ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Janice K. Brewer
Governor

Henry R. Darwin
Director

May 25, 2012

Jared Blumenfeld, Regional Administrator
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

SUBJECT: Submittal of Statutes and Appendices for Approval into the Arizona SIP for the *2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area*

Dear ~~Mr. Blumenfeld~~ Jared:

Consistent with the provisions of Arizona Revised Statutes §§49-104, 49-404 and 49-406 and the Code of Federal Regulations 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) one hard copy and one compact disk of those portions of Arizona Revised Statutes listed in Table 1 below and of the four Appendices listed in Table 1 below for approval into the Arizona State Implementation Plan for the *2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area* to meet the requirements of Section 189 (d) of the Clean Air Act. The electronic copy provided on compact disk is an exact duplicate of the hard copy version.

On June 12, 2009, ADEQ submitted a negative declaration for commercial agriculture in Township 1 North, Range 8 East of Pinal County adopted by the Pinal County Board of Supervisors on June 5, 2009. Copies of both letters are submitted in Appendix D to this plan.

Table 1 — Arizona Statutes and Appendices for Approval into the Arizona SIP For the *2012 Five Percent Plan for PM-10 for Pinal County Township 1 North, Range 8 East Nonattainment Area*

Arizona Revised Statutes (ARS)	Description	Effective Dates
ARS § 9-500.04 Only A.3., A.5., A.6, A.7, A.8, A.9 and H.	Air Quality Control; Definitions [city and town requirements in Area A regarding targeting unpaved roads and shoulders; leaf blower restrictions,; restrictions related to parking, maneuvering, ingress and egress areas and vacant lots; requirements for certified street sweepers]	9/19/07
ARS § 9-500.27	Off-road vehicle ordinances; applicability; violation; classification	9/19/07

Table 1 — Arizona Statutes and Appendices for Approval into the Arizona SIP For the *2012 Five Percent Plan for PM-10 for Pinal County Township 1 North, Range 8 East Nonattainment Area*		
Arizona Revised Statutes (ARS)	Description	Effective Dates
ARS §11-871 Only A, B. and D.4.	Emissions control; no burn; exemptions; penalty [no burn restriction for any HPA day, increased civil penalty]	9/19/07
ARS §11-877	Air quality control measures [county leaf blower restrictions]	9/19/07
ARS §28-1098 Only A. and C.1.	Vehicle loads; restrictions; civil penalties [for safety or air pollution prevention purpose]	9/19/07
ARS § 49-424 Only 11.	Duties of department [develop and disseminate air quality dust forecasts for Maricopa County PM10 Nonattainment Area	7/20/11
ARS § 49-457.01	Leaf blower use restrictions and training; leaf blower equipment sellers; informational material; outreach; applicability	9/19/07
ARS § 49-457.03	Off-road vehicles; pollution advisory days; applicability; penalties	9/19/07
ARS § 49-457.04	Off-highway vehicle and all terrain vehicle dealers; informational material; outreach; applicability	9/19/07
ARS § 49-457.05 Only A., B., C., D. and I.	Dust Action General Permit; best management practices; applicability; definitions	7/20/11
ARS § 49-474.01 Only A.4., A.5., A.6., A.7., A.8., A.11., B. and H.	Additional County Board of Supervisors duties in vehicle emission control areas; definitions [county requirements for stabilization of targeted unpaved roads, alleys and shoulders; restrictions related to parking, maneuvering, ingress and egress areas and vacant lots; requirement for certified street sweepers]	9/19/07
ARS § 49-474.05	Dust control training; site coordinators	9/19/07
ARS § 49-474.06	Dust control; subcontractor registration	9/19/07
ARS § 49-501 Only A.2., B.1., C., F. and G.	Unlawful open burning; exceptions; civil penalty; definitions [ban on outdoor fires from May 1 to September 30 in Area A; deletion of recreational purpose exemption; no burn day restrictions; penalty provision]	9/19/07
ARS § 49-541 Only 1	Definitions [Area A]	8/9/01
Appendices	Description	Effective Dates
A	Certified copies of Arizona Revised Statutes listed above	See dates above
B	Arizona Department of Environmental Quality Dust Action General Permit	12/30/11
C	Arizona Department of Environmental Quality Commitment to Assess the Effectiveness of the Voluntary and Emerging Control Measure	Upon SIP submittal
D	Negative Declaration for Commercial Agriculture	June 2009

