.
- (h) Black Canyon of the Gunnison Wilderness in Colorado.
- (i) West Elk Wilderness in Colorado.
- (j) Maroon Bells-Snowmass Wilderness in Colorado.
- (k) Flat Tops Wilderness in Colorado.
- (l) Arches national park in Utah.
- (m) Canyonlands national park in Utah.
- (n) Capitol Reef national park in Utah.
- (o) Bryce Canyon national park in Utah.
- (p) Zion national park in Utah.

16. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the director has designated as a hazardous air pollutant pursuant to section 49-426.04, subsection A and has not deleted pursuant to section 49-426.04, subsection B.

17. "Hazardous air pollutant reasonably available control technology" means an emissions standard for hazardous air pollutants that the director, acting pursuant to section 49-426.06, subsection C, or the control officer, acting pursuant to section 49-480.04, subsection C, determines is reasonably available for a source. In making the foregoing determination the director or control officer shall take into consideration the estimated actual air quality impact of the standard, the cost of complying with the standard, the demonstrated reliability and widespread use of the technology required to meet the standard and any non-air quality health and environmental impacts and energy requirements. For the purposes of this definition, an emissions standard may be expressed as a numeric emissions limitation or as a design, equipment, work practice or operational standard.

18. "Maintenance area" means any nonattainment area that has been redesignated by the administrator to attainment status.

19. "Major source" means a stationary source or a group of stationary sources that is located within a contiguous area, that is under common control and that is defined as a major source in section 501(2) of the clean air act or that is a major emitting facility as defined in title I, part C of the clean air act or that is defined in department rules as a major source consistent with the clean air act.

20. "Mandatory federal class I areas" means those national parks, monuments and wilderness areas that are included in 40 Code of Federal Regulations sections 81.400 through 81.436 pursuant to the clean air act.

21. "Maximum achievable control technology" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this chapter, including a prohibition on such emissions where achievable, and that the director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by an affected source to which such standard applies, through application of measures, processes, methods, systems or techniques including measures that:

- (a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications.
- (b) Enclose systems or processes to eliminate emissions.

(c) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point.

(d) Are design, equipment, work practice, or operational standards, including requirements for operator training or certification.

(e) Are a combination of the above.

22. "Minor source" means any stationary or portable source that is not a major source.

23. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest.

24. "Modification" or "modify" means a physical change in or change in the method of operation of a source that increases the emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or that results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount. An increase in emissions at a minor source shall be determined by comparing the source's potential to emit before and after the modification. The following exemptions apply:

(a) A physical or operational change does not include routine maintenance, repair or replacement.

(b) An increase in the hours of operation or if the production rate is not considered an operational change unless such increase is prohibited under any federally enforceable permit condition or other permit condition that is enforceable as a practical matter.

(c) A change in ownership at a source is not considered a modification.

25. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the administrator pursuant to 42 United States Code section 7409.

26. "Nonattainment area" means any area in this state that is designated as prescribed by section 49-405 and where violations of national ambient air quality standards have been measured.

27. "Nonattainment area plan" means an air pollution control plan developed in accordance with 42 United States Code sections 7501 through 7515.

28. "Permitting authority" means the department or a county department or agency that is charged with enforcing a permit program adopted pursuant to section 49-480, subsection A.

29. "Planning agency" means an organization designated by the governor pursuant to 42 United States Code section 7504.

30. "Portable source" means any stationary source that is capable of being transported and operated in more than one county of this state.

31. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as a practical matter.

32. "Primary standard attainment date" means the date defined within a nonattainment area plan in accordance with 42 United States Code sections 7401 through 7515 or applicable regulations adopted by the United States environmental protection agency by January 1, 1999 and after which date primary national ambient air quality standards may not be violated.

33. "Reasonable further progress" means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.

34. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution.

35. "State implementation plan" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the director and submitted to the administrator pursuant to 42 United States Code section 7410.

36. "Stationary source" means any facility, building, equipment, device or machine that operates at a fixed location and that emits or generates air contaminants.

37. "Unclassifiable area" means all areas of this state for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

2010

**Recent legislative year:** Laws 1999, Ch. 295, § 40; Laws 2002, Ch. 251, § 1; Laws 2010, 2nd Reg. Sess., Ch. 287, § 16; Laws 2010, 2nd Reg. Sess., Ch. 315, § 1.

**Editor's note.**

Laws 2010, 2nd Reg. Sess., Ch. 315, § 4 provides, "A. Sections 49-401.01 and 49-427, Arizona Revised Statutes, as amended by this

act, are not effective unless on or before October 1, 2013 the United States environmental protection agency approves revisions to this state's air quality implementation plan that incorporate the changes made by this act.

B. The director of the department of environmental quality shall promptly provide written notice of the date of that approval or the failure to receive that approval to the director of the Arizona legislative council."

As of July 29, 2010, this condition had not been met.

**49-402. State and county control**

A. The department shall have original jurisdiction over such sources, permits and violations that pertain to:

1. Major sources in any county that has not received approval from the administrator for new source review under the clean air act and prevention of significant deterioration under the clean air act.

2. Smelting of metal ore.

3. Petroleum refineries.

4. Coal fired electrical generating stations.

5. Portland cement plants.

6. Air pollution by portable sources.

7. Air pollution by mobile sources for the purpose of regulating those sources as prescribed by article 5 of this chapter and consistent with the clean air act.

8. Sources that are subject to title V of the clean air act and that are located in a county for which the administrator has disapproved that county's title V permit program if the department has a title V program that has been approved by the administrator. On approval of that county's title V permit program by the administrator, the county shall resume jurisdiction over those sources.

B. Except as specified in subsection A of this section, the review, issuance, administration and enforcement of permits issued pursuant to this chapter shall be by the county or multi-county air quality control region pursuant to the provisions of article 3 of this chapter. After the director has provided prior written notice to the control officer describing the reason for asserting jurisdiction and has provided an opportunity to confer, the county or multi-county air quality control region shall relinquish jurisdiction, control and enforcement over such permits as the director designates and at such times as the director asserts jurisdiction at the state level. The order of the director which asserts state jurisdiction shall specify the matters, geographical area, or sources over which the department shall exercise jurisdiction and control. Such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted, and the provisions of this chapter shall govern, except as provided in this chapter, until jurisdiction is surrendered by the department to such county or region.

C. Portable sources under jurisdiction of the department under subsection A, paragraph 6 of this section may be required to file notice with the director and the control officer who has jurisdiction over the geographic area that includes the new location before beginning operations at that new location.

D. Notwithstanding any other law, a permit issued to a state regulated source shall include the emission standard or standard of performance adopted pursuant to section 49-479, if such standards are more stringent than those adopted by the director and if such standards are specifically identified as applicable to the

permitted source or a component of the permitted source. Such standards shall be applied to sources identified in subsection A, paragraph 2, 3, 4 or 5 of this section only if the standard is formally proposed for adoption as part of the state implementation plan.

E. The regional planning agency for each county which contains a vehicle emissions control area shall develop plan revisions containing transportation related air quality control measures designed to attain and maintain primary and secondary ambient air quality standards as prescribed by and within the time frames specified in the clean air act. In developing the plan revisions, the regional planning agency shall consider all of the following:

1. Mandatory employee parking fees.
  2. Park and ride programs.
  3. Removal of on-street parking.
  4. Ride share programs.
  5. Mass transit alternatives.
  6. Expansion of public transportation systems.
  7. Optimizing freeway ramp metering.
  8. Coordinating traffic signal systems.
  9. Reduction of traffic congestion at major intersections.
  10. Site specific transportation control measures.
  11. Reversible lanes.
  12. Fixed lanes for buses and carpools.
  13. Encouragement of pedestrian travel.
  14. Encouragement of bicycle travel.
  15. Development of bicycle travel facilities.
  16. Employer incentives regarding ride share programs.
  17. Modification of work schedules.
  18. Strategies for controlling the generation of air pollution by nonresidents of nonattainment or maintenance areas.
  19. Use of alternative fuels.
  20. Use of emission control devices on public diesel powered vehicles.
  21. Paving of roads.
  22. Restricting off-road vehicle travel.
  23. Construction site air pollution control.
  24. Other air quality control measures.
- F. Each regional planning agency shall consult with the department of transportation to coordinate the plans developed pursuant to subsection E of this section with transportation plans developed by the department of transportation pursuant to any other law.

2002

**Recent legislative year:** Laws 1999, Ch. 295, § 41; Laws 2002, Ch. 110, § 1.

#### **49-403. General permits and individual permits; issuance; definition**

A. A person may petition the director or control officer for a determination that a particular class or category of sources should be subject to a general permit instead of an individual permit that is issued under this chapter. The petition shall state the grounds for the determination that is the subject of the petition, including how the class or category meets the criteria prescribed in the applicable statute or rule for a general permit. The director or control officer shall either grant or deny the petition within sixty days after its receipt. If the petition is granted, the director or control officer

shall initiate the formal process for issuing the general permit within six months. If the petition is denied, the denial is an appealable agency action pursuant to title 41, chapter 6, article 10.

B. For the purposes of this section, "general permit" has the same meaning prescribed in section 41-1001.

2010

**Recent legislative year:** Laws 2010, 2nd Reg. Sess., Ch. 287, § 17.

#### **49-404. State implementation plan**

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

1999

**Recent legislative year:** Laws 1999, Ch. 295, § 42.

#### **49-405. Attainment area designations**

A. The governor may designate the status and classification of areas of this state with respect to attainment of national ambient air quality standards.

B. The director shall adopt rules that both:

1. Describe the geographic extent of attainment, nonattainment or unclassifiable areas of this state for all pollutants for which a national ambient air quality standard exists.

2. Establish procedures and criteria for changing the designations of areas that include all of the following:

(a) Technical bases for proposed changes, including ambient air quality data, types and distributions of sources of air pollution, population density and projected population growth, transportation system characteristics, traffic congestion, projected industrial and commercial development, meteorology, pollution transport and political boundaries.

(b) Provisions for review of and public comment on proposed changes to area designations.

(c) All area designations adopted by the administrator as of May 30, 1992.

C. On promulgation by the administrator of new or revised national ambient air quality standards for pollutants, the department shall develop proposed recommendations regarding designations for geographic areas of this state as being in attainment or

nonattainment or unclassifiable with respect to that standard. The proposed recommendations shall be provided to the governor to assist the governor in submitting recommendations to the administrator pursuant to 42 United States Code section 7407(d)(1)(A). The department shall develop the proposed recommendations as follows:

1. No earlier than five months before the date by which the governor must make the recommendations and no later than four months before that date, the department shall complete a draft of the proposed recommendations and a technical support document that explains the scientific and other bases for the draft proposal.

2. No earlier than five months before the date by which the governor must make the recommendations and no later than four months before that date, the department shall post the draft proposed recommendations and technical support document on the department's website. The department shall provide actual notice of the posting to counties and municipalities that would be included in a nonattainment area under the proposed recommendations and to any person who had previously requested actual notice of the draft documents. Actual notice of the posting may be provided by electronic or other means.

3. The website posting and actual notices prescribed in paragraph 2 of this subsection shall include notice that until the close of the comment period, any person may submit written comments to the department regarding the draft proposed recommendations and technical support document. The notice shall also include the date, time and location of a public hearing for the department to receive verbal comments and answer questions concerning the draft proposal. The written comment period shall close and the hearing shall be held no later than forty-six days before the date by which the governor must make the recommendations.

4. After the close of the comment period and after the public hearing and not later than one month before the date by which the governor must make the recommendations, the department shall finalize the proposed recommendations and technical support document and submit them to the governor. The department's final proposed recommendations and technical support document shall:

(a) Consider the comments received by the department pursuant to paragraph 3 of this subsection. For any area that is proposed to be designated a nonattainment area in the final proposed recommendations, the department shall with the submittal to the governor include a responsiveness summary that explains with reasonable particularity the department's consideration of and responses to comments received pursuant to paragraph 3 of this subsection.

(b) Be posted on the department's website within five days after the department's submittal to the governor. The posting shall include any responsiveness summary, and the department shall provide actual notice of the posting to counties and municipalities that would be included in a nonattainment area under the final proposed recommendations and to any person who had previously requested actual notice of the documents. Actual notice of the posting may be provided by electronic or other means.

D. The department shall post on its website a copy of the governor's recommendations within five days after the recommendations are submitted to the administrator.

E. If the administrator requires the governor's recommendations to be submitted six months after promulgation of the new or revised national ambient air quality standards or earlier, the time frames prescribed in subsections C and D shall be reduced by one-half. 2010

Recent legislative year: Laws 2010, 2nd Reg. Sess., Ch. 315, § 2.

#### 49-406. Nonattainment area plan

A. For any ozone, carbon monoxide or particulate nonattainment or maintenance area the governor shall certify the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for that area under 23 United States Code section 134 as the agency responsible for the development of a nonattainment or maintenance area plan for that area.

B. For any ozone, carbon monoxide or particulate nonattainment or maintenance area for which no metropolitan planning organization exists, the department shall be certified as the agency responsible for development of a nonattainment or maintenance area plan for that area.

C. For any ozone, carbon monoxide or particulate nonattainment or maintenance area, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall, by November 15, 1992, and from time to time as necessary, jointly review and update planning procedures or develop new procedures.

D. In preparing the procedures described in subsection C of this section, the department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall determine which elements of each revised implementation plan will be developed, adopted, and implemented, through means including enforcement, by the state and which by local governments or regional agencies, or any combination of local governments, regional agencies or the state.

E. The department, the planning agency certified pursuant to subsection A of this section on behalf of elected officials of affected local government, the county air pollution control department or district, and the department of transportation shall enter into a memorandum of agreement for the purpose of coordinating the implementation of the procedures described in subsection C and D of this section.

F. At a minimum, the memorandum of agreement shall contain:

1. The relevant responsibilities and authorities of each of the coordinating agencies.

2. As appropriate, procedures, schedules and responsibilities for development of nonattainment or maintenance area plans or plan revisions and for determining reasonable further progress.

3. Assurances for adequate plan implementation.

4. Procedures and responsibilities for tracking plan implementation.

5. Responsibilities for preparing demographic projections including land use, housing, and employment.

6. Coordination with transportation programs.

7. Procedures and responsibilities for adoption of control measures and emissions limitations.

8. Responsibilities for collecting air quality, transportation and emissions data.

9. Responsibility for conducting air quality modeling.

10. Responsibility for administering and enforcing stationary source controls.

11. Provisions for the timely and periodic sharing of all data and information among the signatories relating to:

(a) Demographics.

(b) Transportation.

(c) Emissions inventories.

(d) Assumptions used in developing the model.

(e) Results of modeling done in support of the plan.

(f) Monitoring data.

G. Each agency that commits to implement any emission limitation or other control measure, means or technique contained in the implementation plan shall describe that commitment in a resolution adopted by the appropriate governing body of the agency. The resolution shall specify the following:

1. Its authority for implementing the limitation or measure as provided in statute, ordinance or rule.

2. A program for the enforcement of the limitation or measure.

3. The level of personnel and funding allocated to the implementation of the measure.

H. The state, in accordance with the rules adopted pursuant to section 49-404, and the governing body of the metropolitan planning organization shall adopt each nonattainment or maintenance area plan developed by a certified metropolitan planning organization. The adopted nonattainment or maintenance area plan shall be transmitted to the department for inclusion in the state implementation plan provided for under section 49-404.

I. After adoption of a nonattainment or maintenance area plan, if on the basis of the reasonable further progress determination described in subsection F of this section or other information, the control officer determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, the control officer shall issue a written finding to the person, and shall provide an opportunity to confer. If the control officer subsequently determines that the failure has not been corrected, the county attorney, at the request of the control officer, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

J. After adoption of a nonattainment or maintenance area plan, if, on the basis of the reasonable further progress determination described in subsection F of this section or other information, the director determines that any person has failed to implement an emission limitation or other control measure, means or technique as described in the resolution adopted pursuant to subsection G of this section, and that the control officer has failed to act pursuant to subsection I

of this section, the director shall issue a written finding to the person and shall provide an opportunity to confer. If the director subsequently determines that the failure has not been corrected, the attorney general, at the request of the director, shall file an action in superior court for a preliminary injunction, a permanent injunction, or any other relief provided by law.

K. Notwithstanding subsections A and B of this section, in any metropolitan area with a metropolitan statistical area population of less than two hundred fifty thousand persons, the governor shall designate an agency that meets the criteria of section 174 of the clean air act and that is recommended by the city that causes the metropolitan area to exist and the affected county. That agency shall prepare and adopt the nonattainment or maintenance area plan. If the governor does not designate an agency, the department shall be certified as the agency responsible for the development of a nonattainment or maintenance area plan for that area.

1998

#### 49-407. Private right of action; citizen suits

A. Except as provided in subsection B, a person having an interest which is or may be adversely affected may commence a civil action in superior court on his own behalf against the director alleging a failure of the director to perform an act or duty under this article or article 2 of this chapter that is not discretionary with the director. The court has jurisdiction to order the director to perform the act or duty.

B. No action may be commenced in any of the following cases:

1. Before sixty days after the plaintiff has given notice of the alleged violation to the director and to an alleged violator.

2. If the director determines no violation has occurred, or if the director has initiated an administrative enforcement action by issuing a warning letter, notice of violation or issuing an order.

3. If the attorney general or county attorney has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or emission limitation.

C. In an action commenced under this section the plaintiff has the burden of proof.

D. The court, in issuing a final order in an action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party that substantially prevails.

1995

#### 49-408. Air quality conformity; definition

A. Any revision to the state implementation plan adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T shall be no more stringent than required under those regulations. No state agency, metropolitan planning organization or local transportation agency shall take action that is more stringent than required under federal law in performing any of the following functions:

1. Determining which projects require conformity determinations pursuant to 40 Code of Federal Regulations, part 93, any state implementation plan revisions adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T, or the conformity requirements set forth in the federal implementation plan at 40 Code of Federal Regulations, part 52, subpart D.

2. Determining which projects constitute regionally significant projects within the meaning of any of the regulations identified in paragraph 1.

3. Making conformity determinations pursuant to any of the regulations identified in paragraph 1.

B. Notwithstanding any other provisions of this section, the director may adopt consultation procedures for the public or affected agencies which supplement the requirements of 40 Code of Federal Regulations, part 51, subpart T.

C. For purposes of this section "local transportation agency" means any city, town, county or other local or regional government or agency that receives federal funds designated under title 23 United States Code or the federal transit act. 1994

#### **49-409. Chlorofluorocarbons; permitted use; retaliation prohibited**

A. Notwithstanding any other law, a person may possess, use, manufacture, purchase, install, transport or sell chlorofluorocarbons.

B. The possession, use, manufacture, purchase, installation, transportation or sale of chlorofluorocarbons does not subject any person, this state or any political subdivision of this state to any penalty, fine, retaliatory action or other punitive measure. 1995

#### **49-410. Arizona emissions bank; program termination**

A. The department of environmental quality shall establish and administer an Arizona emissions bank. The department shall make information on credits deposited in the Arizona emissions bank easily accessible to the department of commerce and the public.

B. After the effective date of rules adopted pursuant to subsection D of this section, a permitted source that reduces emissions of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compounds by an amount greater than that required by applicable law, rule, permit or order shall be granted credit in an amount to be determined by the department of environmental quality. The credit shall be deposited into the Arizona emissions bank. To be creditable for deposit in the Arizona emissions bank, the reduction in emissions shall be permanent, quantifiable and otherwise enforceable and shall occur after August 6, 1999. This section does not prohibit a source from receiving credit by means other than the Arizona emissions bank for emissions reductions that occurred before August 6, 1999.

C. The department of environmental quality shall register, certify or otherwise approve the amount of the credit before the credit is banked and used to offset future increases in the emissions of air pollutants. The credit may be used, traded, sold or otherwise expended within the same nonattainment area, maintenance area or modeling domain in which the emissions reduction occurred, only if there will be no adverse impact on air quality. Pursuant to title 41, chapter 6, article 8, the department may delegate certification of emissions credits to a county or multi-county air quality control region, but shall retain authority to register credits and administer the Arizona emissions bank.

D. On or before January 1, 2002, the department of environmental quality shall adopt rules for the implementation and administration of the Arizona emissions bank, and establish the criteria the department will use

to determine the amount of the emissions credit. The department shall establish by rule a fee system to administer the Arizona emissions bank. A county that has been delegated authority to certify emissions credits pursuant to subsection C of this section shall establish a fee system to cover the reasonable costs of certification in accordance with section 49-112, subsection B. In setting the fee, the director and a county shall consider the likely economic value of the credits and shall set a fee that does not discourage the banking of emissions credit.

E. The program established by this section ends on July 1, 2019. 2008

Recent legislative year: Laws 1999, Ch. 343, § 1; Laws 2001, Ch. 371, § 6; Laws 2008, Ch. 130, § 1.

