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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Henry R. Darwin
Director

AUG 24 2012

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

RE: Arizona State Implementation Plan Revision under the Clean Air Act Section 110(a)(1) and (2); 2006 PM_{2.5} NAAQS, 1997 PM_{2.5} NAAQS and 1997 8-hour ozone NAAQS

Dear Mr. Blumenfeld:

Consistent with the provisions of Arizona Revised Statutes §§ 49-104, 49-106, 49-404, 49-406 and 49-425 and the Code of Federal Regulations (CFR) Title 40, §§ 51.102 through 51.104, the Arizona Department of Environmental Quality (ADEQ) hereby submits to the U.S. Environmental Protection Agency (EPA) a supplement to the *Arizona State Implementation Plan Revision under Clean Air Act Sections 110(a)(1) and (2): Implementation of 2006 PM_{2.5} National Ambient Air Quality Standards, 1997 PM_{2.5} National Ambient Air Quality Standards, and 1997 8-hour Ozone National Ambient Air Quality Standards* as a revision to the Arizona State Implementation Plan (SIP). The initial revision was submitted on October 14, 2009.

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.

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The SIP revision consists of a document demonstrating that the requirements of 40 C.F.R. Part 51 Appendix V are satisfied, certified copies of Arizona State statutes being proposed for inclusion in the SIP (Appendix A), certified copies of ADEQ rules being proposed for inclusion in the SIP (Appendix B), ADEQ's Public Process documentation (Appendix C), Maricopa County's June 16, 2012 submittal for inclusion in the SIP, including public process documentation (Appendix D), Pima County's August 31, 1994 submittal for inclusion in the SIP, including public process documentation, (Appendix E), and copies of the authorizing statutes cited above (Appendix F). A hard copy of the SIP and an electronic exact duplicate of the hard copy on CD are included with this letter.

Lastly, ADEQ requests that only subsections (A)(2), (A)(4), (B)(3), and (B)(5) of A.R.S. § 49-104, and subsections (A) and (B)(2) of A.R.S. § 49-455 be included as a revision to the SIP.

Sincerely,



Eric C. Massey
Director, Air Quality

cc: Bill Wiley, Maricopa County Air Quality Department, w/o enclosures
Ursula Kramer, Pima County Department of Environmental Quality, w/o enclosures
Don Gabrielson, Pinal County Air Quality Department, w/o enclosures
Colleen McKaughan, EPA Region IX, w/o enclosures
Noah Smith, EPA Region IX, w/o enclosures



**Final Supplement to the Arizona State Implementation
Plan under
Clean Air Act Section 110(a)(1) and (2):
Implementation of**

2006 PM_{2.5} National Ambient Air Quality Standards,

**1997 PM_{2.5} National Ambient Air Quality Standards,
and**

1997 8-Hour Ozone National Ambient Air Quality Standards

**Air Quality Division
August 2012**

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APPENDICES

- A. Certified Arizona State Statutes to be incorporated into the SIP
- B. Certified ADEQ Rules to be incorporated into the SIP
- C. ADEQ's Public Process Documents (Public Hearing Agenda, Sign-in Sheet, Hearing Officer Certification, Hearing Script and Affidavit of Publication)
- D. Maricopa County Rules to be incorporated into the SIP (Maricopa County's June 16, 2012 submittal to the EPA)
- E. Pima County Rules to be incorporated into the SIP (PDEQ's August 31, 1994 submittal to EPA)
- F. Authorizing Statutes

1.0 INTRODUCTION

This supplement to the state implementation plan (SIP) provides the necessary documentation and authority required to demonstrate 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 2006 PM_{2.5} National Ambient Air Quality Standards (NAAQS), the 1997 PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS. This SIP is a supplement to the "Infrastructure" SIP that was submitted on October 14, 2009, for the 2006 PM_{2.5} NAAQS, the 1997 8-hour Ozone NAAQS, and the 1997 PM_{2.5} NAAQS.

ADEQ sought parallel processing of this supplement to the SIP under 40 C.F.R. Part 51, Appendix V, § 2.3.1. ADEQ has completed the State's public notice and public hearing requirements and has attached documentation in Appendix C.

Section 2.0 of this document addresses the criteria for an official SIP submission as set forth in 40 C.F.R. Part 51, Appendix V.

2.0 CRITERIA

2.1 Administrative Materials

2.1(a) A formal letter of submittal from the Governor or [her] designee, requesting EPA approval of the plan or revision thereof (hereafter "the plan").

See cover letter.

2.1(b) Evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement (hereafter "document") in final form.

Certified copies of the statutes and rules are attached in Appendices A, B, D and E.

2.1(c) Evidence that the State has the necessary legal authority under State law to adopt and implement the plan.

ADEQ is authorized to implement SIPs under Arizona Revised Statutes sections 49-104, 49-106, 49-404, 49-406 and 49-425, which are attached as Appendix F.

2.1(d) A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made to the existing approved plan, where applicable.

See Appendices A, B, D, and E. Tables 4-1 through 4-10 also show the statutes and rules being submitted for approval into the SIP.

2.1(e) Evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan.

Not required for parallel processing version of SIP. See 40 C.F.R. Part 51, Appendix V, § 2.3.1(d).

2.1(f) Evidence that public notice was given of the proposed change consistent with procedures approved by EPA, including the date of publication of such notice.

Not required for parallel processing version of SIP. See 40 C.F.R. Part 51, Appendix V, § 2.3.1(d).

2.1(g) Certification that public hearing(s) were held in accordance with the information provided in the public notice and the State's laws and constitution, if applicable and consistent with the public hearing requirements in 40 CFR 51.102.

Not required for parallel processing version of SIP. See 40 C.F.R. Part 51, Appendix V, § 2.3.1(d).

2.1(h) Compilation of public comments and the State's response thereto.

Not required for parallel processing version of SIP. See 40 C.F.R. Part 51, Appendix V, § 2.3.1(d).

2.2 Technical Support

2.2(a) Identification of all regulated pollutants affected by the plan.

PM2.5 and ozone.

2.2(b) Identification of the locations of affected sources including the EPA attainment/ nonattainment designation of the locations and the status of the attainment plan for the affected areas(s).

Not applicable.

2.2(c) Quantification of the changes in plan allowable emissions from the affected sources; estimates of changes in current actual emissions from affected sources or, where appropriate, quantification of changes in actual emissions from affected sources through calculations of the differences between certain baseline levels and allowable emissions anticipated as a result of the revision.

Not applicable.

2.2(d) The State's demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented (Section 110(l) demonstration).

See below sections 5.3, 5.4 and 5.10.

2.2(e) Modeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis.

Not applicable.

2.2(f) Evidence, where necessary, that emission limitations are based on continuous emission reduction technology.

Not applicable.

2.2(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels.

See below sections 5.1, 5.2, 5.3 and 5.6.

2.2(h) Compliance/enforcement strategies, including how compliance will be determined in practice.

See below sections 5.3 and 5.5.

2.2(i) Special economic and technological justifications required by any applicable EPA policies, or an explanation of why such justifications are not necessary.

No known deviations.

3.0 REGULATORY BACKGROUND

Clean Air Act 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.

In July 1997, the U.S. Environmental Protection Agency (EPA) issued new National Ambient Air Quality Standards for 8-hour ozone and particulate matter 2.5 microns or less in diameter (PM_{2.5}). Subsequent litigation challenging the new standards created uncertainty on how to proceed, however, and delayed implementation.¹ On March 10, 2005, in response to a separate lawsuit over states' failure to submit Section 110(a)(1) and (2) plans for the 1997 standards, EPA entered into a Consent Decree with Earth Justice that obligated EPA to determine whether states have made the required SIP submissions.

The Consent Decree required EPA action on state SIPs addressing interstate transport of air pollution, a required SIP component under Section 110(a)(2)(D)(i), by March 15, 2005. On April 25, 2005, EPA published "Finding of Failure To Submit Section 110 State Implementation Plans for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and PM 2.5" (70 FR 21147). The April 25, 2005, finding, effective May 25, 2005, started a 24-month clock for EPA to either issue a final Federal Implementation Plan (FIP) to address the requirements of Section 110(a)(2)(D)(i) or to approve a SIP that addresses these requirements. In response to this action, ADEQ submitted *Revision to the Arizona State Implementation Plan Under Clean Air Act Section 110(a)(2)(D)(i) – Regional Transport on*

¹ See *Whitman v. American Trucking Associations*, U.S. Supreme Court, Nos. 99-1257, 99-1426, February 27, 2001.

May 24, 2007. EPA approved the plan in a Direct Final Rule on July 31, 2007 (72 FR 41629).

The Consent Decree also required EPA to determine whether states have submitted SIP revisions to meet the remaining requirements of sections 110(a)(1) and (2) by December 15, 2007, for the 1997 8-hour ozone standards (later extended to March 27, 2008), and by October 5, 2008, for the 1997 PM_{2.5} standards. EPA issued *Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards, October 2, 2007*, to assist states as they develop SIPs or certify that existing SIP elements are adequate to meet their outstanding obligations.

EPA published "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS" on March 27, 2008, which included a "finding of failure to submit" for Arizona (73 FR 16205). EPA's action started a 24-month deadline by which time EPA must promulgate a FIP to address Section 110(a)(1) and (2) requirements if the state fails to submit and obtain EPA approval of any necessary SIP revision or demonstrate existing state programs are sufficient to meet these requirements.

Arizona submitted *Analysis of Clean Air Act Section 110(a)(2) Air Quality Control Program Elements for Arizona for the 1997 PM_{2.5} National Ambient Air Quality Standards* on September 18, 2008. The analysis demonstrated that, with the exception of 110(a)(2)(E)(i) and (ii) relating to adequate funding and conflicts of interest, and 110(a)(2)(G) relating to emergency powers and contingency plans, existing Arizona SIP elements and the federal prevention of significant deterioration (PSD) permit program are adequate to meet CAA Section 110(a)(2) requirements. EPA published "Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter (PM_{2.5}) NAAQS", effective November 21, 2008, in which EPA concurred that Arizona's submission was complete for the required CAA 110(a)(2) program elements for the 1997 PM_{2.5} NAAQS except for Sections 110(a)(2)(E)(i), 110(a)(2)(E)(ii), and 110(a)(2)(G) (73 FR 62902; October 22, 2008). EPA's action started a 24-month deadline by which time EPA must approve a SIP that addresses these specific elements or to finalize a FIP.

Based on scientific studies regarding the effects of particle pollution, EPA subsequently revised the NAAQS for PM_{2.5} effective December 18, 2006, to improve the protection of public health and welfare (71 FR 61144, October 17, 2006). This action required states to submit Section 110(a)(2) SIPs by September 21, 2009, to provide for implementation, maintenance, and enforcement of the 2006 PM_{2.5} standards. Arizona submitted a SIP under this action on October 14, 2009.

In the October 14, 2009 submittal, Arizona submitted demonstration that the required Section 110(a)(2) elements are met, in part, for the 1997 PM_{2.5} and 8-hour ozone NAAQS. Arizona also submitted a demonstration that Section 110(a)(2) elements for the 2006 PM_{2.5} NAAQS. After subsequent discussions with EPA regarding the October 14, 2009 submittal, Arizona is supplementing the October 14, 2009 submittal with certified copies of specific statutes and rules, which Arizona has attached in Appendices A, B, D, and E of this supplement.

4.0 SUMMARY AND DISCUSSION OF THE SUPPLEMENT TO ARIZONA'S "INFRASTRUCTURE SIP"

This document provides the specific statutes and rules, which are the authorities and infrastructure of Arizona State and local air quality management programs need to meet the basic program elements required under CAA Section 110(a)(2) for the 2006 PM_{2.5} NAAQS and the requirements for the 1997 8-hour ozone and PM_{2.5} NAAQS.

The statutes and programs described in Section 5.0 are adequate to meet the following requirements of the CAA for the 2006 PM_{2.5} NAAQS, the 1997 8-hour ozone air quality standards, and the 1997 PM_{2.5}

NAAQS:

- 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 (this requirement for the 1997 8-hour ozone NAAQS has already been met),
- 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)(G) emergency episodes
- 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.

Arizona's air quality programs are sufficient at this time to assure attainment and maintenance of the 1997 8-hour ozone and PM_{2.5} NAAQS and the 2006 PM_{2.5} NAAQS in all areas of the State. The purpose of this supplement to the SIP is to submit to EPA several of the applicable air quality sections of Arizona Revised Statutes, ADEQ rules, Maricopa County Rules, and Pima County Rules, which have been amended and renumbered since the most recent approval of the SIP. Some of the statutes were not included in the original SIP submission, but are being provided in this Supplement in order to give additional information that may further satisfy requirements under CAA section 110(a)(2).

In addition, a number of air quality authorizing and implementing statutes have been added for Arizona programs, but have not been submitted or approved into the SIP prior to this supplement. These program improvement statutes, listed below, are included in this SIP supplement in Appendix A as Statutes to be approved into the federally enforceable Arizona State SIP.

- 28-1253. Registration requirement; exceptions; assessment; violation; classification,
- 35-313. Investment of trust and treasury monies; loan of securities,
- 38-101. Definitions,
- 38-501. Application of article,
- 38-502. Definitions,
- 38-503. Conflict of interest; exemptions; employment prohibition,
- 38-504. Prohibited acts,
- 38-505. Additional income prohibited for services,
- 38-506. Remedies,
- 38-507. Opinions of the attorney general, county attorneys, city or town attorneys and house and senate ethics committee,
- 38-508. Authority of public officers and employees to act,
- 38-509. Filing of disclosures,
- 38-510. Penalties,
- 38-511. Cancellation of political subdivision and state contracts; definition,
- 49-103. Department employees; legal counsel,

49-104. Powers and duties of the department and director,
49-106. Statewide application of rules,
49-107. Local delegation of state authority,
49-405. Attainment area designations,
49-435. Hearings on orders of abatement,
49-441. Suspension and revocation of conditional order,
49-455. Permit administration fund,
49-460. Violations; production of records,
49-461. Violations; order of abatement,
49-462. Violations; injunctive relief,
49-471. Definitions,
49-476.01. Monitoring,
49-480.02. Appeals of permit actions,
49-490. Hearings on orders of abatement,
49-495. Suspension and revocation of conditional order,
49-502. Violation; classification,
49-510. Violations; production of records,
49-511. Violations; order of abatement,
49-512. Violations; injunctive relief, and

There are also a few statutes and rules that have already been approved into the Arizona SIP.² ADEQ will not be submitting copies of these statutes with this Supplement since they are already approved into the Arizona SIP, but wanted to reference them as they are important to the approval of the October 14, 2009 "Infrastructure" SIP:

49-402 State and county control³,
49-404 State implementation plan, and
49-406 Nonattainment area plan
49-543. Emissions inspection costs; disposition; fleet inspection; certificates
49-544. Emissions inspection costs; disposition; fleet inspection; certificates
49-551. Air quality fee; air quality fund; purpose
R9-3-215. Ambient Air Quality Monitoring Methods & Procedures
R9-3-219. Air Pollution Emergency Episodes

Tables 4-1 through 4-10, provided below, show which statute or rule ADEQ is asking to be incorporated into the Arizona SIP, which sections of those statutes are relevant to which section of the CAA, and which Statute or rule will be replaced in the SIP. All Statutes and rules are listed in Section 5.0 under each respective section of the CAA to which they relate. Provisions applicable solely to Title V sources are not submitted for approval into the Arizona SIP, as they have already been approved into Arizona's separate Title V Operating Permit Program.

² Approval dates and Federal Register Notices are cited in tables 4-1 through 4-11.

³ Additionally, ADEQ would like to remove the old version of ARS § 49-402, § 36-1706 State and county control, which still remains in the Arizona SIP. This action is reflected in Tables 4-1 through 4-11

Table 4-1

CAA 110(a)(2)(A)		
Control Measures and Emission Limits		
ADEQ Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 49-106 Statewide application of rules		
§ 49-107 Local delegation of state authority		
§ 49-402 State and county control ⁴		§ 36-1706 State and county control
§ 49-404 State implementation plan ⁵		
§ 49-406 Nonattainment area plan ⁶		
§ 49-421 Definitions		§ 36-1701 Definitions
§ 49-424 Duties of department		§ 36-1705 Duties of department
§ 49-425 Rules; hearing		§ 36-1707 Rules and Regulations; Hearing; Limitations
County Programs		
§ 49-471 Definitions		
§ 49-473 Board of supervisors		§ 36-0773 Board of Supervisors
§ 49-479 Rules; hearing		§ 36-0779 Rules and regulations; hearing; limitations

⁴ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

⁵ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

⁶ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

Table 4-2

CAA 110(a)(2)(B) Ambient Air Quality Monitoring		
ADEQ Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 49-404 State implementation plan ⁷		
§ 49-406 Nonattainment area plan ⁸	(F)(11)	
§ 49-422 Powers and duties	(A), (B), (C), (E), and (F)	§ 36-1702 Powers
§ 49-424 Duties of department		§ 36-1705 Duties of department
County Programs		
§ 49-476.01 Monitoring		

⁷ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

⁸ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

Table 4-3

CAA 110(a)(2)(C)		
Enforcement of Control Measures		
ADEQ Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 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 ⁹	All sections but (A)(8)	§ 36-1706 State and county control
§ 49-404 State implementation plan ¹⁰		
§ 49-406 Nonattainment area plan ¹¹	(G)(1), (G)(2), and (G)(3)	
§ 49-422 Powers and duties		§ 36-1702 Powers
§ 49-424 Duties of department		§ 36-1705 Duties of department
§ 49-425 Rules; hearing		§ 36-1707 Rules and regulations; hearing; limitations
§ 49-433 Special inspection warrant		§ 36-1708.01 Special
§ 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		§ 36-1720 Misdemeanor; penalty
County Programs		
§ 49-473 Board of supervisors		§ 36-0773 Board of supervisors
§ 49-488 Special inspection warrant		§ 36-0780.01 Special inspection warrant
§ 49-490 Hearings on orders of abatement		
§ 49-495 Suspension and revocation of conditional order		
§ 49-502 Violation; classification	(A), (B), and (C)	

⁹ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

¹⁰ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

¹¹ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

§ 49-510 Violations; production of records		
§ 49-511 Violations; order of abatement		
§ 49-512 Violations; injunctive relief		
§ 49-513 Violations; civil penalties		§ 36-0789.01 Misdemeanor; penalty

Table 4-4

CAA 110(a)(2)(E) Adequate Resources		
<i>CAA 110(a)(2)(E)(i)</i>		
ADEQ Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 28-1253. Registration requirement; exceptions; assessment; violation; classification		
§ 35-313. Investment of trust and treasury monies; loans and securities		
§ 49-103 Department employees; legal counsel		
§ 49-402 State and county control		§ 36-1706 State and county control
§ 49-406 Nonattainment area plan		
§ 49-455 Permit administration fund	(A) and (B)(2)	
§ 49-543. Emissions inspection costs; disposition; fleet inspection; certificates	(A)	
§ 49-544 Emissions inspection fund; composition; authorized expenditures; exemptions; investment ¹²		
§ 49-551 Air quality fee; air quality fund; purpose ¹³		
County Programs		
§ 49-471 Definitions		
§ 49-478. Hearing board		§ 36-0778 Hearing board
§ 49-479 Rules; hearing		§ 36-0779 Rules and regulations; hearing; limitations
§ 49-480.02 Appeals of permit actions		
§ 49-482. Appeals to hearing board		§ 36-0779.03 Appeals to hearing board
<i>CAA 110(a)(2)(E)(ii)</i>		
ADEQ and County Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 38-101 Definitions		
§ 38-501 Application of article		
§ 38-502 Definitions		

¹² Approved into the Arizona SIP on 1/22/2003 (68 FR 2912).

¹³ Approved into the Arizona SIP on 1/22/2003 (68 FR 2912).

§ 38-503 Conflict of interest; exemptions; employment prohibition		
§ 38-504 Prohibited acts		
§ 38-505 Additional income prohibited for services		
§ 38-506 Remedies		
§ 38-507 Opinions of the attorney general, county attorneys, city or town attorneys and house and senate ethics committee		
§ 38-508 Authority of public officers and employees to act		
§ 38-509 Filing of disclosures		
§ 38-510 Penalties		
§ 38-511 Cancellation of political subdivision and state contracts; definition		
CAA 110(a)(2)(E)(iii)		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 49-107 Local delegation of state authority		
§ 49-402 State and county control ¹⁴	(A)(1) through (A)(7), (B), (C),	§ 36-1706 State and county control
§ 49-404 State implementation plan ¹⁵		
§ 49-406 Nonattainment area plan ¹⁶	(C), (D), (E), (I), (J), (K)	

¹⁴ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

¹⁵ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

¹⁶ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

Table 4-5

CAA 110(a)(2)(F) Emission Monitoring and Reporting		
ADEQ Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 49-422 Powers and duties		§ 36-1702 Powers
R18-2-313. Existing Source Emission Monitoring		R9-3-313. Existing source emission monitoring
R18-2-327. Annual Emission Inventory Questionnaire		
County Programs		
§ 49-476.01 Monitoring		
Maricopa County Rules		
Rule 100. General Provisions and Definitions ¹⁷	Section 500 Monitoring and Records	
Pima County Rules		
17.24.040. Reporting for compliance evaluations ¹⁸		

¹⁷ See Maricopa County's June 16, 2012 submittal to the EPA, included in Appendix D of this Supplement.

¹⁸ See Pima County's August 31, 1994 submittal to the EPA, included in Appendix E of this Supplement.

Table 4-6

CAA 110(a)(2)(G) Emergency Powers		
ADEQ Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 49-462 Violations; injunctive relief		
§ 49-465 Air pollution emergency		§ 36-1719 Air pollution emergency
R9-3-215. Ambient Air Quality Monitoring Methods & Procedures ¹⁹		
R9-3-219. Air Pollution Emergency Episodes ²⁰		
Air Quality Monitoring Procedures Manual (Referenced in R9-3-215)		
County Programs		
§ 49-512 Violations; injunctive relief		

¹⁹ Approved into the Arizona SIP on 10/19/1984 (49 FR 41026).

²⁰ Approved into the Arizona SIP on 9/28/1982 (47 FR 42572).

Table 4-7

CAA 110(a)(2)(H) Plan Revisions		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 49-404 State implementation plan ²¹		
§ 49-406 Nonattainment area plan ²²		

²¹ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

²² Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

Table 4-8

CAA 110(a)(2)(J)		
Consultation with Government Officials, Public Notification, PSD and Visibility Protection		
ADEQ Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 49-104 Powers and duties of the department and director	(A)(2), (A)(4), (B)(3) and (B)(5)	
§ 49-405 Attainment area designations		
§ 49-406 Nonattainment area plan ²³		
§ 49-424 Duties of department		§ 36-1705 Duties of department
§ 49-425 Rules; hearing		§ 36-1707 Rules and regulations; hearing; limitations
County Programs		
§ 49-473 Board of supervisors		§ 36-0773 Board of supervisors
§ 49-474 County control boards		§ 36-0774 County control boards
§ 49-479 Rules; hearing		§ 36-0779 Rules and regulations; hearing; limitations

²³ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

Table 4-9

CAA 110(a)(2)(K) Air Quality Modeling		
ADEQ Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 49-406 Nonattainment area plan ²⁴	(A), (E), (F)(8), (F)(9)	
§ 49-422 Powers and duties	(A)(3)(a), (A)(3)(b), (C)(1), (C)(2), (C)(3), (C)(4), (C)(5)	§ 36-1702 Powers
§ 49-424 Duties of department	(2)	§ 36-1705 Duties of department
County Programs		
§ 49-473 Board of supervisors		§ 36-0773 Board of supervisors
§ 49-474 County control boards		§ 36-0774 County control boards

²⁴ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

Table 4-10

CAA 110(a)(2)(M)		
Consultation/Participation by Affected Local Entities		
ADEQ Programs		
Statute/Rule	Relevant Sections	SIP Statute/Rule Replaced
§ 49-104 Powers and duties of the department and director	(A)(2), (A)(4), (B)(3) and (B)(5)	
§ 49-405 Attainment area designations	(B)(2)(6)	
§ 49-406 Nonattainment area plan ²⁵	(C), (D), (E), (F)	
§ 49-424 Duties of department	(8), (10)	§ 36-1705 Duties of department
§ 49-425 Rules; hearing	(B), (D)	§ 36-1707 Rules and regulations; hearing; limitations
County Programs		
§ 49-473 Board of supervisors		§ 36-0773 Board of supervisors
§ 49-474 County control boards		§ 36-0774 County control boards
§ 49-479 Rules; hearing		§ 36-0779 Rules and regulations; hearing; limitations

²⁵ Approved into the Arizona SIP on 6/08/2000 (65 FR 36353).

5.0 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 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).

The Arizona Department of Environmental Quality 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 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 meet these basic elements and are adequate to ensure attainment and maintenance of the particulate matter and ozone NAAQS.

5.1 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 PM_{2.5} and 8-hour ozone air quality standards in all areas of Arizona.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

- 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
- 49-421. Definitions
- 49-424. Duties of department
- 49-425. Rules; hearing

For County Programs:

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

5.2 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 PM and ozone, are measured with instruments meeting EPA certification as Federal Reference or Equivalent Methods. All data collected within the PM and ozone compliance networks 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 the State and county agencies (ADEQ, MCAQD, PDEQ, and PCAQCD) annually submit to EPA network monitoring plans. 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.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

49-404. State implementation plan

49-406(F)(11). Nonattainment area plan

49-422(A,)(B), (C), (E), (F). Powers and duties; definition

49-424. Duties of department

For County Programs:

49-473. Board of supervisors

5.3 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. Arizona Revised Statutes §49-406 provides additional assurance that PM and ozone nonattainment and maintenance measures will be implemented and enforced. Each agency that commits to implement any emission limitation or other control measure 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.

Arizona Revised Statutes 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 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 463, and 49-510 through 513, 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 in Arizona are also subject to the nonattainment New Source Review (NSR) provisions of these rules or Prevention of Significant

Deterioration (PSD) for attainment areas. Since the submittal of the October 14, 2009 revision to the "Infrastructure" SIP, ADEQ has submitted a revision to the New Source Review SIP for parallel processing on April 10, 2012. ADEQ expects that the New Source Review SIP revision to bring the State of Arizona's SIP for areas under the jurisdiction of ADEQ into compliance with the NSR requirements of section 110(a)(2)(C) and 40 C.F.R. Part 51, Subpart I, with the exception of the requirements pertaining to greenhouse gases (GHGs).

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 (All sections, but (A)(8))
- 49-404. State implementation plan
- 49-406(G)(1) through (G)(3). Nonattainment area plan
- 49-422. Powers and duties; definition
- 49-424. Duties of department
- 49-425. Rules; hearing
- 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

For County Programs:

- 49-473. Board of supervisors
- 49-488. Special inspection warrant
- 49-490. Hearings on orders of abatement
- 49-495. Suspension and revocation of conditional order
- 49-502(A), (B), (C). Violation; classification
- 49-510. Violations; production of records
- 49-511. Violations; order of abatement
- 49-512. Violations; injunctive relief
- 49-513. Violations; civil penalties

5.4 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 the state does not contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in any other state, or interfere with any other state's required applicable implementation plan to prevent significant deterioration of air quality or to protect visibility.

ADEQ submitted *Revision to the Arizona State Implementation Plan Under Clean Air Act Section 110(a)(2)(D)(i) – Regional Transport* on May 24, 2007. This revision to the Arizona SIP addresses interstate transport of air pollution under CAA Section 110(a)(2)(D)(i) and contains a demonstration showing that Arizona does not significantly contribute to interstate transport of pollutants that impact

nonattainment in, or interfere with maintenance by, any other state with respect to the 1997 8-hour ozone and PM_{2.5} air quality standards. The plan also demonstrates that Arizona meets the required prevention of significant deterioration of air quality and protection of visibility provisions of the law. EPA approved the plan in a Direct Final Rule on July 31, 2007 (72 FR 41629).