Under a separate transmittal letter, ADEQ is submitting for approval into the Arizona State Implementation Plan the companion *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* and the *Technical Document In Support of the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area.*

ADEQ has adopted for the *2012 Five Percent Plan for PM_{10} for the Pinal County Township 1 North, Range 8 East Nonattainment Area* the following elements of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment* without physically submitting a second

copy in this transmittal: Chapter One Introduction; Chapter Two Description of the Nonattainment Area; Chapter Three Assessment of Air Quality Conditions; Chapter Five Demonstration of Annual Five Percent Reductions in PM-10 Emissions; Chapter Six Attainment Demonstration by December 31, 2012 including the request for extension of the attainment date from June 6, 2012 to December 31, 2012; and Appendices A (emission inventory) and B (Technical Document in Support and Calculation of Benefits from Certified Street Sweepers).

Enclosure 1 contains the plan and the four appendices to the plan. Enclosure 2 is the SIP Completeness Checklist and proof of public participation elements.

If you have any questions, please do not hesitate to contact Eric Massey, Director, Air Quality Division, at (602) 771-2288.

Sincerely,

Henry R. Darwin, Director

Enclosures 1 and 2
Appendices A, B, C and D

cc: Colleen McKaughan, EPA IX, w/o enclosures
Gregory Nudd, EPA IX, w/o enclosures
Don Gabrielson, w/o enclosures, Pinal County Air Quality Control District
Dennis Smith, w/o enclosures, Maricopa Association of Governments
William Wiley, w/o enclosures, Maricopa County Air Quality Control District

ADEQ
Arizona Department
of Environmental Quality

FINAL

Arizona State Implementation Plan

2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area

Air Quality Division
May 25, 2012

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FINAL
2012 FIVE PERCENT PLAN FOR PM-10 FOR THE PINAL COUNTY TOWNSHIP 1 NORTH, RANGE 8 EAST NONATTAINMENT AREA
May 2012

Table of Contents

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Chapter I. REGULATORY HISTORY

The metropolitan Phoenix area has not yet attained the National Ambient Air Quality Standards (NAAQS) for PM-10 particulate matter pollution, and it is classified as a Serious Area under the Clean Air Act. The metropolitan Phoenix PM-10 planning area is largely within Maricopa County, but it also includes one township in Pinal County due to its close commuting ties with Maricopa County: Township 1 North, Range 8 East. Due to its failure to attain the NAAQS by December 31, 2006, Section 189(d) of the Clean Air Act applies to this planning area.

The Clean Air Act requires that until the NAAQS are attained, the plan must provide for reductions in PM-10 or PM-10 precursor emissions from the emission inventory of at least five percent annually. In addition, the plan must include an attainment modeling demonstration. Finally, concentrations of PM-10 recorded at the monitors in the planning area must demonstrate attainment. This plan demonstrates attainment by December 31, 2012.

ADEQ had adopted the *MAG 2007 Five Percent Plan for PM-10* and submitted it to the Environmental Protection Agency (EPA) by the federal deadline of December 31, 2007. ADEQ had also submitted Supplemental Information for Pinal County dated June 4, 2008, and January 21, 2009. The submittals for the Pinal County portion of the planning area were never acted upon by EPA. ADEQ simultaneously withdraws its 2008 and 2009 submittals for this Pinal County township and submits this 2012 plan for this Pinal County township.

On June 12, 2009 ADEQ submitted a negative declaration for commercial agricultural practices in Township 1 North, Range 8 East, including a letter dated June 5, 2009, from Pinal County, both of which are resubmitted in Appendix D to this 2012 plan.

The metropolitan Phoenix area needed three years of clean data at the monitors in 2008, 2009 and 2010 to attain the PM-10 standard in 2010. No violations of the standard during stagnant conditions have been recorded after the plan was submitted in 2007. On September 9, 2010, EPA published in the Federal Register a notice of proposed partial approval and partial disapproval of the *MAG 2007 Five Percent Plan for PM-10* [75 FR 54806]. EPA gave two major reasons for the proposed disapproval relevant to this township: (1) EPA did not concur with ADEQ documentation of four high wind exceptional events at the West 43rd Avenue monitor in 2008, which resulted in a violation that negated the attainment demonstration, and (2) EPA found the 2005 baseline emissions inventory inaccurate because in hindsight it overestimated construction and other emissions including paved road emissions. In January 2010, EPA revised its AP-42 emissions factor for paved road emissions, reducing the calculation of estimated emissions by 67% for this category in metropolitan Phoenix.