#### **49-411. Arizona clean air fund; purposes; penalties, report; definition**

Repealed by Laws 2002, Ch. 260, § 21, effective July 1, 2003.

#### **49-412. Alternative fuel delivery systems; standardized waivers**

The department shall develop a standardized waiver application form that shall be used by state agencies, counties, cities, towns, school districts and federal fleets with vehicles that operate primarily in area A as defined in section 49-541 to document and justify the exemption of that entity's vehicles from compliance with the statutory goals for alternative fuel vehicles. The application form shall include, at a minimum, a life cycle cost formula for traditional fuel vehicles and alternative fuel vehicles that incorporates the vehicle's capital costs or conversion costs, annual fuel cost, annual maintenance and repair costs and salvage value, all as adjusted to present value. The department shall deliver to the secretary of state and the secretary of state shall publish in the Arizona administrative register copies of completed waiver applications that are received by the department. 1996

#### **49-413. Clean burning alternative fuels; public refueling**

The department shall pursue the establishment of a network of public refueling stations so that members of the public have access throughout the state to alternative fuels as a major goal. 2002

Recent legislative year: Laws 2002, Ch. 260, § 13.

#### **49-414. Regional haze program; authority**

##### **Editor's note.**

Renumbered to § 49-458 by Laws 2004, Ch. 129, § 1.

#### **49-414.01. State implementation plan revision; regional haze; rules**

##### **Editor's note.**

Renumbered to § 49-458.01 by Laws 2004, Ch. 129, § 1.

### **ARTICLE 2. STATE AIR POLLUTION CONTROL**

#### **49-421. Definitions**

In this article, unless the context otherwise requires:

1. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases,

sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.

2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the director.

3. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

4. "Special inspection warrant" means an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the director or his deputies, authorizing him to enter into or upon any public or private property for the purpose of making an inspection authorized by law. 2000

Recent legislative year: Laws 2000, Ch. 353, § 3.

#### 49-422. Powers and duties; definition

A. In addition to any other powers vested in it by law, the department may:

1. Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter. All monies resulting therefrom shall be deposited, pursuant to sections 35-146 and 35-147, in the account of the department.

2. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise to carry out the purposes of this chapter.

3. Require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the director either:

(a) Determines that monitoring, sampling or other studies are necessary to determine the effects of the source on levels of air pollution.

(b) Has reasonable cause to believe a violation of this chapter, rules adopted pursuant to this chapter or a permit issued pursuant to this chapter has been committed.

(c) Determines that those studies or data are necessary to accomplish the purposes of this chapter, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.

B. The director shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or

emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424 or section 49-425, subsection A. In the development of the rules, the director shall consider the cost and effectiveness of the monitoring, sampling or other studies.

C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the director may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the director shall consider the relative cost and accuracy of any alternatives that may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The director may require such monitoring, sampling or other quantification by permit or order if the director determines in writing that all of the following conditions are met:

1. The actual or potential emissions or air pollution may adversely affect public health or the environment.

2. A monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.

3. An adequate scientific basis for the monitoring, sampling or quantification method exists.

4. The monitoring, sampling or quantification method is reasonably accurate.

5. The cost of the method is reasonable in light of the use to be made of the data.

D. Orders issued and permit conditions imposed pursuant to this section may be appealed as an appealable agency action pursuant to title 41, chapter 6, article 10.

E. On request of the on-scene commander or the department of health services, the department of environmental quality shall assist at a significant chemical or other toxic fire event, excluding chemical or nuclear warfare or biological agents, and shall provide the following services if funding is available and if the director, in the director's professional capacity, determines the department's provision of services is necessary to protect human health and the environment:

1. Collect air samples for likely contaminants resulting from the fire. The department of environmental quality shall coordinate sampling locations, times and pollutants to be sampled with the department of health services and other appropriate health and emergency response officials.

2. Maintain an hourly plume report that includes meteorological conditions that affect dispersal of smoke.

3. In consultation with the department of health services and the on-scene coordinator, prepare a report that includes test results of any sampling, including the sampling rationale and protocol and chain of custody report using applicable environmental protection agency standards. The report shall also include, to the extent practicable, a smoke dispersion map with detail adequate to determine possible areas of impact at the level of detail practicable and a listing of likely releases of any chemical that is categorized by the United States environmental protection agency as a hazardous air

pollutant and the corresponding environmental protection agency description of possible health effects of the chemical based on a reliable inventory of hazardous materials at the site or facility.

F. For the purposes of this section, "chemical or other toxic fire event" means a fire at a building that is required to be tracked in the municipal hazardous material tracking process program pursuant to section 26-343.01. 2007

**Recent legislative year:** Laws 2000, Ch. 193, § 574; Laws 2000, Ch. 353, § 4; Laws 2007, Ch. 153, § 6.

#### 49-424. Duties of department

The department shall:

1. Determine whether the meteorology of the state is such that airsheds can be reasonably identified and air pollution, therefore, can be controlled by establishing air pollution control districts within well defined geographical areas.

2. Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use, and economic feasibility of air-cleaning devices, the effect on human health and danger to property from air contaminants, the effect on industrial operations of remedial measures; and other matters necessary to arrive at a better understanding of air pollution and its control. In a county with a population in excess of one million two hundred thousand persons according to the most recent United States decennial census, the department shall locate a monitoring system in at least two remote geographic sites.

3. By July 1, 1997, establish substantive policy statements for identifying air quality exceptional events that take into consideration this state's unique geological, geographical and climatological conditions and any other unusual circumstances. These substantive policy statements shall be developed with the planning agency certified pursuant to section 49-406, subsection A and the county air pollution control department or district.

4. Determine the standards for the quality of the ambient air and the limits of air contaminants necessary to protect the public health, and to secure the comfortable enjoyment of life and property by the citizens of the state or in any defined geographical area of the state where the concentration of air pollution sources, the health of the population, or the nature of the economy or nature of land and its uses so require, and develop and transmit to the county boards of supervisors minimum state standards for air pollution control.

5. Conduct investigations, inspections and tests to carry out the duties of this section under the procedures established by this article.

6. Hold hearings relating to any aspect of or matter within the duties of this section, and in connection therewith, compel the attendance of witnesses and the production of records under the procedures established by section 49-432.

7. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state.

8. Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution.

9. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.

10. Compile and publish from time to time reports, data, and statistics with respect to those matters studied and investigated by the department. 1996

#### 49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request. 1992

#### 49-426. Permits; duties of director; exceptions; applications; objections; fees

A. A permit shall:

1. Be issued by the director in compliance with the terms of this section.

2. Be required for any person seeking a compliance extension pursuant to section 49-426.03, subsection B, paragraph 3 and section 112(a)(5) of the clean air act and for any person beginning actual construction of or operating any source, except as prescribed in subsection B of this section or section 49-426.01.

B. The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which, at a location or property other than a one or two family residence, is rated at less than one million British thermal units per hour. The director may establish by rule additional sources or classifications of sources for which a permit is not required and pollutant-emitting activities and emissions units at permitted sources that are not required to be included in the permit. The director shall not adopt such rules unless the director makes a written finding

with supporting facts that the exempted source, class of sources, pollutant-emitting activities or emissions units will have an insignificant adverse impact on air quality. In adopting these rules, the director may consider any rule that is adopted by the administrator pursuant to section 502 of the clean air act and that exempts one or more source categories from the requirement to obtain a permit under title V of the clean air act.

C. Every application for a permit shall be filed in the manner and form prescribed by the director, and shall contain all the information necessary to enable the director to make the determination to grant or deny such application. The director shall establish by rule requirements for permit applications, including the standard application form for title V sources. The director shall establish by rule requirements for applications for general permits. An application for a permit issued pursuant to title V of the clean air act shall include a compliance plan that describes how the applicant will comply with all of the applicable requirements of this chapter and the clean air act, including a schedule of compliance and a schedule under which progress reports will be submitted to the director at least every six months. The director may require that such application include all sources that are used or to be used by the applicant in a certain process or a single facility or location. Before acting on an application for a permit, the director may require the applicant to furnish further information or further plans or specifications. The director shall act, within a reasonable time, on such application and shall notify the applicant in writing of the proposed approval or denial of such application, except that the director may have a reasonable period of time in which to gather information, inspect premises, and issue such permits. The director shall adopt rules that establish procedures for determining when applications are complete, for processing applications and for reviewing permit actions. The director shall also establish by rule criteria for determining reasonable times for processing permit applications. Rules adopted pursuant to this subsection for permits issued pursuant to title V of the clean air act shall conform to the requirements of section 505(a) of the clean air act.

D. The director shall give notice of a proposed permit for a source required to obtain a permit pursuant to title V of the clean air act once each week for two consecutive weeks in two newspapers of general circulation in the county in which the source is or will be located. The notice shall describe the proposed permit and air contaminants to be emitted and shall state that any person may submit comments on the proposed permit and may request a public hearing. The director shall require the applicant at the time of the first notice to post the site where the source is or may be located. If permitted by federal, state and local law, the posting shall be prominently placed at a site that is under the applicant's legal control and that is adjacent to the nearest public roadway. The posting shall be visible to the public using the public roadway and shall contain the information in the notice that is published by the director. If a public hearing is requested, the director shall require the applicant to place an additional posting that provides notice of the public hearing. A posting shall be maintained until the public comment period on the proposed permit is closed. The director shall make available to the public notices of proposed per-

mits. Each public notice that is issued under this chapter shall be mailed to the permit applicant, to the affected federal, state and local agencies and to those persons who have requested in writing copies of proposed permit action notices. During the public comment period, any person may submit a request to the department to conduct a public hearing for the purpose of receiving oral or written comments on the proposed permit. A written comment shall state the name and mailing address of the person, shall be signed by the person, his agent or his attorney and shall clearly set forth reasons why the permit should or should not be issued. Grounds for comment are limited to whether the proposed permit meets the criteria for issuance prescribed in this section or in section 49-427. The department shall consider and prepare written responses to all comments received during the public comment period including comments made at a public hearing conducted by the department. At the time a final permit decision is made, copies of the department's responses shall be made available to the applicant and any person who commented on the proposed permit.

E. Permits or revisions issued pursuant to this section or section 49-426.01 may be issued subject to such terms and conditions as are consistent with the requirements of this article, article 1 of this chapter and the clean air act and are found by the director to be necessary, following public notice and an opportunity for a public hearing as provided in subsection D or H of this section or in section 49-426.01, and subject to payment of a reasonable fee to be determined as follows:

1. For a source that is required to obtain a permit pursuant to title V of the clean air act, the director shall establish by rule a system of fees that is consistent with and equivalent to that prescribed by section 502 of the clean air act. These rules shall prescribe procedures for increasing the fee each year by the percentage if any by which the consumer price index for the immediately preceding calendar year exceeds the consumer price index for calendar year 1989.

2. For a facility that is required to obtain a permit pursuant to this chapter but that is not required to obtain a permit pursuant to title V of the clean air act, the director shall determine a fee based on the total actual cost of processing the permit application, but not exceeding twenty-five thousand dollars. The director shall establish an annual inspection fee, not to exceed the average cost of inspection. The director shall adopt, by rule, criteria for determining fees and for public hearings.

F. Permits issued pursuant to this section shall be issued for a period of five years.

G. Except as provided in subsection H of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel in any machine, incinerator or device shall first obtain a permit from the director. Any permit issued by the director under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.

2. The frequency and types of fuel testing to be conducted by the person.

3. The frequency and type of emissions testing or monitoring to be conducted by the person.

4. Requirements for record keeping and reporting.

5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning off-specification used oil fuel, hazardous waste or hazardous waste fuel.

H. The director may issue a general permit for a defined class of facilities if the class contains a large number of facilities that are substantially similar in nature and that have substantially similar emissions and if the following conditions are met:

1. A general permit shall comply with all of the requirements for permits prescribed by this section except for the requirements of subsection D of this section and shall be consistent with the clean air act.

2. The director shall give notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county. The notice shall describe the proposed general permit, the general class of sources that would be subject to the proposed permit and the air contaminants to be emitted. The notice shall also state that any person may submit comments on the proposed general permit and may request a public hearing. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the general permit should or should not be issued. Grounds for comment are limited to whether the proposed general permit meets the criteria for issuance prescribed in this section or section 49-427.

3. On issuance of a general permit any person seeking to permit a source under this subsection shall submit an application pursuant to subsection C of this section.

4. If the director approves an application to be permitted under a general permit, the director shall provide notice of the approval in a newspaper of general circulation in the county in which the source is or will be located.

5. If a person violates a general permit, the director may require the source to obtain a permit pursuant to subsection A of this section.

6. A general permit may be revoked or revised at any time by the director if necessary to comply with this chapter. If the director revokes or revises a general permit, the director shall notify all persons whose sources are affected by the revocation or revision and shall include notice of procedures to obtain a permit pursuant to subsection A of this section or notice of procedures for compliance with the revisions.

7. The director by rule shall adopt procedures for the issuance of general permits.

8. The director may adopt conditions in a general permit applicable to sources located in a specified geographic area either independently of or upon petition by a county air pollution control officer.

I. Permits issued pursuant to this section for a source required to obtain a permit under title V of the clean air act shall contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.

2. Enforceable emission limitations and standards.

3. A schedule for compliance, if applicable.

4. The requirement to submit at least every six months the results of any required monitoring.

5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

J. The director may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

K. If an applicant has submitted a timely and complete application for a permit required under this section, but final action has not been taken on that application, failure to obtain a permit shall not be a violation of this chapter unless the delay in final action is due to the failure of the applicant to submit information required or requested to process the application. This subsection does not apply to any person required to obtain a permit before commencing construction of a source as required under this section or any person seeking a permit revision as provided under section 49-426.01.

L. The director may issue a single permit authorizing emissions from similar operations at multiple temporary locations, if the permit includes conditions that will assure compliance with all applicable requirements of this chapter and the clean air act at all locations. Any permit issued pursuant to this subsection shall require the applicant to notify the director in advance of each change in location. In issuing a single permit, the director may require a separate permit fee for operations at each location.

M. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major source, the director shall require revisions to the permit to incorporate applicable standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The director shall require any revisions as expeditiously as practicable, but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of standards and regulations is after the expiration of the permit. Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

N. Any permit issued pursuant to the requirements of this article and title V of the clean air act to a unit subject to the provisions of title IV of the clean air act shall include conditions prohibiting all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or by the designated representative of the owners or operators.

2. Amounts in excess of applicable emission rates.

3. The use of any allowance prior to the year for which it was allocated.

4. Contravention of any other provision of the permit.

O. The director shall adopt a rule specifying the notice, public participation requirements and other permit issuance procedures for permits that are not issued pursuant to title V of the clean air act.

P. In determining whether a permitting threshold established pursuant to this section applies to an existing source, the director shall exclude particulate matter that is not subject to a national ambient air quality standard under the clean air act.

Recent legislative year: Laws 1997, Chs. 175 and 178.

#### 49-426.01. Permits; changes within a source; revisions

A. The director shall establish by rule provisions to allow changes within a source required to obtain a permit under title V of the clean air act without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.

2. The changes do not result in an emission that is greater than the emissions allowed under the permit.

3. The source provides the director with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.

4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section for title V sources. Rules adopted pursuant to this section at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act and may prescribe a different time limit for notifications associated with emergency conditions.

B. A permit issued pursuant to section 49-426 may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or termination or a notification filed pursuant to subsection A of this section does not stay an effective permit condition. The director may require that the applicant provide in writing within a reasonable time any information that the director identifies as necessary for the director to determine if cause exists for revising, revoking and reissuing, or terminating the permit or for determining compliance with permit conditions.

C. The director shall establish by rule procedures related to public and departmental review of changes to a permitted source. For title V sources, these rules at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act. For changes to sources that are not required to obtain a permit under title V of the clean air act, the necessity for and level of public and departmental review of a change shall be determined as prescribed by this chapter and the environmental significance of the change.

1996

#### 49-426.02. Permit shield

The director shall establish by rule conditions under which compliance with a permit or permit revision issued pursuant to this chapter constitutes compliance with the applicable requirements of this chapter and the clean air act.

1992

#### 49-426.03. Enforcement of federal hazardous air pollutant program; definitions

A. The list of hazardous air pollutants in section 112(b)(1) of the clean air act is adopted as the list of federally listed hazardous air pollutants that will be subject to the program adopted pursuant to subsection B of this section. Within one year after the administrator adds or deletes a pollutant pursuant to section 112(b)(2) or (3) of the clean air act the director shall adopt those revisions for the list adopted pursuant to this subsection unless the director finds that there is no scientific evidence to support the revision.

B. The director shall adopt by rule a program for administration and enforcement of the federal hazardous air pollutant program established by section 112 of the clean air act. The program shall be consistent with and meet the requirements of section 112 of the clean air act and shall contain the following provisions:

1. After the date specified by the administrator in rules adopted pursuant to section 112(g)(1)(B) of the clean air act, no person may obtain a permit or permit revision to modify a major source of federally listed hazardous air pollutants or to construct a new major source of federally listed hazardous air pollutants, unless the director determines that the person will install the maximum achievable control technology for the modification or new major source. For purposes of this paragraph, the terms "major source" and "modification" have the meanings set forth in section 112(a) of the clean air act and implementing regulations adopted by the administrator. A new or modified major source of federally listed hazardous air pollutants means a major source that commences construction or a modification after rules adopted by the director pursuant to this subsection become effective pursuant to section 41-1032. A physical change to a source or change in the method of operation of a source is not a modification subject to this paragraph or paragraph 2 of this subsection if the change complies with section 112(g)(1) of the clean air act.

2. After the date specified by the administrator in rules adopted pursuant to section 112(g)(1)(B) of the clean air act and until the administrator adopts emissions standards establishing the maximum achievable control technology for a source category or subcategory that includes a source subject to paragraph 1 of this subsection, the director shall determine the maximum achievable control technology for the modification of new major source on a case-by-case basis. If the director determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

3. If an existing source submits an application pursuant to section 49-426 which demonstrates that the source has achieved a reduction of ninety per cent or more of federally listed hazardous air pollutants or ninety-five per cent in the case of federally listed hazardous air pollutants that are particulates, the director shall issue a permit or permit revision allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated by the administrator under section 112(d) of the clean air act. The application shall comply with section 112(i)(5) of the clean air act and implementing regulations adopted by the administrator. The alternative emission limitation shall apply for a period of six years from the compliance date otherwise applicable to the source under section 112(d) of the clean air act.

4. If the administrator fails to adopt a standard for a source category or subcategory within eighteen months after the deadline established for that category or subcategory pursuant to section 112(e)(1) and (3) of the clean air act, the owner or operator of an existing major source in the category or subcategory shall be required

49-438, subsection C, may appeal the decision as an appealable agency action pursuant to title 41, chapter 6, article 10.

B. Any person having an interest that is or may be adversely affected may commence a civil action in superior court against the director alleging that the director has failed to act in a timely manner as provided in section 49-426, subsection C. No action may be commenced before sixty days after the plaintiff has given notice to the director. The court has jurisdiction to require the director to act without additional delay.

2000

**Recent legislative year:** Laws 2000, Ch. 353, § 6.

#### **49-429. Permit transfers; notice; appeal**

A. A permit shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one source to another.

B. Subsection A shall not apply to mobile or portable source which is transferred from one location to another after notification to the department of the transfer.

C. A permit may be transferred from one person to another whether by operation of law or otherwise if the person who holds the permit notifies the director in writing before the transfer. The notice shall be in writing and shall include the name, address, telephone number and statutory agent of the person to whom the permit will be transferred, the effective date of the proposed transfer and other information the director may determine to be necessary by rule. The director shall prescribe procedures for this notice.

D. If the director determines that the transferee is not capable of operating the source in compliance with the requirements of this article, rules adopted under this article and the conditions established in the permit, the transfer shall be denied. In order for the denial to be effective, notice of the director's denial, including the reasons for the denial, shall be issued within ten working days of the director's receipt of the notice of proposed transfer.

E. Denial of a permit transfer may be appealed as an appealable agency action pursuant to title 41, chapter 6, article 10.

2000

**Recent legislative year:** Laws 2000, Ch. 353, § 7.

#### **49-430. Posting of permit**

A person who has been granted an operating permit, shall firmly affix such permit, an approved facsimile of such permit, or other approved identification bearing the permit number upon such machine, equipment, incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises.

1986

#### **49-431. Notice by building permit agencies**

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant

for a building permit to determine if an installation permit will possibly be required under the provisions of section 49-426. If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the department and shall furnish a copy of such notice to the county air pollution control officer and the department.

1986

#### **49-432. Classification and reporting; confidentiality of records**

A. The director, by rule, shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, the nature and duration of emissions and such other information as is relevant to air pollution and deemed necessary by the director.