An analysis of "interstate transport" under CAA Section 110(a)(2)(D)(i) for the 2006 PM_{2.5} air quality standards in Appendix B of the October 14, 2009 SIP revision. The analysis demonstrated that Arizona does not significantly contribute to interstate transport of pollutants that impact nonattainment in, or interfere with maintenance by, any other state with respect to the 2006 PM_{2.5} NAAQS. The analysis also demonstrated that Arizona meets the required prevention of significant deterioration of air quality and protection of visibility provisions of the law.

As stated above in Section 5.3, since the submittal of the October 14, 2009 revision to the "Infrastructure" SIP, ADEQ has submitted a revision to the New Source Review SIP for parallel processing on April 10, 2012. ADEQ expects that the New Source Review SIP revision to bring the State of Arizona's SIP for areas under the jurisdiction of ADEQ into compliance with the NSR requirements of section 110(a)(2)(C) and 40 C.F.R. Part 51, Subpart I, with the exception of the requirements pertaining to greenhouse gases (GHGs).²⁶

5.5 CAA Section 110(a)(2)(E) – Adequate Resources

Generally, 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.

CAA Section 110(a)(2)(E)(i)

The purpose of Section 110(a)(2)(E) of the SIP is to provide the necessary assurances that the State of Arizona, Pinal County, Maricopa County, and Pima County have adequate personnel and funding under State law to carry out the SIP as required under the relevant portions of section 110(a)(2)(E)(i) of the Federal Clean Air Act (CAA), as amended in 1990, and the applicable SIP regulations in 40 CFR part 51 ("Requirements for Preparation, Adoption, and Submittal of Implementation Plans").

CAA section 110(a)(2)(E)(i) requires SIPs to provide:

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, ... under State (and, as appropriate, local) law to carry out such implementation plan ...

The federal regulations in title 40, part 51, subpart O of the Code of Federal Regulations (40 CFR part 51, subpart O) ("Miscellaneous Plan Content Requirements") include requirements for SIPs pertaining to funding and personnel. Specifically, 40 CFR 51.280 ("Resources") requires:

²⁶ See NSR SIP Revision submittal at ADEQ's Website, http://www.azdeq.gov/enviro/air/plan/download/sip_nsr.pdf (Accessed May 31, 2012).

Each plan must include a description of the resources available to the State and local agencies at the date of submission of the plan and of any additional resources needed to carry out the plan during the 5-year period following its submission. The description must include projections of the extent to which resources will be acquired at 1-, 3-, and 5-year intervals.

In the State of Arizona, ADEQ is the primary organization responsible for developing, implementing, and enforcing the SIP.

Under ARS § 49-103 "Department employees; legal counsel" the director, "shall employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical employees as he deems necessary." Under § 49-103(B) "The attorney general shall be the legal advisor of the department and shall give legal services as the department requires...The attorney general shall prosecute and defend in the name of this state all actions necessary to carry out the provisions" of Title 49, relating to the environment.

Funding to staff to administer the Arizona air quality control programs consists of fees that are collected from regulated emissions sources, including fees collected to administer permitting programs. Under ARS § 49-455 "Permit administration fund", a permit administration fund is established consisting of fees and interest collected pursuant to article 2 governing state air pollution control. Under the statute, 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 ARS § 35-313, and monies earned from investment shall be credited to the fund.

There is also an emissions inspection fund (see ARS § 49-544) that consists of monies appropriated to the fund by the legislature; monies collected pursuant to ARS § 49-543(A) concerning vehicle emissions inspections; monies collected by the director for the issuance of inspection certificates to owners of fleet emissions inspection stations; monies received from private grants or donations when so designated by the grantor or donor; and monies received from the United States by grant or otherwise to assist the state in any emissions inspection program.

A third source of funding in Arizona is the Air Quality Fund. Under ARS § 49-551 "Air quality fee; air quality fund; purpose" every person who is required to register a motor vehicle in the state pursuant to ARS § 28-2153 shall pay, in addition to the registration fee, an annual air quality fee at the time of vehicle registration. 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 air quality research and programs for the purpose of bringing area A or area B into or maintaining attainment status, improving air quality in areas outside area A and B, and reducing emissions of various pollutants including particulate matter, carbon monoxide, oxides of nitrogen, volatile organic compounds and hazardous air pollutants throughout the state. The funds are also used to monitor visible air pollution and reduce emissions of pollutants that contribute to visible air pollution in counties with a population of four hundred thousand persons or more. See §49-551(C)(1).

A final source of funding for ADEQ's air programs is CAA section 105 ("Grants for support of air pollution planning and control programs") under which EPA is authorized to make grants to air pollution control agencies to defray a portion of the costs associated with implementation of programs for the prevention and control of air pollution and achievement of the national ambient air quality standards. To qualify for such grants in a given year, air pollution control agencies must at least maintain the same level of funding from non-Federal funds for air pollution control programs as for the preceding year. See CAA section 105(c).

For Maricopa, Pima, and Pinal Counties, ARS § 49-107 "Local delegation of state authority" 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." Under § 49-107(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." These delegation and funding mechanisms help ensure that the counties will have adequate personnel and funding to implement the delegated portions of the SIP.

The scope of county SIP authority is as follows: under ARS § 49-112 "County regulation; standards", a county may adopt rules that are as stringent as state rules and may administer permits provided that the cost of obtaining permits will be approximately equal or be less than the fee or cost of obtaining similar permits or approvals under title 49 or any rule adopted pursuant to title 49, which relates to the environment. The county no-drive days and travel reduction programs are funded by contractual agreements with ADEQ. Other county air quality programs are funded by county fee programs and other sources. In Arizona, the Metropolitan Planning Organizations (MPOs) certified to do planning (Maricopa and Pima) do so for ozone, carbon monoxide, or particulate nonattainment or maintenance areas. See § 49-406(C). The MPOs receive funding as directed in ARS § 49-406(A). ADEQ is responsible for all SO₂ plans and Pb plans even in Maricopa and Pima counties and for plans for the rest of the State. Under ARS § 49-402(B). Maricopa County Air Quality Control District (MCAQCD) and the Pima Department of Environmental Quality (PDEQ) each have a "control officer" whose powers to permit and enforce are set forth under the statute. ADEQ's contractor operates the Vehicle Emissions Inspection program in both Area A and in Area B.

ADEQ, MCAQCD, and PDEQ have been administering, implementing, and enforcing air programs designed to meet the CAA's SIP requirements for over 40 years., and the funding and personnel described above for each of the three agencies is adequate to meet the needs of these programs. Over the next five years, current funding and personnel levels are expected to remain stable via the funding mechanisms described above and to be sufficient to meet the resource needs of the agencies for air pollution control purposes over that period.

Relevant sections of Arizona Revised Statutes:

For State Programs:

- 28-2153. Registration requirement; exceptions; assessment; violation; classification
- 35-313. Investment of trust and treasury monies; loan of securities
- 49-103. Department employees; legal counsel
- 49-402. State and county control
- 49-406. Nonattainment area plan
- 49-455(A) and (B)(2). Permit administration fund
- 49-462. Violations; injunctive relief
- 49-463. Violations; civil penalties
- 49-465. Air pollution emergency
- 49-543(A). Emissions inspection costs; disposition; fleet inspection; certificates
- 49-544. Emissions inspection fund; composition; authorized expenditures; exemptions; investment
- 49-551. Air quality fee; air quality fund; purpose

For County Programs:
49-479. Rules; hearing
49-478. Hearing board
49-480.02. Appeals of permit actions
49-482. Appeals to hearing board

CAA Section 110(a)(2)(E)(ii)

The purpose of 110 (a)(2)(E)(ii) is to provide necessary assurances 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

Permit approval and enforcement orders are provided by the ADEQ Director and county control officers. Arizona law, which is 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. In the October 14, 2009 revision to the SIP, ADEQ submitted ARS Title 38, Chapter 3, Article 8, Conflict of Interest of Officers and Employees, in order to meet the conflict of interest requirements under Section 110(a)(2)(E)(ii). ADEQ commits to sending the certified copies of those statutes with the final submission.

Relevant sections of Arizona Revised Statutes:

For State and County Programs:
38-101 Definitions
Title 38, Chapter 3, Article 8, Conflict of Interest of Officers and Employees

CAA Section 110(a)(2)(E)(iii)

The purpose of 110 (a)(2)(E)(iii) is to provide 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. 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.

Relevant sections of Arizona Revised Statutes:

49-107. Local delegation of state authority
49-402(A)(1) through (A)(7), (B), and (C). State and county control
49-404. State implementation plan
49-406(C), (D), (E), (I), (J), (K). Nonattainment area plan

5.6 CAA Section 110(a)(2)(F) – Emissions Monitoring and Reporting

Section 110 (a)(2)(F) requires provision 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.

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

Statutes:

49-422. Powers and duties; definition

Rules:

R18-2-313. Existing Source Emission Monitoring

R18-2-327. Annual Emission Inventory Questionnaire

For County Programs:

Statutes:

49-476.01. Monitoring

Maricopa County Rules:

Rule 100. General Provisions and Definitions, section 500 Monitoring and Records

Pima County Rules:

17.24.040. Reporting for compliance evaluations

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. ADEQ is submitting with this supplement, the Air Quality Monitoring Procedures Manual referenced in R9-3-215, which as already been approved into the Arizona SIP on October 19, 1984 at 49 FR 41026.

Similar provisions for determining air pollution emergency episodes, advisory procedures, and control actions are contained in Maricopa, Pima, and Pinal County code (Maricopa County Air Pollution Control Regulations, Regulation VI - Emergency Episodes, Rule 600²⁷, 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

²⁷ Maricopa County Rule 600 was adopted 7/13/1988 and approved by EPA into the SIP 3/18/1999 in 64 FR 13351.

Regulations, Chapter 2. Ambient Air Quality Standards, Article 7. Air Pollution Emergency Episodes²⁸).

Relevant sections of Arizona Revised Statutes:

For ADEQ Programs:

Statutes:

49-462. Violations; injunctive relief

49-465. Air pollution emergency

Rules:

R9-3-215. Ambient Air Quality Monitoring Methods & Procedures

R9-3-219. Air Pollution Emergency Episodes

Air Quality Monitoring Procedures Manual (submitted to supplement already approved rule R9-3-215).

For County Programs:

49-512. Violations; injunctive relief

5.8 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 Clean Air Act.

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

5.9 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 October 2, 2007 guidance notes that "the specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirement of section 172, not the timing requirement of section 110(a)(1), and also that SIPs to meet this section are not covered by the Consent Decree." Although the guidance is intended for the 1997 PM_{2.5} and 8-hour ozone NAAQS, requirements for the 2006 PM_{2.5} NAAQS under Section 110(a)(2)(I) are the same.

²⁸ Pinal County Rules were adopted 6/29/1993 and approved by EPA into the SIP on 12/20/2000 in 65 FR 79742.

5.10 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:

- 49-104(A)(2), (A)(4), (B)(3) and (B)(5). Powers and duties of the department and director
- 49-405. Attainment area designations
- 49-406. Nonattainment area plan
- 49-424. Duties of department
- 49-425. Rules; hearing

For County Programs:

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

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 PM and ozone 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.

ADEQ, and those counties with authority to implement portions of the SIP (Maricopa, Pinal, and Pima counties), certify to do now and will continue to notify the public on a regular basis of instances or areas in which any primary NAAQS was exceeded, consistent with the requirements of sections 110(a)(2)(J) and 127 of the Federal Clean Air Act. Such notifications are and will be available on the state and county air quality websites, which are updated daily to identify exceedances of the NAAQS that occurred during the previous day or any portion of the preceding calendar year. We commit to continue, through these websites, to advise the public of the health hazards associated with such exceedances and to increase

public awareness of: (1) measures which can be taken to prevent a primary standard from being exceeded, and (2) ways in which the public can participate in regulatory and other efforts to improve air quality.

Relevant sections of Arizona Revised Statutes:

49-424. Duties of department

Clean Air Act, Title 1, Part C includes provisions relating to prevention of significant deterioration of air quality and visibility protection. PSD provisions are discussed in Section 5.3 above.

Arizona's visibility protection program is designed to analyze the causes of visibility impairment and to develop and implement control strategies as required. Requirements include analysis of emissions from new major sources or sources making major modifications and anticipated impacts on visibility at any Class I area. Arizona submitted a Regional Haze SIP under 40 CFR 51.309 in December 2003, and a 2004 revision for its four Class I areas on the Colorado Plateau. ADEQ submitted a SIP developed under 40 CFR 51.308 on February 28, 2011.

5.11 CAA Section 110(a)(2)(K) – Air Quality Modeling

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

Arizona retains authority to perform air quality modeling for predicting the effect of 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(A), (E), (F)(8), (F)(9). Nonattainment area plan

49-422(A)(3)(a), (A)(3)(b), (C)(1), (C)(2), (C)(3), (C)(4), (C)(5). Powers and duties; definition

49-424(2). Duties of department

For County Programs:

49-473. Board of supervisors

49-474. County control boards

5.12 CAA Section 110(a)(2)(L) – Permit Fees

Section 110(a)(2)(L) requires SIPs to 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.

According to EPA issued Guidance²⁹, “[t]he infrastructure 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’), and 40 CFR Part 70, Appendix A, ‘Approval Status of State and Local Operating Permits Programs’.”

Arizona received interim approval for the federal Title V permit program, established by the 1990 federal Clean Air Act Amendment. 61 FR 55915 (October 30, 1996). The interim approval of the ADEQ Title V program became effective on Nov. 29, 1996. EPA fully approved the Title V operating permits programs for ADEQ, Maricopa County, Pima County, and Pinal County effective November 30, 2001. 66 FR 63175 (December 5, 2001) and 66 FR 63166 (December 5, 2001). Subsequently, on May 17, 2005, EPA issued a notice of deficiency with respect to certain elements of Maricopa County’s Title V operating permits program, including the permit fee requirements. 70 FR 32243 (June 2, 2005). Following EPA’s performance of a Title V program evaluation and the Maricopa County Air Quality Department’s (MCAQD) subsequent submittal of corrections to address the identified deficiencies, EPA issued a notice of resolution explaining EPA’s bases for concluding that the MCAQD had resolved all of the issues identified in EPA’s May 17, 2005 notice of deficiency. 71 FR 67061 (November 20, 2006). Thus, all of the Arizona permitting agencies currently implement fully approved fee programs under Title V of the CAA.

5.13 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:

- 49-104(A)(2), (A)(4), (B)(3) and (B)(5). Powers and duties of the department and director
- 49-405(B)(2)(6). Attainment area designations
- 49-406(C), (D), (E), (F). Nonattainment area plan
- 49-424(8), (10). Duties of department
- 49-425(B), (D). Rules; hearing

For County Programs:

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

²⁹ Guidance On Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS), dated October 14, 2011.

6.0 CONCLUSION

This supplement to the Arizona SIP demonstrates that the existing authorities and infrastructure of Arizona State and local air quality management programs, in conjunction with the updated NSR/PSD SIP submitted for parallel processing on April 10, 2012, meet the basic program elements required under CAA Section 110(a)(2) for the 2006 PM_{2.5} NAAQS, the 1997 8-hour ozone NAAQS, and the 1997 PM_{2.5} NAAQS

Appendix A

Certified Arizona State Statutes to be incorporated into the SIP

AIR QUALITY DIVISION
12 AUG -9 AM 10:34

STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

ss:

I Barbara Howe hereby certify:
Name

That I am Law Reference Librarian of the Arizona State
Title/Division

Library, Archives and Public Records of the State of Arizona;

That there is on file in said Agency the following:

Arizona Revised Statutes §§ 28-2153, 35-313, 38-101, 38-501, 38-502, 38-503, 38-504, 38-505, 38-506, 38-507, 38-508, 38-509, 38-510, 38-511, 49-103, 49-104, 49-106, 49-107, 49-405, 49-421, 49-422, 49-424, 49-425, 49-433, 49-435, 49-441, 49-455, 49-460, 49-461, 49-462, 49-463, 49-465, 49-471, 49-473, 49-474, 49-476.01, 49-478, 49-479, 49-480.02, 49-482, 49-488, 49-490, 49-495, 49-502, 49-510, 49-511, 49-512, and 49-513.

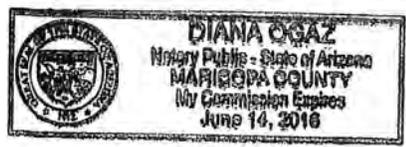
The reproduction(s) to which this affidavit is attached is/are a true and correct copy of the document(s) on file.

Barbara Howe
Signature

Subscribed and sworn to before me this Aug 07, 2012
Date

Diana Ogaz
Signature, Notary Public

My commission expires 6/14/16
Date



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§ 28-2156. Temporary general use registration

A. In lieu of permanent registration, the department may issue a temporary general use registration that allows a person to operate a vehicle for no more than thirty days.

B. The director may authorize issuance of this temporary registration if the person does not qualify for registration under § 28-2154 or 28-2292 or article 10 of this chapter.¹

C. A person operating a vehicle with a temporary general use registration shall comply with the mandatory motor vehicle insurance requirements of this state prescribed in chapter 9, article 4 of this title.²

D. The department shall prescribe the content and form of the temporary general use registration application. The owner or operator of the vehicle shall display the temporary general use registration so that it is clearly visible from outside the vehicle.

E. The registering officer shall not issue more than one temporary general use registration for a vehicle in a twelve month period.

F. At the time of application for a temporary general use registration, the applicant shall submit for inspection proper evidence of ownership or authorized possession of the vehicle.

G. The fee for the temporary general use registration is as prescribed in § 28-2003. The registering officer shall deposit one dollar of the fee in the county assessor's special registration fund established by § 28-2005 if the assessor is the registering officer or in the state highway fund established by § 28-6991 if the director is the registering officer.

Added as § 28-856 by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Renumbered as § 28-2156 and amended by Laws 1996, Ch. 76, §§ 7, 74, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 1, § 145, eff. Oct. 1, 1997.

¹ Section 28-2321 et seq.

² Section 28-4131 et seq.

§ 28-2157. Application for registration

A. A person shall apply to the department for registration of a motor vehicle, trailer or semitrailer on forms prescribed or authorized by the department.

B. The application shall contain:

1. The name and complete residence address of the owner.
2. A description of the vehicle, including the serial number.

3. If it is a new vehicle, the date of sale by the manufacturer or dealer to the person first operating the vehicle.

4. If the owner of the vehicle rents or intends to rent the vehicle without a driver, a statement of that fact.

5. Other facts required by the department.

C. The registering officer shall indicate on the face of the registration application that the registrant may be subject to vehicle emissions testing requirements pursuant to § 49-542.

D. On request of an applicant, the department shall allow the applicant to provide on the registration of a motor vehicle, trailer or semitrailer a post office box address that is regularly used by the applicant and that is located in the county in which the applicant resides.

E. The person shall include with the application the required fees and the certificate of title to the vehicle for which registration is sought. The registering officer may waive the requirement that the applicant present a certificate of title at the time of making an application for renewal if the registering officer has available complete and sufficient records to accurately compute the vehicle license tax.

F. The department may request an applicant who appears in person to register a motor vehicle, trailer or semitrailer to complete satisfactorily the vision screening test prescribed by the department.

G. A person applying for initial registration of a neighborhood electric vehicle shall certify in writing that a notice of the operational restrictions applying to the vehicle as provided in § 28-966 are contained on a permanent notice attached to or painted on the vehicle in a location that is in clear view of the driver.

Added as § 28-857 by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Renumbered as § 28-2157 and amended by Laws 1996, Ch. 76, § 7, 75, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 1, § 146, eff. Oct. 1, 1997; Laws 2001, Ch. 325, § 13.

§ 28-2158. Registration card

A. The department shall file each application for registration. If satisfied that the application is genuine and regular, the department shall issue a registration card to the owner of the vehicle and shall assign license plates to the vehicle.

B. The registration card shall contain on the face of the card all of the following:

1. The date it is issued.
2. The registration number assigned to the owner and the vehicle.

3. The name and address of the owner.
4. A description of the registered vehicle, including the serial number.
5. The amount of fees paid for registration of the vehicle.

C. The registration card shall be carried at all times in the driver's compartment of the vehicle for which it is issued. The registration card is subject to inspection by the director, members of the highway patrol or any peace officer.

Added as § 28-858 by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Renumbered as § 28-2158 by Laws 1996, Ch. 76, § 7, eff. Oct. 1, 1997.

§ 28-2159. Staggered registration

A. The director shall establish a system of staggered registration on a monthly basis to distribute the work of registering vehicles as uniformly as practicable throughout the twelve months of the calendar year.

B. All vehicle registrations provided in this chapter expire pursuant to schedules established by the director. The director may set the number of renewal periods within the month from one each month to one each day depending on which system is most economical and best accommodates the public.

C. If adoption of the staggered system results in the expiration of any registration more than a year from its issuance, the department shall charge a prorated registration fee in addition to the annual fee.

D. In order to initiate a system of registering or reregistering vehicles during any month of the calendar year, the director may register or reregister a vehicle for more or less than a twelve month period, but not more than eighteen months, and may prorate the annual registration fee if in the director's opinion proration tends to fulfill the purpose of the monthly registration system.

E. The director may provide for a two year or five year registration period for any vehicle not subject to annual emissions testing pursuant to § 49-542. For vehicles eligible for a two year or five year registration, the director shall provide in each renewal registration packet information that clearly indicates:

1. The vehicle owner has a choice of registering the vehicle for one year, for two years or for five years.
2. The total amount due for a one year registration period.

3. The total amount due for a two year registration period.

4. The total amount due for a five year registration period.

F. The director or a registering officer may allow a person who owns three or more vehicles to register or reregister the vehicles for less than one year so that the vehicles' registrations expire on the same date. The director may not delay the registration date for a vehicle if it causes a decrease in the vehicle license tax. The director or the registering officer shall prorate the registration fee of these vehicles. This subsection does not apply to a commercial vehicle with a gross weight of more than ten thousand pounds or to a motor vehicle rental or leasing agency.

G. The director shall adopt rules necessary to accomplish the purposes of this section.

Added as § 28-859 by Laws 1995, Ch. 132, § 3, eff. Oct. 1, 1997. Renumbered as § 28-2159 and amended by Laws 1996, Ch. 76, § 7, 76, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 1, § 147, eff. Oct. 1, 1997; Laws 1997, Ch. 292, § 20, eff. Oct. 1, 1997; Laws 1998, Ch. 200, § 2; Laws 2009, 1st S.S., Ch. 3, § 1.

§ 28-2160. Repealed by Laws 2004, Ch. 297, § 2

§ 28-2161. Nonpayment of fees, taxes and assessments; consequences

A. Subject to § 28-5807, the director shall:

1. Refuse to register a motor vehicle, trailer or semitrailer owned by or under the control of a person who has failed, refused or neglected to pay any motor vehicle fee, tax or other assessment, or a penalty on the fee, tax or assessment, that is due the department or for its account. The department shall not renew a registration that is refused until the registration fees and the full amount of the delinquent fees, taxes or other assessments and penalties are paid.

2. Revoke the registration of a motor vehicle, trailer or semitrailer owned by or under the control of a person who has been delinquent for at least forty-five days in the payment of any motor vehicle fee, tax or other assessment due the department or for its account.

B. The department shall renew the registration of a motor vehicle, trailer or semitrailer revoked pursuant to subsection A of this section for the owner who failed, refused or neglected to pay any motor vehicle fee, tax or other assessment, or a penalty on the fee, tax or assessment, only on payment of the fees prescribed for registration and

D. The securities, warrants or safekeeping receipt of an eligible depository shall be deposited with the state treasurer, and the state treasurer is the custodian of those items. The state treasurer may then deposit with the eligible depository monies then in his possession in accordance with this article.

E. Eligible depositories shall report to the state treasurer monthly and upon demand the par and market value of any pledged collateral and the total deposits of the state treasurer.

Added by Laws 1987, Ch. 184, § 1. Amended by Laws 1996, Ch. 64, § 3; Laws 1998, Ch. 69, § 7; Laws 2001, Ch. 117, § 19.

§ 35-313. Investment of trust and treasury monies; loan of securities

A. The state treasurer shall invest and reinvest trust and treasury monies in any of the following items:

1. Obligations issued or guaranteed by the United States or any of its agencies, sponsored agencies, corporations, sponsored corporations or instrumentalities.

2. Collateralized repurchase agreements purchased from securities dealers that make markets in those securities listed in paragraph 1 of this subsection.

3. Bonds or other evidences of indebtedness of this state or any of the counties or incorporated cities, towns or duly organized school districts.

4. Commercial paper whose issuer is rated in one of the two highest rating categories for short-term obligations by any two nationally recognized statistical rating organizations.

5. Bills of exchange or time drafts known as bankers acceptances that are drawn on and accepted by a commercial bank.

6. Negotiable certificates of deposit issued by a nationally or state chartered bank or savings and loan association.

7. Bonds, debentures, notes or other evidences of indebtedness that are issued by entities organized and doing business in the United States and that carry as a minimum one of the Baa ratings of Moody's investors service or one of the BBB ratings of Standard and Poor's rating service or their successors.

8. Securities of or any other interests in any open-end or closed-end management type investment company or investment trust, including exchange traded funds whose underlying investments are invested in securities allowed by state law,

registered under the investment company act of 1940 (54 Stat. 789; 15 United States Code §§ 80a-1 through 80a-64), as amended. For any treasurer investment pool that seeks to maintain a constant share price, both of the following apply:

(a) The investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

(b) The investment policy of the investment company or investment trust includes seeking to maintain a constant share price.

9. Certificates of deferred property taxes as provided by § 42-17309.

10. Treasurer's warrant notes issued pursuant to § 35-185.01 or registered warrants of a county issued pursuant to § 11-605, if the yield is equal to or greater than yields on eligible investment instruments of comparable maturities.

11. Shares in the treasurer's local government investment pools pursuant to § 35-326 provided that investment policies of the pool seek to maintain a constant share price.

12. Shares in the treasurer's long-term local government investment pools, which terms are determined by the state board of investment, pursuant to § 35-326.01.

13. Subject to subsection D of this section, state transportation board funding obligations delivered pursuant to § 28-7678.

14. Certificates of deposit purchased in accordance with the procedures prescribed in § 35-323.01.

B. In case of default or failure to honor a county treasurer's warrant, the state treasurer may withhold the first state shared revenues that would otherwise be distributed to the defaulting county in the amount necessary to honor the note including accrued interest to and beyond the date of default.

C. The state treasurer may contract to loan securities owned by the trust funds and operating monies deposited in the investment pools pursuant to § 35-316, subsection B to the financial or dealer community through one or more of the entities listed in § 35-317, subsection A, or authorized by the board of investment pursuant to § 35-311, subsection E, if the borrower transfers collateral to the state treasurer or acting agent of the state in the form of cash or securities specified in subsection A of this section. Collateral posted in the form of cash shall be in an amount equal to at least one hundred per cent of the market value of the loaned securities as agreed. Collateral posted in the form

of securities shall be in an amount of no more than one hundred ten per cent of the market value of the loaned securities as established from time to time by the board of investment. The loaned securities shall be valued as to market value daily, and, if necessary, the borrower shall post additional collateral, as agreed, to ensure that the required margin is maintained. The state treasurer may collect from the borrower all dividends, interest, premiums, rights and other distributions to which the lender of securities would otherwise be entitled. The state treasurer may terminate the contract on not less than five business days' notice, as agreed, and the borrower may terminate the contract on not less than two business days' notice, as agreed.