B. The owner, lessee or operator of a source under the jurisdiction of the department shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable, necessary, and required to determine compliance in a manner acceptable to the director, and shall supply monitoring information as directed in writing by the director. Such devices shall be available for inspection by the director, or his deputies, during all reasonable times.

C. The department shall make available to the public any records, reports or information obtained from any person pursuant to this chapter, including records, reports or information obtained or prepared by the director or a department employee, except that the information or any particular part of the information shall be considered confidential on either of the following:

1. Notice from the person accompanying the information or a particular part of the information that the information, if made public, would divulge the person's trade secrets as defined in section 49-201 or other information that is likely to cause substantial harm to the person's competitive position.

2. A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action filed under this title in superior court.

D. If the director on his own or following a request for disclosure disagrees with the confidentiality notice, he may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the person shall be served with a copy of the court filing and has twenty business days from the date of service to request a hearing on whether a court order should be issued. The hearing shall be conducted in camera, and any order resulting from the hearing is appealable as provided by law. The director may not disclose the confidential information until a court order authorizing disclosure has been obtained and becomes final. The court may award costs of litigation including reasonable attorney and expert witness fees to the prevailing party.

E. Notwithstanding subsection C, the department shall make available to the public the following infor-

mation obtained from any person pursuant to this chapter:

1. The name and address of any permit applicant or permittee.

2. The chemical constituents, concentrations and amounts of any emission of any air contaminant.

3. The existence or level of a concentration of an air pollutant in the environment.

F. Notwithstanding subsection C, the director may disclose, with an accompanying confidentiality notice, any records, reports or information obtained by the director or department employees to:

1. Other state employees concerned with administering this chapter or if the records, reports or information is relevant to any administrative or judicial proceeding under this chapter.

2. Employees of the United States environmental protection agency if the information is necessary or required to administer and implement or comply with federal statutes or regulations. 1992

#### 49-433. Special inspection warrant

A. The director and his deputies charged under this chapter or the rules and regulations adopted pursuant to this chapter with powers or duties involving inspection of real or personal property including buildings, building premises and building contents for the purpose of air pollution control shall be authorized to present themselves before a magistrate and apply for, obtain and execute special inspection warrants. Such inspections shall be limited to property other than the interior or structures used as private residences.

B. Upon showing by the affidavit of the director or his deputies that consent to entry for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate for inspection of public or private, real or personal properties. Such warrants shall not be necessary in the case of an emergency where there is an imminent and substantial endangerment to the health of persons.

C. The warrant shall be in substantially the following form:

"County of \_\_\_\_\_, state of Arizona to the director or any deputy director in the state of Arizona, proof by affidavit having been this day made before me by (person or persons whose affidavit has been taken) that in and upon certain premises in the (city, town or county) of \_\_\_\_\_ and more particularly described as follows: (describe the premises with reasonable particularity) there now exists a reasonable governmental interest to determine if such premises comply with (section \_\_\_\_\_ of the Arizona Revised Statutes) and/or (section \_\_\_\_\_ of regulation or ordinance). You are therefore commanded in the day time (or during reasonable business hours), to make an inspection of said premises as soon as practicable. Date, signature and title of office."

The endorsement on the warrant shall be in substantially the following form:

"Received by me \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.  
(Name of director or deputy director)."

The return of officer shall be in substantially the following form:

"I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ (Name of director or deputy director)."

D. The warrant may be served by the director or his deputies mentioned in its directions, but by no other person except in aid of the director or his deputies, on his requiring it, the director or his deputies being present and acting in its execution.

E. A warrant shall be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of that time, the warrant shall unless executed be void.

F. Any person who wilfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this article is guilty of a petty offense. 1986

#### 49-435. Hearings on orders of abatement

An order of abatement issued by the director shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to section 49-461 unless the person or persons named in the order have appealed the order of abatement as an appealable agency action pursuant to title 41, chapter 6, article 10. 2000

Recent legislative year: Laws 2000, Ch. 353, § 8.

#### 49-437. Conditional orders; standards; rules

A. The director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of this article, any rule adopted pursuant to this article, or any requirement of a permit issued pursuant to this article if the director makes each of the following findings:

1. Issuance of the conditional order will not endanger public health or the environment, or impede attainment of the national ambient air quality standards.

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; the source was in compliance 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.

B. The director shall adopt rules necessary for the issuance of conditional orders. Such rules shall specify the minimum requirements for petitions, and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of the state implementation plan, the rules adopted by the director shall provide for a public hearing to receive comments on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this article, the rules adopted by the director shall conform to the procedures established for permit revisions pursuant to section 49-426.01. 1992

#### 49-438. Petition for conditional order; publication; public hearing

A. A person who seeks a conditional order shall file a petition with the director.

B. If the issuance of the conditional order requires a public hearing, the director shall set a hearing date within thirty days after the filing of the petition. The hearing date shall be within sixty days after the filing of the petition.

C. 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 section 49-444. The notice shall state that any person may submit comments on the petition. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the petition should or should not be granted. Grounds for comment shall be limited to whether the petition meets the criteria for issuance of a conditional order prescribed in section 49-437. 1992

#### **49-439. Decisions on petitions for conditional order; terms and conditions**

A. Within thirty days after the conclusion of the hearing held pursuant to section 49-438, subsection B, or, if no hearing is held, within sixty days after the filing of the petition, the director shall deny the petition or grant the petition on such terms and conditions as the director deems appropriate.

B. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include, but not be limited to:

1. A detailed plan for completion of corrective steps needed to conform to the provisions of this article, the rules adopted pursuant to this article, and the requirements of the permit issued pursuant to this article.

2. A requirement that necessary construction shall begin as expeditiously as practicable.

3. Such written reports as may be required.

4. The right to make periodic inspection of the facilities for which the conditional order is granted.

C. A reasonable fee as may be prescribed by the director shall be deposited in the air pollution control permit fund established in section 49-555. 1992

#### **49-440. Term of conditional order; effective date**

A. A conditional order issued by the director shall be valid for such period as the director 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 this article and title V of the clean air act, and three years in the case of any other source that is required to obtain a permit pursuant to this article.

B. A holder of a conditional order may petition the director for renewals of such order. The total term of such renewals and the initial period of such order shall not exceed three years from the date of initial issuance of such order. Such petition may be filed at any time not more than sixty days nor less than thirty days prior to the expiration of such order. The director, within thirty days of receipt of such petition, shall renew the conditional order for one year if the petitioner is in compliance with and conforming to the terms and conditions imposed pursuant to section 49-439. The director may refuse to renew the conditional order, if after a public hearing held within thirty days of receipt of such petition the director finds that the petitioner is not in compliance with and conforming to 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 with and conforming to

such terms and conditions, the director may renew such conditional order for a total term of two additional years if the director finds that such failure to comply and conform is due to conditions beyond the control of such petitioner.

C. If the director amends or adopts any rule imposing conditions on the operation of an air pollution source which have become effective as to the source by reason of the action of the director or otherwise, and which require the implementation of control strategies necessitating the installation of additional or different air pollution control equipment, the director may renew a conditional order for an additional term. The term of the renewal shall be governed by the preceding subsections of this section, except that the total term of the renewal shall not exceed two years.

D. Except as provided in paragraphs 1 and 2 of this subsection, a conditional order issued by the director shall be effective when issued if:

1. The conditional order varies from the requirements of the state implementation plan, the conditional order shall be submitted to the administrator as a revision to the state implementation plan pursuant to section 110(l) of the clean air act, and shall become effective upon approval by the administrator.

2. The conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to title V of the clean air act, the conditional order shall be submitted to the administrator if required by section 505 of the clean air act, and in such case shall be effective at the end of the review period specified in such section, unless objected to within such period by the administrator. 1995

#### **49-441. Suspension and revocation of conditional order**

If the terms and conditions of the conditional order are being violated, the director may seek to revoke or suspend the conditional order granted. In such event, the director shall serve notice of such violation on the holder of the conditional order in the manner provided in section 49-444. The notice shall specify the nature of such violation and the date on which a hearing will be held to determine if such a violation has occurred and whether the conditional order should be suspended or revoked. The date of the hearing shall be within thirty days from the date the notice is served upon the holder of the conditional order. 1992

#### **49-442. Appeal of county decisions**

When the department has asserted control pursuant to section 49-402, a party may appeal a revocation or modification of an order of abatement or a permit or permit revision previously issued at the county level by appealing pursuant to title 41, chapter 6, article 10. 2000

**Recent legislative year:** Laws 2000, Ch. 353, § 10.

#### **49-443. Court appeals; procedures**

A. Except as provided in section 41-1092.08, subsection H, all final administrative decisions relating to permit actions, permit transfers or orders of abatement are subject to judicial review pursuant to title 12, chapter 7, article 6.

B. When an appeal is taken from a final administrative decision pursuant to title 41, chapter 6, article 10, the order or decision shall remain in effect pending

final determination of the matter, unless stayed by the court, on a hearing after notice to the director and upon a finding by the court that there is probable cause for appeal and that great or irreparable damage may result to the petitioner warranting the stay.

C. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare. 2000

**Recent legislative year:** Laws 2000, Ch. 113, § 190; Laws 2000, Ch. 353, § 11.

#### **49-444. Notice of hearing; publication; service**

A. Any notice of hearing required by this chapter shall be given by publication of a notice of hearing for at least two times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county.

B. If the hearing involves any violation of rules adopted pursuant to this chapter, or a conditional order therefrom then, in addition to the requirements of subsection A, the person allegedly committing or having committed the violation or requesting the conditional order shall be served pursuant to title 41, chapter 6, article 10. 1997

#### **49-447. Motor vehicle and combustion engine emission; standards**

The director shall adopt rules setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines. Any rules adopted pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines. This authority shall apply to implement the provisions of sections 28-955 and 49-542. 1997

#### **49-448. Limitations**

Nothing in this chapter shall be construed so as to:

1. Grant any jurisdiction or authority with respect to air contamination or pollution existing solely within commercial and industrial plants, works or shops owned by or under control of the person causing the air contamination or pollution.

2. Alter or in any other way affect the relations between employers and employees with respect to or concerning any condition of air contamination or pollution, except that a person using a supplemental control system or intermittent control system for purposes of meeting the requirements of an order under section 113(d) or section 119 of the federal clean air act, as amended or for purposes of receiving an operating permit in the form of a primary nonferrous smelter order authorized under section 119 of the federal clean air act, as amended, may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system. 1986

#### **49-453. Air quality impact reports; filing**

A. Every state agency, board and commission shall prepare an air quality impact report on a state funded project relating to transportation which it proposes to

carry out or approve and which it determines may have a significant impact on air quality as it relates to carbon monoxide and ozone. The report shall contain the following information:

1. A description of the proposed project.
2. Any significant impact on air quality of the proposed project.
3. Significant environmental effects which cannot be avoided if the project is implemented.
4. Mitigation measures proposed to minimize any significant air quality effects.
5. Alternatives to the proposed project including car pooling or van pooling lanes and bicycle routes.
6. Any significant irreversible air quality changes which would be involved in the proposed project if it is implemented.
7. The known views of any local groups concerning the proposed project.

B. The report shall also contain a statement briefly indicating the reasons for determining that various effects of a project are not significant and consequently have not been discussed in detail in the impact report.

C. If authority over a project is shared jointly by an agency and a board or by an agency and a commission, the agency shall prepare the report.

D. This section does not apply to:

1. Emergency repairs to public service facilities which are necessary to maintain service.
2. Projects which are undertaken, carried out or approved by a state agency, board or commission to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been declared by the governor.
3. Projects related to the interstate highway system.
4. State projects involving existing facilities.
5. The report shall be filed with the director. 1987

#### **49-454. Adjusted work hours**

A. A business which has five hundred or more employees at one site in area A or area B as defined in section 49-541 shall submit a schedule prior to October 1 of each year to the director which shows an adjusted work hour proposal that will reduce the level of carbon monoxide concentrations caused by vehicular travel.

B. A business which has one hundred or more employees at one site working in area A or area B as defined in section 49-541 may implement an adjusted work hour schedule in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

C. The director shall transmit the reports received pursuant to subsection A of this section to the advisory committee on air quality compliance on or before December 1 of each year. 1999

**Recent legislative year:** Laws 1999, Ch. 295, § 43.

#### **49-455. Permit administration fund**

A. A permit administration fund is established consisting of fees and interest collected pursuant to this article. The director shall administer the fund subject to annual legislative appropriation. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investment shall be credited to the

fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. Monies in the fund collected pursuant to sections 49-426 and 49-426.01 shall be used for the following:

1. In the case of fees collected pursuant to section 49-426, subsection E, paragraph 1, all reasonable direct and indirect costs required to develop and administer the permit program requirements of title V of the clean air act.

2. In the case of other fees, administering permits or reviews issued pursuant to section 49-426 or 49-426.01 or conducting inspections.

C. No more than five per cent of the monies in the fund may be used for the collection of monies, unless otherwise provided under title V of the clean air act.

D. No more than five per cent of the monies in the fund may be used for general administration of the fund unless otherwise provided under title V of the clean air act.

2000

Recent legislative year: Laws 2000, Ch. 193, § 575.

#### **49-456. Technical assistance for small business; compliance advisory panel**

A. Not later than November 15, 1992, after reasonable notice and a public hearing, the director shall submit to the administrator a plan establishing a small business stationary source technical and compliance assistance program consistent with and equivalent to the plan required under section 507 of the clean air act.

B. A compliance advisory panel is established consisting of seven members who are appointed for staggered five year terms as follows:

1. Two members who are appointed by the governor to represent the general public and who are not owners or representatives of owners of small business stationary sources.

2. Two members who are appointed by the speaker of the house of representatives and who are owners or who represent owners of small business stationary sources.

3. Two members who are appointed by the president of the senate and who are owners or who represent owners of small business stationary sources.

4. One member who is appointed by the director of the department of environmental quality to represent the department.

C. The panel shall:

1. Advise the director on the effectiveness of the small business stationary source technical and environmental compliance assistance program operated pursuant to this section and any such program operated by a county, including the identification of difficulties encountered and the degree and severity of enforcement.

2. Make periodic reports to the director and administrator concerning the compliance of the small business stationary source technical and environmental compliance assistance program operated pursuant to this section and any such program operated by a county with the requirements of the paperwork reduction act (P.L. 96-511; 20 United States Code section 1221), the regulatory flexibility act (P.L. 96-354; 5 United States Code section 601) and the equal access to justice act (P.L. 96-481; 5 United States Code section 504).

3. Review information developed by the department and any county for small business stationary sources to assure that the information is understandable by the general public and advise the director of its findings.

4. Have staff from the small business stationary source technical and environmental compliance assistance program to develop and disseminate reports and advisory opinions.

1992

#### **49-457. Agricultural best management practices committee; members; powers; permits; enforcement; preemption; definitions**

A. A best management practices committee for regulated agricultural activities is established.

B. The committee shall consist of:

1. The director of environmental quality or the director's designee.

2. The director of the Arizona department of agriculture or the director's designee.

3. The dean of the college of agriculture of the university of Arizona or the dean's designee.

4. The state director of the United States natural resources conservation service or the director's designee.

5. One person actively engaged in the production of citrus.

6. One person actively engaged in the production of vegetables.

7. One person actively engaged in the production of cotton.

8. One person actively engaged in the production of alfalfa.

9. One person actively engaged in the production of grain.

10. One soil taxonomist from the university of Arizona college of agriculture.

11. One person actively engaged in the operation of a beef cattle feed lot.

12. One person actively engaged in the operation of a dairy.

13. One person actively engaged in the operation of a poultry facility.

14. One person actively engaged in the operation of a swine facility.

15. One person who is employed by a county air quality department or agency.

C. The governor shall appoint the members designated pursuant to subsection B, paragraphs 5 through 15 of this section for a term of six years. Members may be reappointed. Members are not entitled to compensation for their services but are entitled to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The committee shall elect a chairman from the appointed members to serve a two year term.

E. The committee shall meet at the call of the chairman or at the request of a majority of the appointed members.

F. The department of environmental quality, the Arizona department of agriculture and the college of agriculture of the university of Arizona shall cooperate with and provide technical assistance and any necessary information to the committee. The department of environmental quality shall provide the necessary staff support and meeting facilities for the committee.

**49-457.04. Off-highway vehicle and all-terrain vehicle dealers; informational material; outreach; applicability**

A. Any person who rents or sells in the normal course of business off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles, other than golf carts sold to public or private golf courses, shall provide to the buyer or renter of the vehicle printed materials that are approved by the department pursuant to this section.

B. The department shall produce printed materials and distribute those materials to persons who sell or rent off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles. The printed materials shall be designed to educate and inform the user of the vehicle on methods for reducing the generation of dust and shall include information regarding dust control ordinances and restrictions that may be applicable. The department shall make available on the department's website the printed materials in a format that is accessible to the public.

C. This section applies in a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area.

2007

**Recent legislative year:** Laws 2007, Ch. 292, § 15.

**49-458. Regional haze program; authority**

The department may participate in interstate regional haze programs that are established by the regional planning organization that is authorized for this region pursuant to 40 Code of Federal Regulations part 51, subpart P and the clean air act.

2004

**Recent legislative year:** Laws 2002, Ch. 251, § 2; Laws 2004, Ch. 129, § 1.

**49-458.01. State implementation plan revision; regional haze; rules**

A. The director shall submit to the administrator state implementation plan revisions to address regional haze visibility impairment in mandatory federal class I areas. The state implementation plan revisions submitted to the administrator shall address any of the following as necessary to submit an approvable plan:

1. The applicable time period.
2. A monitoring strategy for regional haze visibility impairment.
3. Calculations of baseline visibility conditions and natural visibility conditions.
4. Comprehensive emissions tracking strategies for clean air corridors.
5. Implementation of stationary source emissions reduction strategies.
6. Provisions addressing mobile source emissions.
7. Programs related to emissions from fire sources defined as wildland fire, including wildfire, prescribed natural fire, wildland fire use, prescribed fire and agricultural burning conducted and occurring on federal, state and private lands.
8. Provisions addressing the impact of dust emissions on visibility impairment.
9. Provisions relating to pollution prevention.

10. Best available retrofit technology requirements.

11. A report that assesses emissions control strategies for stationary source emissions of oxides of nitrogen and particulate matter and the degree of visibility improvement that would result from implemented strategies.

12. A long-term strategy that addresses regional haze visibility impairment.

13. Additional measures necessary to make reasonable progress toward remedying existing and preventing future regional haze in mandatory federal class I areas.

14. For the Arizona Grand Canyon visibility transport commission class I areas, a projection of the improvement in visibility conditions that are expected from the implementation of all measures set forth in the implementation plan.

15. For the eight other Arizona mandatory federal class I areas, provisions for the establishment of reasonable progress goals.

16. Periodic progress reports.

B. The department may establish intrastate market trading programs and participate in interstate market trading programs as necessary to submit an approvable plan under subsection A.

C. The director may adopt rules necessary for the revisions to the state implementation plan that address regional haze.

D. Except as provided in subsection E, the department may meet the requirements of subsection A by submitting plan revisions under 40 Code of Federal Regulations section 51.308 or section 51.309.

E. The department may submit a plan revision under 40 Code of Federal Regulations section 51.309 only if the revision contains a determination pursuant to 40 Code of Federal Regulations section 51.309(d)(5)(ii) that mobile source emissions from areas within the state do not contribute significantly to visibility impairment in any of the Grand Canyon visibility transport commission class I areas.

2004

**Recent legislative year:** Laws 2002, Ch. 251, § 2; Laws 2004, Ch. 129, § 1.

**49-460. Violations; production of records**

When the director has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may request in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules adopted pursuant to this article.

1992

**49-461. Violations; order of abatement**

When the director has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may serve upon such person by certified mail or in person an order of abatement or may file a complaint in superior court alleging a violation pursuant to section 49-463. The order shall state with particularity the act constituting the violation, shall state in its entirety the specific requirement,

provision or rule violated, shall state the duration of the order and shall state that the alleged violator is entitled to a hearing, if such hearing is requested in writing within thirty days after the date of issuance of the order. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. An order issued under this section shall require the persons to whom it is issued to comply with the requirement, provision or rule as expeditiously as practicable. In the case of a source required to obtain a permit pursuant to this article and title V of the clean air act, the order shall require compliance no later than one year after the date the order was issued and may be renewable for no more than one additional year on a showing of good cause to the director. 2003

**Recent legislative year:** Laws 2001, Ch. 292, § 1; Laws 2003, Ch. 104, § 44.

#### 49-462. Violations; injunctive relief

The attorney general, at the request of the director, shall file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, if the director has reasonable cause to believe that any of the following is occurring:

1. A person has violated or is in violation of any provision of this article, a rule adopted pursuant to this article or a permit issued pursuant to this article.

2. A person has violated or is in violation of an effective order of abatement.

3. A person is creating an imminent and substantial endangerment to the public health or the environment because of a release of a harmful air contaminant, unless that release is subject to enforcement under title 3, chapter 2, article 6. 1992

#### 49-463. Violations; civil penalties

A. A person who violates any provision of this article, any permit or permit condition issued pursuant to this article, any fee or filing requirement, any rule adopted pursuant to this article, an effective order of abatement issued pursuant to this article or any duty to allow or carry out inspection, entry or monitoring activities, is subject to a civil penalty of not more than ten thousand dollars per day per violation. The attorney general at the request of the director shall file an action in superior court to recover penalties provided for in this section.

B. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, if the director has notified the source of the violation and makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section is accomplished by the issuance of a notice of violation or order of abatement or by filing a complaint in superior court that alleges any violation described in subsection A.

C. In determining the amount of a civil penalty under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

4. Any good faith efforts to comply with the applicable requirements.

5. The economic impact of the penalty on the violator.

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other factors the court deems relevant.

D. All penalties collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. 2000

**Recent legislative year:** Laws 2000, Ch. 193, § 576.

#### 49-464. Violation; classification; penalties; definition

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 United States Code section 11002(a)(2) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the administrator or director has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.

2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant.

Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the director pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test

in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the director to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material after considering the following criteria:

1. The effect of the permit condition on public health and the environment.

2. The effect of the permit condition on the department's ability to enforce the permit program.

3. The effect of noncompliance with the permit condition on emissions.

4. The effect of the permit condition on the director's ability to determine a source's compliance status.

The director shall adopt the rules required by this subsection and section 49-514, subsection G by November 1, 1993.

H. A person who is required to obtain a permit before commencing construction of a source both under this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the director is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the director pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:

1. Violates a permit condition not described in subsection C or G of this section.

2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.

3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.

4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a

single act or series of related acts, constitutes the commission of a single offense.

N. The attorney general may enforce the provisions of this section.

O. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

4. Any good faith efforts to comply with the applicable requirements.

5. The economic impact of the penalty of the violator.

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other aggravating and mitigating factors as the court deems relevant.

P. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.

2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

Q. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the director within twenty-four hours after the source first learned of the violation.

2. The owner or operator of the source provided written notification to the director containing all of the following information within seventy-two hours following the verbal or facsimile notification:

- (a) Confirmation of the violation for which verbal or facsimile notification was provided.

- (b) Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved.

In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.

R. It shall be an affirmative defense to any prosecution under subsection B, H, I or K of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by a permitting authority, the defendant obtained and

relied upon the written advice of a permitting authority that no permit was necessary. Failure of a permitting authority to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described in this subsection shall be deemed to be advice that no permit was necessary for purposes of this subsection.

S. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

T. Under this section, to prove a knowing violation the state must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

U. All civil or criminal penalties or fines assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

V. For purposes of this section, "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. Emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the administrator or the director.

2000

Recent legislative year: Laws 2000, Ch. 193, § 577.

#### 49-465. Air pollution emergency

A. If the director determines that air pollution in any area constitutes or may constitute an emergency risk to the health of those in the area or that national ambient air quality standards are likely to be exceeded, such determination shall be communicated to the governor. The governor may, by proclamation, declare that an emergency exists and may prohibit, restrict or condition the following:

1. Motor vehicle traffic.
2. The operation of retail, commercial, manufacturing, governmental, industrial, or similar activity.
3. Operation of incinerators.
4. The burning or other consumption of fuels.
5. The burning of any materials whatsoever.
6. Any and all other activity which contributes or may contribute to the emergency.

B. If the governor declares that an emergency exists pursuant to subsection A, the governor shall prohibit, restrict or condition the employment schedules for employees of this state and its political subdivisions, and on a voluntary basis only, may encourage private employers to develop similar work rules to restrict vehicle emissions during air quality emergencies. Any unscheduled leave that an employee of this state or its political subdivisions is required to take because of the prohibition, restriction or condition shall be leave with pay.

C. Orders of the governor shall be enforced by the department and the state and local police and air

pollution enforcement personnel forces. Those authorized to enforce the orders may use reasonable force required in the enforcement of the orders, and may take reasonable steps required to assure compliance, including but not limited to the following:

1. Enter upon any property or establishment believed to be violating the order and, if a request does not produce compliance, cause compliance with such order.

2. Stopping, detouring, rerouting, and prohibiting vehicle traffic.

3. Disconnecting incinerator or other types of combustion facilities.

1993

#### 49-466. Precedence of actions

For the benefit of the people of the state, court actions and proceedings brought under this article shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare. 1992

#### 49-467. Preservation of rights

It is the purpose of this article to provide additional and cumulative remedies to prevent, abate and control air pollution in the state. Nothing contained in this article shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this article, or any act done by virtue thereof, be construed as estopping the state or any municipality, or owners of land from the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution. 1992

### ARTICLE 3. COUNTY AIR POLLUTION CONTROL

#### 49-471. Definitions

In this article, unless the context otherwise requires:

1. "Advisory council" means any county air pollution control advisory council established pursuant to this article.

2. "Air contaminants" includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials or noxious chemicals, or any other material in the outdoor atmosphere.

3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the board of supervisors.

4. "Appealable agency action":

(a) Means an action that determines the legal rights, duties or privileges of a party.

(b) Does not include any rule, ordinance, order, standard or statement of policy of general application issued by a control officer or board of supervisors to implement, interpret or make specific the legislation enforced or administered by the control officer or board of supervisors.

(c) Does not mean or include any rule that relates to the internal management of a county and that does not affect private rights or interests.

(d) Does not include a decision or action that must be appealed to the hearing board pursuant to section 49-476.01, 49-480.02, 49-482, 49-490 or 49-511 or to a final administrative decision obtained by an administrative appeal under section 49-471.15.

5. "Board of supervisors" means any county board of supervisors.

6. "Control officer" means the executive head of the department authorized or designated to enforce air pollution regulations, or the executive head of an air pollution control district established pursuant to section 49-473.

7. "Final rule" or "final ordinance" means any rule or ordinance approved by the board of supervisors.

8. "Hearing board" means any county air pollution hearing board established pursuant to this article.

9. "Permit" includes all or any part of a county permit, license, certificate, approval, registration, charter or similar form of permission required by law.

10. "Permitting" includes the county process for granting, denying, renewing, revoking, suspending, annulling, withdrawing or amending a permit.

11. "Person" includes any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.

12. "Provision of law" means all or any part of the federal or state constitution or of any federal or state statute, court rule, executive order or rule or ordinance adopted by a board of supervisors.

13. "Register" means the Arizona administrative register.

14. "Rule" or "ordinance":

(a) Means a county statement of general applicability that is adopted by a board of supervisors and that implements, interprets or prescribes law or policy or that describes the procedure of a county.

(b) Includes prescribing fees or the amendment or repeal of a prior rule or ordinance.

(c) Does not include intra-agency memoranda.

15. "Rule or ordinance making" means the process for formulation and adoption of a rule or ordinance.

16. "Special inspection warrant" means an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to the control officer or the control officer's deputies and authorizing the control officer or the control officer's deputies to enter into or upon public or private property for the purpose of making an inspection authorized by law.

17. "Substantive policy statement":

(a) Means a written expression that informs the general public of a current approach to, or opinion of, the requirements of the federal or state constitution, a federal or state statute, a federal, state or county administrative rule, ordinance or regulation or a final judgment of a court of competent jurisdiction, including, if appropriate, the control officer's current practice, procedure or method of action based on that approach or opinion.

(b) Is advisory only.

(c) Does not include internal procedural documents that only affect internal procedures of the county and that do not impose additional requirements or penalties on regulated parties, confidential information or rules or ordinances adopted pursuant to this chapter.

2000

Recent legislative year: Laws 2000, Ch. 194, § 2.

#### 49-471.01. Regulatory bill of rights

A. To ensure fair and open regulation under this article by counties, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against a county in a court proceeding regarding a county decision as provided in section 12-348.

2. Is entitled to have a county not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 49-471.02.

3. Is entitled to receive the information and notice regarding inspections prescribed in section 49-471.03.

4. May review the full text or summary of all rule or ordinance making activity and the summary of substantive policy statements in the register as provided in sections 49-471.04, 49-471.08, 49-471.09 and 49-471.11.

5. May participate in the rule or ordinance making process as provided in this article, including providing written or oral comments on proposed rules or ordinances as provided in sections 49-471.06 and 49-471.08, and having the control officer adequately address those comments as provided in sections 49-471.07 and 49-471.08.

6. May allege that an existing county agency practice or substantive policy statement constitutes a rule or ordinance and have that county agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule or ordinance as an appealable agency action under section 49-471.15 or as provided in sections 49-471.12 and 49-497.

7. Is entitled to have the control officer not base a permitting decision under this article in whole or in part on conditions or requirements that are not specifically authorized by a provision of this state's law as provided in section 49-471.10, subsection C.

8. Is entitled to have the control officer identify the legal authority for each condition in a permit issued under this article as provided in section 49-471.10, subsection C.

9. Is entitled to have a county not make a rule or ordinance under a general grant of rule or ordinance making authority to supplement a more specific grant of rule or ordinance making authority as provided in section 49-471.10, subsection D.

10. May inspect all rules or ordinances and substantive policy statements of a county, including a directory of documents, in the office of the county control officer as provided in section 49-471.11.

11. May have the control officer approve or deny the person's permit application within a predetermined period of time as provided in section 49-471.13.

12. May have appealable agency actions heard by a hearing board or administrative law judge as provided in section 49-471.15.

13. May have administrative appeal hearings governed by uniform administrative procedures as set

forth in section 49-496 for appeals to the hearing board and title 41, chapter 6, article 10 for appeals to an administrative law judge as provided in 49-471.15.

14. Is entitled to request the control officer to waive overly burdensome permit procedures and requirements for sources that are not required to obtain a Title V permit as provided in section 49-480, subsection M.

15. Is entitled to obtain judicial review of decisions by the hearing board, administrative law judge or the control officer in appropriate cases as provided in sections 49-497, 49-497.01 and 49-497.02.

16. Is entitled, with the county's concurrence, to enter settlement agreements with the county to resolve compliance matters without the need for an order, action in court or allegation or finding of violation as provided in section 49-511.

B. The reference to rights in subsection A of this section does not grant any additional rights that are not prescribed in the other sections of this article. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

#### **49-471.02. Fees; express authority**

The control officer shall not charge or receive a fee unless the fee is expressly authorized by action of the board of supervisors pursuant to statutory authority.

2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

#### **49-471.03. Inspections**

The control officer shall follow the protocols and allow permittees opportunities to correct deficiencies found during inspections in a manner substantially identical to section 41-1009, except that section 41-1009, subsection L, paragraph 1 does not apply. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

#### **49-471.04. Notice of proposed rule or ordinance making**

A. Before a board of supervisors adopts or amends a rule or ordinance that is subject to section 49-112, subsection A or a rule or ordinance that does not otherwise qualify under section 41-471.08, subsection A, the control officer shall:

1. File a notice of a proposed rule or ordinance making with the secretary of state for publication in the register. The secretary of state shall publish the notice in the next issue of the register at no cost to the county. The notice shall include:

- (a) The preamble as prescribed in section 49-471.05.
- (b) The exact wording of the rule or ordinance.

2. At the time the control officer files a notice of the proposed rule or ordinance making with the secretary of state, notify by regular mail, fax or electronic mail each person who has made a timely request to the county for notification of the proposed rule or ordinance making and to each person who has requested notification of all proposed rule or ordinance makings. A county may provide the notification prescribed in this paragraph in a periodic newsletter. The control officer may purge the control officer's list of persons requesting notification of proposed rule or ordinance makings once each year by providing notice of the purge in the manner prescribed in this paragraph.

B. Before adopting or amending a rule or ordinance pursuant to section 49-112, subsection B, a control officer and board of supervisors shall follow the procedure established in this section or in section 49-471.08.

2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

#### **49-471.05. Contents of preamble**

The preamble shall include:

1. Reference to the specific statutory authority for the rule or ordinance.

2. The name and address of county personnel with whom persons may communicate regarding the rule or ordinance.

3. For the proposed rule or ordinance, a description of the rule or ordinance making process, including the procedure for requesting an oral proceeding.

4. An explanation of the rule or ordinance, including the control officer's reasons for initiating the rule or ordinance.

5. A reference to any study that the control officer proposes to rely on in the control officer's evaluation of or justification for the rule or ordinance and where the public may obtain or review the study, all data underlying the study, any analysis of the study and other supporting material.

6. An economic, small business and consumer impact statement that includes those elements prescribed in section 41-1055, subsections A, B and C.

7. The proposed effective date of the rule or ordinance.

8. Such other matters as are prescribed by statute and that are applicable to the county or to any specific rule or ordinance or class of rules or ordinances.

9. For a final rule or ordinance, a list of all previous notices appearing in the register addressing the proposed rule or ordinance and a concise explanatory statement prescribed in section 49-471.07, subsection B. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

#### **49-471.06. Public participation; written statements; oral proceedings**

A. A control officer may meet informally with any interested party for the purpose of discussing a proposed rule or ordinance making action. The control officer may solicit comments, suggested language or other input on the proposed rule or ordinance. The control officer may publish notice of these meetings in the register at no cost to the county.

B. For at least thirty days after publication of the notice of the proposed rule or ordinance making, the control officer shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule or ordinance and preamble, with or without the opportunity to present them orally.

C. Before adopting or amending a rule or ordinance pursuant to section 49-471.04, subsection A, a control officer shall schedule an oral proceeding on a proposed rule or ordinance if, within thirty days after the published notice of proposed rule or ordinance making, a written request for an oral proceeding is submitted to the county.

D. An oral proceeding on a proposed rule or ordinance may not be held earlier than thirty days after

notice of its location and time is published in the register. The notice for the oral proceeding may be published concurrently with the notice inviting comment generally. The control officer shall determine a location and time for the oral proceeding that affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule or ordinance, and persons may ask questions regarding the proposed rule or ordinance and present oral argument, data and views on the proposed rule or ordinance.

E. The control officer, or the control officer's designee shall preside at an oral proceeding on a proposed rule or ordinance. Oral proceedings shall be open to the public and shall be recorded by stenographic or other means.

F. The board of supervisors may adopt rules or ordinances for the conduct of oral proceedings. 2000

Recent legislative year: Laws 2000, Ch. 194, § 3.

#### 49-471.07. Time and manner of rule or ordinance making

A. A board of supervisors may not act on a rule or ordinance until the rule or ordinance making record is closed.

B. At the time a control officer submits a rule or ordinance to the board of supervisors, the control officer shall issue a concise explanatory statement containing:

1. An indication of any change between the text of the proposed rule or ordinance or preamble contained in the notice of proposed rule or ordinance making published in the register and the text of the rule or ordinance submitted to the board of supervisors, with the reasons for any change.

2. An evaluation of the arguments for and against the rule or ordinance, including a response to comments received on the proposed rule or ordinance or preamble and any supplemental notices.

C. The board of supervisors shall not adopt a rule or ordinance that is substantially different from the proposed rule or ordinance contained in the notice of proposed rule or ordinance making. If the rule or ordinance is substantially different from the proposed rule or ordinance, the board of supervisors shall terminate the rule or ordinance making proceeding and commence a new rule or ordinance making proceeding by filing a new notice of proposed rule or ordinance making, or the board of supervisors may file a supplemental notice of proposed rule or ordinance making.

D. In determining whether a rule or ordinance is substantially different from the published proposed rule or ordinance on which it is required to be based, all of the following shall be considered:

1. The extent to which all persons affected by the rule or ordinance should have understood that the published proposed rule or ordinance would affect their interests.

2. The extent to which the subject matter of the rule or ordinance or the issues determined by that rule or ordinance are different from the subject matter or issues involved in the published proposed rule or ordinance.

3. The extent to which the effects of the rule or ordinance differ from the effects of the published proposed rule or ordinance if it had been made instead.

E. Within one hundred twenty days after the close of the record on the proposed rule or ordinance making, a control officer shall take one of the following actions:

1. Submit the rule or ordinance to the board of supervisors.

2. Continue or terminate the proceeding by publication of a notice to that effect in the register.

F. A final rule or ordinance is effective on the date the board of supervisors adopts the final rule or ordinance, unless the board of supervisors specifies a later effective date.

G. Within thirty days after adoption by the board of supervisors of the final rule or ordinance, the control officer shall submit a notice to the secretary of state for publication in the next register. The notice shall contain the preamble and text of the final rule or ordinance. The secretary of state shall publish the notice in the next issue of the register at no cost to the county. 2000

Recent legislative year: Laws 2000, Ch. 194, § 3.

#### 49-471.08. Expedited rule or ordinance making

A. If a rule or ordinance is adopted pursuant to section 49-112, subsection B, and the proposed rule or ordinance is a conforming change to directly reflect federal or state rule or law, the rule or ordinance making may be declared an expedited rule or ordinance making and is not subject to section 49-471.07, except as otherwise provided in this section, if all of the following apply:

1. The rule or ordinance making is substantially identical to the sense, meaning and effect of the federal or state rule or law from which it is derived.

2. The control officer makes a written finding setting forth the reasons why the rule or ordinance making is necessary and does not alter the sense, meaning or effect of the federal or state rule or law from which it is derived.

3. Fees established in the rule or ordinance do not exceed limits specified in section 49-112.

B. For ordinances and rules that meet the requirements of subsection A of this section, the control officer shall file a notice with the secretary of state for publication in the register. The notice shall contain the full text of the proposed rule or ordinance, and the written finding required pursuant to subsection A, paragraph 2 of this section. The secretary of state shall publish the notice in the next issue of the register at no cost to the county.

C. For thirty days after the date of publication in the register, the control officer shall accept public comment on the proposed rule or ordinance.

D. Subject to section 49-471.07, subsections C and D after consideration of any comments, the control officer shall submit the expedited rule or ordinance to the board of supervisors for adoption. The rule or ordinance is effective on adoption by the board of supervisors.

E. After adoption by the board of supervisors, the control officer shall submit a notice to the secretary of state for publication in the next issue of the register. The notice shall contain the full text of the final rule or ordinance and the finding required pursuant to subsection A, paragraph 2 of this section. The secretary of

state shall publish the notice in the next issue of the register at no cost to the county. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

**49-471.09. County rule or ordinance making record**

A. A control officer shall maintain for public inspection an official rule or ordinance making record for each proposed rule or ordinance for which a notice is published in the register and each final rule or ordinance filed with the office of the secretary of state.

B. The county rule or ordinance making record shall contain all of the following:

1. Copies of all publications in the register with respect to the rule or ordinance.

2. All written petitions, requests, submissions and comments received by the county and all other written materials considered or prepared by the control officer in connection with the rule or ordinance.

3. Any official transcript of oral presentations made in the proceeding on which the rule or ordinance is based, and any tape recording or stenographic record of those presentations, and any memorandum summarizing the contents of those presentations.

4. A copy of any materials submitted to the board of supervisors.

5. A copy of the final rule or ordinance adopted by the board of supervisors and the preamble, concise explanatory statement and response to comments. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

**49-471.10. Invalidity of rules or ordinances; prohibited agency action**

A. Unless otherwise provided by law, a rule or ordinance is invalid unless it is adopted in substantial compliance with this article.

B. Only the reasons contained in the concise explanatory statement or the preamble may be used by the county as justification for the making of a rule or ordinance in any proceeding in which its validity is at issue.

C. A control officer shall not base an air quality permitting decision in whole or in part on a requirement or condition that is not specifically authorized by a provision of this state's law. No later than September 1, 2000, each permit shall clearly identify the underlying legal authority for each enforceable provision included in the permit. A general grant of authority in this article does not constitute a basis for imposing a permitting requirement or condition unless a rule or ordinance is adopted pursuant to that general grant of authority that specifically authorizes the requirement or condition.

D. A board of supervisors may adopt a rule or ordinance under a general grant of authority if it does not conflict with a more specific grant of authority. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

**49-471.11. Substantive policy statements; directory of rules and policy statements**

A. A control officer shall file substantive policy statements pertaining to this article in the register in accordance with section 41-1013, subsection B.

B. The control officer shall publish at least annually a directory summarizing the subject matter of all cur-

rently applicable rules or ordinances and substantive policy statements pertaining to this article. The control officer shall keep copies of this directory and all of its substantive policy statements at one location. The directory, rules or ordinances, substantive policy statements and any materials incorporated by reference in the directory, rules or ordinances or substantive policy statements shall be open to public inspection at the office of the control officer.