D. The state treasurer shall invest operating monies in state transportation board funding obligations delivered pursuant to § 28-7678 pursuant to the following:

1. The state treasurer shall liquidate investments of operating monies if necessary in order to invest in state transportation board funding obligations, except that if operating monies in the state general fund fall below an eight hundred million dollar average over the previous twelve consecutive months, the state treasurer is not required to purchase state transportation board funding obligations pursuant to this subsection.

2. Each series of state transportation board funding obligations shall bear interest at a fixed interest rate equal to the mean bid-ask price of the United States treasury obligation with a maturity date closest to the maturity date of the state transportation board funding obligation as published most recently in the Wall Street Journal before the date the state treasurer receives a certificate from the state transportation board that states the board's determination to deliver an obligation to the state treasurer and the anticipated delivery date of the obligation. The delivery date shall be between fifteen and sixty days after the day the state treasurer receives the certificate.

3. The state treasurer shall provide written notice to the state transportation board and the director of the department of transportation when the operating monies fall below four hundred million dollars. If operating monies fall below two hundred million dollars, the state treasurer may call the investment in the state transportation board funding obligations in twenty-five million dollar increments up to the amount that the operating monies are below two hundred million dollars. The state treasurer shall give the state transportation board and the director of the department of

transportation at least fifteen days' notice of the call.

Added by Laws 1987, Ch. 184, § 1. Amended by Laws 1992, Ch. 249, § 1; Laws 1996, Ch. 64, § 4; Laws 1996, 7th S.S., Ch. 2, § 4; Laws 1997, Ch. 151, § 2; Laws 1998, Ch. 1, § 95, eff. Jan. 1, 1999; Laws 1998, Ch. 69, § 8; Laws 1999, Ch. 189, § 13; Laws 1999, Ch. 211, § 23; Laws 2001, Ch. 117, § 20; Laws 2001, 2nd S.S., Ch. 2, § 7, eff. Dec. 18, 2001, retroactively effective to June 30, 2001; Laws 2007, Ch. 53, § 3; Laws 2010, Ch. 83, § 1; Laws 2010, Ch. 262, § 1.

§ 35-314. Equity investment of trust and treasury monies; definition

A. The state treasurer may invest and reinvest monies in equity securities for any fund for which equity investment is authorized.

B. The state treasurer shall exercise prudence, judgment and care under the prevailing circumstances when investing in equity securities and may reduce the portion of equity securities held by any fund in order to avoid a reduction in current return on investments.

C. Equity securities that are eligible for purchase are restricted to stocks listed on any national stock exchange or eligible for trading through the United States national association of securities dealers automated quotation system, or successor institutions, except as may be prohibited by general criteria or by a restriction on investment in a specific security adopted pursuant to this section.

D. Not more than five per cent of a fund at cost may be invested in equity securities issued by the same institution, agency or corporation, other than securities issued as direct obligations of and fully guaranteed by the United States government or any of its agencies, sponsored agencies, corporations, sponsored corporations or instrumentalities.

E. For purposes of this section "equity securities" means shares of stock, certificates of stock or any other evidence of equity interest in a corporation.

Added by Laws 2001, Ch. 117, § 22.

§ 35-314.01. Permanent state land fund monies; investment

In addition to the investment authority in § 35-313, the state treasurer may invest and reinvest monies of the state land funds established in §§ 37-521 through 37-525 in equity securities pursuant to § 35-314, except that not more than sixty per cent of the monies in each of the funds may be

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TITLE 38

PUBLIC OFFICERS AND EMPLOYEES

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CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS

§ 38-101. Definitions

In this title, unless the context otherwise re-
quires:

1. "Office", "board" or "commission" means
any office, board or commission of the state, or any
political subdivision thereof, the salary or compen-
sation of the incumbent or members of which is

Section
38-101. Definitions.

ARTICLE 1. DEFINITIONS

paid from a fund raised by taxation or by public revenue.

2. "Public institution" means any institution maintained and paid for from a fund raised by taxation or by public revenue.

3. "Officer" or "public officer" means the incumbent of any office, member of any board or commission, or his deputy or assistant exercising the powers and duties of the officer, other than clerks or mere employees of the officer.

CHAPTER 2

QUALIFICATION AND TENURE

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	38-364. Summary proceedings to obtain property and records of office.	

physical or mental impairment that substantially limits one or more major life activities of the individual or who has a record of such an impairment or is regarded as having such an impairment.

C. A person qualified for a preference pursuant to subsections A and B of this section shall be given a ten point preference.

D. A spouse or surviving spouse of any of the following, otherwise qualified pursuant to subsection A of this section, shall be given a five point preference as if the spouse or surviving spouse were an eligible veteran pursuant to subsection A of this section:

1. Any veteran who died of a service-connected disability.

2. Any member of the armed forces who is serving on active duty and who, at the time of application, is listed by the secretary of defense of the United States in any of the following categories for not less than ninety days:

(a) Missing in action;

(b) Captured in the line of duty by a hostile force.

(c) Forcibly detained or interned in the line of duty by a foreign government or power.

3. A person who has a total, permanent disability resulting from a service-connected disability or any person who died while the disability was in existence.

E. An honorably separated veteran who served on active duty in the armed forces at any time and who has a service-connected disability or is receiving compensation or disability retirement benefits under laws administered by the veterans administration, army, navy, air force, coast guard or United States public health service shall be given a ten point preference pursuant to this section.

F. If a person is eligible for a preference pursuant to this section and the person applies for employment with the state or any political subdivision under a merit system of employment as provided by § 38-491 in which applicants are assessed and evaluated but scores are not given, preference shall be given by granting applicable preference codes to qualified applicants.

G. No person eligible for a preference pursuant to this section shall be allowed more than a ten point preference.

H. If a department, division or agency of the state or any political subdivision is operated under a merit system prescribed by the federal government or a department, division or agency of the

federal government, the provisions of that system, including preferences, prevail.

Amended by Laws 1971, Ch. 9, § 2; Laws 1975, Ch. 146, § 3; Laws 1977, Ch. 24, § 1; Laws 1995, Ch. 168, § 1; Laws 2000, Ch. 280, § 5.

§ 38-493. Effect of article

The provisions of this article shall be binding on the state and on a county, city, town or other political subdivision which employs personnel of any or all branches of its service under a merit system of employment as provided by § 38-491, regardless of any provision of the law, ordinance, rule, regulation or other enactment providing for such merit system.

§ 38-494. Violations; classification

A. A person violating any provision of this article is guilty of a class 2 misdemeanor.

B. An officer or person charged with the administration of a civil service or merit system of employment of the state or a county, city, town or other political subdivision who knowingly refuses or fails to observe any provision of this article in the selection of a public employee, or in grading the examination papers of an applicant for employment as provided in § 38-492, is guilty of a class 3 misdemeanor.

Amended by Laws 1978, Ch. 201, § 686, eff. Oct. 1, 1978.

ARTICLE 8. CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

Article 8, consisting of §§ 38-501 to 38-504, was added by Laws 1968, Ch. 88, § 1, effective June 20, 1968.

§ 38-501. Application of article

A. This article shall apply 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.

B. Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.

C. Other prohibitions in the state statutes against any specific conflict of interests shall be in addition to this article if consistent with the intent and provisions of this article.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 1, eff. Oct. 1, 1978; Laws 1992, Ch. 140, § 1.

§ 38-502. Definitions

In this article, unless the context otherwise requires:

1. "Compensation" means money, a tangible thing of value or a financial benefit.

2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.

3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to § 38-509.

4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.

5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.

6. "Public agency" means:

(a) All courts.

(b) Any department, agency, board, commission, institution, instrumentality or legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.

(c) The state, county and incorporated cities or towns and any other political subdivisions.

7. "Public competitive bidding" means the method of purchasing defined in title 41, chapter 4, article 3,¹ or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.

8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.

9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

10. "Remote interest" means:

(a) That of a nonsalaried officer of a nonprofit corporation.

(b) That of a landlord or tenant of the contracting party.

(c) That of an attorney of a contracting party.

(d) That of a member of a nonprofit cooperative marketing association.

(e) The ownership of less than three per cent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five per cent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five per cent of his total annual income.

(f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

(g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.

(h) That of a public school board member when the relative involved is not a dependent, as defined in § 43-1001, or a spouse.

(i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment upon the officer, employee or his relative, of any of the following:

(i) Another political subdivision.

(ii) A public agency of another political subdivision.

(iii) A public agency except if it is the same governmental entity.

(j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.

11. "Substantial interest" means any pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1973, Ch. 116, § 6; Laws 1974, Ch. 199, § 1; Laws 1977, Ch. 164, § 17; Laws 1978, Ch. 151, § 7; Laws 1978, Ch. 208, § 2, eff. Oct. 1, 1978; Laws 1979, Ch. 145, § 36; Laws 1992, Ch. 140, § 2.

¹ Section 41-722 et seq.

§ 38-503. Conflict of interest; exemptions; employment prohibition

A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

C. Notwithstanding the provisions of subsections A and B of this section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:

1. A school district governing board may purchase, as provided in §§ 15-213 and 15-323, supplies, materials and equipment from a school board member.

2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.

D. Notwithstanding subsections A and B of this section and as provided in §§ 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board. Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 3, eff. Oct. 1, 1978; Laws 1980, Ch. 170, § 3; Laws 1986, Ch. 17, § 3; Laws 1986, Ch. 246, § 1; Laws 1987, Ch. 138, § 2.

§ 38-504. Prohibited acts

A. A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.

B. During the period of a public officer's or employee's employment or service and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.

C. A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

Added by Laws 1974, Ch. 199, § 3. Amended by Laws 1995, Ch. 76, § 5; Laws 1999, Ch. 40, § 1.

§ 38-505. Additional income prohibited for services

A. No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.

B. This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

Added by Laws 1974, Ch. 199, § 3.

§ 38-506. Remedies

A. In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is voidable at the instance of the public agency.

B. Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.

C. The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-507. Opinions of the attorney general, county attorneys, city or town attorneys and house and senate ethics committee

Requests for opinions from either the attorney general, a county attorney, a city or town attorney, the senate ethics committee or the house of representatives ethics committee concerning violations of this article shall be confidential, but the final opinions shall be a matter of public record. The county attorneys shall file opinions with the county recorder, the city or town attorneys shall file opinions with the city or town clerk, the senate ethics committee shall file opinions with the senate secretary and the house of representatives ethics committee shall file opinions with the chief clerk of the house of representatives.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.
Amended by Laws 1992, Ch. 140, § 3.

§ 38-508. Authority of public officers and employees to act

A. If the provisions of § 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or

such authority may act in the capacity of the public officer or employee on the conflicting matter.

B. If the provisions of § 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-509. Filing of disclosures

Every political subdivision and public agency subject to this article shall maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article.

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-510. Penalties

A. A person who:

1. Intentionally or knowingly violates any provision of §§ 38-503 through 38-505 is guilty of a class 6 felony.

2. Recklessly or negligently violates any provision of §§ 38-503 through 38-505 is guilty of a class 1 misdemeanor.

B. A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.

C. It is no defense to a prosecution for a violation of §§ 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.

D. It is a defense to a prosecution for a violation of §§ 38-503 through 38-505 that the interest charged to be substantial was a remote interest.
Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

§ 38-511. Cancellation of political subdivision and state contracts; definition

A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in

effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by § 37-289 and other lawful provisions of the lease.

C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.

D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.

F. Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.

G. For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22.¹

Added as § 38-507 by Laws 1978, Ch. 189, § 1. Renumbered as § 38-511. Amended by Laws 1985, Ch. 155, § 1; Laws 1988, Ch. 169, § 1; Laws 1992, Ch. 45, § 1.

¹ Sections 48-1501 et seq., 48-1701 et seq., 48-1901 et seq., 48-2301 et seq., 48-2601 et seq., 48-2901 et seq., 48-3701 et seq.

ARTICLE 8.1. STANDARDS OF CONDUCT FOR MEMBERS OF THE STATE LEGISLATURE

Article 8.1, consisting of §§ 38-520 and 38-521, was added by Laws 1974, Ch. 199, § 4, effective August 9, 1974.

§ 38-519. Legislative ethics committees; membership; powers and duties; code of ethics

A. An ethics committee is established in the senate and an ethics committee is established in the house of representatives, each consisting of five members. The president of the senate and the speaker of the house of representatives shall appoint to the ethics committee of their respective house five members, not more than three of whom may be from the same political party.

B. Each ethics committee shall propose, and each house of the legislature shall adopt, not later than thirty days after the beginning of the first regular legislative session, a code of ethics and conflict of interest requirements as part of the rules of the respective house in the same manner as other rules are adopted.

C. On the request of a member of the legislature or on its own initiative, each ethics committee may issue advisory opinions interpreting the code of ethics, conflict of interest and financial disclosure requirements.

D. Each ethics committee shall investigate complaints and charges against members of its house and, if necessary, report the results of the investigation to its house with recommendations for further action.

E. A member is subject to punishment or expulsion as provided by article IV, part 2, § 11, Constitution of Arizona, for any violation of the code of ethics, conflict of interest or financial disclosure requirements.

Added by Laws 1983, Ch. 328, § 4, eff. Jan. 1, 1984. Amended by Laws 2004, Ch. 41, § 1.

§§ 38-520, 38-521. Repealed by Laws 1983, Ch. 328, § 2, eff. Feb. 9, 1984; Laws 1984, Ch. 6, § 33, eff. March 9, 1984, retroactively effective to Feb. 9, 1984

ARTICLE 9. DISCLOSURE OF INFORMATION BY PUBLIC EMPLOYEES

Article 9, consisting of §§ 38-531 and 38-532, was added by Laws 1985, Ch. 189, § 1, effective April 26, 1985.

§ 38-531. Definitions

In this article, unless the context otherwise requires:

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Sections 44-101 to 49-End

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charged by the state for similar state permits or approvals.

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

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

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987. Amended by Laws 2000, Ch. 353, § 2, eff. July 18, 2000, retroactively effective to July 1, 2000.

§ 49-102. Department of environmental quality; director; 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 § 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 § 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.¹

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.

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987. Amended by Laws 1994, Ch. 95, § 1.

¹ Sections 41-761 et seq. and 41-781 et seq.

§ 49-103. Department employees; legal counsel

A. The director, subject to title 41, chapter 4, articles 5 and 6,¹ 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 per-

form 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.

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987.

¹ Sections 41-761 et seq. and 41-781 et seq.

§ 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.¹

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. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

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.

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.

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 § 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. The department may require payment of a fee as a condition of licensure. After the effective date of this amendment to this section, the department shall establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to §§ 35-146 and 35-147, in the solid waste fee fund established by § 49-881.

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 3.²

16. Approve remediation levels pursuant to article 4 of this chapter.³

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title⁴ for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employees salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6⁵ and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under § 49-203, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited, pursuant to §§ 35-146 and 35-147, in the water quality fee fund established by § 49-210.

2. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

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.

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987. Amended by Laws 1987, Ch. 317, § 14, eff. Aug. 18, 1987, retroactively effective to July 1, 1987; Laws 1989, Ch. 238, § 10; Laws 1995, Ch. 202, § 2, eff. July 1, 1996; Laws 1995, Ch. 231, § 1; Laws 1995, Ch. 232, § 2; Laws 1995, Ch. 261, § 1; Laws 1996, Ch. 351, § 37; Laws 1997, Ch. 49, § 6; Laws 1997, Ch. 287, § 17, eff. April 29, 1997; Laws 1997, Ch. 296, § 1; Laws 1999, Ch. 26, § 3, eff. Jan. 1, 2001; Laws 2000, Ch. 225, § 1; Laws 2000, Ch. 225, § 2, eff. Jan. 1, 2001; Laws 2001, Ch. 21, § 3; Laws 2001, Ch. 231, § 12; Laws 2003, Ch. 104, § 37; Laws 2010, Ch. 265, § 1; Laws 2010, Ch. 309, § 14; Laws 2011, Ch. 220, § 3.

¹ Sections 49-141 et seq., 49-201 et seq., and 49-401 et seq.

² Section 26-341 et seq.

³ Section 49-151 et seq.

⁴ Sections 44-1301 et seq., 49-701 et seq., and 49-901 et seq.

⁵ Section 41-1001 et seq.

§ 49-105. 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.

Added by Laws 1987, Ch. 317, § 15, eff. Aug. 18, 1987, retroactively effective to July 1, 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.

Added by Laws 1987, Ch. 317, § 15, eff. Aug. 18, 1987, retroactively effective to July 1, 1987. Amended by Laws 2000, Ch. 11, § 20.

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 10.¹

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

Added by Laws 2010, Ch. 287, § 17.

¹ Section 41-1092 et seq.

§ 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.

Added by Laws 1992, Ch. 299, § 9. Amended by 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 § 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.

Added by Laws 1992, Ch. 299, § 9. Amended by Laws 2010, 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 § 134¹ 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.

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 8,¹ 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 § 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.

Added by Laws 1999, Ch. 343, § 1. Amended by Laws 2001, Ch. 371, § 6; Laws 2008, Ch. 130, § 1.

¹ Section 41-1081 et seq.

§ 49-411. Repealed by Laws 2002, Ch. 260, § 21, effective July 1, 2003

§ 49-411.01. Renumbered as § 49-414.01

§ 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 § 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.

Added as § 41-1516.01 by Laws 1996, 7th S.S., Ch. 6, § 24. Renumbered as § 49-412 by Laws 2002, Ch. 260, § 12.

§ 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.

Added as § 49-572.01 by Laws 1994, Ch. 353, § 26, eff. April 26, 1994. Renumbered as § 41-1517. Renumbered as § 49-413 and amended by Laws 2002, Ch. 260, § 13.

§ 49-414. Renumbered as § 49-458

§ 49-414.01. Renumbered as § 49-458.01

ARTICLE 2. STATE AIR POLLUTION CONTROL

Termination Under Sunset Law

Section 41-3000.08, providing for termination of the air pollution control hearing board, effective July 1, 2000, and for repeal of Title 49, Ch. 3, Art. 2, effective January 1, 2001, was itself repealed by Laws 2000, Ch. 353, § 1, effective July 18, 2000, retroactively effective to July 1, 2000.

§ 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.

Added as § 36-1701 by Laws 1967, Ch. 2, § 9. Amended by Laws 1969, Ch. 53, § 15; Laws 1970, Ch. 164, § 24, eff. May 18, 1970; Laws 1973, Ch. 158, § 197. Renumbered as § 49-421 and amended by Laws 1986, Ch. 368, §§ 37, subsec. C, 76, eff. July 1, 1987. Amended by Laws 2000, Ch. 353, § 3, eff. July 18, 2000, retroactively effective to July 1, 2000.

§ 49-422. Powers and duties

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 §§ 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 § 49-424 or § 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. In determining the frequency and duration of monitoring, sampling or quantification of emissions under subsections B and C of this section, the director shall consider the five factors prescribed in subsection C of this section and the level of emissions from the source.

E. Orders issued and permit conditions imposed pursuant to this section may be appealed as appealable agency actions pursuant to title 41, chapter 6, article 10.¹

F. 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.

Added as § 36-1702 by Laws 1967, Ch. 2, § 9. Amended by Laws 1971, Ch. 190, § 11; Laws 1973, Ch. 158, § 198. Renumbered as § 49-422 by Laws 1986, Ch. 368, § 37, subsec. C, eff. July 1, 1987. Amended by Laws 1991, Ch. 283, § 4, eff. July 1, 1992; Laws 2000, Ch. 193, § 574; Laws 2000, Ch. 353, § 4, eff. July 18, 2000, retroactively effective to July 1, 2000; Laws 2007, Ch. 153, § 6; Laws 2011, Ch. 291, § 2.

¹ Section 41-1092 et seq.

§ 49-423. Repealed by Laws 2000, Ch. 353, § 5, eff. July 18, 2000, retroactively effective to July 1, 2000.

§ 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. 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 § 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 § 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.

11. Develop and disseminate air quality dust forecasts for the Maricopa county PM-10 nonattainment area. Each forecast shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. At a minimum, the forecasts shall be posted on the department's website and distributed electronically. When developing these forecasts, the department shall consider all of the following:

(a) Projected meteorological conditions for the Maricopa county area, including all of the following:

- (i) Wind speed and direction.
- (ii) Stagnation.
- (iii) Recent precipitation.
- (iv) Potential for precipitation.

(b) Existing concentrations of air pollution at the time of the forecast.

(c) Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.

Added as § 36-1705 by Laws 1967, Ch. 2, § 9. Amended by Laws 1969, Ch. 53, § 16; Laws 1970, Ch. 164, § 27, eff. May 18, 1970; Laws 1973, Ch. 158, § 200; Laws 1986, Ch. 319, § 1, eff. Jan. 1, 1987. Renumbered as § 49-424 and amended by Laws 1986, Ch. 368, §§ 37, subsec. C, 77, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 10; Laws 1993, 6th S.S., Ch. 1, § 22; Laws 1996, 7th S.S., Ch. 6, § 29; Laws 2011, Ch. 214, § 1.

§ 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, con-

trol 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.

Added as § 36-1707 by Laws 1967, Ch. 2, § 9. Amended by Laws 1969, Ch. 53, § 18; Laws 1970, Ch. 164, § 29, eff. May 18, 1970; Laws 1973, Ch. 158, § 202; Laws 1978, Ch. 201, § 656, eff. Oct. 1, 1978; Laws 1980, Ch. 69, § 1. Renumbered as § 49-425 and amended by Laws 1986, Ch. 368, §§ 37, subsec. C, 78, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 11.

§ 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 § 49-426.03, subsection B, paragraph 3 and § 112(a)(5) of the clean air act¹ and for any person beginning actual construction of or operating any source, except as prescribed in subsection B of this section or § 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 § 502 of

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.

Added as § 36-1708 by Laws 1967, Ch. 2, § 9. Amended by Laws 1969, Ch. 53, § 20; Laws 1970, Ch. 164, § 32, eff. May 18, 1970; Laws 1971, Ch. 190, § 15; Laws 1973, Ch. 158, § 205; Laws 1978, Ch. 201, § 657, eff. Oct. 1, 1978. Renumbered as § 49-432 and amended by Laws 1986, Ch. 368, §§ 37, subsec. C, 82, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 20, eff. Sept. 1, 1993.

§ 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.

Added as § 36-1708.01 by Laws 1969, Ch. 53, § 21. Amended by Laws 1978, Ch. 201, § 658, eff. Oct. 1, 1978. Renumbered as § 49-433 by Laws 1986, Ch. 368, § 37, subsec. C, eff. July 1, 1987.

§ 49-434. Repealed by Laws 1992, Ch. 299, § 21, eff. Sept. 1, 1993

§ 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 § 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 10.¹

Added as § 36-1710 by Laws 1969, Ch. 53, § 24. Amended by Laws 1970, Ch. 164, § 34, eff. May 18, 1970. Renumbered as § 49-435 and amended by Laws 1986, Ch. 368, §§ 37, subsec. C, 84, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 22, eff. Sept. 1, 1993; Laws 2000, Ch. 353, § 8, eff. July 8, 2000, retroactively effective to July 1, 2000.

¹ Section 41-1092 et seq.

scribes 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,¹ 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 § 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 § 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 § 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.

Added as § 36-1712.03 by Laws 1970, Ch. 164, § 37, eff. May 18, 1970. Amended by Laws 1974, Ch. 35, § 3; Laws 1975, Ch. 144, § 4. Renumbered as § 49-440 and amended by Laws 1986, Ch. 368, §§ 37, subsec. C, 87, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 27, eff. Sept. 1, 1993; Laws 1995, Ch. 235, § 2.

¹ 42 U.S.C.A. § 7401 et seq.

§ 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 § 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.

Added as § 36-1712.04 by Laws 1970, Ch. 164, § 37, eff. May 18, 1970. Renumbered as § 49-441 and amended by Laws 1986, Ch. 368, §§ 37, subsec. C, 88, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 28, eff. Sept. 1, 1993.

§ 49-442. Appeal of county decisions

When the department has asserted control pursuant to § 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 10.¹

Added by Laws 2000, Ch. 353, § 10, eff. July 18, 2000, retroactively effective to July 1, 2000.

¹ Section 41-1092 et seq.

§ 49-443. Court appeals; procedures

A. Except as provided in § 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 6.¹

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.

E. The report shall be filed with the director.
Added by Laws 1987, Ch. 365, § 17.

§ 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 § 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 § 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 compliance¹ on or before December 1 of each year.

Added by Laws 1987, Ch. 365, § 17. Amended by Laws 1999, Ch. 295, § 43.

¹ The committee was established by Laws 1987, Ch. 365, § 27. (Repealed by Laws 1988, ch. 252, § 12, subsec. F.)

§ 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 § 35-313, and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of § 35-190 relating to lapsing of appropriations.

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

1. In the case of fees collected pursuant to § 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.¹
2. In the case of other fees, administering permits or revisions issued pursuant to § 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.

Added by Laws 1991, Ch. 283, § 10. Amended by Laws 1992, Ch. 291, § 9; Laws 1993, Ch. 77, § 24, eff. Sept. 1, 1993; Laws 1996, Ch. 102, § 67; Laws 2000, Ch. 193, § 575.

¹ 42 U.S.C.A. § 7401 et seq.

§ 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

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 § 51.308 or § 51.309.

E. The department may submit a plan revision under 40 Code of Federal Regulations § 51.309

only if the revision contains a determination pursuant to 40 Code of Federal Regulations § 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.

Added as § 49-411.01 by Laws 2002, Ch. 251, § 2. Renumbered as § 49-414.01. Renumbered as § 49-458.01 by 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.

Added by Laws 1992, Ch. 299, § 34, eff. Sept. 1, 1993.

§ 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 § 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,¹ 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.

Added by Laws 1992, Ch. 299, § 34, eff. Sept. 1, 1993. Amended by Laws 2001, Ch. 292, § 1; Laws 2003, Ch. 104, § 44.

¹ 42 U.S.C.A. § 7401 et seq.

§ 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 6.¹

Added by Laws 1992, Ch. 299, § 34, eff. Sept. 1, 1993.

¹ Section 3-361 et seq.

§ 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 §§ 35-146 and 35-147, in the state general fund.

Added by Laws 1992, Ch. 299, § 34, eff. Sept. 1, 1993. Amended by Laws 1996, Ch. 102, § 68; 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 § 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.

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 §§ 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.

Added by Laws 1992, Ch. 299, § 34, eff. Sept. 1, 1993. Amended by Laws 1996, Ch. 102, § 69; Laws 2000, Ch. 193, § 577.

1 42 U.S.C.A. 7661 et seq.

2 42 U.S.C.A. § 7411 or 42 U.S.C.A. § 7470 et seq. or 42 U.S.C.A. § 7501 et seq.

§ 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 commu-

nicated 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.

Added by Laws 1992, Ch. 299, § 34, eff. Sept. 1, 1993.
Amended by Laws 1993, 6th S.S., Ch. 1, § 23.

§ 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.

Added by Laws 1992, Ch. 299, § 34, eff. Sept. 1, 1993.

§ 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. Added by Laws 1992, Ch. 299, § 34, eff. Sept. 1, 1993.

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 § 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 § 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 § 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.

Added as § 36-771 by Laws 1962, Ch. 121, § 1, eff. March 27, 1962. Amended by Laws 1967, Ch. 2, § 6; Laws 1969, Ch. 53, § 2; Laws 1970, Ch. 164, § 2, eff. May 18, 1970. Renumbered as § 49-471 and amended by Laws 1986, Ch. 368, §§ 38, 93, eff. July 1, 1987. Amended by Laws 2000, Ch. 194, § 2, eff. Jan. 1, 2002.

§ 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 substantially prevails by adjudication on the merits against a county in a court proceeding or an administrative appeal brought pursuant to this article.