C. On or before June 30 of each year, the control officer shall certify to the board of supervisors that the county is in compliance with this section. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

**49-471.12. Petition for rule or ordinance making or review of practice or policy**

Any person, in a manner and form prescribed by the control officer, may petition the control officer requesting initiation of rule or ordinance making or review of an existing practice or substantive policy statement. Within sixty days after submission of a written petition, the control officer shall issue a comprehensive written decision denying or granting the action requested in the petition. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

**49-471.13. Permitting time frames**

For permits issued pursuant to section 49-480, a control officer shall comply with permitting time frames that are no longer than permitting time frames established by the director pursuant to title 41, chapter 6, article 7.1. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

**49-471.14. Reporting; compliance with time frames**

Beginning on September 1, 2001, and on or before September 1 of each year thereafter, each control officer shall report to the control officer's board of supervisors the county's compliance level with overall time frames for the prior fiscal year. The control officer's reports shall include the number of permits issued or denied by the control officer within the applicable time frames. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 3.

**49-471.15. Administrative appeals**

A. A person whose legal rights, duties or privileges were determined by an appealable agency action or who will be adversely affected by an appealable agency action and who exercised any right to comment on the action provided by law, rule or ordinance may appeal the action to the air pollution hearing board established pursuant to section 49-478 if the grounds for the appeal are limited to issues raised in that party's comments, except that administrative appeals of decisions to approve, deny or revoke a permit, permit revision or conditional order are governed by sections 49-480.02 and 49-482 and hearings on orders of abatement are governed by section 49-490.

B. A notice of appeal under this section shall be filed with the hearing board within thirty days after the county serves notice of the appealable agency action. The notice of appeal shall identify the party, the party's

address, the action being appealed and shall contain a concise statement of the reasons for the appeal. The hearing board shall conduct a public hearing on the appeal within the time prescribed by section 49-482.

C. On the concurrence of the control officer and the appealing party, or if a hearing board is unavailable for any reason, any appeals under this section may be heard before an administrative law judge pursuant to section 41-1092.01, subsection J, and the appeal shall be governed by the procedures prescribed in title 41, chapter 6, article 10 and all associated rules adopted by the office of administrative hearings.

D. Under this section, service of notice of an appealable agency action shall be effected by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice to the party to the action to the party's last address of record with the control officer. 2000

Recent legislative year: Laws 2000, Ch. 194, § 3.

#### 49-471.16. Waiver

Except to the extent expressly precluded by another law, a person may waive in writing any right conferred on that person by this chapter. 2000

Recent legislative year: Laws 2000, Ch. 194, § 3.

#### 49-472. Department studies

Upon the request of any county by its board of supervisors, the department shall conduct such studies as are requested, and at the expense of such county, but limited to the county making the request. Such studies shall be made to determine the nature, extent, distribution and sources of air pollution within such county and the possible methods of control and abatement of such pollution within the county making the request. In the conduct of such requested studies the department may seek cooperative arrangements with state universities and other educational institutions of the state, or with other state departments, the county, municipalities or private agencies of any kind which have available facilities or personnel, or both, suitable for the conduct of one or more areas of such research, under the supervision of the department. 1986

#### 49-473. Board of supervisors

A. The board of supervisors of a county, in order to conserve and promote the public health, safety, and general welfare, shall within its territorial limits, or any portion thereof, investigate the degree to which the atmosphere of the county is contaminated by air pollution and the causes, sources, and extent of such air pollution or, if the state is developing a study in the county pursuant to section 49-424, cooperate with and assist the state in such a study.

B. The board of supervisors of a county shall authorize or designate an existing department of the county government or establish an air pollution control district to carry out the necessary investigations, inspections, and enforcement of any rules and regulations adopted pursuant to this article.

C. The board of supervisors of a county may in lieu of the provisions of subsection B, in addition to the joint exercise of powers provided for in title 11, chapter 7, article 3, establish a multi-county air quality control region with one or more other counties by agreement

with the board of supervisors of such other county or counties, and contract for the joint administration of this article within such region, including, but not limited to, the joint adoption of regulations and standards and the enforcement thereof by a joint region hearing board. Any region created under this subsection shall be governed by all of the provisions applicable to a county. 1986

#### 49-474. County control boards

The board of supervisors of each county may authorize the board of health or health department of their respective counties in cooperation with the department of environmental quality to:

1. Study the problem of air pollution in the county.
2. Study possible effects on adjoining counties.
3. Cooperate with chambers of commerce, industry, agriculture, public officials and all other interested persons or organizations.
4. Hold public hearings if in their discretion such action is necessary.
5. The board of supervisors by resolution may establish an air pollution control district. 1986

#### 49-474.01. Additional board duties in vehicle emissions control areas; definitions

A. The board of supervisors of a county which contains any portion of area A or area B as defined in section 49-541 shall:

1. In area A, in consultation with the designated metropolitan planning organization, synchronize traffic control signals on all existing and new roadways, within the unincorporated area and at jurisdictional boundaries, which have a traffic flow exceeding fifteen thousand motor vehicles per day.

2. In area A, beginning January 1, 2000, develop and implement plans to stabilize targeted unpaved roads, alleys and unpaved shoulders on targeted arterials. The plans shall address the performance goals, the criteria for targeting roads, alleys and arterials, a schedule for implementation, funding options and reporting requirements.

3. In area A, acquire or utilize vacuum systems or other dust removal technology to reduce the particulates attributable to conventional crack sealing operations as existing equipment is retired.

4. In area A, beginning January 1, 2008, develop and implement plans to stabilize targeted unpaved roads, alleys and unpaved shoulders on targeted arterials. The plans shall address the performance goals, the criteria for targeting the roads, alleys and shoulders, a schedule for implementation, funding options and reporting requirements. Priority shall be given to the following:

(a) Unpaved roads with more than one hundred average daily trips.

(b) Unpaved shoulders on arterial roads and other road segments where vehicle use on unpaved shoulders is evident or anticipated due to projected traffic volume.

5. In a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area, no later than March 31, 2008, adopt or amend codes or ordinances and, no later than October 1, 2008, commence enforcement of those codes or

ordinances as necessary to require that parking, maneuvering, ingress and egress areas at developments other than residential buildings with four or fewer units are maintained with one or more of the following dustproof paving methods:

- (a) Asphaltic concrete.
- (b) Cement concrete.
- (c) Penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate.

(d) A stabilization method approved by the county.

6. In a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area, no later than March 31, 2008, adopt or amend codes or ordinances and, no later than October 1, 2009, commence enforcement of those codes or ordinances as necessary to require that parking, maneuvering, ingress and egress areas three thousand square feet or more in size at residential buildings with four or fewer units are maintained with a paving or stabilization method authorized by the county by code, ordinance or permit.

7. In area A, no later than March 31, 2008, adopt or amend codes or ordinances as necessary to restrict vehicle parking and use on unpaved or unstabilized vacant lots.

8. In area A, require that new or renewed contracts for street sweeping on city streets must be conducted with street sweepers that meet the south coast air quality management district rule 1186 street sweeper certification specifications for pick up efficiency and PM-10 emissions in effect on January 1, 2007.

9. In area B, synchronize traffic control signals on roadways with a traffic flow exceeding fifteen thousand motor vehicles per day.

10. Implement adjusted work hours for at least eighty-five per cent of county employees in area A each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

11. In a county with a population of two million or more persons or any portion of a county within an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area, no later than March 31, 2008, adopt rule provisions, and, no later than October 1, 2008, commence enforcement of those rule provisions regarding the stabilization of disturbed surfaces of vacant lots that include the following:

- (a) Reasonable written notice to the owner or the owner's authorized agent or the owner's statutory agent that the unpaved disturbed surface of a vacant lot is required to be stabilized. The notice shall be given not less than thirty days before the day set for compliance and shall include a legal description of the property and the estimated cost to the county for the stabilization if the owner does not comply. The notice shall be either personally served or mailed by certified mail to the owner's statutory agent, to the owner at the owner's last known address or to the address to which the tax bill for the property was last mailed.

(b) Authority for the county to enter the lot to stabilize the disturbed surface at the expense of the owner if the vacant lot has not been stabilized by the day set for compliance.

(c) Methods for stabilization of the disturbed surface of the vacant lot, the actual cost of stabilization and the fine that may be imposed for a violation of this section.

B. For the purposes of subsection A, paragraph 11 of this section:

1. "Disturbed surface" means a portion of the earth's surface or material placed on the earth's surface that has been physically moved, uncovered, destabilized or otherwise modified from its undisturbed native condition if the potential for the emission of fugitive dust is increased by the movement, destabilization or modification.

2. Vacant lots do not include any site of disturbed surface area that is subject to a permit issued by a control officer that requires control of PM-10 emissions from dust generating operations.

C. The board of supervisors of a county that contains any portion of area A as defined in section 49-541 shall make and enforce ordinances consistent with section 49-588 to reduce or encourage the reduction of the commuter use of motor vehicles by employees of the county and employees whose place of employment is within area A.

D. The board of supervisors in a county that contains any portion of area A shall develop and implement a vehicle fleet plan for the purpose of encouraging and progressively increasing the use of alternative fuels and clean burning fuels in county owned vehicles operating in area A.

E. The plan shall include a timetable for increasing the use of alternative fuels and clean burning fuels in fleet vehicles either through purchase or conversion. The timetable shall reflect the following schedule and percentage of vehicles that operate on alternative fuels or clean burning fuels:

1. At least eighteen per cent of the total fleet by December 31, 1995.

2. At least twenty-five per cent of the total fleet by December 31, 1996.

3. At least fifty per cent of the total fleet by December 31, 1998.

4. At least seventy-five per cent of the total fleet by December 31, 2000 and each year thereafter.

F. The requirements of subsections D and E of this section may be waived on receipt of certification supported by evidence acceptable to the department that the county is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using alternative fuels or clean burning fuels at a projected cost that is reasonably expected to result in net costs of no greater than ten per cent more than the net costs associated with the continued use of conventional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied. Applications for waivers shall be filed with the department pursuant to section 49-412. An entity that receives a waiver pursuant to this section shall retrofit fleet heavy-duty diesel vehicles with a gross vehicle weight of eight thousand five hundred pounds or more, that were manufactured in or before model year 1993 and that are the subject of the waiver with a technology that is effective at reducing particulate emissions at

least twenty-five per cent or more and that has been approved by the United States environmental protection agency pursuant to the urban bus engine retrofit/rebuild program. The entity shall comply with the implementation schedule pursuant to section 49-555.

G. If the requirements of subsections D and E of this section are met by the use of clean burning fuel, vehicle equivalents under those requirements shall be calculated as follows:

1. One vehicle equivalent for every four hundred fifty gallons of neat biodiesel or two thousand two hundred fifty gallons of a diesel fuel substitute prescribed in section 1-215, paragraph 7, subdivision (b).

2. One vehicle equivalent for every five hundred thirty gallons of the fuel prescribed in section 1-215, paragraph 7, subdivision (d).

H. Subsection A, paragraphs 5, 6 and 7 of this section do not apply to any site that has a permit issued by a control officer as defined in section 49-471 for the control of fugitive dust from dust generating operations.

I. For the purposes of this section, "alternative fuel" and "clean burning fuel" have the same meanings prescribed in section 1-215. 2007

**Recent legislative year:** Laws 1999, Ch. 168, § 23; Laws 2000, Ch. 148, § 5; Laws 2001, Ch. 70, § 4; Laws 2002, Ch. 260, § 14; Laws 2004, Ch. 95, § 3; Laws 2006, Ch. 349, § 8; Laws 2006, Ch. 388, § 5; Laws 2007, Ch. 292, § 16.

**49-474.02. Voluntary lawn and garden equipment emissions reduction program; voluntary lawn and garden equipment emissions reduction fund; criteria**

A. A county with a population of more than five hundred thousand persons according to the most recent United States decennial census shall establish and coordinate a voluntary lawn and garden equipment emissions reduction program to begin no later than July 1, 1998. The equipment owner's participation in the program is voluntary. The county may contract with an independent contractor to develop and implement all or any portion of the program. The program shall provide for real and quantifiable emissions reductions. The county shall coordinate the program with any similar programs offered by any person, organization or business.

B. A person may participate in the program if the lawn or garden equipment starts and is used for residential or commercial purposes.

C. A voucher shall be issued in the amount of two hundred dollars to an owner of a commercial lawn mower that is retired and that meets the requirements of this section. The voucher shall be used for the purchase of a lawn mower that generates lower emissions.

D. A voucher shall be issued in the amount of at least one hundred dollars to an owner of a residential lawn mower that is retired and that meets the requirements of this section. The voucher shall be used for the purchase of an electric lawn mower.

E. A voucher shall be issued in the amount of at least fifty dollars to the owner of a gasoline-powered lawn or garden device that is retired and that meets the requirements of this section. The voucher shall be used for the purchase of a lawn or garden device that generates lower emissions.

F. Equipment that is retired pursuant to this section shall not be used in this state.

G. The voluntary lawn and garden equipment emissions reduction fund is established. The director shall administer the fund. The fund shall consist of monies from the following sources:

1. Monies appropriated by the legislature.
2. Monies appropriated by political subdivisions.
3. Gifts, grants and donations.

H. The county shall prepare and submit on December 1 of each year a progress report on the voluntary lawn mower emissions reduction program containing at least the following information:

1. The number of lawn mowers and other lawn and garden devices retired by brand and year of manufacture.

2. The cost-effectiveness of the program in terms of dollars spent per ton of emissions reductions.

3. Any recommendations for improving the effectiveness of the program.

4. The administrative costs of the program. 1998

**49-474.03. Voluntary vehicle repair and retrofit program; criteria; fund; report**

A. A county with a population of more than four hundred thousand persons according to the most recent United States decennial census shall operate and administer a voluntary vehicle repair and retrofit program in the county. The county shall coordinate the program with the department of environmental quality and the department of transportation. A vehicle owner's participation is voluntary. The county may contract with an independent contractor to develop and implement all or any portion of the program. The program shall provide for real and quantifiable emissions reduction based on actual emissions testing performed on the vehicle before repair or retrofit.

B. A vehicle owner may participate in the program if all of the following criteria are met:

1. The owner is willing to participate in the program.

2. The vehicle being repaired or retrofitted is functionally operational.

3. The vehicle being repaired or retrofitted is titled in this state, has taken the emissions inspection test pursuant to section 49-542, subsection A, has been registered during the immediately preceding twelve months and has not been unregistered for more than sixty days.

4. The vehicle being repaired or retrofitted is at least twelve years older than the current calendar year.

5. The vehicle is required to take the emissions inspection test and the vehicle fails the emissions test in the emissions inspection results portion of the test. The vehicle owner shall apply to the program not more than sixty days after failing the test.

6. The emissions control system has not been tampered with.

7. The emissions control system has not been removed or disabled, in whole or in part.

8. The vehicle is taken to a participating repair facility. Any repairs performed at an unauthorized repair facility are not eligible for payment.

9. Participation in the program is limited to one vehicle per owner.

10. Motor homes, motorcycles, salvage vehicles and fleet vehicles are not eligible to participate in the program.

C. Notwithstanding subsection B or D of this section, diesel powered motor vehicles with a gross vehicle rating of more than eight thousand five hundred pounds, that are registered in area A or B, as defined pursuant to section 49-541, and that fail any random roadside vehicle test conducted by the state or that fail the emissions test conducted pursuant to section 49-542 are eligible for up to one thousand dollars in repair or retrofit costs from the program. Qualified vehicle owners pursuant to this subsection shall be responsible for one-half of the costs of the qualified repairs and the other half of the costs shall be funded from the program up to one thousand dollars. An owner of vehicles that are registered as a fleet shall not receive more than ten thousand dollars in total monies. No more than twenty-five per cent of the program funds in any year may be used for the purposes of this subsection.

D. The county shall operate and administer an emissions control repair and retrofit program in cooperation with the department that provides that:

1. Vehicle owners who qualify for the repair and retrofit program shall pay the first one hundred fifty dollars as a copayment.

2. Vehicles that require more than seven hundred dollars in repair costs are not eligible unless the vehicle owner chooses to pay additional costs.

3. A vehicle that is able to accept a retrofit kit shall have a retrofit kit installed. A vehicle that requires more than eight hundred dollars in aggregated retrofit parts and labor costs is not eligible for the program unless the vehicle owner pays the additional costs.

E. A county with a population of more than one million two hundred thousand persons shall operate and administer a program to replace catalytic converters on motor vehicles that fail to meet emissions standards due to failure of the catalytic converter system if that failure is not the result of tampering.

F. The voluntary vehicle repair and retrofit program fund is established. The director shall administer the fund. Not more than five per cent of the monies in the fund may be used for the purpose of educating the general public about the program and eligibility for the program. The fund consists of monies from the following sources:

1. Monies appropriated by the legislature.

2. Monies appropriated by political subdivisions.

3. Monies deposited pursuant to section 49-551, subsection B.

4. Gifts, grants and donations.

G. By December 1 of each year the county shall prepare and submit a progress report to the department of environmental quality, the department of transportation, the speaker of the house of representatives, the president of the senate, the governor, the secretary of state and the director of the Arizona state library, archives and public records on the voluntary vehicle repair and retrofit program that contains at least the following information:

1. The number of vehicles repaired or retrofitted by model year.

2. The cost-effectiveness of the program in terms of dollars spent per ton of vehicle emissions reductions.

3. Any recommendations for improving the effectiveness of the program.

4. The administrative costs of the program. 2002

Recent legislative year: Laws 2000, Ch. 88, § 95; Laws 2000, Ch. 404, § 1; Laws 2001, Ch. 229, § 1; Laws 2002, Ch. 45, § 1.

#### 49-474.04. Voluntary vehicle repair and retrofit program advisory committee

The board of supervisors shall appoint an advisory committee representing the department of transportation, the department of environmental quality and the parties affected by the voluntary vehicle repair and retrofit program, including automobile hobbyists and the automotive aftermarket products industry, to advise and make recommendations on the development and implementation of the program. Members shall be appointed for staggered terms of two years. Initial terms shall be determined by lot. 1998

Recent legislative year: Laws 1998, Ch. 217, § 34.

#### 49-474.05. Dust control; training; site coordinators

A. This section applies in a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area.

B. No later than January 1, 2008, the control officer shall develop and implement basic and comprehensive training programs for the suppression of PM-10 emissions from sources of PM-10 that are subject to a permit issued by a control officer that requires control of PM-10 emissions from dust generating operations. The control officer may approve training developed and provided by a third party and the board of supervisors may adopt rules prescribing standards for dust control training.

C. At least once every three years, the following persons are required to successfully complete basic dust control training:

1. The site superintendent or other designated on-site representative of the permit holder if present at a site that has more than one acre of disturbed surface area that is subject to a permit issued by a control officer requiring control of PM-10 emissions from dust generating operations.

2. Water truck and water pull drivers.

D. Persons who are required to be trained under this section shall complete the training no later than December 31, 2008. All persons who have successfully completed training during the 2006 and 2007 calendar years are deemed to have satisfied this requirement if the training program completed was conducted or approved by a county air pollution control officer. Completion of the training required under subsection G satisfies the requirements of this subsection.

E. No later than June 30, 2008, the permittee for any site of five acres or more of disturbed surface area subject to a permit issued by a control officer requiring control of PM-10 emissions from dust generating operations shall have on site at least one dust control coordinator trained in accordance with this section at all times during primary dust generating operations related to the purposes for which the dust control permit was obtained.

F. A dust control coordinator has full authority to ensure that dust control measures are implemented on site, including conducting inspections, deployment of dust suppression resources and modification or shut-

down of activities as needed to control dust. The dust control coordinator shall be responsible for managing dust prevention and dust control on the site.

G. At least once every three years, the dust control coordinator shall successfully complete a comprehensive dust control class conducted or approved under subsection A by the county air pollution control officer with jurisdiction over the site. The dust control coordinator shall have a valid dust training certification identification card readily accessible on site while acting as a dust control coordinator. All persons having successfully completed training during the 2006 and 2007 calendar years are deemed to have satisfied this requirement if the training program completed was conducted or approved by a county air pollution control officer.

H. Subsections C and D do not apply when on-site dust generating operations are conducted by a permittee who is required to obtain a single permit for multiple noncontiguous sites that is issued by a control officer and that requires control of PM-10 emissions.

I. The requirements of subsections E and F lapse if all of the following apply:

1. The area of the disturbed surface area is less than five acres.

2. The previously disturbed areas are stabilized in accordance with the requirements of applicable rules.

3. The permittee provides notice of the acreage stabilized to the control officer.

J. Permittees who are required to obtain a single permit for multiple noncontiguous sites that is issued by a control officer and that requires control of PM-10 emissions from dust generating operations shall have on sites with greater than one acre of disturbed surface area at least one individual who is designated by the permittee as a dust control coordinator trained in accordance with subsection C. The dust control coordinator shall be present on site at all times during primary dust generating activities that are related to the purposes for which the permit was obtained. This subsection does not apply to permittees subject to subsections B and C.

2007

Recent legislative year: Laws 2007, Ch. 292, § 17.

#### **49-474.06. Dust control; subcontractor registration; fee**

A. In an area designated by the environmental protection agency as a serious PM-10 nonattainment area or a maintenance area that was designated as a serious PM-10 nonattainment area, a subcontractor who is engaged in dust generating operations at a site that is subject to a permit that is issued by a control officer and that requires control of PM-10 emissions from dust generating operations shall register with the control officer by submitting information in the manner prescribed by the control officer. The control officer shall issue a registration number after payment of the fee authorized under subsection C.

B. The subcontractor shall have its registration number readily accessible on site while conducting any dust generating operations.

C. The control officer may establish and assess a fee for the registration required under subsection A based on the total cost of processing the registration and issuance of a registration number.

2007

Recent legislative year: Laws 2007, Ch. 292, § 17.

#### **49-474.07. Voluntary diesel equipment retrofit program; criteria; inventory; permits**

A. A county with a population of more than four hundred thousand persons shall operate and administer a voluntary diesel emissions retrofit program in the county for the purpose of reducing particulate emissions from diesel equipment. The program shall provide for real and quantifiable emissions reductions based on actual emissions reductions by an amount greater than that already required by applicable law, rule, permit or order and computed based on the percentage emissions reductions from the testing of the diesel retrofit equipment prescribed in subsection C as applied to the rated emissions of the engine and using the standard operating hours of the equipment.

B. A person may participate in the program if both of the following apply:

1. The person is the owner of diesel powered equipment that requires a permit issued pursuant to this article for lawful operation.

2. The person reports to the control officer on the type of equipment that is retrofitted, provides a method for calculating the emissions reductions achieved that is approved by the control officer and provides evidence that the retrofitted equipment is actually used in a manner that results in lower particulate emissions with no increase in emissions of other pollutants.

C. The voluntary diesel retrofit program shall provide for the following:

1. Each person who participates shall allocate to the air quality emissions reduction inventory for that county one-half of the total particulate emissions reduction achieved through that person's retrofit of diesel equipment operating at the permitted site whether or not that equipment is required to have a permit.

2. Each person who participates shall retain one-half of the total particulate emissions reduction achieved through that person's retrofit of equipment at the site for purposes of receiving a modification to an existing permit or a provision in a new permit that allows for extended hours of operation for the permitted equipment, as compared to the existing permit, or for new permits, as compared to permits for similar equipment.

3. The diesel emissions reduction equipment that is retrofitted shall be registered with the department of environmental quality with notice to the applicable county, shall be tested with an ISO 8178 test by a properly equipped laboratory and shall demonstrate at least a thirty-five per cent reduction in particulate pollution with no increase in the generation or emission of other regulated pollutants. This paragraph applies without regard to whether the participant is required to obtain an air quality permit for the equipment.

4. The control officer shall provide a method for determining the participant's eligibility for the program and for the modification of existing permits or for incorporating this program's provisions into the terms of any applicable new permits as well as any reporting requirements to ensure continued use of the emissions reduction measures.

D. This section does not authorize a permit condition or a modification to a permit condition that would violate a requirement of the clean air act, this chapter

or a rule adopted under this chapter, including the national ambient air quality standards. This section does not authorize the use of reductions in mobile source emissions for purposes of determining the applicability of new source review requirements. 2007

Recent legislative year: Laws 2007, Ch. 292, § 17.

#### 49-475. Powers and duties

The air pollution control district established by the board of supervisors shall have the power to:

1. Have perpetual succession.
2. Sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.
3. Adopt a seal and alter it at its pleasure.
4. Take by grant, purchase, gift, or lease, hold, use, enjoy, and to lease or dispose of real or personal property of every kind within or without the district necessary to the full exercise of its powers.
5. Lease, sell or dispose of any property or any interest therein whenever in the judgment of the air pollution control board such property, or any interest therein, or part thereof, is no longer required for the purposes of the district, or may be leased for any purpose without interfering with the use of the same for the purposes of the district, and to pay any compensation received therefor into the general fund of the district. 1986

#### 49-476. Authorization to accept funds or grants

The department of environmental quality, county health departments, or boards of supervisors may accept and expend in accordance with the terms of the grant any funds granted to it for research of air pollution by the federal government, any political subdivision of the state, any agency or branch of the federal or state governments, or any private agency. 1986

#### 49-476.01. Monitoring

A. The control officer may require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the control officer either:

1. Determines that monitoring, sampling or other studies are necessary to determine the effects of the facility on levels of air pollution.
2. Has reasonable cause to believe a violation of this article, rules adopted pursuant to this article or a permit issued pursuant to this article has been committed.
3. Determines that those studies or data are necessary to accomplish the purposes of this article, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.

B. The board of supervisors shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions or air pollution which may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424 or section 49-425, subsection A. In the development of the rules, the board

shall consider the cost and effectiveness of the monitoring, sampling or other studies.

C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the control officer may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the control officer shall consider the relative cost and accuracy of any alternatives which may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The control officer may require such monitoring, sampling or other quantification by permit or order if the control officer determines in writing that all of the following conditions are met:

1. The actual or potential emissions of air pollution may adversely affect public health or the environment.
2. An adequate scientific basis for the monitoring, sampling or quantification method exists.
3. The monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.
4. The monitoring, sampling or quantification method is reasonably accurate.
5. The cost of the method is reasonable in light of the use to be made of the data.

D. Orders issued or permit conditions imposed pursuant to this section shall be appealable to the hearing board in the same manner as that prescribed for orders of abatement in sections 49-489 and 49-490 and for permit conditions in section 49-482. 1992

#### 49-477. Advisory council

The board of supervisors may appoint an advisory council of such membership as it deems necessary to advise and consult with the board of supervisors, the control agency, and the control officer in effecting the purposes of this article. 1986

#### 49-478. Hearing board

A. The board of supervisors shall appoint an air pollution hearing board.

B. The hearing board shall consist of five members. The five members shall be knowledgeable in the field of air pollution. At least one member of the board shall be an attorney licensed to practice law in this state. At least three members shall not have a substantial interest, as defined in section 38-502, in any person required to obtain a permit pursuant to this article. Each board member shall serve for a term of three years.

C. The hearing board shall select a chairman and vice-chairman and such other officers as it deems necessary.

D. The board of supervisors may authorize compensation for hearing board members, and may authorize reimbursement for subsistence and travel, including travel from and to their respective places of residence when on official business. 1990

#### 49-479. Rules; hearing

A. The board of supervisors shall adopt such rules as it determines are necessary and feasible to control the release into the atmosphere of air contaminants originating within the territorial limits of the county or

multi-county air quality control region in order to control air pollution, which rules, except as provided in subsection C shall contain standards at least equal to or more restrictive than those adopted by the director. In fixing such standards, the board or region shall give consideration but shall not be limited to:

1. The latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.

2. Atmosphere conditions and the types of air pollution agent or agents which, when present in the atmosphere, may interact with another agent or agents to produce an adverse effect on public health and welfare.

3. Securing, to the greatest degree practicable, the enjoyment of the natural attractions of the state and the comfort and convenience of the inhabitants.

B. No rule may be enacted or amended except after the board of supervisors first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. A county may adopt or amend a rule, emission standard, or standard of performance that is as stringent or more stringent than a rule, emission standard or standard of performance for similar sources adopted by the director only if the county complies with the applicable provisions of section 49-112.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

1994

#### 49-480. Permits; fees

A. The board of supervisors may adopt a program for the review, issuance, revision, administration and enforcement of permits and for public review of proposed permits for sources that are subject to section 49-426, subsection A, that are not under the jurisdiction of the state pursuant to section 49-402 and that are not otherwise exempt pursuant to section 49-426, subsection B and subsection K of this section. This program shall include provisions for administration, inspection and enforcement of general permits issued pursuant to section 49-426, subsection H and subsection J of this section.

B. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and required to be obtained pursuant to title V of the clean air act including sources that emit hazardous air pollutants shall be substantially identical to procedures for the review, issuance, revision and administration of permits issued by the department under this chapter. Such procedures shall comply with the requirements of sections 165, 173 and 408 and titles III and V of the clean air act and implementing regulations for sources subject to titles III and V of the clean air act. Procedures for the review, issuance, revision and administration of permits issued pursuant to this section and not required to be obtained pursuant to title V of the clean air act shall impose no greater procedural burden on the permit applicant than procedures for the review, issuance, revision and administration of permits issued by the department under sections 49-426

and 49-426.01 and other applicable provisions of this chapter.

C. Upon adoption of a permit program by the board of supervisors pursuant to this section, no person may begin actual construction, operate or make a modification to any source subject to the permit program without complying with the requirements of that program.

D. Permits issued pursuant to a program adopted under this section are subject to payment of a reasonable fee to be determined as follows:

1. For any source required to obtain a permit under title V of the clean air act, the board of supervisors shall establish by rule a system of fees consistent with and equivalent to that prescribed under section 502 of the clean air act. Such system shall prescribe procedures for increasing the fee each year by the percentage, if any by which the consumer price index for the most recent calendar year ending before the beginning of such year exceeds the consumer price index for the calendar year 1989.

2. For any facility subject to the permitting requirements of this chapter but not required to obtain a permit under title V of the clean air act, the board of supervisors shall determine a permit fee based on all reasonable direct and indirect costs required to administer the permit, but not exceeding twenty-five thousand dollars.

The board of supervisors shall establish an annual inspection fee, not to exceed the average cost of services.

E. Funds received for permits issued pursuant to this section shall be deposited in a special public health fund and shall be used by the control officer to defray the costs of implementing this article.

F. Permits issued pursuant to this section for a source required to obtain a permit under title V of the clean air act shall, and for a source that is not required to obtain a title V permit may, contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.
2. Enforceable emission limitations and standards.
3. A schedule for compliance, if applicable.
4. The requirement to submit at least every six months the results of any required monitoring.
5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

G. The control officer may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

H. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major source, the control officer shall require revisions to the permit to incorporate applicable standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The control officer shall require any revisions as expeditiously as practicable but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of the standards and regulations is after the expiration of the permit.

Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

I. Except as provided in section 49-426, subsection B and subsection A of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel in any machine, incinerator or device shall first obtain a permit from the control officer. Any permit issued by the control officer under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.

2. The frequency and types of fuel testing to be conducted by the person.

3. The frequency and type of emissions testing or monitoring to be conducted by the person.

4. Requirements for record keeping and reporting.

5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning used oil, used oil fuel, hazardous waste or hazardous waste fuel.

J. The board of supervisors may authorize by rule the control officer to issue a general permit for a defined class of facilities if that class of facilities has not been issued a general permit by the director for sources in that county pursuant to section 49-426, subsection H. The criteria for issuance of a general permit are those applicable to the director pursuant to section 49-426, subsection G.

K. The board of supervisors may identify by rule sources or classifications of sources for which a permit is not required and pollutant-emitting activities and emissions units at permitted sources that are not subject to inclusion in the permit. The criteria for exemptions granted pursuant to this subsection are those applicable to exemptions granted by the director pursuant to section 49-426, subsection B.

L. In determining whether a permitting threshold established pursuant to this section applies to an existing source, the control officer shall exclude particulate matter that is not subject to a national ambient air quality standard under the clean air act.

M. The board of supervisors may adopt a rule or ordinance that establishes less burdensome permit procedures and requirements for permits that are not required to be obtained pursuant to title V of the clean air act. Until the effective date of a rule or ordinance adopted by a board of supervisors pursuant to this section, the control officer, either on the control officer's own initiative or on the request of a permit applicant, may waive requirements that are not appropriate for non-title V sources.

2000

**Recent legislative year:** Laws 1997, Chs. 175 and 178; Laws 2000, Ch. 194, § 4.

#### **49-480.01. Permits; changes within a source; revisions**

A. The board of supervisors shall establish by rule provisions to allow changes within a source required to obtain a permit under title V of the clean air act without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.

2. The changes do not result in an emission that is greater than the emissions allowed under the permit.

3. The source provides the control officer with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.

4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section. Rules adopted pursuant to this section for title V sources may prescribe a different time limit for notifications associated with emergency conditions.

B. Any permit issued pursuant to section 49-480 may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or a termination, or a notification filed pursuant to subsection A does not stay any effective permit condition. The control officer may require in writing that the applicant provide within a reasonable time any information that the control officer identifies as necessary for the control officer to determine if cause exists for revising, revoking and reissuing, or terminating, the permit, or to determine compliance with permit conditions.

C. The board of supervisors shall establish by rule procedures related to public and departmental reviews of changes to a permitted source. The procedures shall impose no greater procedural burden on the permittee than the procedures adopted by the director pursuant to section 49-426.01, subsection C.

1996

#### **49-480.02. Appeals of permit actions**

A. Within thirty days after the control officer gives notice of approval, denial or revocation of a permit, the applicant or any person who submitted comments pursuant to section 49-480, may request an appeal as provided under section 49-482. The decision after that hearing constitutes the final permit action from which judicial review may be taken pursuant to title 12, chapter 7, article 6.

B. Any person who has an interest that is or may be adversely affected may commence a civil action in superior court against the control officer alleging that the control officer has failed to act in a timely manner consistent with the requirements of section 49-480. No action may be commenced before sixty days after the plaintiff has given notice to the control officer of the plaintiff's intent to file. The court has jurisdiction to require the control officer to act without additional delay.

1992

#### **49-480.03. Federal hazardous air pollutant program; date specified by administrator; prohibition**

A. The board of supervisors shall adopt by rule a program for administration and enforcement of the federal hazardous air pollutant program established by section 112 of the clean air act. The program shall be consistent with and meet the requirements of section 112 of the clean air act and shall contain the following provisions:

1. After the date specified by the administrator in rules adopted pursuant to section 112(g)(1)(B) of the clean air act, no person may obtain a permit or permit revision to modify a major source of federally listed hazardous air pollutants or to construct a new major source of federally listed hazardous air pollutants, unless the control officer determines that the person will install the maximum achievable control technology for

incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine, equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises. 1986

#### 49-486. Notice by building permit agencies

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant for a building permit to determine if an installation permit will possibly be required under the provisions of section 49-480. If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the control officer or the department of environmental quality and shall furnish a copy of such notice to the control officer and the department. 1986

#### 49-487. Classification and reporting; confidentiality of records

A. The board of supervisors by rules which are equal to or more restrictive than those adopted by the director of environmental quality shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, the nature and duration of emissions and such other information as is relevant to air pollution and deemed necessary by the board.

B. The owner, lessee, or operator of a potential air contaminant source shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable and required to determine compliance in a manner acceptable to the control officer, and shall supply monitoring information as directed in writing by the control officer. Such devices shall be available for inspection by the control officer during all reasonable times.

C. Any records, reports or information obtained from any person under this chapter, including records, reports or information obtained or prepared by the control officer or a county employee, shall be available to the public, except that the information or any part of the information shall be considered confidential on either of the following:

1. A showing, satisfactory to the control officer, by any person that the information or a part of the information if made public would divulge the trade secrets of the person.

2. A determination by the county attorney that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this chapter in superior court.

D. Notwithstanding subsection C of this section, the following information shall be available to the public:

1. The name and address of any permit applicant or permittee.

2. The chemical constituents, concentrations and amounts of any emission of any air contaminant.

3. The existence or level of a concentration of an air pollutant in the environment. 1992

#### 49-488. Special inspection warrant

A. The control officer and his deputies charged under this chapter or the rules and regulations adopted pursuant to this chapter with powers or duties involving inspection of real or personal property including buildings, building premises and building contents for the purpose of air pollution control shall be authorized to present themselves before a magistrate and apply for, obtain and execute special inspection warrants. Such inspections shall be limited to property other than the interior of structures used as private residences.

B. Upon showing by the affidavit of the control officer or his deputies that consent to entry for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate for inspection of public or private, real or personal properties. Such warrants shall not be necessary in the case of an emergency where there is an imminent and substantial endangerment to the health of persons.

C. The warrant shall be in substantially the following form:

"County of \_\_\_\_\_, state of Arizona to any control officer or deputy control officer in the county of \_\_\_\_\_ proof by affidavit having been this day made before me by (person or persons whose affidavit has been taken) that in and upon certain premises in the (city, town or county) of \_\_\_\_\_ and more particularly described as follows: (describe the premises with reasonable particularity) there now exists a reasonable governmental interest to determine if said premises comply with (section \_\_\_\_\_ of the Arizona Revised Statutes) and/or (section \_\_\_\_\_ of regulation or ordinance), you are therefore commanded in the day time (or during reasonable business hours), to make an inspection of said premises as soon as practicable.

Date, signature and title of office."

The endorsement on the warrant shall be in substantially the following form:

"Received by me \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ (name of control officer or deputy control officer)."

The return of officer shall be in substantially the following form:

"I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings).  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
(name of control officer or deputy control officer)."

D. The warrant may be served by the control officer or his deputies mentioned in its directions, but by no other person except in aid of the control officer or his deputies, on his requiring it, the control officer or his deputies being present and acting in its execution.

E. A warrant shall be executed and returned to the magistrate who issued it within ten days after its date. After the expiration of that time, the warrant shall unless executed be void.

F. Any person who knowingly refuses to permit an inspection lawfully authorized by warrant issued pursuant to this article is guilty of a petty offense. 1986

#### 49-490. Hearings on orders of abatement

A. An order of abatement issued by the control officer shall become effective immediately upon the expiration of the time during which a request for a hearing may be made pursuant to section 49-511 unless the person or persons named in such order shall have made a timely request for a hearing before the hearing board. If a hearing is requested, the hearing board shall hold the hearing within thirty days from receipt of the request unless such time is extended by the hearing board. Written notice of the time and place of the hearing shall be sent by the hearing board to the person or persons requesting the hearing and to the control officer at least fifteen days before the hearing.

B. If the board, after the hearing, determines that the act or acts set forth in the order constitute a violation of any provision of this article or of the rules adopted pursuant to this article or any requirement of a permit or conditional order issued pursuant to this article and that no conditional order is justified, the board shall affirm or modify the order for abatement. The order may be conditional and require a person to refrain from the particular act or acts unless certain conditions are met. 1992

#### 49-491. Conditional orders; standards; rules

A. The director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of this article, any rule adopted pursuant to this article, or any requirement of a permit issued pursuant to this article if the control officer makes each of the following findings:

1. Issuance of the conditional order will not endanger public health or the environment, or impede attainment of the national ambient air quality standards.

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; the source was in compliance 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.

B. The board of supervisors shall adopt rules necessary for the issuance of conditional orders. Such rules shall specify the minimum requirements for petitions, and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of the state implementation plan, the rules adopted by the board of supervisors shall provide for a public hearing to receive comments on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this article, the rules adopted by the board of supervisors shall conform to the procedures established for permit revisions pursuant to section 49-480.01. 1992

#### 49-492. Petition for conditional order; publication; public hearing

A. A person who seeks a conditional order shall file a petition with the control officer.

B. If the issuance of the conditional order requires a public hearing, the control officer shall set a hearing date within thirty days after the filing of the petition. The hearing date shall be within sixty days after the filing of the petition.

C. 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 section 49-498. The notice shall state that any person may submit comments on the petition. A written comment shall state the name of the person and the person's agent or attorney and shall clearly set forth reasons why the petition should or should not be granted. Grounds for comment shall be limited to whether the petition meets the criteria for issuance of a conditional order prescribed in section 49-491. 1992

#### 49-493. Decisions on petitions for conditional order; terms and conditions

A. Within thirty days after the conclusion of the hearing held pursuant to section 49-492, subsection B, or, if no hearing is held, within sixty days after the filing of the petition, the control officer shall deny the petition or grant the petition on such terms and conditions as the director deems appropriate.

B. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include but not be limited to:

1. A detailed plan for completion of corrective steps needed to conform to the provisions of this article, the rules adopted pursuant to this article, and the requirements of the permit issued pursuant to this article.

2. A requirement that necessary construction shall begin as expeditiously as practicable.

3. Such written reports as may be required.

4. The right to make periodic inspection of the facilities for which the conditional order is granted.

C. A reasonable fee as may be prescribed by the control officer shall be deposited in the special public health fund. 1992

#### 49-494. Term of conditional order; effective date

A. 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 this article and title V of the clean air act, and three years in the case of any other source that is required to obtain a permit pursuant to this article.

B. Except as otherwise provided in paragraphs 1 and 2 of this subsection, a conditional order issued by the control officer shall be effective when issued.

1. If the conditional order varies from the requirements of the state implementation plan, the conditional order shall be submitted to the administrator as a revision to the state implementation plan pursuant to section 110(L) of the clean air act, and shall become effective upon approval by the administrator.