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 § 49-471.02.

3. Is entitled to receive the information and notice regarding inspections prescribed in § 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 §§ 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 pro-

§ 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.

Added by Laws 2000, Ch. 194, § 3, eff. Jan. 1, 2002.

§ 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 § 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 §§ 49-480.02 and 49-482 and hearings on orders of abatement are governed by § 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 § 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 § 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.

Added by Laws 2000, Ch. 194, § 3, eff. Jan. 1, 2002.

§ 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.

Added by Laws 2000, Ch. 194, § 3, eff. Jan. 1, 2002.

§ 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.

Added as § 36-772 by Laws 1962, Ch. 121, § 1, eff. March 27, 1962. Amended by Laws 1973, Ch. 158, § 136; Laws 1977, Ch. 171, § 15. Renumbered as § 49-472 and amended by Laws 1986, Ch. 368, §§ 38, 94, eff. July 1, 1987.

§ 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 § 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 3,¹ establish a multi-county air quality control region with one or more other counties by agreement with the board of supervi-

sors 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.

Added as § 36-773 by Laws 1962, Ch. 121, § 1, eff. March 27, 1962. Amended by Laws 1967, Ch. 2, § 7; Laws 1969, Ch. 53, § 3; Laws 1970, Ch. 164, § 3, eff. May 18, 1970. Renumbered as § 49-473 and amended by Laws 1986, Ch. 368, §§ 38, 95, eff. July 1, 1987.

¹ Section 11-951 et seq.

§ 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.

Added as § 36-774 by Laws 1962, Ch. 121, § 1, eff. March 27, 1962. Amended by Laws 1973, Ch. 158, § 137. Renumbered as § 49-474 and amended by Laws 1986, Ch. 368, §§ 38, 96, eff. July 1, 1987.

§ 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 § 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

partment 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.

Added by 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.

Added as § 36-775 by Laws 1962, Ch. 121, § 1, eff. March 27, 1962. Renumbered as § 49-475 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987.

§ 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.

Added as § 36-776 by Laws 1962, Ch. 121, § 1, eff. March 27, 1962. Amended by Laws 1973, Ch. 158, § 138. Renumbered as § 49-476 and amended by Laws 1986, Ch. 368, §§ 38, 97, eff. July 1, 1987.

§ 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 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 § 49-424 or § 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 that 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. In determining the frequency and duration of monitoring, sampling or quantification of emissions under subsection B and C of this section, the control officer shall consider the five factors prescribed in subsection C of this section and the level of emissions from the source.

E. 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 § 49-490 and for permit conditions in § 49-482.

Added by Laws 1991, Ch. 283, § 11, eff. July 1, 1992. Amended by Laws 1992, Ch. 299, § 35, eff. Sept. 1, 1993; Laws 2011, Ch. 291, § 5.

§ 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.

Added as § 36-777 by Laws 1970, Ch. 164, § 5, eff. May 18, 1970. Renumbered as § 49-477 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987.

§ 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 § 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.

Added as § 36-778 by Laws 1967, Ch. 2, § 8. Amended by Laws 1969, Ch. 53, § 5; Laws 1970, Ch. 164, § 6, eff. May 18, 1970; Laws 1980, Ch. 132, § 2. Renumbered as § 49-478 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987. Amended by Laws 1990, Ch. 42, § 10.

§ 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 § 49-112.

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

Added as § 36-779 by Laws 1967, Ch. 2, § 8. Amended by Laws 1969, Ch. 53, § 6; Laws 1970, Ch. 164, § 7, eff. May 18, 1970; Laws 1973, Ch. 158, § 139. Renumbered as § 49-479 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987. Amended by Laws 1987, Ch. 365, § 19, eff. Jan. 1, 1989; Laws 1992, Ch. 299, § 36, eff. Sept. 1, 1993; Laws 1994, Ch. 297, § 3.

§ 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 § 49-426, subsection A, that are not under the jurisdiction of the state pursuant to § 49-402 and that are not otherwise exempt pursuant to § 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 § 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 act¹ 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 §§ 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.² 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 §§ 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 § 502 of the clean air act.³ 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,⁴ including the applicable implementation plan.

time limit for notifications associated with emergency conditions.

B. Any permit issued pursuant to § 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 § 49-426.01, subsection C.

Added by Laws 1992, Ch. 299, § 40, eff. Sept. 1, 1993.
Amended by Laws 1996, Ch. 88, § 4.

¹ 42 U.S.C.A. § 7661 et seq.

² 42 U.S.C.A. § 7401 et seq.

§ 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 § 49-480, may request an appeal as provided under § 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 6.¹

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 § 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.

Added by Laws 1992, Ch. 299, § 40, eff. Sept. 1, 1993.

¹ Section 12-901 et seq.

§ 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 § 112 of the clean air act.¹ The program shall be consistent with and meet the requirements of § 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 § 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 the modification or new major source. For purposes of this paragraph, the terms "major source" and "modification" have the meanings set forth in § 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 board of supervisors pursuant to this subsection become effective. 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 § 112(g)(1) of the clean air act.

2. After the date specified by the administrator in rules adopted pursuant to § 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 control officer shall determine the maximum achievable control technology for the modification or the new major source on a case-by-case basis. If on the basis of this case-by-case determination of the maximum achievable control technology the control officer 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 § 49-480 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 control officer shall issue a permit or permit revision allowing the source to meet an alternative emission limitation reflecting such reduction in lieu

§ 49-482. Appeals to hearing board

A. Within thirty days after notice is given by the control officer of approval or denial of a permit, permit revision or conditional order, the applicant and any person who filed a comment on the permit or permit revision pursuant to § 49-480, subsection B and § 49-426, subsection D, or on the conditional order pursuant to § 49-492, subsection C, may petition the hearing board, in writing, for a public hearing, which shall be held within thirty days after receipt of the petition. The hearing board, after notice and a public hearing, may sustain, modify or reverse the action of the control officer.

B. Any person having 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 as provided in § 49-480, subsection B and § 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.

Added as § 36-779.03 by Laws 1970, Ch. 164, § 9, eff. May 18, 1970. Renumbered as § 49-482 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987. Amended by Laws 1990, Ch. 42, § 13; Laws 1992, Ch. 299, § 42, eff. Sept. 1, 1993.

§ 49-483. 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 piece of equipment to another.

B. The provisions of subsection A shall not apply to mobile or portable machinery or equipment which is transferred from one location to another after notification to the control officer of the transfer.

C. A permit may be transferred, whether by operation of law or otherwise, from one person to another, provided that prior to the transfer, the person holding the permit notifies the control officer in writing of 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 board of supervisors may determine to be necessary by rule. The control officer shall prescribe procedures for such notification.

D. If the control officer 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 control officer's denial, including the reasons for the denial, shall be issued within ten working days of the control officer's receipt of the notice of the proposed transfer.

E. Denial of a permit transfer is appealable by the transferor and the transferee to the air pollution hearing board in the same manner as prescribed for denial of a permit in § 49-482.

Added as § 36-779.04 by Laws 1970, Ch. 164, § 9, eff. May 18, 1970. Renumbered as § 49-483 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 43, eff. Sept. 1, 1993.

§ 49-484. Expiration of permit

An installation permit shall expire two years from the date of its issuance.

Added as § 36-779.05 by Laws 1970, Ch. 164, § 9, eff. May 18, 1970. Renumbered as § 49-484 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987.

§ 49-485. 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.

Added as § 36-779.06 by Laws 1970, Ch. 164, § 9, eff. May 18, 1970. Renumbered as § 49-485 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987.

§ 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 § 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 fur-

nish a copy of such notice to the control officer and the department.

Added as § 36-779.07 by Laws 1970, Ch. 164, § 9, eff. May 18, 1970. Amended by Laws 1973, Ch. 158, § 140. Renumbered as § 49-486 and amended by Laws 1986, Ch. 368, §§ 38, 99, eff. July 1, 1987.

§ 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.

Added as § 36-780 by Laws 1967, Ch. 2, § 8. Amended by Laws 1969, Ch. 53, § 8; Laws 1970, Ch. 164, § 10, eff. May 18, 1970; Laws 1971, Ch. 190, § 3; Laws 1973, Ch. 158, § 141; Laws 1978, Ch. 201, § 618, eff. Oct. 1, 1978. Renumbered as § 49-487 and amended by Laws 1986, Ch. 368, §§ 38, 100, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 44, eff. Sept. 1, 1993.

§ 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.

Added as § 36-780.01 by Laws 1969, Ch. 53, § 9. Amended by Laws 1978, Ch. 201, § 619, eff. Oct. 1, 1978. Renumbered as § 49-488 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987.

§ 49-489. Repealed by Laws 1992, Ch. 299, § 45, eff. Sept. 1, 1993

§ 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 § 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.

Added as § 36-782 by Laws 1969, Ch. 53, § 12. Amended by Laws 1970, Ch. 164, § 12, eff. May 18, 1970. Renumbered as § 49-490 and amended by Laws 1986, Ch. 368, §§ 38, 102, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 46, eff. Sept. 1, 1993.

§ 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 § 49-480.01.

Added as § 36-784 by Laws 1970, Ch. 164, § 15, eff. May 18, 1970. Renumbered as § 49-491 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 47, eff. Sept. 1, 1993.

§ 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 § 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 § 49-491.

Added as § 36-784.01 by Laws 1970, Ch. 164, § 15, eff. May 18, 1970. Renumbered as § 49-492 and amended by Laws 1986, Ch. 368, §§ 38, 103, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 48, eff. Sept. 1, 1993.

§ 49-493. Decisions on petitions for conditional order; terms and conditions

A. Within thirty days after the conclusion of the hearing held pursuant to § 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.

Added as § 36-784.02 by Laws 1970, Ch. 164, § 15, eff. May 18, 1970. Amended by Laws 1971, Ch. 190, § 4. Renumbered as § 49-493 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 49, eff. Sept. 1, 1993.

§ 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,¹ 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 § 110(L) of the clean air act,² 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 § 505 of the clean air act,³ 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.

Added as § 36-784.03 by Laws 1970, Ch. 164, § 15, eff. May 18, 1970. Renumbered as § 49-494 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 50, eff. Sept. 1, 1993.

¹ 42 U.S.C.A. § 7661 et seq.

² 42 U.S.C.A. § 7410.

³ 42 U.S.C.A. § 7661d.

§ 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 § 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.

Added as § 36-784.04 by Laws 1970, Ch. 164, § 15, eff. May 18, 1970. Renumbered as § 49-495 and amended by Laws 1986, Ch. 368, §§ 38, 104, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 51, eff. Sept. 1, 1993.

§ 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 § 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 § 49-498.

Added as § 36-785 by Laws 1967, Ch. 2, § 8, eff. Feb. 9, 1967. Amended by Laws 1970, Ch. 164, § 16, eff. May 18, 1970. Renumbered as § 49-496 and amended by Laws 1986, Ch. 368, §§ 38, 105, eff. July 1, 1987. Amended by Laws 1992, Ch. 299, § 52, eff. Sept. 1, 1993.

§ 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.

Added by Laws 2000, Ch. 194, § 6, eff. Jan. 1, 2002.

§ 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 § 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.

Added by Laws 2000, Ch. 194, § 6, eff. Jan. 1, 2002.

§ 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

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. Added as § 36-789 by Laws 1967, Ch. 2, § 8. Amended by Laws 1969, Ch. 53, § 14; Laws 1970, Ch. 164, § 21, eff. May 13, 1970; Laws 1971, Ch. 190, § 7; Laws 1973, Ch. 153, § 142; Laws 1978, Ch. 201, § 620, eff. Oct. 1, 1978. Renumbered as § 49-501 and amended by Laws 1986, Ch. 368, §§ 38, 106, eff. July 1, 1987. Amended by Laws 1990, Ch. 374, § 444, eff. Jan. 1, 1991; Laws 1994, Ch. 273, § 2, eff. April 24, 1994; Laws 1996, Ch. 137, § 1; Laws 1997, Ch. 175, § 4; 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 § 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 § 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.

Added as § 36-789.01 by Laws 1970, Ch. 164, § 22, eff. May 18, 1970. Amended by Laws 1971, Ch. 190, § 5; Laws 1978, Ch. 201, § 621, eff. Oct. 1, 1978; Laws 1982, Ch. 37, § 33. Renumbered as § 49-502 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987. Amended by Laws 1990, Ch. 246, § 2; Laws 1991, Ch. 283, § 16.

§ 49-503. Defenses

Violations under § 49-502 shall be malum prohibitum. Lack of criminal intent shall not constitute a defense to such violations.

Added as § 36-789.02 by Laws 1971, Ch. 190, § 9. Renumbered as § 49-503 and amended by Laws 1986, Ch. 368, §§ 38, 107, eff. July 1, 1987.

§ 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.

Added as § 36-790 by Laws 1967, Ch. 2, § 8, eff. Feb. 9, 1967. Renumbered as § 49-504 by Laws 1986, Ch. 368, § 38, eff. July 1, 1987.

§ 49-505. Repealed by Laws 1992, Ch. 299, § 54, eff. Sept. 1, 1993

§ 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.

Added by Laws 1988, Ch. 252, § 17. Amended by Laws 1998, Ch. 217, § 20.

§ 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 § 507 of the clean air act.¹

Added by Laws 1992, Ch. 299, § 55.

¹ 42 U.S.C.A. § 7661f.

§ 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.

Added by Laws 1992, Ch. 299, § 56, eff. Sept. 1, 1993.

§ 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 § 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,¹ 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.

Added by Laws 1992, Ch. 299, § 56, eff. Sept. 1, 1993. Amended by Laws 2000, Ch. 194, § 7, eff. Jan. 1, 2002; Laws 2001, Ch. 292, § 2; Laws 2001, Ch. 292, § 3, eff. Jan. 1, 2002.

¹ 42 U.S.C.A. § 7661 et seq.

§ 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 6.¹

Added by Laws 1992, Ch. 299, § 56, eff. Sept. 1, 1993.

¹ Section 3-361 et seq.

§ 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 § 49-480.

Added by Laws 1992, Ch. 299, § 56, eff. Sept. 1, 1993.

§ 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. § 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 act¹ 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

Appendix B

Certified ADEQ Rules to be incorporated into the SIP

STATE OF ARIZONA

Department Of State



UNITED STATES OF AMERICA

STATE OF ARIZONA

I, **KEN BENNETT**, SECRETARY OF STATE, DO HEREBY CERTIFY THAT THE ATTACHED IS A COMPLETE, TRUE, AND CORRECT COPY OF R18-2-313 FROM

ARIZONA ADMINISTRATIVE CODE SUPPLEMENT 12-1

IN WITNESS WHEREOF I have

hereunto set my hand and affixed the

Great Seal of the State of Arizona

Done this 10th day of August, 2012.

Ken Bennett
Ken Bennett
Secretary of State

KEN BENNETT
Secretary of State

R18-2-313. Emission Monitoring
A. Every combustion engine emitting source per... shall include, calibrate, operate, and maintain all monitoring equipment...
B. The following shall apply to each category:
1. Fossil fuel fired... as specified in...
2. Diesel engine...
3. Gas turbine...
4. Internal combustion engine...
5. Steam generator...
6. Steam boiler...
7. Steam turbine...
8. Steam engine...
9. Steam locomotive...
10. Steam tractor...
11. Steam hoist...
12. Steam pump...
13. Steam engine...
14. Steam engine...
15. Steam engine...
16. Steam engine...
17. Steam engine...
18. Steam engine...
19. Steam engine...
20. Steam engine...

- The owner or operator of a permitted source shall provide, or cause to be provided, performance testing facilities as follows:
1. Sampling ports adequate for test methods applicable to such facility.
 2. Safe sampling platform(s).
 3. Safe access to sampling platform(s).
 4. Utilities for sampling and testing equipment.
- F.** Each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs is required to be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Director's approval, be determined using the arithmetic means of the results of the two other runs. If the Director, or the Director's designee is present, tests may only be stopped with the Director's or such designee's approval. If the Director, or the Director's designee is not present, tests may only be stopped for good cause, which includes forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the operator's control. Termination of testing without good cause after the first run is commenced shall constitute a failure of the test.
- G.** Except as provided in subsection (H) compliance with the emission limits established in this Chapter or as prescribed in permits issued pursuant to this Chapter shall be determined by the performance tests specified in this Section or in the permit.
- H.** In addition to performance tests specified in this Section, compliance with specific emission limits may be determined by:
1. Opacity tests.
 2. Emission limit compliance tests specifically designated as such in the regulation establishing the emission limit to be complied with.
 3. Continuous emission monitoring, where applicable quality assurance procedures are followed and where it is designated in the permit or in an applicable requirement to show compliance.
- I.** Nothing in this Section shall be so construed as to prevent the utilization of measurements from emissions monitoring devices or techniques not designated as performance tests as evidence of compliance with applicable good maintenance and operating requirements.
- b. Fluid bed catalytic cracking unit catalyst regenerators, as specified in subsection (C)(4), shall be monitored for opacity.
 - c. Sulfuric acid plants, as specified in subsection (C)(3) of this Section, shall be monitored for sulfur dioxide emissions.
 - d. Nitric acid plants, as specified in subsection (C)(2), shall be monitored for nitrogen oxides emissions.
2. Emission monitoring shall not be required when the source of emissions is not operating.
 3. Variations.
 - a. Unless otherwise prohibited by the Act, the Director may approve, on a case-by-case basis, alternative monitoring requirements different from the provisions of this Section if the installation of a continuous emission monitoring system cannot be implemented by a source due to physical plant limitations or extreme economic reasons. Alternative monitoring procedures shall be specified by the Director on a case-by-case basis and shall include, as a minimum, annual manual stack tests for the pollutants identified for each type of source in this Section. Extreme economic reasons shall mean that the requirements of this Section would cause the source to be unable to continue in business.
 - b. Alternative monitoring requirements may be prescribed when installation of a continuous emission monitoring system or monitoring device specified by this Section would not provide accurate determinations of emissions (e.g., condensed, uncombined water vapor may prevent an accurate determination of opacity using commercially available continuous emission monitoring systems).
 - c. Alternative monitoring requirements may be prescribed when the affected facility is infrequently operated (e.g., some affected facilities may operate less than one month per year).
 4. Monitoring system malfunction: A temporary exemption from the monitoring and reporting requirements of this Section may be provided during any period of monitoring system malfunction, provided that the source owner or operator demonstrates that the malfunction was unavoidable and is being repaired expeditiously.
- B.** Installation and performance testing required under this Section shall be completed and monitoring and recording shall commence within 18 months of the effective date of this Section.
- C.** Minimum monitoring requirements:
1. Fossil-fuel fired steam generators: Each fossil-fuel fired steam generator, except as provided in the following subsections, with an annual average capacity factor of greater than 30%, as reported to the Federal Power Commission for calendar year 1976, or as otherwise demonstrated to the Department by the owner or operator, shall conform with the following monitoring requirements when such facility is subject to an emission standard for the pollutant in question.
 - a. A continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section shall be installed, calibrated, maintained, and operated in accordance with the procedures of this Section by the owner or operator of any such steam generator of greater than 250 million Btu per hour heat input except where:
 - i. Gaseous fuel is the only fuel burned; or

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-312 renumbered without change as R18-2-312 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-313. Existing Source Emission Monitoring

- A.** Every source subject to an existing source performance standard as specified in this Chapter shall install, calibrate, operate, and maintain all monitoring equipment necessary for continuously monitoring the pollutants and other gases specified in this Section for the applicable source category.
1. Applicability.
 - a. Fossil-fuel fired steam generators, as specified in subsection (C)(1), shall be monitored for opacity, nitrogen oxides emissions, sulfur dioxide emissions, and oxygen or carbon dioxide.

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- ii. Oil or a mixture of gas and oil are the only fuels burned and the source is able to comply with the applicable particulate matter and opacity regulations without utilization of particulate matter collection equipment, and where the source has never been found to be in violation through any administrative or judicial proceedings, or accepted responsibility for any violation of any visible emission standard.
 - b. A continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section shall be installed, calibrated, using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on any fossil-fuel fired steam generator of greater than 250 million Btu per hour heat input which has installed sulfur dioxide pollutant control equipment.
 - c. A continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specification of this Section shall be installed, calibrated using nitric oxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on fossil-fuel fired steam generators of greater than 1000 million Btu per hour heat input when such facility is located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, unless the source owner or operator demonstrates during source compliance tests as required by the Department that such a source emits nitrogen oxides at levels 30% or more below the emission standard within this Chapter.
 - d. A continuous emission monitoring system for the measurement of the percent oxygen or carbon dioxide which meets the performance specifications of this Section shall be installed, calibrated, operated, and maintained on fossil-fuel fired steam generators where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard within this Chapter.
2. Nitric acid plants: Each nitric acid plant of greater than 300 tons per day production capacity, the production capacity being expressed as 100% acid located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, shall install, calibrate using nitrogen dioxide calibration gas mixtures, maintain, and operate a continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specifications of this Section for each nitric acid producing facility within such plant.
 3. Sulfuric acid plants: Each sulfuric acid plant as defined in R18-2-101, of greater than 300 tons per day production capacity, the production being expressed as 100% acid, shall install, calibrate using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintain and operate a continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section for each sulfuric acid producing facility within such a plant.
 4. Fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries. Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh-feed capacity shall install, calibrate, maintain and operate a continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section for each regenerator within such refinery.
- D. Minimum specifications: Owners or operators of monitoring equipment installed to comply with this Section shall demonstrate compliance with the following performance specifications.
1. The performance specifications set forth in Appendix B of 40 CFR 60 are incorporated herein by reference and shall be used by the Director to determine acceptability of monitoring equipment installed pursuant to this Section. However where reference is made to the Administrator in Appendix B of 40 CFR 60, the Director may allow the use of either the state-approved reference method or the federally approved reference method as published in 40 CFR 60. The performance specifications to be used with each type of monitoring system are listed below.
 - a. Continuous emission monitoring systems for measuring opacity shall comply with performance specification 1.
 - b. Continuous emission monitoring systems for measuring nitrogen oxides shall comply with performance specification 2.
 - c. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 2.
 - d. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 3.
 - e. Continuous emission monitoring systems for measuring carbon dioxide shall comply with performance specification 3.
 2. Calibration gases: Span and zero gases shall be traceable to National Bureau of Standards reference gases whenever these reference gases are available. Every six months from date of manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses using the reference methods in Appendix A of 40 CFR 60 (Chapter 1) as amended: For sulfur dioxide, use Reference Method 6; for nitrogen oxides, use Reference method 7; and for carbon dioxide or oxygen, use Reference Method 3. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.
 3. Cycling time: Time includes the total time required to sample, analyze, and record an emission measurement.
 - a. Continuous emission monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive six-minute period.
 - b. Continuous emission monitoring systems for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
 4. Monitor location: All continuous emission monitoring systems or monitoring devices shall be installed such that representative measurements of emissions of process parameter (i.e., oxygen, or carbon dioxide) from the affected facility are obtained. Additional guidance for location of continuous emission monitoring systems to

obtain representative samples are contained in the applicable performance specifications of Appendix B of 40 CFR 60.

5. Combined effluents: When the effluents from two or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere through more than one point, separate monitors shall be installed.
 6. Zero and drift: Owners or operators of all continuous emission monitoring systems installed in accordance with the requirements of this Section shall record the zero and span drift in accordance with the method prescribed by the manufacturer's recommended zero and span check at least once daily, using calibration gases specified in subsection (C) as applicable, unless the manufacturer has recommended adjustments at shorter intervals, in which case such recommendations shall be followed; shall adjust the zero span whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in Appendix B of Part 60, Chapter 1, Title 40 CFR are exceeded.
 7. Span: Instrument span should be approximately 200% of the expected instrument data display output corresponding to the emission standard for the source.
- E. Minimum data requirement: The following subsections set forth the minimum data reporting requirements for sources employing continuous monitoring equipment as specified in this Section. These periodic reports do not relieve the source operator from the reporting requirements of R18-2-310.01.
1. The owners or operators of facilities required to install continuous emission monitoring systems shall submit to the Director a written report of excess emissions for each calendar quarter and the nature and cause of the excess emissions, if known. The averaging period used for data reporting shall correspond to the averaging period specified in the emission standard for the pollutant source category in question. The required report shall include, as a minimum, the data stipulated in this subsection.
 2. For opacity measurements, the summary shall consist of the magnitude in actual percent opacity of all six-minute opacity averages greater than any applicable standards for each hour of operation of the facility. Average values may be obtained by integration over the averaging period or by arithmetically averaging a minimum of four equally spaced, instantaneous opacity measurements per minute. Any time periods exempted shall be deleted before determining any averages in excess of opacity standards.
 3. For gaseous measurements the summary shall consist of emission averages in the units of the applicable standard for each averaging period during which the applicable standard was exceeded.
 4. The date and time identifying each period during which the continuous emission monitoring system was inoperative, except for zero and span checks and the nature of system repair or adjustment shall be reported. The Director may require proof of continuous emission monitoring system performance whenever system repairs or adjustments have been made.
 5. When no excess emissions have occurred and the continuous emission monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be included in the report.
 6. Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous emission monitoring system or as necessary to convert

monitoring data to the units of the applicable standard for a minimum of two years from the date of collection of such data or submission of such summaries.

- F. Data reduction: Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.
1. For fossil-fuel fired steam generators the following procedures shall be used to convert gaseous emission monitoring data in parts per million to g/million cal (lb/million Btu) where necessary,
 - a. When the owner or operator of a fossil-fuel fired steam generator elects under subsection (C)(1)(d) to measure oxygen in the flue gases, the measurements of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry).
 - i. When measurements are on a wet basis, except where wet scrubbers are employed or where moisture is otherwise added to stack gases, the following conversion procedure shall be used:

$$E(Q) = C(ws)F(w) \left[\frac{20.9}{20.9(1 - B(wa)) - \%O(2ws)} \right]$$

- ii. When measurements are on a wet basis and the water vapor content of the stack gas is determined at least once every 15 minutes the following conversion procedure shall be used:

$$E(Q) = C(ws)F \left[\frac{20.9}{20.9(1 - B(wa))\%O(2ws)} \right]$$

Use of this equation is contingent upon demonstrating the ability to accurately determine B(ws) such that any absolute error in B(ws) will not cause an error of more than ±1.5% in the term:

$$\left[\frac{20.9}{20.9(1 - B(wa)) - \%O(2ws)} \right]$$

- iii. When measurements are on a dry basis, the following conversion procedure shall be used:

$$E(Q) = CF \left[\frac{20.9}{20.9 - \%O(2ws)} \right]$$

- b. When the owner or operator elects under subsection (C)(1)(d) to measure carbon dioxide in the flue gases, the measurement of the pollutant concentration and the carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure used;

$$E(Q) = CF(c) \left[\frac{100}{\%CO(2)} \right]$$

- c. The values used in the equations under subsection (F)(1) above are derived as follows:

Department of Environmental Quality – Air Pollution Control

$E(Q)$ = pollutant emission, g/million cal (lb/million Btu).

C = pollutant concentration, g/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each hourly period by 4.16×10^{-5} M g/dscm per ppm (2.64×10^{-9} M lb/dscf per ppm) where M = pollutant molecular weight, g/g-mole (lb/lb-mole), $M = 64$ for sulfur dioxide and 46 for oxides of nitrogen.

$C(ws)$ = pollutant concentrations at stack conditions, g/wscm (lb/wscf), determined by multiplying the average concentration (ppm) for each one-hour period by 4.15×10^{-5} M lb/wscm per ppm (2.59×10^{-5} M lb/wscf per ppm) where M = pollutant molecular weight, g/g mole (lb/lb mole), $M = 64$ for sulfur dioxide and 46 for nitrogen oxides.