2. If the conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to title V of the clean air act, the conditional order shall be submitted to the administrator if required by section 505 of the clean air act, and in such case shall be effective at the end of the review period specified in such section, unless objected to within such period by the administrator. 1992

#### 49-495. Suspension and revocation of conditional order

If the terms and conditions of the conditional order are being violated, the control officer may seek to revoke or suspend the conditional order granted. In such event, the control officer shall serve notice of such violation on the holder of the conditional order in the manner provided in section 49-498. The notice shall specify the nature of such violation and the date on which a hearing will be held by the hearing board to determine if such a violation has occurred and whether the conditional order should be suspended or revoked. The date of said hearing shall be within thirty days from the date said notice is served upon the holder of the conditional order. 1992

#### 49-496. Decisions of hearing board; subpoenas; effective date

A. All decisions of the hearing board, including the majority of opinion and all concurring and dissenting opinions, shall be in writing and shall be of public record.

B. A majority of the total membership of the hearing board shall concur in a decision for it to have effect.

C. The chairman or, in his absence, the vice chairman may issue subpoenas to compel attendance of any person at a hearing and require the production of books, records and other documents material to a hearing. Obedience to subpoenas may be enforced pursuant to section 12-2212.

D. Subject to the approval of the board of supervisors, the hearing board may adopt a manual of procedures governing its operation.

E. Decisions of the hearing board shall become effective not less than thirty days after they are issued unless:

1. A rehearing is granted which shall have the effect of staying the decision.

2. It is determined that an emergency exists which justifies an earlier effective date.

F. The hearing board may revoke or modify an order of abatement or a permit or permit revision only after first holding a hearing within thirty days from the giving of notice of such hearing as provided in section 49-498. 1992

#### 49-497. Declaratory judgment

Any person who is or may be affected by a county rule or ordinance pursuant to this article may obtain a judicial declaration of the validity or construction of the rule or ordinance by filing an action for declaratory relief in superior court in accordance with Title 12, Chapter 10, Article 2. 2000

Recent legislative year: Laws 2000, Ch. 194, § 6.

#### 49-497.01. Judicial review of hearing board or administrative law judge decisions

A. Except as provided in this section, a hearing board decision or a decision of an administrative law judge in lieu of a hearing board is subject to judicial review pursuant to Title 12, Chapter 7, Article 6.

B. Within thirty days after service of notice of a final decision or order of the board or administrative law judge, or an order denying a rehearing timely applied for, any person who was a party of record in the proceedings before the board or administrative law

judge, including the control officer or department authorized or designated to enforce air pollution regulations, may appeal the decision or order to the superior court in the county in which the hearing was conducted and the scope of the review shall be determined pursuant to section 12-910.

C. A notice of appeal, designating the grounds for appeal, and a demand in writing for a certified transcript of the testimony and exhibits shall be filed with the court and served on the board or administrative law judge. After receipt of the demand, accompanied by payment of a fee of the current prevailing rate for transcripts and one dollar for certification of the transcript, the board or administrative law judge shall make and certify the transcript and file it with the clerk of the court to which the appeal has been taken within thirty days, unless extended by agreement of the parties or order of the court.

D. If an appeal is taken from an order or decision of the board or administrative law judge, the order or decision remains in effect pending final determination of the matter, unless stayed by the court on a hearing, after notice to the board or administrative law judge, and on a finding by the court that there is probable cause for appeal and that great or irreparable damage may result to the petitioner warranting the stay.

E. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare. 2000

Recent legislative year: Laws 2000, Ch. 194, § 6.

#### 49-497.02. Judicial review of appealable agency action not subject to review by hearing board or administrative law judge

A. Any person having an interest that is or may be adversely affected may commence a civil action in superior court against a control officer alleging that the control officer has failed to act in a timely manner as provided in section 49-480, subsection B and section 49-426, subsection C. No action may be commenced before sixty days after the plaintiff has given notice to the control officer. The court has jurisdiction to require the control officer to act without additional delay.

B. Except as provided in subsections C and D of this section, a person whose legal rights, duties or privileges were determined by an appealable agency action, or any person who will be adversely affected by an appealable agency action, may commence a civil action in superior court against the control officer alleging that the action was not supported by substantial evidence, is contrary to law, is arbitrary and capricious, or is an abuse of discretion. Review of the appealable agency action may be obtained without first obtaining a review by a hearing board or administrative law judge. The appeal in superior court shall be governed by the Arizona rules of procedure for special actions.

C. This section does not apply to a decision or action that must be appealed to the hearing board under section 49-476.01, 49-480.02, 49-482, 49-490 or 49-511 or to a final administrative decision obtained by an administrative appeal under section 49-471.15. Judicial review of those decisions or actions shall be as pro-

vided under section 49-497.01 rather than under subsection B of this section.

D. An action pursuant to subsection B of this section shall not be commenced before sixty days after the plaintiff has given notice to the control officer.

E. A sixty day notice under this section shall be filed with the control officer within thirty days of service of notice of the appealable agency action. The notice of appeal shall identify the party, the party's address, the action being appealed and shall contain a concise statement of the reasons for the appeal.

F. Under this section, service of notice of an appealable agency action shall be effected by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice to the party to the action to the party's last address of record with the control officer.

G. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare. 2000

**Recent legislative year:** Laws 2000, Ch. 194, § 6.

#### **49-498. Notice of hearing; publication; service**

A. Any notice of hearing required by this article shall be given by publication of a notice of hearing for at least two times in a newspaper of general circulation published in the county concerned or if there is no such newspaper published in the county, in a newspaper of general circulation published in an adjoining county, and by posting copies of the petition and notice in at least three conspicuous places in the county.

B. If the hearing involves any violation of rules or regulations adopted pursuant to this article or a conditional order therefrom then, in addition to the requirements of subsection A, the person allegedly committing or having committed the violation or requesting the conditional order, shall be served personally or by registered or certified mail at least fifteen days prior to the hearing with a written notice of hearing. 1992

#### **49-501. Unlawful open burning; exceptions; civil penalty; definition**

A. Notwithstanding the provisions of any other section of this article:

1. It is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.

2. From May 1 through September 30 each year, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited or suffer, allow or maintain any open outdoor fire in area A as defined in section 49-541.

B. The following fires are excepted from this section:

1. Fires used only for cooking of food or for providing warmth for human beings or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.

2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.

3. Fires set by or permitted by the director of the department of agriculture or county agricultural agents of the county for the purpose of disease and pest prevention.

4. Fires set by or permitted by the federal government or any of its departments, agencies or agents or the state or any of its agencies, departments or political subdivisions for the purpose of watershed rehabilitation or control through vegetative manipulation.

5. Fires permitted by any rule or regulation issued pursuant to this article, by any conditional permit issued by a hearing board established under this article or by any rule or conditional permit issued pursuant to article 2 of this chapter when the department of environmental quality pursuant to section 49-402 has assumed jurisdiction of the county in which the fire is located.

6. Fires set for the disposal of dangerous materials where there is no safe alternate method of disposal.

C. Permission for the setting of any fire given by a public officer in the performance of official duty under subsection B, paragraph 2, 3 or 4 of this section shall be given in writing and a copy of the written permission shall be transmitted immediately to the director of environmental quality and the control officer of the county, district or region in which such fire is allowed. The setting of any such fire shall be conducted in a manner and at such time as approved by the control officer or the director of environmental quality, unless doing so would defeat the purpose of the exemption.

D. Notwithstanding section 49-107, the director may delegate authority for the issuance of open burning permits to a county, city, town or fire district. A county, city, town or fire district that has been delegated authority for the issuance of open burning permits may assign the issuance of these permits to a private fire protection service provider that performs fire protection services within that county, city, town or fire district. Any private fire protection service provider that is authorized to issue open burning permits pursuant to this subsection shall maintain a copy of all currently effective permits issued including a means of contacting the person authorized by the permit to set the fire in the event that an order to extinguish the open burning is issued. Permits issued pursuant to this subsection shall contain both of the following:

1. Conditions that limit the manner and time of setting the fire and that are consistent with this section and rules adopted pursuant to this section.

2. A provision that all burning be extinguished at the discretion of the director or the director's authorized representative during periods of inadequate atmospheric smoke dispersion, periods of excessive visibility impairment that could adversely affect public safety or periods when smoke is blown into populated areas so as to create a public nuisance.

E. The director may issue a general permit to allow persons engaged in farming or ranching on forty acres or more in an unincorporated area to burn household waste, as defined in section 49-701, that is generated on site, if no household waste collection and disposal service is available. The general permit shall include the following:

1. Conditions governing the method, manner and times for burning.

2. Limitation on materials which may be burned, including a prohibition on burning of materials which generate noxious fumes.

3. A requirement that any person seeking coverage under the general permit shall register with the director on a form prescribed by the director. Upon receipt of a registration form, the director shall notify the county in which the farm or ranch is located of such registration.

4. A statement that the director, a local air pollution control officer, or any other public officer may order the extinguishment of burning or may prohibit burning during periods of inadequate smoke dispersion or excessive visibility impairment or at other times when public health or safety could be adversely affected.

F. Nothing in this section is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation in a county with a population in excess of one million two hundred thousand persons. Notwithstanding any other law, such a county shall prohibit by ordinance the use of wood burning chimineas, outdoor fire pits and similar outdoor fires on those days for which the county has issued a no burn day restriction.

G. A person who violates any provision of this section may be served a notice of violation and be subject to the enforcement provisions of this article to the same extent as a person violating any rule or regulation adopted pursuant to this article, except that a violation that lasts no more than twenty-four hours and that is the first violation committed by that person is subject to a civil penalty of no more than five hundred dollars.

H. For the purposes of this section, "open outdoor fire" means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. For the purposes of this subsection, "flue" means any duct or passage for air, gases or the like, such as a stack or chimney. 2007

Recent legislative year: Laws 2007, Ch. 292, § 18.

#### 49-502. Violation; classification

A. Any person who violates any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article is guilty of a class 1 misdemeanor for each day the violation continues unless another classification is specifically prescribed in this article. Each day of violation shall constitute a separate offense. Peace officers and the control officer and his deputies shall have the authority to issue a notice to appear under the same conditions and procedures set forth in section 13-3903 for a violation of any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article.

B. Any person who violates any provision of this article, any rule adopted pursuant to this article or any effective order of abatement, permit or permit condition issued pursuant to this article is subject to a civil penalty of not more than ten thousand dollars per day per violation. The county attorney, at the request of the control officer, may commence an action in superior court to recover civil penalties provided by this section. Penalties recovered pursuant to this section shall be

deposited in the special public health fund prescribed in section 49-480.

C. In determining the amount of a fine or civil penalty under this section, the court shall consider:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of such violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. Such other factors as the court deems relevant. 1991

#### 49-503. Defenses

Violations under section 49-502 shall be malum prohibitum. Lack of criminal intent shall not constitute a defense to such violations. 1986

#### 49-504. Limitations

Nothing in this article shall be construed so as to:

1. Grant any jurisdiction or authority with respect to air contamination or pollution existing solely within commercial and industrial plants, works, or shops owned by or under control of the person causing the air contamination or pollution.
2. Alter or in any other way affect the relations between employers and employees with respect to or concerning any condition of air contamination or pollution.
3. Require the readoption of any rule or regulation previously adopted prior to the effective date of this article, provided such rule or regulation is in conformity with the provisions of this article.
4. Prevent the normal farm cultural practices which cause dust. 1986

#### 49-506. Voluntary no-drive days

A county with a population of four hundred thousand or more persons according to the most recent United States decennial census shall implement a voluntary program to encourage all drivers within such a county to not drive their motor vehicles during certain prescribed days. 1998

#### 49-507. Technical assistance to small businesses

Not later than August 15, 1993, after reasonable notice and a public hearing, the control officer shall submit to the director a plan that establishes a small business stationary source technical and compliance assistance program consistent with and equivalent to that required under section 507 of the clean air act. 1992

#### 49-510. Violations; production of records

When the control officer has reasonable cause to believe that any person has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, he may request, in writing, that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with rules adopted pursuant to this article. 1992

#### 49-511. Violations; order of abatement

A. When the control officer has reasonable cause to believe that any person has violated or is in violation of

any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article, the control officer may serve upon such person by certified mail or in person an order of abatement or may file a complaint in superior court alleging a violation pursuant to section 49-513.

B. Except as provided in subsection E of this section, an order issued pursuant to this section shall state the following:

1. With particularity, the act constituting the violation.

2. In its entirety, the certain requirement, provision or rule violated.

3. The duration of the order.

4. That the alleged violator is entitled to a hearing, if the hearing is requested in writing within thirty days after the date of issuance of the order.

C. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met.

D. An order issued under this section shall require the persons to whom it is issued to comply with the requirement, provision or rule as expeditiously as practicable. In the case of a source required to obtain a permit pursuant to this article and title V of the clean air act, the order shall require compliance no later than one year after the date the order was issued and may be renewable for no more than one additional year on a showing of good cause to the control officer. The control officer shall report annually, by December 1, to the governor, the president of the senate, the speaker of the house of representatives and the director of the Arizona state library, archives and public records on the sources that are issued an order of abatement or a renewal pursuant to this section. The report shall include summary information about the source and the order. If the order was renewed, the report shall also include a summary of the justification for the renewal. The control officer shall publish the following information on the county's internet web site:

1. A notice that an abatement order has been issued pursuant to this section and summary information about the order.

2. A notice that an order of abatement has been renewed pursuant to this section and summary information about the renewal.

E. The control officer may enter into an order of abatement by consent. The control officer may agree to accept monetary payments as part of the negotiated terms of an order of abatement by consent. The terms of an order of abatement by consent shall be determined by the agreement of the parties. 2001

**Recent legislative year:** Laws 2000, Ch. 194, § 7; Laws 2001, Ch. 292, § 3.

#### 49-512. Violations; injunctive relief

The county attorney, at the request of the control officer, shall file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, if the control officer has reasonable cause to believe that any of the following is occurring:

1. A person has violated or is in violation of any provision of this article, a rule adopted pursuant to this article or a permit issued pursuant to this article.

2. A person has violated or is in violation of an effective order of abatement.

3. A person is creating an imminent and substantial endangerment to the public health or the environment because of a release of a harmful air contaminant, unless that release is subject to enforcement under title 3, chapter 2, article 6. 1992

#### 49-513. Violations; civil penalties

A. A person who violates any provision of this article, any permit or permit condition issued pursuant to this article, any fee or filing requirement, any rule adopted pursuant to this article, an effective order of abatement issued pursuant to this article or any duty to allow or carry out inspection, entry or monitoring activities, is subject to a civil penalty of not more than ten thousand dollars per day per violation. The county attorney at the request of the control officer shall file an action in superior court to recover penalties provided for in this section.

B. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this section, if the control officer has notified the source of the violation and makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violations shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section is accomplished by the issuance of a notice of violation or order of abatement or by filing a complaint in superior court that alleges any violation described in subsection A of this section.

C. In determining the amount of a civil penalty under this section, the court shall consider all of the following:

1. The seriousness of the violation.
2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.
3. Any history of that violation.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other factors as the court deems relevant.

D. All penalties collected pursuant to this section shall be deposited in the special public health fund authorized in section 49-480. 1992

#### 49-514. Violation; classification; definition

From and after October 31, 1994:

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 U.S.C. section 11002(a)(2) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class

2 felony. For any air pollutant for which the administrator, director or control officer has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.

2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant.

Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the control officer pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the control officer to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material pursuant to section 49-464, subsection G.

H. A person who is required to obtain a permit before commencing construction of a source both under this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the control officer is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the control officer pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:

1. Violates a permit condition not described in subsection C or G of this section.

2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.

3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.

4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a single act or series of related acts, constitutes the commission of a single offense.

N. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

4. Any good faith efforts to comply with the applicable requirements.

5. The economic impact of the penalty of the violation.

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other aggravating and mitigating factor as the court deems relevant.

O. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.

2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

P. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the control officer within twenty-four hours after the source first learned of the violation.

D. Any person, except a person who has been issued a certificate of waiver pursuant to section 49-542, subsection L, whose vehicle has been inspected at an official emissions inspection station, if the vehicle was not found to comply with the minimum standards, shall have the vehicle repaired, including recommended repair or replacement of emissions control devices as a result of tampering, and have the right within sixty consecutive calendar days but not thereafter to return the vehicle for one reinspection without charge. The department may provide for additional reinspections without charge. A vehicle shall not be deemed to pass a reinspection unless the tampering discovered during the tampering inspection is repaired with new or reconditioned emissions control devices.

E. The department shall issue certificates of inspection to owners of fleet emissions inspection stations. Each certificate shall be validated by the fleet emissions inspection stations in a manner required by the director at the time that each owner's fleet vehicle has been inspected or has passed inspection. The validated certificate of inspection shall indicate at the time of registration that the owner's fleet vehicle has been inspected and that the vehicle has passed inspection.

F. The director shall fix an emissions inspection fee before inspection certificates may be issued to the owner of any fleet emissions inspection station. Such fee shall be uniform for each inspection certificate issued and shall be based on the director's estimated costs to the state of administering and enforcing this article as it applies to fleet emissions inspection stations and the vehicles inspected in fleet emissions inspection stations. The director shall deposit, pursuant to sections 35-146 and 35-147, all such monies collected by the director pursuant to this article in the emissions inspection fund. 2007

**Recent legislative year:** Laws 1999, 1st Sp. Sess., Ch. 5, § 8; Laws 2000, Ch. 193, § 579; Laws 2000, Ch. 405, § 35; Laws 2000, 7th Sp. Sess., Ch. 1, § 24; Laws 2001, Ch. 324, § 52; Laws 2002, Ch. 260, § 15; Laws 2003, Ch. 188, § 27; Laws 2005, Ch. 332, § 3; Laws 2007, Ch. 171, § 6.

**49-544. Emissions inspection fund; composition; authorized expenditures; exemptions; investment**

A. An emissions inspection fund is established and is subject to legislative appropriation. The emissions inspection fund shall consist of:

1. Monies appropriated to the fund by the legislature.
2. All monies collected pursuant to section 49-543, Subsection A.
3. All monies collected by the director for the issuance of inspection certificates to owners of fleet emissions inspection stations.
4. Monies received from private grants or donations when so designated by the grantor or donor.
5. Monies received from the United States by grant or otherwise to assist the state in any emissions inspection program.

B. Monies in the emissions inspection fund may be used for the following:

1. Enforcement of the provisions of this article related to fleet emissions inspections, exemptions, and certificates of waiver.
2. Payment of contractual charges to independent contractors pursuant to section 49-545.

3. Costs to the state of administering the emissions inspection services performed by the independent contractor, including inspection station auditing, contractor training and certification, and motorist assistance.

4. Funding the state's portion of the catalytic converter program costs prescribed by section 49-542.

5. Through June 30, 2005, conducting research studies to evaluate the feasibility and effectiveness of emission system control technologies, including the repair of vehicles participating in the studies.

6. Other costs of administering and enforcing the provisions of this article.

C. The department of environmental quality shall approve and provide for the payment of contractual charges to independent contractors and for enforcement of the provisions of this article related to fleet emissions inspections, exemptions and certificates of waiver.

D. Monies in the emissions inspection fund are exempt from the provisions of section 35-190, relating to lapsing of appropriations.

E. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. 2001

**Recent legislative year:** Laws 2000, Ch. 193, § 580; Laws 2000, Ch. 404, § 4; Laws 2000, Ch. 405, § 36; Laws 2001, Ch. 371, § 13; Laws 2002, Ch. 260, § 16.

**49-545. Agreement with independent contractor; qualifications of contractor; agreement provisions**

A. The director is authorized to enter into an emissions inspection agreement with one or more independent contractors, subject to public bidding, to provide for the construction, equipment, establishment, maintenance and operation of any official emissions inspection stations in such numbers and locations as may be required to provide vehicle owners reasonably convenient access to inspection facilities for the purpose of obtaining compliance with this article and the rules adopted pursuant to this article. The agreement may provide that official inspection stations shall be placed in permanent or movable buildings at particular locations as well as in mobile units for conveyance from one preannounced particular location to another.

B. The director is prohibited from entering into an emissions inspection agreement with any independent contractor who:

1. Is engaged in the business of manufacturing, selling, maintaining or repairing vehicles, except that the independent contractor shall not be precluded from maintaining or repairing any vehicle owned or operated by the independent contractor.

2. Does not have the capability, resources or technical and management skill to adequately construct, equip, operate and maintain a sufficient number of official emissions inspection stations to meet the demand for inspection of every vehicle which is required to be submitted for inspection pursuant to this article.

C. All persons employed by the independent contractor in the performance of an emissions inspection agreement are deemed to be employees of the independent contractor and not of this state. No employee of the independent contractor shall wear any badge,

that does not conform with this section is subject to a civil penalty of one thousand dollars for a first violation of this subsection. For the second violation of this subsection within a one year period, a court shall impose a civil penalty of two thousand dollars and a suspension of the dealer's license for a period of ninety days.