%O(2), %CO(2) = Oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under subsection (D)(1)(d).

$F, F(c)$ = A factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted ($F(c)$), respectively. Values of F and $F(c)$ are given in 40 CFR 60.45(f) (Chapter 1).

$F(w)$ = A factor representing a ratio of the volume of wet flue gases generated to the calorific value of the fuel combusted. Values of $F(w)$ are given in Reference Method 19 of the Arizona Testing Manual.

$B(wa)$ = Proportion by volume of water vapor in the ambient air. Approval may be given for determination of $B(w)a$ by on-site instrumental measurement provided that the absolute accuracy of the measurement technique can be demonstrated to be within $\pm 0.7\%$ water vapor. Estimation methods for $B(wa)$ are given in Reference Method 19 of the Arizona Testing Manual.

$B(ws)$ = Proportion by volume of water vapor in the stack gas.

2. For sulfuric acid plants as defined in R18-2-101, the owner or operator shall:
 - a. Establish a conversion factor three times daily according to the procedures of 40 CFR 60.84(b) (Chapter 1),
 - b. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain average sulfur dioxide emissions in Kg/metric ton (lb/short ton), and
 - c. Report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.
3. For nitric acid plants, the owner or operator shall:
 - a. Establish a conversion factor according to the procedures of 40 CFR 60.73(b) (Chapter 1),
 - b. Multiply the conversion factor by the average nitrogen oxides concentration in the flue gases to obtain the nitrogen oxides emissions in the units of the applicable standard,
 - c. Report the average nitrogen oxides emission for each averaging period in excess of applicable emission standard in the quarterly summary.

4. The Director may allow data reporting or reduction procedures varying from those set forth in this Section if the owner or operator of a source shows to the satisfaction of the Director that his procedures are at least as accurate as those in this Section. Such procedures may include but are not limited to the following:
 - a. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).
 - b. Alternative methods of converting pollutant concentration measurements to the units of the emission standards.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (C), paragraph (1), subparagraph (d) (Supp 80-2). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-313 renumbered without change as R18-2-313 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

R18-2-314. Quality Assurance

Facilities subject to the permit requirements of this Article shall submit a quality assurance plan to the Director that meets the requirements of R18-2-311(D)(3) within 12 months of the effective date of this Section. Facilities subject to the requirements of R18-2-313 shall submit a quality assurance plan as specified in the permit.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-314 renumbered without change as R18-2-314 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-315. Posting of Permit

- A. Any person who has been granted an individual or general permit shall post such permit or a certificate of permit issuance on location where the equipment is installed in such a manner as to be clearly visible and accessible. All equipment covered by the permit shall be clearly marked with one of the following:
 1. The current permit number,
 2. A serial number or other equipment number that is also listed in the permit to identify that piece of equipment.
- B. A copy of the complete permit shall be kept on the site.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-315 renumbered without change as R18-2-315 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-316. Notice by Building Permit Agencies

All agencies of the county or political subdivisions of the county that issue or grant building permits or approvals shall examine the plans and specifications submitted by an applicant for a permit or approval to determine if an air pollution permit will possibly be required under the provisions of this Chapter. If it appears that an air pollution permit will be required, the agency or political subdi-

STATE OF ARIZONA

Department Of State



...without change
...to A.R.S. § 41-
...days (Supp. 91-4). Emergency
... (Supp. 95-1). New Section adopted
... effective November 15, 1991 (Supp. 91-1). Amended by
... effective January 1,
... (Supp. 91-4). Amended by
... effective November 15, 1991 (Supp. 91-1).

UNITED STATES OF AMERICA)

) SS.

STATE OF ARIZONA)

I, KEN BENNETT, SECRETARY OF STATE, DO HEREBY CERTIFY THAT THE

ATTACHED IS A COMPLETE, TRUE, AND CORRECT COPY OF R18-2-327 FROM ARIZONA ADMINISTRATIVE CODE SUPPLEMENT 12-1.

D. Actual quantities of emissions... shall be calculated by...
IN WITNESS WHEREOF, I have
hereunto set my hand and affixed the
Great Seal of the State of Arizona.
Done this 10th day of August, 2012.

Ken Bennett
KEN BENNETT
Secretary of State

Any single... greater than...
in R18-2-101...
Any combination... quantity greater than...
Actual quantities of emissions... following emission factors or data
Whenever available, emissions... calculated from continuous...
... of 40 CFR 75...

Department of Environmental Quality – Air Pollution Control

- b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
- c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department.

Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4).

R18-2-326.01. Emissions-Based Fee Increase Related to Individual Permits for Fiscal Year 2011

In addition to the emissions-based fees required under R18-2-326(C) for Class I Title V sources for Calendar Year 2008, a one-time emissions-based fee of \$20.82 per ton of actual emissions of all regulated pollutants emitted during Calendar Year 2008 shall be due within 30 days of the invoice postmark date for the increased fee.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 844, effective July 1, 2010 (Supp. 10-2).

R18-2-327. Annual Emissions Inventory Questionnaire

- A. Every source subject to a permit requirement under this Chapter shall complete and submit to the Director an annual emissions inventory questionnaire. The questionnaire is due by March 31 or 90 days after the Director makes the inventory form available, whichever occurs later, and shall include emission information for the previous calendar year. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.
- B. The questionnaire shall be on a form provided by the Director and shall include the following information:
 - 1. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.
 - 2. Process information for the source, including design capacity, operations schedule, and emissions control devices, their description and efficiencies.
 - 3. The actual quantity of emissions from permitted emission points and fugitive emissions as provided in the permit, including documentation of the method of measurement, calculation, or estimation, determined pursuant to subsection (C), of the following regulated air pollutants:
 - a. Any single regulated air pollutant in a quantity greater than 1 ton or the amount listed for the pollutant in subsection (a) of the definition of "significant" in R18-2-101, whichever is less.
 - b. Any combination of regulated air pollutants in a quantity greater than 2 1/2 tons.
- C. Actual quantities of emissions shall be determined using the following emission factors or data:
 - 1. Whenever available, emissions estimates shall either be calculated from continuous emissions monitors certified pursuant to 40 CFR 75, Subpart C and referenced appen-

dices, or data quality assured pursuant to Appendix F of 40 CFR 60.

- 2. When sufficient data pursuant to subsection (C)(1) is not available, emissions estimates shall be calculated from data from source performance tests conducted pursuant to R18-2-312 in the calendar year being reported or, when not available, conducted in the most recent calendar year representing the operating conditions of the year being reported.
- 3. When sufficient data pursuant to subsection (C)(1) or (C)(2) is not available, emissions estimates shall be calculated using emissions factors from EPA Publication No. AP-42 "Compilation of Air Pollutant Emission Factors," Volume I: Stationary Point and Area Sources, Fifth Edition, 1995, U.S. Environmental Protection Agency, Research Triangle Park, NC (and no future editions) which is incorporated by reference and is on file with the Department of Environmental Quality and the Office of Secretary of State. AP-42 can be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, telephone (202) 783-3238, or by downloading the document from the EPA Technology Transfer Network, computer modem number (919) 541-5742, setting 8-N-1, VT100, or ANSI.
- 4. When sufficient data pursuant to subsections (C)(1) through (C)(3) is not available, emissions estimates shall be calculated from material balance using engineering knowledge of process.
- 5. When sufficient data pursuant to subsections (C)(1) through (C)(4) is not available, emissions estimates shall be calculated by equivalent methods approved by the Director. The Director shall only approve methods that are demonstrated as accurate and reliable as the applicable method in subsections (C)(1) through (4).
- D. Actual quantities of emissions calculated under subsection (C) shall be determined on the basis of actual operating hours, production rates, in-place process control equipment, operational process control data, and types of materials processed, stored, or combusted.
- E. An amendment to an annual emission inventory questionnaire, containing the documentation required by subsection (B)(3), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous questionnaire. If the incorrect or insufficient information resulted in an incorrect annual emissions fee, the Director shall require that additional payment be made or shall apply an amount as a credit to a future annual emissions fee. The submittal of an amendment under this subsection shall not subject the owner or operator to an enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was due to reasonable cause and not wilful neglect.
- F. The Director may require submittal of supplemental emissions inventory questionnaires for air contaminants pursuant to A.R.S. §§ 49-422, 49-424, and 49-426.03 through 49-426.08.

Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective December 7, 1995 (Supp. 95-4).

Appendix C

***ADEQ's Public Process Documents
(Public Hearing Agenda, Sign-in Sheet, Hearing Officer Certification, Hearing Script and
Affidavit of Publication)***



Public Hearing Agenda

AIR QUALITY DIVISION

HEARING ON PROPOSED SUPPLEMENT TO THE ARIZONA STATE IMPLEMENTATION PLAN UNDER CLEAN AIR ACT SECTION 110 (a)(1) AND (2): IMPLEMENTATION OF: 2006 PM2.5 NATIONAL AMBIENT AIR QUALITY STANDARDS, 1997 PM2.5 NATIONAL AMBIENT AIR QUALITY STANDARDS, AND 1997 8-HOUR OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS, PARALLEL PROCESSING VERSION

ADEQ building, 1110 W. Washington St., Phoenix, AZ 85007
Conference Room 3175
Monday, July 23, 2012 at 2:00 p.m.

Pursuant to 40 CFR § 51.102 notice is hereby given that the above referenced meeting is open to the public.

1. Welcome and Introductions
2. Purposes of the Oral Proceeding
3. Procedure for Making Public Comment
4. Brief Overview of the proposed SIP revision
5. Question and Answer Period
6. Oral Comment Period
7. Adjournment of Oral Proceeding

Copies of the proposal are available for review at the Arizona Department of Environmental Quality (ADEQ) Records Center, First Floor, 1110 W. Washington St., Phoenix, Arizona 85007, 1110 W. Washington St., Phoenix, Arizona, and <http://www.azdeq.gov/environ/air/plan/notmeet.html#infra>. For additional information regarding the hearing please call Danielle M. Dancho, ADEQ Air Quality Division, at (602) 771 - 4210 or 1-800-234-5677, Ext. 771-4210.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Dan Flukas at (602) 771-4795 or 1-800-234-5677, Ext. 771-4795. Requests should be made as early as possible to allow sufficient time to make the arrangements for the accommodation. This document is available in alternative formats by contacting ADEQ TDD phone number at (602) 771-4829.



Air Quality Division Sign-In Sheet

Please Sign In

SUBJECT Proposed Supplement to AZSIP under CAA DATE 7/23/12
Section 110 a(1) & (2): 2006 PM2.5 NAAQS, 1997 PM2.5 NAAQS, & 1997 8-hour
Ozone NAAQS, Parallel Processing Version

	<u>NAME</u>	<u>ORGANIZATION</u>	<u>PHONE</u>	<u>FAX</u>	<u>E-MAIL</u>
1.	Danielle Dancho	ADEQ	602-7714210		DMD@azdeg.gov
2.	Rebecca Hudson	Southwest Gas	480-739-2820		Rebecca.Hudson@swgas.com
3.					
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7.					

Air Quality Division Sign-In Sheet - p ___ of ___

NAME

ORGANIZATION

PHONE

FAX

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Air Quality Division

Public Hearing Presiding Officer Certification

I, Wendy LeStarge, the designated Presiding Officer, do hereby certify that the public hearing held by the Arizona Department of Environmental Quality was conducted on July 23, 2012 at 1110 W. Washington St., Phoenix, Arizona, in accordance with public notice requirements by publication in The Arizona Republic and other locations beginning June 20, 2012. 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 23 day of July 2012.

[Signature]
Wendy LeStarge

State of Arizona)
) ss.
County of Maricopa)

Subscribed and sworn to before me on this 23 day of July 2012.



[Signature]
Notary Public
My commission expires: 4/2/2016

**PROPOSED ARIZONA AIR QUALITY
STATE IMPLEMENTATION PLAN (SIP)
HEARING ON PROPOSED SUPPLEMENT TO THE ARIZONA STATE
IMPLEMENTATION PLAN UNDER CLEAN AIR ACT SECTION 110
(a)(1) AND (2): IMPLEMENTATION OF: 2006 PM2.5 NATIONAL
AMBIENT AIR QUALITY STANDARDS, 1997 PM2.5 NATIONAL
AMBIENT AIR QUALITY STANDARDS, AND 1997 8-HOUR OZONE
NATIONAL AMBIENT AIR QUALITY STANDARDS, PARALLEL
PROCESSING VERSION**

Oral Proceeding
Hearing Officer Script

July 23, 2012

Ok. Good afternoon, thank you for coming. I now open this hearing on the proposed supplement to the Arizona State Implementation Plan (or SIP) under Clean Air Act section 110 (a)(1) and (2): Implementation of: 2006 PM2.5 National Ambient Air Quality Standards (NAAQS), 1997 PM 2.5 NAAQS, and the 1997 8-hour Ozone NAAQS, parallel processing version.

It is now Monday, July 23, 2012 and the time is 2:03 p.m. The location is the 1110 W. Washington St, Phoenix, AZ, Conference Room 3175. My name is Wendy LeStarge and I have been appointed by the Director of the Arizona Department of Environmental Quality (ADEQ) to preside at this proceeding.

The purposes of this proceeding are to provide the public an opportunity to:

- (1) hear about the substance of the proposed SIP revision,
- (2) ask questions regarding the revision, and
- (3) present oral argument, data and views regarding the revision in the form of comments on the record.

Representing the ADEQ today is Danielle M. Dancho and Diane Arnst.

Public notice appeared in the Arizona Republic on June 20th and 21st, 2012, and on ADEQ's website. Copies of the proposal were made available at the ADEQ Phoenix office and at the ADEQ Records Center.

The procedure for making a public comment on the record is straightforward. If you wish to comment, you need to fill out a speaker slip, which is available at the sign-in table, and give it to me. Speaker slips allows everyone an opportunity to be heard and allows us to match the name on the official record with the comments. You may also submit written comments to me today. Please note, the comment period for the proposed SIP ends on July 23, 2012. All written comments must be postmarked or received by ADEQ by 5:00 P.M., Mountain Standard Time, July 23, 2012, whether sent via U.S. mail or via e-mail or via FAX. Written comments can be mailed to Danielle M. Dancho, Air Quality Planning Section, Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, 85007 or Dancho.Danielle@azdeq.gov. Comments may also be faxed to (602) 771-2366.

Comments made during the formal comment period are required by law to be considered by the Department when preparing the final SIP. This is done through the preparation of a responsiveness summary in which the Department responds in writing to written and oral comments made during the formal comment period.

The agenda for this hearing is simple. First, we will present a brief overview of the proposed revision to the SIP.

Second, I will conduct a question and answer period. The purpose of the question and answer period is to provide information that may help you in making comments on the proposed revision.

Thirdly, I will conduct the oral comment period. At that time, I will begin to call speakers in the order that I have received speaker slips.

Please be aware that any comments at today's hearing that you want the Department to formally consider must be gither given either in writing or on the record at today's hearing during the oral comment period of this proceeding.

At this time, Ms. Dancho will give a brief overview of the proposal.

* * * * *

This supplement to the state implementation plan or (SIP) provides the necessary documentation and authority required to demonstrate that Arizona State and local air quality management programs meet the basic elements

required under Clean Air Act (CAA) Sections 110(a)(1) and (2) for implementing the 2006 PM_{2.5} National Ambient Air Quality Standards or (NAAQS), the 1997 PM_{2.5} NAAQS, and the 1997 8-hour ozone NAAQS. This SIP is a supplement to the "Infrastructure" SIP that was submitted on October 14, 2009, for the 2006 PM_{2.5} NAAQS, the 1997 8-hour Ozone NAAQS, and the 1997 PM_{2.5} NAAQS.

This submittal is a supplement to Arizona's October 14, 2009 submittal, in which Arizona submitted demonstration that the required Section 110(a)(2) elements are met, in part, for the 1997 PM_{2.5} and 8-hour ozone NAAQS. At that time, Arizona also submitted a demonstration that Section 110(a)(2) elements for the 2006 PM_{2.5} NAAQS. After subsequent discussions with EPA regarding the October 14, 2000...2009 submittal, Arizona is supplementing the October 14, 2009 submittal with certified copies of specific statutes and rules already listed in the 2009 submittal.

ADEQ is seeking parallel processing of this supplement to the SIP under 40 C.F.R. Part 51, Appendix V, § (section) 2.3.1 pending completion of the State's public notice and public hearing requirements. ADEQ will submit a final version of this SIP when public process has been completed.

*** * * * ***

This concludes the explanation period of this proceeding on the proposed revision to the SIP.

*** * * * ***

Are there any questions before we move to the oral comment period?

Hearing none.

This concludes the question and answer period of this proceeding on the proposed SIP.

*** * * * ***

I now open this proceeding for oral comments.

Ms. LeStarge: Since we have one person here who does not wish to comment, how about if I go off the record 'til about 12:15...we see who shows up?

Ms. Dancho: Are you sure?

Ms LeStarge: I...do you want to wait or not wait?

Ms. Dancho: Hmmm

Ms. LeStarge: I usually wait.

Ms. Dancho: Well, let's not wait.

Ms. LeStarge: No?

Ms Dancho: No.

Ms. LeStarge: Ok.

Ms. LeStarge: Well, this concludes the oral comment period of this proceeding.

* * * * *

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 SIP ends July 23, 2012 at 5:00 p.m.

Thank you for attending.

The time is now 2:08p.m. I now close this oral proceeding.

289193

AFFIDAVIT OF PUBLICATION

ADEQ
AIR QUALITY DIVISION

12 JUN 27 AM 10: 57

THE ARIZONA REPUBLIC

6840
State Agency
Public Notices

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
30 DAY PUBLIC COMMENT PERIOD AND HEARING ON PROPOSED SUPPLEMENT TO THE ARIZONA STATE IMPLEMENTATION PLAN UNDER CLEAN AIR ACT SECTION 110 (a)(1) AND (2); IMPLEMENTATION OF 2006 PM2.5 NATIONAL AMBIENT AIR QUALITY STANDARDS, 1997 PM2.5 NATIONAL AMBIENT AIR QUALITY STANDARDS, AND 1997 8-HOUR OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS; PARALLEL PROCESSING VERSION
The Arizona Department of Environmental Quality (ADEQ) opens a thirty-day public comment period with the publication of this notice on June 18, 2012, for the proposed supplement to the Arizona State Infrastructure State Implementation Plan (SIP) for the 2006 PM2.5 National Ambient Air Quality Standards (NAAQS), the 1997 Ozone NAAQS, and the 1997 PM2.5 NAAQS. The proposed SIP supplements the revision to the Arizona Infrastructure SIP submitted to the U.S. Environmental Protection Agency (EPA) on October 14, 2009. A public hearing on the proposed SIP supplement which was submitted to the EPA for parallel processing under 40 CFR 51 Appendix V on June 1, 2012, will be held on Monday, July 23, 2012, at 2:00 p.m. ADEQ Conference Room 3175, 1110 W. Washington St., Phoenix, AZ. All interested parties will be given an opportunity at the public hearing to submit relevant comments, data, and views, orally and in writing. Written comments may be submitted prior to or during the public hearing and must be postmarked or received by ADEQ by 5:00 p.m. on July 25, 2012. Written comments should be addressed, faxed, or e-mailed to: Danielle M. Dancho, Air Quality Planning Section, Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ 85007. FAX: (602) 771-2366. E-mail: dancho.danielle@azdeq.gov. Copies of the SIP proposal are available for review online at the following web address: <http://www.azdeq.gov/cobin/vertical.pl?l=search&keyword=air%20quality> and in hard copy at the following location: ADEQ Records Center, First Floor, 1110 W. Washington Street, Phoenix, Arizona 85007. Attention: Koriene Lara, (602) 771-4712. Pub: June 20, 21, 2012

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

Tabitha Antoniadis, being first duly sworn, upon oath deposes and says: That she 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

June 20, 21, 2012

Sworn to before me this
22TH day of
June A.D. 2012

BRIAN BILLINGS
Notary Public - Arizona
Maricopa County
My Comm. Expires Jul 25, 2014

Notary Public

Appendix D

*Maricopa County Rules to be incorporated into the SIP
(Maricopa County's June 16, 2012 submittal to the EPA)*



Maricopa County
Air Quality Department

August 10, 2012

Office of the Director
William Wiley
1001 North Central Avenue
Suite #500
Phoenix, Arizona 85004
602-506-6443 - desk
602-372-6440 - fax

Mr. Henry Darwin
Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

RE: SIP submittal clarification

Mr. Darwin:

On June 8, 2012, the Maricopa County Air Quality Department submitted to the Arizona Department of Environmental Quality (ADEQ) a final State Implementation Plan (SIP) revision package for amendments to Rule 100 (General Provisions And Definitions) as a revision to the Maricopa County portion of the Arizona SIP for Section 110(a)(2) Infrastructure. On June 19, 2012, ADEQ formally submitted this final SIP revision package to the U.S. Environmental Protection Agency (EPA).

It has been brought to the department's attention that the June 8, 2012 letter should have indicated that the department only intended to submit Rule 100, Section 500 (Sections 501-505) and not the entire Rule 100 as the SIP revision. By this letter, the department confirms our intent is to submit only the amendments to Rule 100, Section 500 (Sections 501-505) as a SIP revision in the final SIP revision package submitted to ADEQ on June 8, 2012. This SIP revision is part of the Maricopa County portion of the Arizona Infrastructure SIP for Clean Air Act (CAA) Section 110(a)(2).

Thank you for your cooperation and consideration in this matter. If you have any questions, please contact Johanna Kuspert, Acting Manager-Planning & Analysis Division, at (602) 506-6710.

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Wiley".

William D. Wiley, P.E.
Director

Enclosure

cc: Julie Rose, EPA
Jared Blumenfeld, EPA
Andrew Steckel, EPA
Colleen McKaughan, EPA
Eric Massey, ADEQ



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Henry R. Darwin
Director

JUN 19 2012

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

RE: Submittal of Maricopa County Rule 100 revising the Maricopa County Portion of the Arizona State Implementation Plan for Section 110(a)(2) Infrastructure

Dear Mr. Blumenfeld:

Consistent with the provisions of Arizona Revised Statutes §§ 49-104, 49-404, 49-406, and the Code of Federal Regulations (CFR) Title 40, §§ 51.102 through 51.104, the Arizona Department of Environmental Quality (ADEQ) hereby adopts and submits to the U.S. Environmental Protection Agency (EPA) Maricopa County Rule 100, General Provisions And Definitions, adopted March 15, 2006, as a revision to the Maricopa County portion of the Arizona State Implementation Plan (SIP). This revision strengthens the existing rules and supersedes the rules as outlined in number three of the SIP Completeness Checklist. Rule 100 contains provisions that are required for Clean Air Act (CAA) Section 110(a)(2)(f), which requires provisions for monitoring, emissions inventories, and modeling designed to assure attainment and maintenance of the NAAQS.

Rule 100 was discussed as part of ADEQ's SIP supplement to the *Clean Air Act Sections 110(a)(1) and (2): Implementation of 2006 PM_{2.5} National Ambient Air Quality Standards, 1997 PM_{2.5} National Ambient Air Quality Standards, and 1997 8-hour Ozone National Ambient Air Quality Standards*, which was submitted to the EPA on June 1, 2012.

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733

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Mr. Jared Blumenfeld
Page 2 of 2

The SIP revision consists of a document demonstrating that the requirements of 40 C.F.R. Part 51 Appendix V are satisfied, the Notice of Proposed Rulemaking (Appendix 1), documents showing public process was completed (Appendices 2 through 5), and the Final Adopted Version of the Rule (Appendix 6). A hard copy of the SIP revision and an electronic exact duplicate of the hard copy on CD are included with this letter.

Sincerely,



Eric C. Massey
Director, Air Quality

Enclosures (2)

cc: Bill Wiley, Maricopa County Air Quality Department
Ursula Kramer, Pima County Department of Environmental Quality
Don Gabrielson, Pinal County Air Quality Department
Colleen McKaughan, EPA Region IX
Noah Smith, EPA Region IX



Maricopa County
Air Quality Department

Office of the Director
William D. Wiley, P.E.
1001 North Central Avenue
Suite 125
Phoenix, Arizona 85004
(602) 506-6443 - desk
(602) 372-6440 - fax

June 8, 2012

Mr. Henry Darwin
Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Mr. Darwin:

Enclosed is a final State Implementation Plan revision package for amendments to the Maricopa County Air Pollution Control Regulations consistent with A.R.S. §49-479 and 40 CFR 51. The enclosed amendments revise Rule 100 titled General Provisions and Definitions which was adopted on March 15, 2006. Rule 100 contains several provisions required for an "infrastructure SIP" by Clean Air Act (CAA) Section 110 (a) (2). This package includes the following:

Completeness Checklist

EPA SIP Enforceability Statement

Appendix 1 Notice of Proposed Rulemaking

Appendix 2 Agenda Form And Notice of Final Rulemaking

Appendix 3 Notice of Public Hearing

Appendix 4 Affidavit of Publication

Appendix 5 Certified Excerpts From The Minutes Of The Board Of Supervisors' Public Hearing

Appendix 6 Final Adopted Version Of Rule

We are submitting this package to the Arizona Department of Environmental Quality as an official revision to the Arizona State Implementation Plan. A hard copy of the SIP revision and an electronic exact duplicate of the hard copy on CD are included with this letter.

Thank you for your cooperation and consideration in this matter. If you have any questions, please contact Johanna Kuspert, Acting Manager-Planning & Analysis Division, at (602) 506-6710.

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Wiley".

William D. Wiley, P.E.
Director

Enclosure

cc: Julie Rose, EPA
Jared Blumenfeld, EPA
Andrew Steckel, EPA
Colleen McKaughan, EPA
Eric Massey, ADEQ

★ **COMPLETENESS CHECKLIST** ★

1. **Agency:** Maricopa County Air Quality Department

2. **Submitted Rule:**

Number, Title

Adoption Date

100 (General Provisions And Definitions)

03/15/2006

3. **EPA Analogous Approved Rule (Applicable SIP):**

Rule 100 is analogous to the following EPA Applicable SIP approved rules:

EPA Applicable SIP Rule	Rule 100 Analogous Section
Rule 1 (Emissions Required: Policy Legal Authority)	Section 101, Section 102
Rule 2 (Definitions)	Section 200 Definitions, Sections 200.1—200.112
Rule 3 (Air Pollution Prohibited)	Section 301
Rule 40 (Recordkeeping and Reporting) A., D.	Section 106
Rule 40 B.	Section 502
Rule 40 C.	Section 504
Rule 43 (Right Of Inspection)	Section 105
Rule 71 (Anti-Degradation)	Section 109
Rule 80 (Validity)	Section 103
Rule 100, Section 504 Emission Statements Required	Renumbered as Section 503

4. **State/District Authority for Adoption/Implementation:**

A.R.S. § 49-479

5. **Pollutants Regulated by Rule:**

PM X, SO_x X, VOC X, NO_x X, CO X, Pb X

6. **Identification of Sources by Name or Number/Location (City, County, or District) Area's Attainment and Plan Status (Group By Size/Subcategory, if Necessary):**

Rule 100 is a general provisions rule that applies to all sources of air pollution in Maricopa County.