2003

**Recent legislative year:** Laws 2003, Ch. 253, § 46.

**49-551. Air quality fee; air quality fund; purpose**

A. Every person who is required to register a motor vehicle in this state pursuant to section 28-2153 shall pay, in addition to the registration fee, an annual air quality fee at the time of vehicle registration of one dollar fifty cents. Unless and until the United States environmental protection agency grants a waiver for diesel fuel pursuant to section 211(c)(4) of the clean air act, every person who is required to register a diesel powered motor vehicle in this state with a declared gross weight as defined in section 28-5431 of more than eight thousand five hundred pounds and every person who is subject to an apportioned fee for diesel powered motor vehicles collected pursuant to title 28, chapter 7, articles 7 and 8 shall pay an additional apportioned diesel fee of ten dollars.

B. The registering officer shall collect the fees and immediately deposit, pursuant to sections 35-146 and 35-147, the air quality fees in the air quality fund established pursuant to subsection C of this section and shall deposit the diesel fees in the voluntary vehicle repair and retrofit program fund established pursuant to section 49-474.03.

C. An air quality fund is established consisting of monies received pursuant to this section, section 49-542.05, gifts, grants and donations, and monies appropriated by the legislature. The department of environmental quality shall administer the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. Interest earned on monies in the fund shall be credited to the fund. Monies in the air quality fund shall be used, subject to legislative appropriation, for:

1. Air quality research, experiments and programs conducted by or for the department for the purpose of bringing area A or area B into or maintaining area A or area B in attainment status, improving air quality in areas of this state outside area A or area B and reducing emissions of particulate matter, carbon monoxide, oxides of nitrogen, volatile organic compounds and hazardous air pollutants throughout the state.

2. Monitoring visible air pollution and developing and implementing programs to reduce emissions of pollutants that contribute to visible air pollution in counties with a population of four hundred thousand persons or more.

3. Developing and adopting rules in compliance with sections 49-426.03, 49-426.04, 49-426.05 and 49-426.06.

D. The department shall transfer four hundred thousand dollars from the air quality fund to the department of administration for the purposes prescribed by section 49-588 in eight installments in each of the first eight months of a fiscal year.

E. This section does not apply to an electrically powered golf cart or an electrically powered vehicle.

2005

**Recent legislative year:** Laws 1999, Ch. 211, § 63; Laws 2000, Ch. 193, § 581; Laws 2001, Ch. 229, § 2; Laws 2002, Ch. 241, § 31; Laws 2002, Ch. 260, § 17; Laws 2003, Ch. 188, § 29, Ch. 238, § 2; Laws 2005, Ch. 332, § 4.

**49-551.01. Diesel vehicle low emissions incentive grants; criteria**

*Conditionally repealed July 1, 2005, or later, pursuant to Laws 2002, Ch. 296, § 8; see notes*

A. The department may award incentive grants from the air quality fund established by section 49-551 for diesel vehicles:

1. To operate on alternative fuel or clean burning fuel as defined in section 1-215.

2. To operate on ultra low sulfur diesel fuel as defined in section 49-558.01 that is used in an engine with an emission control device.

3. Powered by an engine that meets or exceeds an emissions standard for diesel particulate matter of 0.05 grams per brake horsepower hour.

B. A vehicle that is awarded an incentive grant pursuant to this section shall meet the following criteria:

1. The vehicle has a gross vehicle weight rating of at least seventeen thousand five hundred pounds.

2. The vehicle is not a recreational vehicle as defined in section 28-3102.

3. The vehicle is registered in this state and the incentive grant recipient signs a statement, under penalty of perjury, that it is the recipient's intent that the vehicle will be registered in this state for at least three years from the date the vehicle is awarded an incentive grant pursuant to this section and that the recipient intends to operate the vehicle more than fifty per cent of the time in area A or area B.

4. The vehicle is subject to the financial responsibility requirements prescribed in section 28-4032, subsection A.

C. An incentive grant awarded pursuant to this section shall provide for real and quantifiable emissions reductions. Engine retrofit or conversions may meet the requirements of subsection A of this section if they have been approved for use by any one of the following:

1. The United States environmental protection agency voluntary retrofit program.

2. The United States environmental protection agency verification protocol for retrofit catalyst particulate filter and engine modification control technologies for highway and nonroad use diesel engines.

3. The California air resources board diesel emission control strategy verification procedure.

4. Sections 43100 and 43102 of the health and safety code of the state of California.

5. Actual emission testing performed on the vehicle.

D. Notwithstanding subsection B, paragraph 4 of this section, the director may award incentive grants for school buses and municipal vehicles that otherwise meet the requirements of subsection B of this section.

2002

**Recent legislative year:** Laws 2002, Ch. 296, § 7.

**Editor's note.**

Laws 2002, Ch. 296, § 8 provides:

"A. Section 49-551.01, Arizona Revised Statutes, as added by this act, is repealed from and after the later of either of the following:

1. June 30, 2005.

2. One year before the beginning production date for the standard for diesel fuel of a maximum sulfur limit of 15 parts per

## **APPENDIX C**

State Implementation Plan Revision Public Comment and Hearing Documentation

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**C.1 Notice of Public Hearing**

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SIP REVISION/CAA

# THE ARIZONA REPUBLIC

**PUBLIC COMMENT AND HEARING NOTICE**  
**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY AIR QUALITY DIVISION**  
**Draft Revision to the Arizona State Implementation Plan**

Under Clean Air Act Section 110(a)(1) and (2) ADEQ will hold a public hearing to receive comments on a proposed SIP Revision for Clean Air Act (CAA) Section 110(a)(1) and (2)(A) through (M) for the 2008 Lead National Ambient Air Quality Standards (NAAQS). This revision will demonstrate State provisions for implementation, maintenance, and enforcement of such standards, including provisions for monitoring, emissions inventories, and modeling designed to assure attainment and maintenance of the NAAQS. A public hearing on the SIP Revision will be held on Thursday, October 13, 2011, at 3:00 p.m., at the Arizona Department of Environmental Quality, Room 145, 1110 West Washington Street, Phoenix, AZ 85007. All interested parties will be given an opportunity at the public hearing to submit relevant comments, data, and views, orally and in writing. The 30-day public comment period for this SIP Revision begins on September 13, 2011, and will end at the conclusion of the public hearing or 6:00 p.m. on October 13, 2011, whichever is later. All written comments should be addressed, faxed, or e-mailed to: James Wagner Air Quality Planning Section Arizona Department of Environmental Quality 1110 W. Washington St. Phoenix, AZ 85007 PHONE: (602) 771-2388 FAX: (602) 771-2366 E-Mail: [jw3@azdeq.gov](mailto:jw3@azdeq.gov) A copy of the proposal is available for review on the ADEQ web site Events and Notices Calendar at the following Web address <http://www.azdeq.gov/cgi-bin/vertical.pl> or at the following locations:  
ADEQ Library  
1110 W. Washington St  
Phoenix, AZ 85007  
Attn: Norleen Lara,  
(602) 771-4712  
First Floor  
Pub: September 12, 13, 2011

STATE OF ARIZONA }  
COUNTY OF MARICOPA } SS.

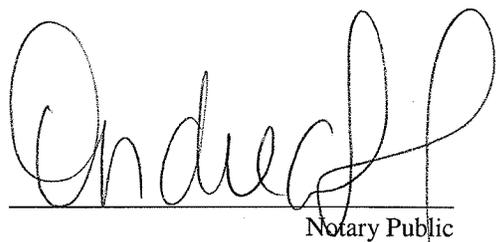
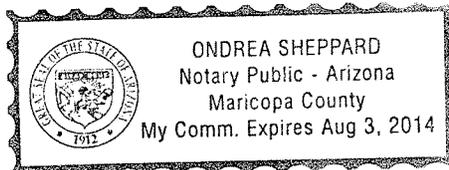
Manuel Vargas, being first duly sworn, upon oath deposes and says: That he is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

9/12/2011  
9/13/2011



Sworn to before me this  
12<sup>TH</sup> day of  
October A.D. 2011

  
Notary Public

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## **C.2 Public Hearing Agenda**

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# **PUBLIC COMMENT AND HEARING NOTICE**

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

Draft Revision to the Arizona State Implementation Plan  
Under Clean Air Act Section 110(a)(1) and (2)

ADEQ will hold a public hearing to receive comments on a proposed SIP Revision for Clean Air Act (CAA) Section 110(a)(1) and (2)(A) through (M) for the 2008 Lead National Ambient Air Quality Standards (NAAQS). This revision will demonstrate State provisions for implementation, maintenance, and enforcement of such standards, including provisions for monitoring, emissions inventories, and modeling designed to assure attainment and maintenance of the NAAQS.

A public hearing on the SIP Revision will be held on Wednesday, October 13, 2011, at 3:00 p.m., at the Arizona Department of Environmental Quality, Room 145, 1110 West Washington Street, Phoenix, AZ 85007. All interested parties will be given an opportunity at the public hearing to submit relevant comments, data, and views, orally and in writing. The 30-day public comment period for this SIP Revision begins on September 13, 2011, and will end at the conclusion of the public hearing or 6:00 p.m. on October 13, 2011, whichever is later.

All written comments should be addressed, faxed, or e-mailed to:

James Wagner  
Air Quality Planning Section  
Arizona Department of Environmental Quality  
1110 W. Washington St.  
Phoenix, AZ 85007  
PHONE: (602) 771-2388  
FAX: (602) 771-2366  
E-Mail: [jw3@azdeq.gov](mailto:jw3@azdeq.gov)

A copy of the proposal is available for review on the ADEQ web site Events and Notices Calendar at the following Web address <http://www.azdeq.gov/cgi-bin/vertical.pl> or at the following locations:

ADEQ Library  
1110 W. Washington St  
Phoenix, AZ 85007  
Attn: Norleen Lara, (602) 771- 4712  
First Floor

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### **C.3 Public Hearing Sign-In Sheet**

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# Air Quality Division Sign-In Sheet

## Please Sign In

SUBJECT PROPOSAL SIP REVISION 2008 LEAD SIP DATE 10-13-2011

	<u>NAME</u>	<u>ORGANIZATION</u>	<u>PHONE</u>	<u>FAX</u>	<u>E-MAIL</u>
1.	KRISHNA PAN-AMERICAN	ASARCO LLC	520-798-7792		520-398-7792
2.	Cathy Wotkinski	ADEQ-AQ	(602)-971-2372		<del>602-971-2372</del> <u>damc@adeq.gov</u>
3.	James Wagner	ADEQ	602-771-2388		JW3@ADEQ.CO
4.					
5.					
6.					
7.					
8.					

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## **C.4 Public Hearing Officer Certification and Transcript**

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Air Quality Division

Public Hearing Presiding Officer Certification

I, Deborrah Martinkovic, the designated Presiding Officer, do hereby certify that the public hearing held by the Arizona Department of Environmental Quality was conducted on October 13, 2011, at the Arizona Department of Environmental Quality Building, Room 145, 1110 West Washington Street, Phoenix, AZ 85007, in accordance with public notice requirements by publication in the Arizona Republic and other locations beginning September 13, 2011. Furthermore, I do hereby certify that the public hearing was recorded from the opening of the public record through concluding remarks and adjournment, and the transcript provided contains a full, true, and correct record of the above-referenced public hearing.

Dated this 13 day of October 2011.

[Signature]
Deborrah Martinkovic

State of Arizona )
) ss.
County of Maricopa )

Subscribed and sworn to before me on this 13 day of October 2011

Notary Public State of Arizona
Maricopa County
Brandon Kade Loftin
Expires: October 29, 2011

[Signature]
Notary Public

My commission expires: Oct 29, 2011

1                                   **PROPOSED ARIZONA AIR QUALITY**  
2                                   **STATE IMPLEMENTATION PLAN (SIP) REVISION UNDER**  
3                                   **CLEAN AIR ACT SECTION 110(a) (1) AND (2):**  
4  
5                                   **2008 LEAD (Pb) NATIONAL AMBIENT AIR QUALITY STANDARDS,**

6  
7                                   Oral Proceeding Transcript

8  
9                                   October 13, 2011

10  
11   Mrs. Martinkovic: Good afternoon, thank you for coming. I now open this hearing  
12   on a proposed revision to the Arizona State Implementation Plan (or SIP) under  
13   Clean Air Act Section 110(a)(1) and (2): regarding the implementation of the 2008  
14   Lead National Ambient Air Quality Standards (NAAQS).

15  
16   It is now October 13, 2011, and the time is approximately 3:05 p.m. The location  
17   is Room 145 at the Arizona Department of Environmental Quality, 1110 W.  
18   Washington Street, Phoenix, AZ. My name is Deborrah “Corky” Martinkovic, and  
19   I have been appointed by the Director of the Arizona Department of Environmental  
20   Quality (ADEQ) to preside at this proceeding.

21  
22   The purposes of this proceeding are to provide the public with an opportunity to:  
23   (1) hear about the substance of the proposed SIP revision,  
24   (2) ask questions regarding the revision, and  
25   (3) present oral argument, data and views regarding the revision in the form of  
26   comments on the public record.

1 Representing the Department today are: James Wagner, myself.

2  
3 Public notice appeared in the Arizona Republic and on ADEQ's website. Copies  
4 of the proposal titled, *PROPOSED Arizona State Implementation Plan Revision*  
5 *under Clean Air Act Section 110(a)(1) and (2): Implementation of 2008 Lead*  
6 *National Ambient Air Quality Standards*, was made available at the ADEQ  
7 Phoenix office and on the ADEQ website.

8  
9 The procedure for making a public comment on the record is straightforward. If  
10 you wish to comment, you just need to fill out a speaker slip, which is available at  
11 the sign-in table, and give it to me. Using speaker slips allows everyone an  
12 opportunity to be heard and allows us to match up the name on the official record  
13 with the comments. You may also submit written comments to me today. Please  
14 note that the comment period for the proposed SIP Revision ends today, October  
15 13, 2011. All written comments must be postmarked if sent via U.S. mail or  
16 received if sent via e-mail at ADEQ by today, October 13, 2011. Written  
17 comments can be mailed to James Wagner, Air Quality Planning Section, Arizona  
18 Department of Environmental Quality, 1110 W. Washington Street, Phoenix,  
19 Arizona 85007 or JW3@azdeq.gov. Comments may also be faxed to (602) 771-  
20 2366.

21  
22 Comments made during the formal comment period are required by law to be  
23 considered by the Department when preparing the final state implementation plan.  
24 This is done through the preparation of a responsiveness summary in which the  
25 Department responds in writing to written and oral comments made during the  
26 formal comment period.

1 The agenda for this hearing is simple. First, we will present a brief overview of the  
2 proposed revision to the state implementation plan.

3  
4 Second, I will conduct a question and answer period. The purpose of the question  
5 and answer period is to provide information that may help you in making  
6 comments on the proposed revision.

7  
8 Third, I will conduct the oral comment period. At that time, I will begin to call  
9 speakers in the order that I have received speaker slips.

10  
11 Please be aware that any comments at today's hearing that you want the  
12 Department to formally consider must be given either in writing or on record at  
13 today's hearing during the oral comment period of this proceeding.

14  
15 At this time, James Wagner will give a brief overview of the proposal.

16  
17 \* \* \* \* \*

18  
19 Mr. Wagner: Clean Air Act Section 110(a) (1) requires states to submit State  
20 Implementation Plans, known as SIPs, within three years following the  
21 promulgation of new or revised National Ambient Air Quality Standards to provide  
22 for implementation, maintenance, and enforcement of such standards. Each of  
23 these SIPs must address certain basic elements of the "infrastructure" of its air  
24 quality management programs under Clean Air Act Section 110(a)(2). These  
25 elements, detailed in Clean Air Act Sections 110(a) (2) (A) through (M), include at  
26 the least provisions for monitoring, emissions inventories, and modeling designed  
27 to assure attainment and maintenance of the National Ambient Air Quality

1 Standards.

2

3 In October 2008, based on scientific studies regarding the effects of lead pollution,  
4 EPA revised the 1978 NAAQS for lead. This action required states to submit  
5 Section 110(a) (1) and (2) SIPs by October 15, 2011, to provide for the  
6 implementation, maintenance, and enforcement of the 2008 lead standards through  
7 not only these infrastructure SIPs, but any subsequent nonattainment area plans or  
8 rules necessary to bring an area within the State of Arizona back into attainment  
9 for the current lead standards.

10

11 This concludes the explanation period of this proceeding on the proposed revision  
12 to the state implementation plan.

13

14 \* \* \* \* \*

15

16 Mrs. Martinkovic: Thank you Jim. Are there any questions before we move to the  
17 oral comment period?

18

19 Hearing none, this concludes the question and answer period of this proceeding on  
20 the proposed state implementation plan revision.

21

22 \* \* \* \* \*

23

24 I now open this proceeding for oral comments.

25

26 Hearing none, this concludes the oral comment period of this proceeding.

27

\* \* \* \* \*

1  
2  
3  
4  
5  
6  
7  
8

If you have not already submitted written comments, you may submit them to me at this time. Again, the comment period for this proposed revision to the state implementation plan ends today, October 13, 2011.

Thank you very much for attending.

The time is now approximately 3:12 p.m. I now close this public oral proceeding.

## **C.5 Responsiveness Summary**

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**RESPONSIVENESS SUMMARY**  
**to**  
**Testimony Taken at Oral Proceedings and Written Comments Received**  
**On Arizona State Implementation Plan (SIP) Revision under Clean Air Act**  
**Section 110(a) (1) and (2): Implementation of the 2008 Lead National**  
**Ambient Air Quality Standards**

The oral proceeding on the *Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(1) and (2): Implementation of 2008 Lead National Ambient Air Quality Standards* was held on Thursday, October 13, 2011, at 3:00 p.m., at the Arizona Department of Environmental Quality, Conference Room 145, 1110 West Washington Street, Phoenix, Arizona. The public comment period began on September 13, 2011, and closed on Thursday, October 13, 2011, at 6:00 p.m. No oral comments were received. Four written comments were received, shown on the next page; ADEQ's responses follow.

Comment 1: Comment acknowledged. ADEQ will withdraw the ARS 36 series with a SIP revision in the future, as appropriate. Should it be necessary, ADEQ will pursue changes to the statutes with the legislature.

Comment 2: ADEQ concurs, and the change has been made in the submitted edition.

Comment 3: ADEQ concurs, and the change has been made in the submitted edition.

Comment 4: Comment acknowledged.



Director  
Environmental Services and Compliance Assurance  
Environmental Affairs Department

October 13, 2011

Mr. James Wagner  
Air Quality Planning Section  
Arizona Department of Environmental Quality  
1110 West Washington St.  
Phoenix, AZ 85007

RE: Proposed SIP Revision for the 2008 Lead National Ambient Air Quality Standards

ASARCO LLC is pleased to submit the following comments on the above referenced Proposal by the Arizona Department of Environmental Quality (ADEQ), as follows:

1. Page 3, Table 1, list of state statutes. The SIP should specify that the prior statutes are being replaced with the new list of statutes. We do not want both the ARS 49-XXX and the ARS 36-XXX series in the SIP at the same time. It is important that the ARS 36-XXX series is removed from the SIP. To the extent that regulatory provisions refer to the ARS 36-XXX series, ADEQ should provide a translator as part of the SIP that would convert the ARS 36-XXX to the appropriate ARS 49-XXX value.
2. Page 4, 2<sup>nd</sup> paragraph. ADEQ's responsibilities for smelters under ARS 49-402 should probably be referenced. It is acknowledged later, but is absent from this page.
3. Page 9, 2<sup>nd</sup> full paragraph. Publication of the new NSR rule will be in "late 2011" not September 2011.

In addition, ADEQ appears to be abandoning the 1990 "air emergency episode" SIP submittal that EPA has never acted upon. Under EPA's guidance, the failure to include the air emergency episode aspect of the infrastructure SIP means that it will be, at best, partially approved and we will possibly trigger a sanctions clock. ADEQ should put the onus on EPA to act on the 1990 submittal as part of the "submitted SIP" to avoid a partial disapproval and possible sanctions clock. ADEQ can always complete a rulemaking and submit something in the future. EPA guidance specifically states that "future commitments" are not approvable.

Sincerely,

A handwritten signature in black ink that reads "Krishna Parameswaran". The signature is written in a cursive, flowing style.

Dr. Krishna Parameswaran

## **CONTACT INFORMATION:**

**Dr. Krishna Parameswaran**  
**Director-- Environmental Services & Compliance Assurance**  
**Environmental Affairs Department**  
**ASARCO LLC**  
**5285 E. Williams Circle, Suite 2000**  
**Tucson, AZ 85711**

**Phone: 520-798-7792 (Work)**  
**Fax: 520-798-7580**  
**Mobile: 602-826-0314**

**E-mail: [kparameswaran@asarco.com](mailto:kparameswaran@asarco.com)**

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