PM10 Classification:	Serious (As of June 1996)
Carbon Monoxide Classification:	Serious (As of July 1996)
Ozone Classification:	Marginal (As of June 2012)
PM2.5 Classification:	Unclassifiable/Attainment (As of March 2011)

7. **Summary of Rule/Rule Changes:**

Rule 100 is an administrative rule. On November 29, 2004, the EPA published two final rules in the Federal Register. The first final rule, 69 FR 69298 - 69304, exempted t-butyl acetate from volatile organic compound (VOC) emissions limitations and content requirements. In the second final rule, 69 FR 69290 - 69298, the EPA added four compounds to the list of compounds excluded from the definition of VOC at 40 CFR 51.100(s)(1), and also made nomenclature changes to two previously exempted compounds. Maricopa County is incorporating these changes into Rule 100,

as required by the EPA. With this action, Maricopa County is also responding to a petition by an interested party to incorporate the changes to t-butyl acetate into Rule 100. In 62 FR 38652 - 38760 (7/18/97), the EPA promulgated final rules implementing the National Ambient Air Quality Standards (NAAQS) for PM_{2.5}. Maricopa County is adding the definition for PM_{2.5} to Rule 100 and adding "40 CFR 50, Appendix L" to the Reference Method definition.

In this rulemaking, Maricopa County also amended Rule 100 by making several technical corrections. Maricopa County removed the terms "Bureau", "Division", "Division of Air Pollution Control" and "Maricopa County Environmental Services Department" and replaced, where applicable, with "Maricopa County Air Quality Department" or "Department" in order to reflect the creation of the Maricopa County Air Quality Department on November 17, 2004. Maricopa County also updated the suite number and telephone number for the Air Quality Department. Maricopa County updated references to the ARS in several definitions to be consistent with the text currently used in the ARS. Several definitions in Rule 100 reference other sections of the Maricopa County Air Pollution Control Regulations. Maricopa County revised these references, where needed, due to the deletion and addition of definitions in Rule 100. Maricopa County also changed the term "subsection" to "section" when addressing sections of the Maricopa County Air Pollution Control Regulations in order to ensure consistency throughout the rules. Section 503 Emission Statements Required was renumbered as Section 503 in a revision on July 26, 2000. In this action the section was updated to incorporate a reference to the Consolidated Emissions Reporting Rule replacing the obsolete AIRS Fixed Format Report (AFP 644). Finally, Maricopa County added a new Appendix G, Incorporated Materials.

The intent of several of the revisions to Rule 100 is for Maricopa County's rule to be consistent with 40 CFR and the AAC. These and other substantive revisions to Rule 100 are discussed in the Section by Section Explanation of Changes. Note: Numerical references to the ADEQ rules at Title 18, Chapter 2, Section 101, Definitions are subject to change due to the addition or deletion of definitions by ADEQ in subsequent rulemakings.

8. Rule's Effect on Emissions:

Rule 100 is an administrative rule.

9. Demonstration that NAAQS/PSD Increments/RFP Demonstration Are Protected (As Appropriate):

Rule 100 is an administrative rule.

10. Modeling Information Used to Support Rule Revision:

Rule 100 is an administrative rule.

11. Evidence that Emissions Limitations are based on Continuous Emission Reduction Technology, Add-On Controls, Reformulated Materials, and/or Industrial/Process Equipment Designs:

Rule 100 is an administrative rule.

12. Identification of Section/Paragraph in Rule that Contains Emission Limitations, Work Practice Standards, Averaging Times, Test Procedures and/or Recordkeeping/Reporting Requirements:

Rule 100 is an administrative rule. However, Rule 100 contains emission limitations, recordkeeping requirements, and reporting requirements in the following sections:

- Emission Limitations:
 - 301 (Air Pollution Prohibited)

- 302 (Applicability of Multiple Rules)
- Recordkeeping Requirements:
 - 504 (Retention of Records)
- Reporting Requirements:
 - 501 (Reporting Requirements)
 - 502 (Data Reporting)
 - 503 (Emission Statements Required As Stated In The Act)
 - 505 (Annual Emissions Inventory Report)

13. Compliance/Enforcement Strategies to be Used to Determine Compliance (Including Frequency Of Inspection):

Compliance/enforcement strategies to be used to determine compliance are described in the following section of Rule 100:

- According to Section 105, the Control Officer during reasonable hours, for the purpose of enforcing and administering Maricopa County Air Pollution Control Regulations, or any provision of the Arizona Revised Statutes relating to the emission or control prescribed pursuant thereto, may enter every building, premises, or other place, except the interior of structures used as private residences. In the event that consent to enter for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate.

14. Special Economic/Technological Justifications for Deviations from EPA Policies (As Appropriate):

Rule 100 is an administrative rule.

15. Other Comments

Attached support documentation includes the following:

1. Notice of Proposed Rulemaking
2. Agenda Form and Notice of Final Rulemaking
3. Notice of Public Hearing
4. Affidavit of Publication
5. Certified Excerpts from the Minutes of the Board of Supervisors' Public Hearing
6. Final Adopted Version of the Rule

« FOR EPA USE ONLY «

SIP RULE REVISION IS:

COMPLETE

INCOMPLETE

	<u>Name</u>	<u>Telephone Number</u>
District Contact:	Johanna Kuspert	(602) 506-6710
State Contact:	Diane Arnst	(602) 771-2375
EPA Contact:		

State Submittal Date:

« EPA SIP ENFORCEABILITY STATEMENT «

1. APPLICABILITY

a. What sources are being regulated?

The intent of Rule 100 is to prevent, reduce, control, correct, or remove air pollution originating within the territorial limits of Maricopa County and to carry out the mandates of Title 49, Arizona Revised Statutes.

b. What exemptions are provided?

Rule 100 is an administrative rule and does not specifically address exemptions.

c. What are the units of compliance?

Units of compliance are described in the following sections of Rule 100:

- According to Section 301, no person shall discharge from any source whatever into the atmosphere regulated air pollutants which exceed in quantity or concentration that specified and allowed in these rules, the Arizona Administrative Code, or the Arizona Revised Statutes, or which 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 or the Director.
- According to Section 503, upon request of the Control Officer and as directed by the Control Officer, the owner or operator of any source which emits or may emit oxides of nitrogen (NO_x) or volatile organic compounds (VOC) shall provide the Control Officer with an emission statement, in such form as the Control Officer prescribes, showing measured actual emissions or estimated actual emissions of NO_x and VOC from that source. At a minimum, the emission statement shall contain all information required by the Consolidated Emissions Reporting Rule in 40 CFR 51, Subpart A, Appendix A, Table 2A, which is incorporated by reference in Appendix G. The statement shall contain emissions for the time period specified by the Control Officer. The statement shall also contain a certification by a responsible official of the company that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The first statement will cover 1992 emissions and shall be submitted to the Division by April 30, 1993. Statements shall be submitted annually thereafter. The Control Officer may waive this requirement for the owner or operator of any source which emits less than 25 tons per year of oxides of nitrogen or volatile organic compounds with an approved emission inventory for sources based on AP-42 or other methodologies approved by the Administrator of EPA.

d. Is bubbling or averaging of any type allowed?

Rule 100 is an administrative rule and does not specifically address bubbling or averaging of any type.

e. If there is a redesignation, will this change the emission limitations?

Rule 100 is an administrative rule and does not specifically address emission limitations.

2. COMPLIANCE DATES

a. What is the compliance date?

Rule 100 is an administrative rule. The revisions to Rule 100 became effective March 15, 2006.

b. What is the attainment date?

Particulates attainment date: December 31, 2006.
CO attainment date: December 31, 2000.
Ozone attainment date: December 31, 2015.

3. SPECIFICITY OF CONDUCT

a. What test method is required?

Rule 100 is an administrative rule and does not specifically address test method requirements.

b. What is the averaging time in the compliance test method?

Rule 100 is an administrative rule and does not specifically address the averaging time in the compliance test method.

4. RECORDKEEPING

a. What records are required to determine compliance?

Records required to determine compliance are described in the following section of Rule 100:

- According to Section 504, information and records required by applicable requirements and copies of summarizing reports recorded by the owner and/or operator and submitted to the Control Officer shall be retained by the owner and/or operator for 5 years after the date on which the information is recorded or the report is submitted. Non-Title V sources may retain such information, records, and reports for less than 5 years, if otherwise allowed by Maricopa County Air Pollution Control Regulations.

b. In what forms or units must records be kept?

Forms or units, in which records must be kept, are described in the following sections of Rule 100:

- According to Section 502, when requested by the Control Officer, a person shall furnish to the Division, information to locate and classify air contaminant sources according to type, level, duration, frequency, and other characteristics of emissions and such other information as may be necessary. This information shall be sufficient to evaluate the effect on air quality and compliance with these rules. The owner or operator of a source requested to submit information under Rule 100, Section 501 may subsequently be required to submit annually, or at such intervals specified by the Control Officer, reports detailing any changes in the nature of the source since the previous report and the total annual quantities of materials used or air contaminants emitted.
- According to Section 503, upon request of the Control Officer and as directed by the Control Officer, the owner or operator of any source which emits or may emit oxides of nitrogen (NO_x) or volatile organic compounds (VOC) shall provide the Control Officer with an emission statement, in such form as the Control Officer prescribes, showing measured actual emissions or estimated actual emissions of NO_x and VOC from that source. At a minimum, the emission statement shall contain all information required by the Consolidated Emissions Reporting Rule in 40 CFR 51, Subpart A, Appendix A, Table 2A, which is incorporated by reference in Appendix G. The statement shall contain emissions for the time period specified by the Control Officer. The statement shall also contain a certification by a responsible official of the company that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The

first statement will cover 1992 emissions and shall be submitted to the Division by April 30, 1993. Statements shall be submitted annually thereafter. The Control Officer may waive this requirement for the owner or operator of any source which emits less than 25 tons per year of oxides of nitrogen or volatile organic compounds with an approved emission inventory for sources based on AP-42 or other methodologies approved by the Administrator of EPA.

c. **On what time basis must records be kept?**

The time basis, in which records must be kept, is described in the following section of Rule 100:

- According to Section 504, information and records required by applicable requirements and copies of summarizing reports recorded by the owner and/or operator and submitted to the Control Officer shall be retained by the owner and/or operator for 5 years after the date on which the information is recorded or the report is submitted. Non-Title V sources may retain such information, records, and reports for less than 5 years, if otherwise allowed by Maricopa County Air Pollution Control Regulations.

Appendix 1

Background

Maricopa County is required to incorporate changes to 40 Code of Federal Regulations (CFR), and mandated by the Environmental Protection Agency (EPA), into the Maricopa County Air Pollution Control Regulations. Maricopa County is proposing this rulemaking to respond to recent notices published by the EPA in the Federal Register (FR).

Summary

Maricopa County is proposing to amend Rule 100, General Provisions and Definitions. Rule 100 includes definitions, administrative requirements, requirement for emissions statements and data reporting and other general information. Maricopa County also proposes to add a new Appendix G, Incorporated Materials.

On November 29, 2004, the EPA published two final rules in the Federal Register. The first final rule, 69 FR 69298 - 69304, exempted t-butyl acetate from volatile organic compound (VOC) emissions limitations and content requirements. In the second final rule, 69 FR 69290 - 69298, the EPA added four compounds to the list of compounds excluded from the definition of VOC at 40 CFR 51.100(s)(1), and also made nomenclature changes to two previously exempted compounds. Maricopa County proposes to incorporate these changes into Rule 100, as mandated by the EPA. With this action, Maricopa County is also responding to a petition by an interested party to incorporate the changes to t-butyl acetate into Rule 100. In 62 FR 38652 - 38760 (7/18/97), the EPA promulgated final rules implementing the National Ambient Air Quality Standards (NAAQS) for PM_{2.5}. Maricopa County proposes to add the definition for PM_{2.5} to Rule 100 and to add "40 CFR 50, Appendix L" to the Reference Method definition.

In this rulemaking, Maricopa County is proposing several technical corrections to Rule 100. Maricopa County proposes to remove the terms "Bureau", "Division", "Division of Air Pollution Control" and "Maricopa County Environmental Services Department" and replace, where applicable, with "Maricopa County Air Quality Department" or "Department" in order to reflect the creation of the Maricopa County Air Quality Department on November 17, 2004. Maricopa County also proposes to update the suite number and telephone number for the Air Quality Department. Maricopa County proposes to update references to the ARS in several definitions to be consistent with the text currently used in the ARS. Several definitions in Rule 100 reference other sections of the Maricopa County Air Pollution Control Regulations. Maricopa County proposes to revise these references, where needed, due to the deletion and addition of definitions in Rule 100. Maricopa County also proposes to change the term "subsection" to "section" when addressing sections of the Maricopa County Air Pollution Control Regulations in order to ensure consistency throughout the rules. Finally, Maricopa County proposes to add a new Appendix G, Incorporated Materials. The intent of several of the proposed revisions to Rule 100 is for Maricopa County's rule to be consistent with 40 CFR and the AAC. These and other substantive revisions to Rule 100 are discussed in the Section by Section Explanation of Changes.

Section by Section Explanation of Changes:

- Section 110 This proposal revises the text "Pollution Standard Index (PSI)" to "Air Quality Index (AQI)". The EPA changed the name of this index in 64 FR 42530 - 42549, 8/4/99.
- Section 112 This proposal adds a new Section 112 "Availability of Information" to indicate where incorporated materials are available.
- Section 200.14 This proposal revises the definition of AP-42. This document is now incorporated by reference in Appendix G.
- Section 200.38 This proposal removes the outdated text "The Division of Air Pollution Control within the Maricopa County Environmental Management and Transportation Agency."
- Section 200.39 This proposal adds the definition for "Dust Generating Operation". This definition is currently used in Maricopa County Air Pollution Control Regulations Rules 310 and Rules 316.
- Section 200.40 This proposal removes the definition for "Earthmoving Operation". This definition is currently only used in Maricopa County Air Pollution Control Regulation Rule 310.
- Section 200.49(b) This proposal changes the word "unitary" to "preconstruction" in the definition for "Federal Applicable Requirement" to reflect the language used in 40 CFR 70.2 and the Arizona Administrative Code (AAC) R18-2-101(42)(b).
- Section 200.67 This proposal adds a definition for "Nitrogen Oxides (NO_x)". The term "Nitrogen Oxides" is used in multiple Maricopa County Air Pollution Control Regulations. The term is defined as in 40 CFR 60.2 and AAC R18-2-101(76).
- Section 200.69 On November 29, 2004, the EPA published two final rules in the Federal Register. The first final rule, 69 FR 69298 - 69304, exempted t-butyl acetate (also known as tertiary butyl acetate, TBAC, or TBAc) from VOC emissions limitations and content requirements. EPA codified this change at 40 CFR 51.100(s)(5). T-butyl acetate will continue to be a VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements which apply to VOCs. EPA has made this determination on the reactivity of t-butyl acetate because of the "closeness" of t-butyl acetate to EPA's reactivity exemption line. In the second final rule, 69 FR 69290 - 69298, the EPA added four compounds to the list of compounds excluded from the definition of VOC at 40 CFR 51.100(s)(1), and also made nomenclature changes to two previously exempted compounds. The four compounds are: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃, or HFE-7000), 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (or HFE-7500, HFE-s702, T-7145, or L-15381), 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea), and methyl formate (HCOOCH₃). EPA based this ruling on its determination that the

four compounds make a negligible contribution to tropospheric ozone formation. EPA also made nomenclature changes to two previously exempted compounds: the addition of "HFE-7100" to the definition of 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C₄F₉OCH₃), and the addition of "HFE-7200" to the definition of 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅). Maricopa County proposes to incorporate the EPA's rulings into Rule 100 in the definition of "non-precursor organic compound".

- Section 200.79 In 62 FR 38652 - 38760 (7/18/97), the EPA promulgated final rules implementing the NAAQS for PM_{2.5}. Maricopa County proposes to add the definition for PM_{2.5} to Rule 100. Maricopa County will revise Rule 510, NAAQS in a separate rulemaking.
- Section 200.80 This proposal moves the word "nominal" before the text "10 microns" and changes the term "smaller than" to "less than" to keep the definition for PM₁₀ consistent with the language used in AAC R18-2-101(85) and 40 CFR 51.100(qq).
- Section 200.90 This proposal adds 40 CFR 50, Appendix L as a Reference Method. Appendix L, "Reference Method for the Determination of Particulate Matter as PM_{2.5} in the Atmosphere" was added with 62 FR 38652 - 38760, 7/18/97.
- Section 200.102 This proposal removes the text "A gas temperature of 60 degrees Fahrenheit (°F) and a gas pressure of 14.7 pounds per square inch absolute (psia)" and adds the text "A temperature of 293K (68 degrees Fahrenheit or 20 degrees Celsius) and a pressure of 101.3 kilopascals (29.92 in. Hg or 1013.25 mb)" to be consistent with the language used in AAC R18-2-701(34) and 40 CFR 60.2.
- Section 200.108 This proposal adds a definition for "Total Reduced Sulfur (TRS)". The term "Total Reduced Sulfur (TRS)" is used in Maricopa County Air Pollution Control Regulations Rule 100 and Rule 240. The definition added is consistent with the definition for "Total Reduced Sulfur (TRS)" used by the ADEQ in AAC R18-2-101(116).
- Section 503 Maricopa County proposes to remove the outdated reference to "AFP-644", and replace with a reference to "the Consolidated Emissions Reporting Rule in 40 CFR 51, Subpart A, Appendix A, Table 2A, July 1, 2004", published at 67 FR 39602 - 39616, 6/10/02. In this final rulemaking, EPA simplified and consolidated emission inventory reporting requirements to a single location within the CFR. Maricopa County also proposes to revise Section 503 by removing the outdated text "The first statement will cover 1992 emissions and shall be submitted to the Division by April 30, 1993" and replace with "Statements shall be submitted annually to the Department".

Appendix G, Incorporated Materials

This proposal adds a new appendix that incorporates by reference EPA test methods, protocols, federal regulations, and documents that are approved for use by Maricopa County. The test

methods, protocols, and documents are currently referenced or incorporated by reference in various sections of the Maricopa County Air Pollution Control Regulations. Maricopa County also proposes to incorporate by reference 40 CFR 51, Subpart A, Appendix A, Table 2A in Appendix G. The incorporation by reference of these test methods, protocols, documents, and regulations in one appendix of the Maricopa County Air Pollution Control Regulations will simplify future updates. This Appendix is equivalent to Title 18, Chapter 2, Appendix 2 in the AAC. The documents are also incorporated by reference by ADEQ in the AAC, R18-2-102 and R18-2-327(C)(3). The document "Guidelines for Determining Capture Efficiency" is not incorporated by reference by ADEQ, but is used in multiple Maricopa County rules.

6. Demonstration of compliance with ARS §49-112:

Under ARS §49-479(C), a county may not adopt or amend a rule that is more stringent than the rules adopted by the director of the ADEQ for similar sources unless it demonstrates compliance with the requirements of ARS §49-112.

ARS § 49-112(A)

When authorized by law, a county may adopt a rule, ordinance, or other regulation that is more stringent than or in addition to a provision of this title or rule adopted by the director or any board or commission authorized to adopt rules pursuant to this title if all the following conditions are met:

1. The rule, ordinance or other regulation is necessary to address a peculiar local condition;
2. There is credible evidence that the rule, ordinance or other regulation is either:
 - (a) Necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible
 - (b) Required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement with the federal government to enforce federal statutes or regulations if the county rule, ordinance or other regulation is equivalent to federal statutes or regulations.

Section 182(a)(3)(B) of the Clean Air Act requires stationary sources of air pollution in ozone nonattainment areas to prepare and submit emission statement data each year to the local governing agency; showing actual emissions of VOCs and NO_x. The requirements apply to facilities which emit VOC or NO_x in amounts of 25 tons per year or more (plant-wide basis). Under 40 CFR 81.303, Maricopa County is classified as nonattainment as for the 8-hour ozone standard. Maricopa County and parts of Pinal County are the only 8-hour ozone nonattainment areas in the state of Arizona. Maricopa County is proposing the revision to Rule 100, Section 503, Emission Statements Required as Stated in the Act, to address a peculiar local condition: the designation of Maricopa County as a nonattainment area for the 8-hour ozone standard. Maricopa County is

also proposing this revision because the preparation and submittal of emission statement data is required under Section 182(a)(3)(B) of the Clean Air Act. Therefore, this revision is in compliance with ARS §49-112(A).

ARS § 49-112(B)

The ARS § 49-112(B) demonstration does not apply because these particular rules are in that portion of Maricopa County's air quality program that is administered under direct statutory authority. Therefore, these rules are not being adopted or revised in lieu of a state program.

- 7. A reference to any study relevant to the rule that the department reviewed and either proposes to rely on or not rely on its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

See the *Federal Register* articles listed in item #5.

- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

- 9. The preliminary summary of the economic, small business, and consumer impact:**

Rule Identification

Rule 100 - General Provisions and Definitions, Appendix G - Incorporated Materials

Economic, small business and consumer impact summary

Background

In this rulemaking, Maricopa County is proposing to amend Rule 100, General Provisions and Definitions. Rule 100 includes definitions, administrative requirements, requirement for emissions statements and data reporting, and other general information. In this rulemaking, Maricopa County responds to recent notices published by the EPA in the Federal Register (FR). Maricopa County also proposes several technical corrections in this rulemaking, several revisions to be consistent with text used in 40 CFR and the AAC, and proposes to add a new Appendix G. Maricopa County is required to incorporate changes to 40 Code of Federal Regulations (CFR) into the Maricopa County Air Pollution Control Regulations.

Cost/benefit analysis/summary

The proposed "technical corrections" and "other proposed revisions" impose no economic impacts. The "technical corrections" are non-substantive changes. The "other proposed revisions" are mainly changes made to reflect the text currently used in 40 CFR and the AAC. The proposal to update the outdated reference to AFP-644, and replace with a reference to "the Consolidated Emissions Reporting Rule in 40 CFR 51, Subpart A, Appendix A, Table 2A" will have no economic impact. This final rule was promulgated by EPA in 67 FR

39602 - 39616, 6/10/02, and was effective on August 9, 2002, and consolidates emission inventory reporting requirements to a single location within the CFR. Also, the regulated community is already required to comply with Rule 100, Section 503, "Emission Statements Required As Stated in the Act". This proposed revision only updates a reference to an outdated document. Finally, the proposal to add a new Appendix G will have no economic impact. This new Appendix consolidates incorporated by reference material into one central location in the Maricopa County Air Pollution Control Regulations.

The proposal to add the definition for PM_{2.5} and revise the definition of "Reference Method" reflects the EPA's actions in 62 FR 38652 - 38760, 7/18/97. Both of these changes are mandated by 40 CFR, National Ambient Air Quality Standards (NAAQS) rule.

The proposal to revise the definition of "Non-Precursor Organic Compound" to incorporate two final rulemakings promulgated by EPA on 11/29/04 will reduce the economic burden on businesses. The exemption of t-butyl acetate (also known as tertiary butyl acetate, TBAC, or TBAc) from VOC emissions limitations and content requirements will result in reduced costs to businesses. Although t-butyl acetate will continue to be a VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements which apply to VOCs, businesses will no longer be required to include t-butyl acetate when determining VOC emissions limitations and content requirements. The exemption of 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃, or HFE-7000), 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (or HFE-7500, HFE-s702, T-7145, or L-15381), 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea), and methyl formate (HCOOCH₃) from the definition of VOC at 40 CFR 51.100(s)(1), will reduce the economic burden on businesses. Businesses will no longer be required to include these four compounds as a VOC in determining whether they meet regulatory obligations for limiting VOC use, limiting VOC emissions, or otherwise controlling VOCs. The minor nomenclature changes to two previously exempted compounds will also have no economic impact. The four compounds excluded from the definition of VOC all have potential for use as refrigerants, fire suppressants, aerosol propellants, or blowing agents. In addition, all four compounds may be used as an alternative to ozone-depleting substances. Three of the compounds are approved by EPA's Significant New Alternatives Policy program as acceptable substitutes for ozone-depleting compounds.

Costs to Maricopa County are those that may accrue for implementation and enforcement of the standards as county law. Since this rulemaking proposes updates, definitions, and technical corrections, it is not expected to have any effect on department revenues or personnel.

Benefits accrue to the regulated community when a county agency incorporates a federal regulation in order to become the primary implementer of the regulation, because the county agency is closer to those being regulated and, therefore, is generally easier to contact and to work with to resolve differences, compared with the EPA,

whose regional office for Arizona is in San Francisco. Local implementation also reduces travel and communication costs.

Health benefits accrue to the general public whenever enforcement of environmental laws takes place. Adverse health effects from air pollution result in a number of economic and social consequences, including:

1. **Medical Costs.** These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example. Also included are reduced emergency room visits and hospital admissions.
2. **Work Loss.** This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. **Increased costs for chores and care giving.** These include special care giving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and he or she may require extra care.
4. **Other social and economic costs.** These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members and others.

Rule impact reduction on small businesses.

ARS § 41-1035 requires Maricopa County to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives of the rulemaking.

The five listed methods are:

1. Establish less stringent compliance or reporting requirements in the final rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

A small business is defined in ARS § 41-1001 as a "concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations."

Maricopa County solicits input from stakeholders (i.e., small businesses) regarding administrative costs associated with compliance with proposed rulemakings and any other information relevant to the economics, small business, and consumer impact statement.

A description of the methods that the agency may use to reduce the impact on small businesses.

Maricopa County has determined that there is a beneficial impact on small businesses in transferring implementation of these rules to Maricopa County. In addition, Maricopa County is required to adopt the federal rules without reducing stringency. Maricopa County, therefore, has found that it is not legal or feasible to adopt any of the five listed methods in ways that reduce the impact of these rules on small businesses. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings. Information related to such may be found in the individual rules described in Section 5.

Conclusions

In conclusion, costs associated with this rule are generally low, while the air quality benefits are generally high. Costs to Maricopa County are those that may accrue for implementation and enforcement of the standards as county law. In addition, there are benefits to industry from being regulated by a geographically nearer government entity. There are no adverse economic impacts on political subdivisions. There are no adverse economic impacts on private businesses (the regulated community), their revenues, or expenditures. The fact that no new employment is expected to occur has been discussed above, in the context of the impact on county agencies. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above in terms of enforcement. There will be no direct impact on county revenues. There are no other, less costly alternatives for achieving the goals of this rulemaking.

The preliminary economic impact statement (EIS) was developed to estimate the impact of the proposed rule. This impact statement, comprised of potential costs and benefits, represents an estimate. Maricopa County solicits input from stakeholders that are small businesses and organizations on the administrative and other costs required for compliance with the proposed rulemaking, and any other information relevant to the economic, small business and consumer impact statement.

10. The name and address of department personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Hilary R Hartline or Jo Crumbaker, Maricopa County Air Quality Dept.
Address: 1001 North Central Avenue, Suite # 695, Phoenix, AZ 85004
Telephone Number: 602-506-3476 or 602-506-6705
Fax Number: 602-506-6179
E-Mail Address: hhartline@mail.maricopa.gov or jcrumbak@mail.maricopa.gov

11. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Oral Proceeding Date: December 15, 2005

Oral Proceeding Time: 9:00 AM

Location: Maricopa County Air Quality Department
5th Floor Conference Room #560
1001 North Central Avenue, Phoenix, Arizona, 85004

Nature: Public hearing with the opportunity for formal comments on the record regarding the proposed rules. All formal comments will be addressed in the Notice of Final Rulemaking. Call (602) 506-0169 for current information. Please call (602) 506-3476 for special accommodations under the Americans with Disabilities Act.

Written comments will be accepted if received between the date of this publication and December 16, 2005, 5:00 PM. Written comments may be mailed or hand delivered to the Maricopa County Air Quality Department (see # 4 above). Written comments received during the comment period will be considered formal comments to the proposed rule and will be responded to in the Notice of Final Rulemaking.

12. Any other matters prescribed by statute that are applicable to the specific department or to any specific rule or class of rules:

Not applicable.

13. Incorporations by reference and their location in the rules:

<u>Incorporation by reference:</u>	<u>Location</u>
Consolidated Emissions Reporting Rule, 40 CFR 51, Subpart A, Appendix A, Table 2A, July 1, 2004;	Appendix G
40 CFR 50, July 1, 2004;	Appendix G
40 CFR 50, Appendices A through N, July 1, 2004;	Appendix G
40 CFR 51, Appendix M, Appendix S, Section IV, and Appendix W, July 1, 2004;	Appendix G
40 CFR 52, Appendices D and E, July 1, 2004;	Appendix G
40 CFR 53, July 1, 2004;	Appendix G
40 CFR 58, July 1, 2004;	Appendix G
40 CFR 58, all appendices, July 1, 2004;	Appendix G
40 CFR 60, all appendices, July 1, 2004;	Appendix G
40 CFR 61, all appendices, July 1, 2004;	Appendix G
40 CFR 63, all appendices, July 1, 2004;	Appendix G

40 CFR 75, all appendices, July 1, 2004;	Appendix G
ADEQ's "Arizona Testing Manual for Air Pollutant Emissions," amended as of March 1992;	Appendix G
American Society for Testing and Materials (ASTM) test methods referenced in the Maricopa County Air Pollution Control Rules and Regulations as of the year specified in the reference;	Appendix G
The U.S. Government Printing Office's "Standard Industrial Classification Manual, 1987";	Appendix G
EPA Publication No. AP-42, 1995, "Compilation of Air Pollutant Emission Factors," Volume I: Stationary Point and Area Sources, Fifth Edition, including Supplements A, B, C, D, E, F, and Updates 2001, 2002, 2003, and 2004;	Appendix G
EPA guidance document "Guidelines for Determining Capture Efficiency", January 9, 1995.	Appendix G
2002 US NAICS Manual, "North American Industry Classification System - United States", National Technical Information Service, US Census Bureau, 2002.	Appendix G

14. The full text of the rule follows:

REGULATION I - GENERAL PROVISIONS

RULE 100

GENERAL PROVISIONS AND DEFINITIONS

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Revised 02/15/95

Revised 04/03/96

Revised 06/19/96

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Revised 05/20/98

Revised 07/26/00

Revised 03/07/01

Revised 08/22/01

Revised 11/06/02

**MARICOPA COUNTY
AIR POLLUTION CONTROL REGULATIONS**

REGULATION I - GENERAL PROVISIONS

**RULE 100
GENERAL PROVISIONS AND DEFINITIONS**

SECTION 100 - GENERAL

- 101 DECLARATION OF INTENT:** The Maricopa County Air Pollution Control Regulations prevent, reduce, control, correct, or remove regulated air pollutants originating within the territorial limits of Maricopa County and carry out the mandates of Arizona Revised Statutes (ARS), Title 49 (The Environment).
- 102 LEGAL AUTHORITY:** These rules are adopted under the authority granted by ARS §49-479.
- 103 VALIDITY:** If any section, subsection, clause, phrase, or provision of these rules is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion.
- 104 CIRCUMVENTION:** A person shall not build, erect, install, or use any article, machine, equipment, condition, or any contrivance, the use of which, without resulting in a reduction in the total release of regulated air pollutants to the atmosphere, conceals or dilutes an emission which would otherwise constitute a violation of these rules. No person shall circumvent these rules to dilute regulated air pollutants by using more emission openings than is considered normal practice by the industry or activity in question.
- 105 RIGHT OF INSPECTION OF PREMISES:** The Control Officer, during reasonable hours, for the purpose of enforcing and administering these rules or any provision of ARS relating to the emission or control prescribed pursuant thereto, may enter every building, premises, or other place, except the

interior of structures used as private residences. In the event that consent to enter for inspection purposes has been refused or circumstances justify the failure to seek such consent, special inspection warrants may be issued by a magistrate. Every person is guilty of a petty offense under ARS §49-488 who in any way denies, obstructs, or hampers such entrance or inspection that is lawfully authorized by warrant.

- 106 **RIGHT OF INSPECTION 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 rule, any rule adopted under this rule, or any requirement of a permit issued under this rule, the Control Officer 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 non-compliance with rules adopted under this rule. No person shall fail nor refuse to produce all existing documents required in such written request by the Control Officer.
- 107 **ADVISORY COUNCIL:** An Advisory Council appointed by the Board of Supervisors may advise and consult with the Board of Supervisors, the ~~Division of Air Pollution Control~~ Maricopa County Air Quality Department, and the Control Officer in effecting the mandates of ARS Title 49.
- 108 **HEARING BOARD:** The Board of Supervisors shall appoint a 5-member hearing board knowledgeable in the field of air pollution. At least 3 members shall not have a substantial interest, as defined in ARS §38-502(11), in any person required to obtain an air pollution permit. Each member shall serve a term of 3 years (ARS §49-478).
- 109 **ANTI-DEGRADATION:** The standards in these rules shall not be construed as permitting the preventable degradation of air quality in any area of Maricopa County.
- 110 **AVAILABILITY OF POLLUTION INFORMATION:** The public shall be informed on a daily basis of average daily concentration of 3 pollutants: particulates, carbon monoxide, and ozone. This information shall be disseminated through the use of newspapers, radio, and television. The levels of each pollutant shall be expressed through the use of the ~~Pollution Standard Index (PSI)~~ Air Quality Index (AQI) and a written copy of such information shall be made available at the office of the Maricopa County ~~Environmental Services~~ Air Quality Department, 1001 North Central Avenue, #201-Suite 400, Phoenix, Arizona, 85004, 602-506-6010.
- 111 **ANNUAL REASONABLE FURTHER PROGRESS (RFP) REPORT:** A report on the progress in implementation of nonattainment area plans shall be produced by the ~~Division~~ Department each year. The primary function of the report is to review the implementation schedules for control

measures and emission reduction forecasts in the nonattainment area plans. The annual report will be made available to the public at the offices of the Maricopa County Environmental Services Air Quality Department, 1001 North Central Avenue, #201 Suite 400, Phoenix, Arizona, 85004, 602-506-6010.

112 **AVAILABILITY OF INFORMATION:** Copies of 40 CFR 51, Subpart A, Appendix A, Table 2A, are available at 1001 N. Central Avenue, Suite 695, Phoenix, Arizona, 85004, or call (602) 506-6010 for information.

SECTION 200 - DEFINITIONS: To aid in the understanding of these rules, the following general definitions are provided. Additional definitions, as necessary, can be found in each rule of the Maricopa County Air Pollution Control Regulations.

200.1 AAC - Arizona Administrative Code.

200.2 ACT - 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).

200.3 ACTUAL EMISSIONS - The actual rate of emissions of a pollutant from an emissions unit, as determined in ~~subsections~~ Sections 200.3(a) through 200.3(e):

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a 2-year period that precedes the particular date and that is representative of normal source operation. The Control Officer may allow the use of a different time period upon a demonstration that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. If there is inadequate information to determine actual historical emissions, then the Control Officer may presume that source-specific allowable emissions for the emissions unit are equivalent to the actual emissions of the emissions unit.

c. For any emissions unit at a Title V source, other than an electric utility steam generating unit described in ~~subsection~~ Section 200.3(e) of this rule, that has not begun

normal operations on the particular date, actual emissions shall equal the unit's potential to emit on that date.

d. For any emissions unit at a Non-Title V source that has not begun normal operations on the particular date, actual emissions shall be based on applicable control equipment requirements and projected conditions of operation.

e. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit), actual emissions of the unit, following the physical or operational change, shall equal the representative actual annual emissions of the unit, if the source owner and/or operator maintains and submits to the Control Officer on an annual basis, for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the Control Officer, if the Control Officer determines the longer period to be more representative of normal source post-change operations.

200.4 ADMINISTRATOR - The Administrator of the United States Environmental Protection Agency.

200.5 ADVISORY COUNCIL - The Maricopa County Air Pollution Control Advisory Council appointed by the Maricopa County Board of Supervisors.

200.6 AFFECTED FACILITY - With reference to a stationary source, any apparatus to which a standard is applicable.

200.7 AFFECTED SOURCE - A source that includes one or more emissions units which are subject to emission reduction requirements or limitations under Title IV (Acid Deposition Control) of the Act.

200.8 AFFECTED STATE - Any State whose air quality may be affected and that is contiguous to Arizona or that is within 50 miles of the permitted source.

200.9 AIR CONTAMINANT - Includes smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, windborne matter, radioactive materials, noxious chemicals, or any other material in the outdoor atmosphere.

200.10 AIR POLLUTION - 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 causes damage to property, or unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, or obscures visibility, or which in any way degrades the quality of the ambient air below the standards established by the Board of Supervisors.

200.11 AIR POLLUTION CONTROL EQUIPMENT - Equipment used to eliminate, reduce, or control the emission of air pollutants into the ambient air.

200.12 ALLOWABLE EMISSIONS - The emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

- a. The applicable New Source Performance Standards as described in Rule 360 of these rules or the Federal Hazardous Air Pollutant Program as described in Rule 370 of these rules; or
- b. The applicable existing source performance standard as approved for the SIP; or
- c. The emissions rate specified in any federally promulgated rule or federally enforceable permit condition.

200.13 AMBIENT AIR - That portion of the atmosphere, external to buildings, to which the general public has access.

200.14 AP-42 - The EPA document "Compilation of Air Pollutant Emission Factors," as incorporated by reference in Appendix G September 1985, and all supplements thereto.

200.15 APPLICABLE IMPLEMENTATION PLAN - Those provisions of the SIP approved by the Administrator of EPA or a Federal Implementation Plan (FIP) promulgated under Title I (Air Pollution Prevention And Control) of the Act.

200.16 APPLICABLE REQUIREMENT - Applicable requirement means any of the following:

- a. Any federal applicable requirement as defined in Section ~~200.50~~ 200.49 of this rule.

b. Any other requirement established under the Maricopa County Air Pollution Control Regulations or ARS Title 49, Chapter 3, Articles 1, 3, 7, and 8.

200.17 **APPROVED** - Approved in writing by the Maricopa County Air Pollution Control Officer.

200.18 **AREA SOURCE** - Any stationary source that is not a major source. For purposes of these rules, the term "area source" shall not include motor vehicles or nonroad vehicles subject to regulation under Title II (Emission Standards For Moving Sources) of the Act.

200.19 **ARS** - The Arizona Revised Statutes. The titles of the most frequently used ARS references in these rules are listed below:

ARS §38-502(11)	Public Officers And Employees, Conduct Of Office, Conflict Of Interest Of Officers And Employees, Definitions, Substantial Interest
ARS Title 49	The Environment
ARS Title 49, Chapter 3	The Environment, Air Quality
ARS Title 49, Chapter 4	The Environment, Solid Waste Management
ARS §49-109	The Environment, General Provisions, Department Of Environmental Quality, Certificate Of Disclosure Of Violations; Definition; Remedies
ARS §49-401	The Environment, Air Quality, General Provisions, Declaration Of Policy
ARS §49-426	The Environment, Air Quality, State Air Pollution Control, Permits; Duties Of Director; Exceptions; Applications; Objections; Fees
ARS §49-426.04	The Environment, Air Quality, State Air Pollution Control, State List Of Hazardous Air Pollutants
ARS §49-426.05	The Environment, Air Quality, State Air Pollution Control, Designation Of Sources Of Hazardous Air Pollutants
ARS §49-429	The Environment, Air Quality, State Air Pollution Control, Permit Transfers; Notice; Appeal
ARS §49-464	The Environment, Air Quality, State Air Pollution Control, Violation; Classification; Definitions Penalties; <u>Definition</u>
ARS §49-473	The Environment, Air Quality, County Air Pollution Control, Board Of Supervisors

ARS §49-476.01	The Environment, Air Quality, County Air Pollution Control, Monitoring
ARS §49-478	The Environment, Air Quality, County Air Pollution Control, Hearing Board
ARS §49-480	The Environment, Air Quality, County Air Pollution Control, Permits; Fees
ARS §49-480.03	The Environment, Air Quality, County Air Pollution Control, Federal Hazardous Air Pollutant Program; Date Specified By Administrator; Prohibition
ARS §49-480.04	The Environment, Air Quality, County Air Pollution Control, County Program For Control Of Hazardous Air Pollutants
ARS §49-482	The Environment, Air Quality, County Air Pollution Control, Appeals To Hearing Board
ARS §49-483	The Environment, Air Quality, County Air Pollution Control, Permit Transfers; Notice; Appeal
ARS §49-487	The Environment, Air Quality, County Air Pollution Control, Classification And Reporting; Confidentiality Of Records
ARS §49-488	The Environment, Air Quality, County Air Pollution Control, Special Inspection Warrant
ARS §49-490	The Environment, Air Quality, County Air Pollution Control, Hearings On Orders Of Abatement
ARS §49-498	The Environment, Air Quality, County Air Pollution Control, Notice Of Hearing; Publication; Service
ARS §49-501	The Environment, Air Quality, County Air Pollution Control, Unlawful Open Burning; <u>Definition</u> ; Exceptions; Violation ; Classification <u>Fine</u>
ARS §49-511	The Environment, Air Quality, County Air Pollution Control, Violations, Order Of Abatement
ARS §49-514	The Environment, Air Quality, County Air Pollution Control, Violation; Classification; Definition

200.20 ASME - The American Society of Mechanical Engineers.

200.21 ASTM - The American Society for Testing and Materials.

200.22 ATTAINMENT AREA - An area so designated by the Administrator of EPA, acting under Section 107 (Air Quality Control Regions) of the Act, as having ambient air pollutant concentrations

equal to or less than national primary or secondary ambient air quality standards for a particular pollutant or pollutants.

200.23 BEGIN ACTUAL CONSTRUCTION - In general, initiation of physical on-site construction activities on an emissions unit, which are of a permanent nature. Such activities include installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, "begin actual construction" refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

200.24 BEST AVAILABLE CONTROL TECHNOLOGY (BACT) - An emissions limitation, based on the maximum degree of reduction for each pollutant, subject to regulation under the Act, which would be emitted from any proposed stationary source or modification, which the Control Officer, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. Under no circumstances shall BACT be determined to be less stringent than the emission control required by an applicable provision of these rules or of any State or Federal Laws ("Federal laws" include the EPA approved SIP). If the Control Officer determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

200.25 BRITISH THERMAL UNIT (BTU) - The quantity of heat required to raise the temperature of 1 pound of water 1 degree Fahrenheit (°F) at 39.1°F.

200.26 BUILDING, STRUCTURE, FACILITY, OR INSTALLATION - All the pollutant-emitting equipment and activities that belong to the same industrial grouping, that are located on one or more contiguous or adjacent properties, and that 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" as described in the "Standard Industrial Classification Manual, 1987".

~~200.27~~ ~~BUREAU~~ - The Division of Air Pollution Control within the Maricopa County Environmental Quality and Community Services Agency. The "Bureau" no longer exists; consequently, all references to "Bureau" in these rules refer to "Department".

~~200.28~~ 200.27 CFR - The United States Code of Federal Regulations.

~~200.29~~ 200.28 CIRCUMSTANCES OUTSIDE THE CONTROL OF THE SOURCE - Shall include, but not be limited to, circumstances where a violation resulted from a sudden and unavoidable breakdown of the process or the control equipment, resulted from unavoidable conditions during a startup or shutdown, or resulted from upset of operations.

~~200.30~~ 200.29 CLEAN COAL TECHNOLOGY - Any technology, including technologies applied at the pre-combustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

~~200.31~~ 200.30 CLEAN COAL TECHNOLOGY DEMONSTRATION PROJECT - A project using funds appropriated under the heading "Department Of Energy-Clean Coal Technology", up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology or similar projects, funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

~~200.32~~ 200.31 COMMENCE - As applied to construction of a major source or a major modification, that the owner and/or operator has all necessary preconstruction approvals or permits and has either:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner and/or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~200.33~~ 200.32 COMPLETE - In reference to an application for a permit, "complete" means that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Control Officer from requesting nor from accepting any additional information.

- ~~200.34~~ 200.33 **CONSTRUCTION** - Any physical change or change in the method of operation, including fabrication, erection, or installation, demolition, or modification of an emissions unit, which would result in a change in actual emissions.
- ~~200.35~~ 200.34 **CONTROL OFFICER** - The executive head of the department authorized or designated to enforce air pollution regulations, the executive head of an air pollution control district established under ARS §49-473, or the designated agent.
- ~~200.36~~ 200.35 **DEPARTMENT** - The Maricopa County ~~Environmental Services~~ Air Quality Department.
- ~~200.37~~ 200.36 **DIRECTOR** - The director of the Arizona Department of Environmental Quality (ADEQ).
- ~~200.38~~ 200.37 **DISCHARGE** - The release or escape of an effluent into the atmosphere from a source.
- ~~200.39~~ 200.38 **DIVISION** - ~~The Division of Air Pollution Control within the Maricopa County Environmental Management and Transportation Agency.~~ The Division no longer exists; consequently, all references in these rules to Division refer to Department.
- 200.39 **DUST GENERATING OPERATION** - Any activity capable of generating fugitive dust, including but not limited to, land clearing, earthmoving, weed abatement by discing or blading, excavating, construction, demolition, bulk material handling, storage and/or transporting operations, vehicle use and movement, the operation of any outdoor equipment, or unpaved parking lots. For the purpose of this rule, landscape maintenance and playing on or maintaining a field used for non-motorized sports shall not be considered a dust generating operation. However, landscape maintenance shall not include grading, trenching, or any other mechanized surface disturbing activities performed to establish initial landscapes or to redesign existing landscapes.
- ~~200.40~~ ~~**EARTHMOVING OPERATION** - The use of any equipment for an activity which may generate fugitive dust, such as, but not limited to, cutting and filling, grading, leveling, excavating, trenching, loading or unloading of bulk materials, demolishing, blasting, drilling, adding to or removing bulk materials from open storage piles, back filling, soil mulching, landfill operations, or weed abatement by discing or blading.~~
- ~~200.41~~ 200.40 **EFFLUENT** - Any air contaminant which is emitted and subsequently escapes into the atmosphere.

200.42 **200.41** **ELECTRIC UTILITY STEAM GENERATING UNIT** - Any steam electric generating unit that is constructed for the purpose of supplying more than 1/3 of its potential electric output capacity and more than 25 MW electric output to any utility power distribution system for sale. Any steam supplied to a steam distribution system, for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale, is also considered in determining the electrical energy output capacity of the affected facility.

200.43 **200.42** **EMISSION STANDARD** - The definition of emission standard, as summarized from ARS §49-514(T) and ARS §49-464(V), is: 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. The term 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 of EPA or the Director or the Control Officer.

200.44 **200.43** **EMISSIONS UNIT** - Any part of a stationary source which emits or would have the potential to emit any regulated air pollutant.

200.45 **200.44** **EPA** - The United States Environmental Protection Agency.

200.46 **200.45** **EQUIVALENT METHOD** - Any method of sampling and analyzing for an air pollutant, which has been demonstrated to the EPA Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

200.47 **200.46** **EXCESS EMISSIONS** - Emissions of an air pollutant in excess of an emission standard, as measured by the compliance test method applicable to such emission standard.

200.48 **200.47** **EXISTING SOURCE** -

- a. A source in operation prior to the effective date of this rule, or a source on which the construction or modification has commenced and for which the Control Officer has granted a permit prior to the effective date of this rule; or
- b. When used in conjunction with a source subject to new source performance standards (NSPS), any source which does not have an applicable NSPS under Rule 360 of these rules.

~~200.49~~ 200.48 **FACILITY** - The definition of facility is included in Section 200.6 (Definition Of Affected Facility) of this rule and in Section 200.26 (Definition Of Building, Structure, Facility Or Installation) of this rule.

~~200.50~~ 200.49 **FEDERAL APPLICABLE REQUIREMENT** - Any of the following as they apply to emissions units covered by a Title V permit or a Non-Title V permit (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

- a. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I (Air Pollution Prevention And Control) of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52.
- b. Any term or condition of any unitary preconstruction permits issued under regulations approved or promulgated through rulemaking under Title I (Air Pollution Prevention And Control), including Parts C or D, of the Act.
- c. Any standard or other requirement under Section 111 (Standards Of Performance For New Stationary Sources) of the Act, includes Section 111(d).
- d. Any standard or other requirement under Section 112 (National Emission Standards For Hazardous Air Pollutants) of the Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Act.
- e. Any standard or other requirement of the acid rain program under Title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder and incorporated under Rule 371 of these rules.
- f. Any requirements established under Section 504(b) (Permit Requirements And Conditions) or Section 114(a)(3) (Inspections, Monitoring, And Entry) of the Act.
- g. Any standard or other requirement governing solid waste incineration under Section 129 (Solid Waste Combustion) of the Act.
- h. Any standard or other requirement for consumer and commercial products pursuant to Section 183(e) (Federal Ozone Measures) of the Act.

- i. Any standard or other requirement for tank vessels pursuant to Section 183(f) (Federal Ozone Measures) of the Act.
- j. Any standard or other requirement of the program to control air pollution from outer continental shelf sources under Section 328 (Air Pollution From Outer Continental Shelf Activities) of the Act.
- k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI (Stratospheric Ozone Protection) of the Act, unless the Administrator of EPA has determined that such requirements need not be contained in a Title V permit; and
- l. Any national ambient air quality standard or increment or visibility requirement under Part C (Prevention Of Significant Deterioration Of Air Quality) of Title I (Air Pollution Prevention And Control) of the Act, but only as it would apply to temporary sources permitted under Section 504(e) (Permit Requirements And Conditions) of the Act.

~~200.51~~ 200.50

FEDERAL LAND MANAGER - With respect to any lands in the United States, the Secretary Of The Department with authority over such lands.

~~200.52~~ 200.51

FEDERALLY ENFORCEABLE -

- a. All terms and conditions contained in a Title V permit, except those terms and conditions which have been specifically designated as not federally enforceable;
- b. The requirements of operating permit programs and permits issued under such permit programs which have been approved by the Administrator of EPA, including the requirements of State and County operating permit programs approved under Title V (Permits) of the Act or under any new source review permit program;
- c. All limitations and conditions which are enforceable by the Administrator of EPA, including the requirements of the New Source Performance Standards (NSPS) and the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) contained in these rules;

- d. The requirements of such other State or County rules or regulations approved by the Administrator of EPA for inclusion in the SIP;
- e. The requirements of any federal regulation promulgated by the Administrator of EPA as part of the SIP; and
- f. The requirements of State and County operating permit programs, other than Title V programs, which have been approved by the Administrator of EPA and incorporated into the applicable SIP under the criteria for federally enforceable State operating permit programs set forth in 54, Federal Register 27274, dated June 28, 1989. Such requirements include permit terms and conditions which have been entered into voluntarily by a source under this rule and/or under Rule 220 (Non-Title V Permit Provisions) of these rules.

~~200.53~~ 200.52 **FINAL PERMIT** - The version of a permit issued by the Control Officer after completion of all review required by Maricopa County Air Pollution Control Regulations.

~~200.54~~ 200.53 **FUEL OIL** - Number 2 through Number 6 fuel oils as specified in ASTM D-396-90a (Specification For Fuel Oils), gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D-2880-90a (Specification For Gas Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D-975-90a (Specification For Diesel Fuel Oils).

~~200.55~~ 200.54 **FUGITIVE EMISSION** - Any emission which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~200.56~~ 200.55 **INDIAN GOVERNING BODY** - The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

~~200.57~~ 200.56 **INDIAN RESERVATION** - Any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

~~200.58~~ 200.57 **INSIGNIFICANT ACTIVITY** - For the purpose of this rule, an insignificant activity shall be any activity, process, or emissions unit that is not subject to a source-specific applicable requirement, that emits no more than 0.5 ton per year of hazardous air pollutants (HAPs) and no more than 2 tons per year of a regulated air pollutant, and that is either included in Appendix D (List of Insignificant Activities) of these rules or is approved as an insignificant activity under Rule 200 of these rules.

Source-specific applicable requirements include requirements for which emissions unit-specific information is needed to determine applicability.

~~200.59~~ 200.58

MAJOR MODIFICATION - Any physical change or change in the method of operation of a major source that would result in a significant net emissions increase of any regulated air pollutant.

- a. Any net emissions increase that is significant for VOCs shall be considered significant for ozone.
- b. Any net emissions increase that is significant for oxides of nitrogen shall be considered significant for ozone nonattainment areas classified as marginal, moderate, serious, or severe.
- c. For the purposes of this definition, the following shall not be considered a physical change or a change in the method of operation:
 - (1) Routine maintenance, repair, and replacement;
 - (2) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. §792, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. §792 - 825r;
 - (3) Use of an alternative fuel by reason of an order or rule under Section 125 (Measures To Prevent Economic Disruption Or Unemployment) of the Act;
 - (4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
 - (5) Use of an alternative fuel or raw material by a stationary source that either:
 - (a) The source was capable of accommodating before December 12, 1976, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Rules 200, 210, 240, 245, and 270 of these rules; or

not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; and

- (11) For electric utility steam generating units located in attainment and unclassified areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.

~~100.60~~ 200.59

MAJOR SOURCE -

- a. A major source as defined in Rule 240 of these rules;
- b. A major source under Section 112 (National Emission Standards For Hazardous Air Pollutants) of the Act:
- (1) For pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, including fugitive emissions, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed under Section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as described in Title 18 (Environmental Quality), Chapter 2 (Department Of Environmental Quality Air Pollution Control), Article 11 (Federal Hazardous Air Pollutants) of the Arizona Administrative Code. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
- (2) For radionuclides, major source shall have the meaning specified by the Administrator of EPA by rule.
- c. A major stationary source, as defined in Section 302 (Definitions) of the Act, that directly emits or has the potential to emit 100 tpy or more of any air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purpose of Section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:
- Coal cleaning plants (with thermal dryers).

Kraft pulp mills.
Portland cement plants.
Primary zinc smelters.
Iron and steel mills.
Primary aluminum ore reduction plants.
Primary copper smelters.
Municipal incinerators capable of charging more than 50 tons of refuse per day.
Hydrofluoric, sulfuric, or nitric acid plants.
Petroleum refineries.
Lime plants.
Phosphate rock processing plants.
Coke oven batteries.
Sulfur recovery plants.
Carbon black plants (furnace process).
Primary lead smelters.
Fuel conversion plants.
Sintering plants.
Secondary metal production plants.
Chemical process plants.

Fossil-fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input.

Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

Taconite ore processing plants.

Glass fiber processing plants.

Charcoal production plants.

Fossil fuel-fired steam electric plants of more than 250 million BTU per hour rated heat input.

Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 (Standards Of Performance For New Stationary Sources) of the Act or under Section 112 (National Emission Standards For Hazardous Air Pollutants) of the Act.

~~200.61~~ 200.60

MAJOR SOURCE THRESHOLD – The lowest applicable emissions rate for a pollutant that would cause the source to be a major source, at the particular time and location, under Section ~~200.60~~ 200.59 (Definition Of Major Source) of this rule.

~~200.62~~

200.61 MALFUNCTION - Any sudden and unavoidable failure of air pollution control equipment, process, or process equipment to operate in a normal and usual manner. Failures that are caused by poor maintenance, careless operation, or any other upset condition or equipment breakdown which could have been prevented by the exercise of reasonable care shall not be considered malfunctions.

~~200.63~~ **200.62 MATERIAL PERMIT CONDITION** -

a. For the purposes of ARS §49-464(G) and ARS §49-514(G), a material permit condition shall mean a condition which satisfies all of the following:

(1) The condition is in a permit or permit revision issued by the Control Officer or by the Director after the effective date of this rule.

(2) The condition is identified within the permit as a material permit condition.

(3) The condition is one of the following:

(a) An enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement.

(b) A requirement to install, operate, or maintain a maximum achievable control technology or hazardous air pollutant reasonably available control technology required under the requirements of ARS §49-426.06.

(c) A requirement for the installation or certification of a monitoring device.

(d) A requirement for the installation of air pollution control equipment.

(e) A requirement for the operation of air pollution control equipment.

(f) An opacity standard required by Section 111 (Standards Of Performance For New Stationary Sources) of the Act or Title I (Air Pollution Prevention And Control), Part C or D, of the Act.

(4) Violation of the condition is not covered by Subsections (A) through (F) or (H) through (J) of ARS §49-464 or Subsections (A) through (F) or (H) through (J) of ARS §49-514.

b. For the purposes of ~~subsections 200.63(a)(3)(e)~~, Sections 200.62(a)(3)(c), (d), and (e) of this rule, a permit condition shall not be material where the failure to comply resulted from circumstances which were outside the control of the source.

~~200.64~~ 200.63 **METHOD OF OPERATION** - The definition of method of operation is included in Section 200.71 (Definition Of Operation) of this rule.

~~200.65~~ 200.64 **MODIFICATION** - A physical change in or a change in the method of operation of a source which increases the actual 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.

~~200.66~~ 200.65 **NET EMISSIONS INCREASE** -

a. The amount by which the sum of ~~subsection 200.66(a)(1)~~ Section 200.65(a)(1) and ~~subsection 200.66(a)(2)~~ Section 200.65(a)(2) below exceed zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(1) The date 5 years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

- c. An increase or decrease in actual emissions is creditable only if the Control Officer has not relied on it in issuing a permit, which is in effect when the increase in actual emissions from the particular change occurs. In addition, in nonattainment areas, a decrease in actual emissions shall be considered in determining net emissions increase due to modifications only if the State has not relied on it in demonstrating attainment or reasonable further progress.
- d. An increase or decrease in actual emissions of sulfur dioxide, nitrogen oxides, or particulate matter which occurs before the applicable baseline date, as described in Rule 500 of these rules, is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
- e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- f. A decrease in actual emissions is creditable only to the extent that:
- (1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 - (2) The emissions unit was actually operated and emitted the specific pollutant;
 - (3) It is federally enforceable at and after the time that actual construction on the particular change begins; and
 - (4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

~~200.67~~

200.66 NEW SOURCE - Any source that is not an existing source.

200.67 NITROGEN OXIDES (NO_x) - All oxides of nitrogen except nitrous oxide, as measured by test methods set forth in the Appendices to 40 CFR 60.

200.68 NONATTAINMENT AREA - An area so designated by the Administrator of EPA, acting under Section 107 (Air Quality Control Regions) of the Act, as exceeding national primary or secondary ambient air standards for a particular pollutant or pollutants.

200.69 NON-PRECURSOR ORGANIC COMPOUND - ~~Any of the following organic compounds that have been designated by EPA as having negligible photo-chemical reactivity:~~

a. Any of the following organic compounds that have been designated by EPA as having negligible photo-chemical reactivity:

67-64-1	Acetone;
74-82-8	Methane;
74-84-0	Ethane;
75-09-2	Methylene chloride (dichloromethane);
71-55-6	1,1,1-trichloroethane (methyl chloroform);
75-69-4	Trichlorofluoromethane (CFC-11);
75-71-8	Dichlorodifluoromethane (CFC-12);
75-45-6	Chlorodifluoromethane (HCFC-22);
76-13-1	1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
76-14-2	1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114);
76-15-3	Chloropentafluoroethane (CFC-115);
75-46-7	Trifluoromethane (HFC-23);
306-83-2	1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
2837-89-0	2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
1717-00-6	1,1-dichloro-1-fluoroethane (HCFC-141b);
75-68-3	1-chloro-1,1-difluoroethane (HCFC-142b);
354-33-6	Pentafluoroethane (HFC-125);
354-25-6	1,1,2,2-tetrafluoroethane (HFC-134);
811-97-2	1,1,1,2-tetrafluoroethane (HFC-134a);
420-46-2	1,1,1-trifluoroethane (HFC-143a);
75-37-6	1,1-difluoroethane (HFC-152a);
98-56-6	Parachlorobenzotrifluoride (PCBTF);
127-18-4	Perchloroethylene (tetrachloroethylene);
422-56-0	3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
507-55-1	1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
	1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
75-10-5	Difluoromethane (HFC-32);
353-36-6	Ethylfluoride (HFC-161);

690-39-1	1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
678-86-7	1,1,2,2,3-pentafluoropropane (HFC-245ca);
460-73-1	1,1,2,3,3-pentafluoropropane (HFC-245ea);
431-31-2	1,1,1,2,3-pentafluoropropane (HFC-245eb);
	1,1,1,3,3-pentafluoropropane (HFC-245fa);
431-63-0	1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
	1,1,1,3,3-pentafluorobutane (HFC-365mfc);
593-70-4	Chlorofluoromethane (HCFC-31);
1615-75-4	1-chloro-1-fluoroethane (HCFC-151a);
354-23-4	1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
<u>163702-07-6</u>	1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C ₄ F ₉ OCH ₃) (HFE-7100);
	2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane (CF ₃) ₂ CF ₂ OCH ₃);
<u>163702-05-4</u>	1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C ₄ F ₉ OC ₂ H ₅) (HFE-7200);
	2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane (CF ₃) ₂ CF ₂ OC ₂ H ₅);
79-20-9	methyl acetate;
	cyclic, branched, or linear completely methylated siloxanes;
<u>375-03-1</u>	<u>1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C₃F₇OCH₃, HFE-7000);</u>
<u>297730-93-9</u>	<u>3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane</u> (HFE-7500);
<u>431-89-0</u>	<u>1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);</u>
<u>107-31-3</u>	<u>methyl formate (HCOOCH₃);</u>

And perfluorocarbon compounds that fall into these classes:

Cyclic, branched, or linear, completely fluorinated alkanes;

Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

b. The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to

VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate (540-88-5).

- 200.70 OPEN OUTDOOR FIRE** - Any combustion of material of any type outdoors, where the products of combustion are not directed through a flue.
- 200.71 OPERATION** - Any physical action resulting in a change in the location, form, or physical properties of a material, or any chemical action resulting in a change in the chemical composition or properties of a material.
- 200.72 ORGANIC COMPOUND** - Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.
- 200.73 ORGANIC LIQUID** - Any organic compound which exists as a liquid under any actual conditions of use, transport, or storage.
- 200.74 OWNER AND/OR OPERATOR** - Any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.
- 200.75 PARTICULATE MATTER** - Any material, except condensed water containing no more than analytical trace amounts of other chemical elements or compounds, which has a nominal aerodynamic diameter smaller than 100 microns (micrometers), and which exists in a finely divided form as a liquid or solid at actual conditions.
- 200.76 PERMITTING AUTHORITY** - The department or a County department or agency that is charged with enforcing a permit program adopted under ARS §49-480, Subsection A.
- 200.77 PERSON** - Any individual, public or private corporation, company, partnership, firm, association or society of persons, the Federal Government and any of its departments or agencies, or the State and any of its agencies, departments or political subdivisions.
- 200.78 PHYSICAL CHANGE** - Any replacement, addition, or alteration of equipment that is not already allowed under the terms of the source's permit.
- 200.79 "PM_{2.5}"** - Particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 microns (micrometers), as measured by the applicable State and Federal Reference Test Methods.

~~200.79~~ **200.80** **PM₁₀** - Particulate matter with a ~~nominal~~ an aerodynamic diameter ~~smaller~~ less than or equal to a nominal 10 microns (micrometers), as measured by the applicable State and Federal Reference Test Methods.

~~200.80~~ **200.81** **POLLUTANT** - An air contaminant the emissions or ambient concentration of which is regulated under these rules.

~~200.81~~ **200.82** **POLLUTION CONTROL PROJECT** - Any activity or project undertaken at an existing electric utility steam generating unit to reduce emissions from the unit. The activities or projects are limited to:

- a. The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls, and electrostatic precipitators;
- b. An activity or project to accommodate switching to a fuel less polluting than the fuel used before the activity or project, including but not limited to natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;
- c. A permanent clean coal technology demonstration project, conducted under Title II, Section 101(d) of the Further Continuing Appropriation Act of 1985 (42 U.S.C. 5903(d)) or subsequent appropriations up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA; or
- d. A permanent clean coal technology demonstration project that constitutes a repowering project.

~~200.82~~ **200.83** **PORTABLE SOURCE** - Any stationary source that is capable of being transported and operated in more than one county of this state.

~~200.83~~ **200.84** **POTENTIAL TO EMIT** - The maximum capacity of a stationary source to emit pollutants, 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 federally enforceable.

~~200.84~~ 200.85 **PROPOSED PERMIT** - The version of a permit for which the Control Officer offers public participation under Rule 210 (Title V Permit Provisions) of these rules or offers affected State review under Rule 210 (Title V Permit Provisions) of these rules.

~~200.85~~ 200.86 **PROPOSED FINAL PERMIT** - The version of a Title V permit that the Control Officer proposes to issue and forwards to the Administrator of EPA for review, in compliance with Rule 210 (Title V Permit Provisions) of these rules.

~~200.86~~ 200.87 **QUANTIFIABLE** - With respect to emissions, including the emissions involved in equivalent emission limits and emission trades, capable of being measured or otherwise determined in terms of quantity and assessed in terms of character. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, materials used in a process or production, modeling, or other reasonable measurement practices.

~~200.87~~ 200.88 **REACTIVATION OF A VERY CLEAN COAL-FIRED ELECTRIC UTILITY STEAM GENERATING UNIT** - Any physical change or change in the method of operation, associated with commencing commercial operations by a coal-fired utility unit after a period of discontinued operation, if the unit:

- a. Has not been in operation for the 2-year period before enactment of the Clean Air Act Amendments of 1990 and the emissions from the unit continue to be carried in the Maricopa County emissions inventory at the time of enactment;
- b. Was equipped before shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
- c. Is equipped with low nitrogen oxides (NO_x) burners before commencement of operations following reactivation; and
- d. Is otherwise in compliance with the Act.

~~200.88~~ 200.89 **REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT)** - For facilities subject to Regulation III (Control Of Air Contaminants) of these rules, the emissions limitation of the existing source performance standard. For facilities not subject to Regulation III (Control Of Air Contaminants) of these rules, the lowest emission limitation that a particular source is capable of

achieving by the application of control technology that is reasonably available considering technological and economic feasibility. Such technology may previously have been applied to a similar, but not necessarily identical, source category. RACT for a particular facility, other than a facility subject to Regulation III (Control Of Air Contaminants) of these rules, is determined on a case-by-case basis, considering the technological feasibility and cost-effectiveness of the application of the control technology to the source category.

200.89 200.90 REFERENCE METHOD - Any of the methods of sampling and analyzing for an air pollutant as described in the Arizona Testing Manual for Air Pollutant Emissions; 40 CFR 50, Appendices A through ~~K~~ L; 40 CFR 52, Appendices D and E; 40 CFR 60, Appendices A through F; and 40 CFR 61, Appendices B and C.

200.90 200.91 REGULATED AIR POLLUTANT - Any of the following:

- a. Any conventional air pollutant as defined in ARS §49-401.01, which means any pollutant for which the Administrator of EPA has promulgated a primary or a secondary national ambient air quality standard (NAAQS) (i.e., for carbon monoxide (CO), nitrogen oxides (NO_x), lead, sulfur oxides (SO_x) measured as sulfur dioxides (SO₂), ozone, and particulates).
- b. Nitrogen oxides (NO_x) and volatile organic compounds (VOCs).
- c. Any air contaminant that is subject to a standard contained in Rule 360 (New Source Performance Standards) of these rules or promulgated under Section 111 (Standards Of Performance For New Stationary Sources) of the Act.
- d. Any hazardous air pollutant (HAP) as defined in ARS §49-401.01 or listed in Section 112(b) (Hazardous Air Pollutants; List Of Pollutants) of the Act.
- e. Any Class I or II substance listed in Section 602 (Stratospheric Ozone Protection; Listing Of Class I And Class II Substances) of the Act.

200.91 200.92 REGULATORY REQUIREMENTS - All applicable requirements, ~~Division~~ Department rules, and all State requirements pertaining to the regulation of air contaminants.

~~200.92~~ 200.93 **REPLICABLE** - With respect to methods or procedures sufficiently unambiguous such that the same or equivalent results would be obtained by the application of the method or procedure by different users.

~~200.93~~ 200.94 **REPOWERING** - The Control Officer shall give expedited consideration to permit applications for any source that satisfies the following criteria and that is granted an extension under Section 409 (Repowered Sources) of the Act:

a. Repowering means replacing an existing coal-fired boiler with one of the following clean coal technologies:

- (1) Atmospheric or pressurized fluidized bed combustion;
- (2) Integrated gasification combined cycle;
- (3) Magnetohydrodynamics;
- (4) Direct and indirect coal-fired turbines;
- (5) Integrated gasification fuel cells; or
- (6) As determined by the Administrator of EPA, in consultation with the United States Secretary of Energy, a derivative of one or more of the above listed technologies; and
- (7) Any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b. Repowering also includes any oil, gas, or oil and gas-fired units which have been awarded clean coal technology demonstration funding as of January 1, 1991 by the United States Department of Energy.

~~200.94~~ 200.95 **REPRESENTATIVE ACTUAL ANNUAL EMISSIONS** - The average rate, in tons per year, at which the source is projected to emit a pollutant for the 2-year period after a physical change or change in the method of operation of a unit (or a different consecutive 2-year within 10 years after

that change, if the Control Officer determines that the different period is more representative of source operations), considering the effect the change will have on increasing or decreasing the hourly emission rate and on projected capacity utilization. In projecting future emissions, the Control Officer shall:

- a. Consider all relevant information, including but not limited to historical operational data, the company's representations, filings with the Maricopa County, State or Federal regulatory authorities, and compliance plans under Title IV (Acid Deposition Control) of the Act; and
- b. Exclude, in calculating any increase in emissions that result from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions, following the change, that could have been accommodated during the representative baseline period and that is attributable to an increase in projected capacity utilization at the unit unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

200.95 200.96 RESPONSIBLE OFFICIAL - One of the following:

- a. For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either;
 - (1) The sources employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - (2) The delegation of authority to such representatives is approved in advance by the permitting authority;
- b. For a partnership or sole proprietorship: A general partner or the proprietor, respectively;
- c. For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this rule, a principal executive officer

of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

d. For affected sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV (Acid Deposition Control) of the Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative for any other purposes under 40 CFR, Part 70.

~~200.96~~ 200.97 **SCHEDULED MAINTENANCE** - Preventive maintenance undertaken in order to avoid a potential breakdown or upset of air pollution control equipment.

~~200.97~~ 200.98 **SIGNIFICANT** -

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any one of the following rates:

<u>Pollutant</u>	<u>Emissions Rate (TPY)</u>
Carbon Monoxide	100
Nitrogen Oxides	40
Sulfur Dioxide	40
Particulate Matter	25
PM ₁₀	15
VOC	40
Lead	0.6
Fluorides	3
Sulfuric Acid Mist	7
Hydrogen Sulfide (H ₂ S)	10
Total Reduced Sulfur (including hydrogen sulfide)	10
Reduced Sulfur Compounds (including hydrogen sulfide)	10

Municipal waste combustor organics (measured as total tetra-through- octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶
Municipal waste combustor metals (measured as particulate matter)	15
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50

- b. In ozone nonattainment areas classified as serious or severe, significant emissions of VOC shall be determined under Rule 240 (Permit Requirements For New Major Sources And Major Modifications To Existing Major Sources) of these rules.
- c. In reference to a regulated air pollutant that is not listed in ~~subsection 200.97(a)~~ Section 200.98(a) of this rule, is not a Class I nor a Class II substance listed in Section 602 (Listing Of Class I And Class II Substances) of the Act, and is not a hazardous air pollutant according to ARS ~~§49-401.01(11)~~ §49-401.01(13), any emissions rate.
- d. Notwithstanding the emission amount listed in ~~subsection 200.97(a)~~ Section 200.98(a) of this rule, any emissions rate or any net emissions increase associated with a major source or major modification, which would be constructed within 10 kilometers (6.2 miles) of a Class I area and which would have an impact on the ambient air quality of such area equal to or greater than 1 microgram/cubic meter (mg/m³) (24-hour average).

~~200.98~~ 200.99 **SOLVENT-BORNE COATING MATERIAL** - Any liquid coating-material in which the solvent is primarily or solely a VOC. For the purposes of this definition, "primarily" means that of the total solvent mass that evaporates from the coating, the VOC portion weighs more than the non-VOC portion.

~~200.99~~ 200.100 **SOURCE** - Any building, structure, facility, or installation that may cause or contribute to air pollution.

~~200.100~~ 200.101 **SPECIAL INSPECTION WARRANT** - An order, in writing, issued in the name of the State of Arizona, signed by a magistrate, directed to the Control Officer or his deputies authorizing him to

enter into or upon public or private property for the purpose of making an inspection authorized by law.

~~200.101~~ **200.102 STANDARD CONDITIONS** - ~~A gas temperature of 60 degrees Fahrenheit (°F) and a gas pressure of 14.7 pounds per square inch absolute (psia).~~ A temperature of 293K (68 degrees Fahrenheit or 20 degrees Celsius) and a pressure of 101.3 kilopascals (29.92 in. Hg or 1013.25 mb). When applicable, all analyses and tests shall be calculated and reported at standard gas temperatures and pressure values.

~~200.102~~ **200.103 STATE IMPLEMENTATION PLAN (SIP)** - The plan adopted by the State of Arizona which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as are adopted by the Administrator of EPA under the Act.

~~200.103~~ **200.104 STATIONARY SOURCE** - Any source that operates at a fixed location and that emits or generates regulated air pollutants.

~~200.104~~ **200.105 SYNTHETIC MINOR** - Any source whose maximum capacity to emit a pollutant under its physical and operational design would exceed the major source threshold levels but is restricted by an enforceable emissions limitation that prevents such source from exceeding major source threshold levels.

~~200.105~~ **200.106 TEMPORARY CLEAN COAL TECHNOLOGY DEMONSTRATION PROJECT** - A clean coal technology demonstration project operated for 5 years or less and that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

~~200.106~~ **200.107 TITLE V** - Title V of the Federal Clean Air Act as amended in 1990 and the 40 CFR Part 70 EPA regulations adopted to implement the Act.

200.108 TOTAL REDUCED SULFUR (TRS) - The sum of the sulfur compounds, primarily hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, that are released during kraft pulping and other operations and measured by Method 16 in 40 CFR 60, Appendix A.

~~200.107~~ **200.109 TRADE SECRETS** - Information to which all of the following apply:

- a. A person has taken reasonable measures to protect from disclosure and the person intends to continue to take such measures.
- b. The information is not, and has not been, reasonably obtainable without the person's consent by other persons, other than governmental bodies, by use of legitimate means, other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding.
- c. No statute, including ARS §49-487, specifically requires disclosure of the information to the public.
- d. The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

~~200.108~~ 200.110 TRIVIAL ACTIVITY – For the purpose of this rule, a trivial activity shall be any activity, process, or emissions unit that, in addition to meeting the criteria for insignificant activity, has extremely low emissions. No activity, process, or emissions unit that is conducted as part of a manufacturing process or is related to the source's primary business activity shall be considered trivial. Trivial activities are listed in Appendix E of these rules and may be omitted from Title V permit applications and from Non-Title V permit applications.

~~200.109~~ 200.111 UNCLASSIFIED AREA - An area which the Administrator of EPA, because of lack of adequate data, is unable to classify as an attainment or nonattainment area for a specific pollutant. For purposes of these rules, unclassified areas are to be treated as attainment areas.

~~200.110~~ 200.112 VOLATILE ORGANIC COMPOUND (VOC) - Any organic compound which participates in atmospheric photochemical reactions, except the non-precursor organic compounds.

SECTION 300 - STANDARDS

301 AIR POLLUTION PROHIBITED: No person shall discharge from any source whatever into the atmosphere regulated air pollutants which exceed in quantity or concentration that specified and allowed in these rules, the Arizona Administrative Code or ARS, or which 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 or the Director.

- 302 **APPLICABILITY OF MULTIPLE RULES:** Whenever more than one standard in this rule applies to any source or whenever a standard in this rule and a standard in the Maricopa County Air Pollution Control Regulations Regulation III (Control Of Air Contaminants) applies to any source, the rule or combination of rules resulting in the lowest rate or lowest concentration of regulated air pollutants released to the atmosphere shall apply, unless otherwise specifically exempted or designated.

SECTION 400 - ADMINISTRATIVE REQUIREMENTS

- 401 **CERTIFICATION OF TRUTH, ACCURACY, AND COMPLETENESS:** Any application form or report submitted under these rules shall contain certification by a responsible official of truth, accuracy, and completeness of the application form or report as of the time of submittal. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

402 **CONFIDENTIALITY OF INFORMATION:**

- 402.1 The Control Officer shall make all permits, including all elements required to be in the permit under Rule 210 (Title V Permit Provisions) of these rules and Rule 220 (Non-Title V Permit Provisions) of these rules, available to the public.

- 402.2 Any records, reports, or information obtained from any person under these rules shall be available to the public, unless the Control Officer has notified the person in writing as specified in subsection Section 402.3 of this rule and unless a person:

- a. Precisely identifies the information in the permit(s), records, or reports, which is considered confidential.
- b. Provides sufficient supporting information to allow the Control Officer to evaluate whether such information satisfies the requirements related to trade secrets as defined in Section ~~200-107~~ 200.109 of this rule.

- 402.3 Within 30 days of receipt of a notice of confidentiality that complies with subsection Section 402.2 of this rule, the Control Officer shall make a determination as to whether the information satisfies the requirements for trade secrets as described in Section ~~200-107~~ 200.109 of this rule and so notify the applicant in writing. If the Control Officer agrees with the applicant that the information covered by the notice of confidentiality satisfies the

statutory requirements, the Control Officer shall include a notice in the administrative record of the permit application that certain information has been considered confidential.

402.4 A claim of confidentiality shall not excuse a person from providing any and all information required or requested by the Control Officer.

402.5 A claim of confidentiality shall not be a defense for failure to provide such information.

SECTION 500 - MONITORING AND RECORDS

501 REPORTING REQUIREMENTS: The owner and/or operator of any air pollution source shall maintain records of all emissions testing and monitoring, records detailing all malfunctions which may cause any applicable emission limitation to be exceeded, records detailing the implementation of approved control plans and compliance schedules, records required as a condition of any permit, records of materials used or produced, and any other records relating to the emission of air contaminants which may be requested by the Control Officer.

502 DATA REPORTING: When requested by the Control Officer, a person shall furnish to the Division Department information to locate and classify air contaminant sources according to type, level, duration, frequency, and other characteristics of emissions and such other information as may be necessary. This information shall be sufficient to evaluate the effect on air quality and compliance with these rules. The owner and/or operator of a source requested to submit information under Section 501 of this rule may subsequently be required to submit annually, or at such intervals specified by the Control Officer, reports detailing any changes in the nature of the source since the previous report and the total annual quantities of materials used or air contaminants emitted.

503 EMISSION STATEMENTS REQUIRED AS STATED IN THE ACT: Upon request of the Control Officer and as directed by the Control Officer, the owner and/or operator of any source which emits or may emit oxides of nitrogen (NO_x) or volatile organic compounds (VOC) shall provide the Control Officer with an emission statement, in such form as the Control Officer prescribes, showing measured actual emissions or estimated actual emissions of NO_x and VOC from that source. At a minimum, the emission statement shall contain all information ~~contained in the "Guidance on Emission Statements" document as described in the AIRS Fixed Format Report (AFP 644)~~ required by the Consolidated Emissions Reporting Rule in 40 CFR 51, Subpart A, Appendix A, Table 2A, which is incorporated by reference in Appendix G. The statement shall contain emissions for the time period specified by the Control Officer. The statement shall also contain a certification by a responsible official of the company that the information contained in the statement is accurate to the

best knowledge of the individual certifying the statement. ~~The first statement will cover 1992 emissions and shall be submitted to the Division by April 30, 1993.~~ Statements shall be submitted annually thereafter to the Department. The Control Officer may waive this requirement for the owner and/or operator of any source which emits less than 25 tons per year of oxides of nitrogen or volatile organic compounds with an approved emission inventory for sources based on AP-42 or other methodologies approved by the Administrator of EPA.

504 RETENTION OF RECORDS: Information and records required by applicable requirements and copies of summarizing reports recorded by the owner and/or operator and submitted to the Control Officer shall be retained by the owner and/or operator for 5 years after the date on which the information is recorded or the report is submitted. Non-Title V sources may retain such information, records, and reports for less than 5 years, if otherwise allowed by these rules.

505 ANNUAL EMISSIONS INVENTORY REPORT:

505.1 Upon request of the Control Officer and as directed by the Control Officer, the owner and/or operator of a business shall complete and shall submit to the Control Officer an annual emissions inventory report. The report is due by April 30, or 90 days after the Control Officer makes the inventory form(s) available, whichever occurs later. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.

505.2 The annual emissions inventory report shall be in the format provided by the Control Officer.

505.3 The Control Officer may require submittal of supplemental emissions inventory information forms for air contaminants under ARS §49-476.01, ARS §49-480.03, and ARS §49-480.04.

APPENDIX G

Incorporated Materials

1. The following test methods and protocols located in Title 40, Code of Federal Regulations (CFR) are approved for use as directed by the Department under the Maricopa County Air Pollution Control Rules and Regulations. These standards are incorporated by reference revised as of July 1, 2004, and no future editions or amendments.

a. 40 CFR 50;

- b. 40 CFR 50, Appendices A through N;
- c. 40 CFR 51, Appendix M, Appendix S, Section IV, and Appendix W;
- d. 40 CFR 52, Appendices D and E;
- e. 40 CFR 53;
- f. 40 CFR 58;
- g. 40 CFR 58, all appendices;
- h. 40 CFR 60, all appendices;
- i. 40 CFR 61, all appendices;
- j. 40 CFR 63, all appendices;
- k. 40 CFR 75, all appendices.

2. The following documents are incorporated by reference and are approved for use as directed by the Department under the Maricopa County Air Pollution Control Rules and Regulations. These documents are incorporated by reference as of the year specified below, and no future editions or amendments.

- a. The Arizona Department of Environmental Quality's (ADEQ) "Arizona Testing Manual for Air Pollutant Emissions," amended as of March 1992, and no future editions or amendments.
- b. All American Society for Testing and Materials (ASTM) test methods referenced in the Maricopa County Air Pollution Control Rules and Regulations as of the year specified in the reference, and no future editions or amendments.
- c. The U.S. Government Printing Office's "Standard Industrial Classification Manual, 1987", and no future editions or amendments.
- d. EPA Publication No. AP-42, 1995, "Compilation of Air Pollutant Emission Factors," Volume I: Stationary Point and Area Sources, Fifth Edition, including Supplements A, B, C, D, E, F, and Updates 2001, 2002, 2003, and 2004 and no future editions.
- e. EPA guidance document "Guidelines for Determining Capture Efficiency", January 9, 1995, and no future editions or amendments.
- f. 2002 US NAICS Manual, "North American Industry Classification System - United States", National Technical Information Service, US Census Bureau, 2002, and no future editions or amendments.

3. The following federal regulations located in Title 40, Code of Federal Regulations (CFR) are approved for use as directed by the Department under the Maricopa County Air Pollution Control Rules and Regulations. These standards are incorporated by reference revised as of July 1, 2004, and no future editions or amendments.

- a. The Consolidated Emissions Reporting Rule in 40 CFR 51, Subpart A, Appendix A, Table 2A.

Availability of Information: Copies of these standards are on file with the Department and are available at 1001 N. Central Avenue, Suite 695, Phoenix, Arizona, 85004, or call (602) 506-6010 for information.