On January 25, 2011, ADEQ voluntarily withdrew the *MAG 2007 Five Percent Plan for PM-10* to address approvability issues. Although the plan was withdrawn, implementation of the control measures in it continued, to reduce PM-10 and strive to attain the standard at the earliest possible date. A wide range of control measures in the withdrawn plan continue to be implemented to reduce PM-10 and are being resubmitted in the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* and in this 2012 plan.

On February 9, 2011, EPA published a Notice of Withdrawal of Adequacy of the Motor Vehicle Emissions Budget in the withdrawn plan (76 FR 7204). On February 28, 2011, EPA published a correction to the February 9, 2011 Notice (76 FR 10897). Conformity determinations are required to be made to the Motor Vehicle Emission Budget of 59.7 metric tons per day approved by EPA on July 25, 2002 (67 FR 48718) until a new plan is submitted and the new Motor Vehicle Emissions Budget found adequate or approved by EPA.

On February 14, 2011, EPA published a Finding of Failure to Submit the Section 189(d) Plan (76 FR 8300). The finding triggered an 18-month clock for mandatory application of the offset sanction unless EPA received a complete Section 189(d) plan by August 14, 2012, and a 2-year clock for a Federal Implementation Plan (FIP) and application of the highway funding sanction unless EPA approved the Section 189(d) Plan by February 14, 2013.

See Chapter One Introduction of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area,* adopted by ADEQ and submitted as a companion to this plan, for a more detailed explanation.

Chapter II. NONATTAINMENT AREA

Included as part of the Phoenix metropolitan Maricopa County PM-10 nonattainment area, Township 1 North, Range 8 East in Pinal County was classified as a Moderate PM-10 Nonattainment Area by operation of the Clean Air Act Amendments effective November 15, 1990. Again as part of the Phoenix metropolitan Maricopa County PM-10 nonattainment area, EPA classified Pinal County Township 1 North, Range 8 East as a Serious PM-10 Nonattainment area effective June 10, 1996 [Title 40 Code of Federal Regulations § 81.303]. Commuting patterns tie this township to the Phoenix metropolitan area.

See Chapter Two Description of the Nonattainment Area of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area,* adopted by ADEQ and submitted as a companion to this plan, for a more detailed explanation.

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Chapter III. AIR QUALITY

The metropolitan Phoenix area did not attain the National Ambient Air Quality Standard (NAAQS) for PM-10 particulate matter pollution by December 31, 2006. Additional control measures and improvements in rule effectiveness have reduced the frequency and magnitude of exceedances of the standard significantly.

For information on the air quality conditions in the nonattainment area, see Chapter Three Assessment of Air Quality Conditions and Appendix A Exhibit 1 *2008 PM-10 Periodic Emissions Inventory for the Maricopa County, Arizona, Nonattainment Area, Maricopa County Air Quality Department Revised June 2011* of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area,* adopted by ADEQ and submitted as a companion to this plan, for a more detailed explanation. Section 1.5.1 Demographic Profile in Appendix A, Exhibit 1, notes that demographic data used to derive estimates of activity or emissions within the PM-10 nonattainment area from county-level calculations includes the Pinal County portion of the PM-10 nonattainment area.

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Chapter IV. CONTROL MEASURES

Pursuant to Arizona Revised Statutes §§ 49-401, 49-404, and 49-406, ADEQ develops particulate matter nonattainment plans for Pinal County. The Pinal County Air Quality Control District is responsible for rulemaking, permitting and enforcement in Pinal County.

On June 12, 2009, ADEQ submitted a negative declaration for commercial agriculture in Township 1 North, Range 8 East of Pinal County adopted by the Pinal County Board of Supervisors on June 5, 2009. Copies of both letters are resubmitted in Appendix D to this 2012 plan submittal.

Those portions of Arizona Revised Statutes listed in Table 1 below and of the Appendices listed in Table 1 below are the control measures submitted for approval into the Arizona State Implementation Plan for the *2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area* to meet the requirements of Section 189 (d) of the Clean Air Act. These control measures became effective September 19, 2007, and have been implemented to date in this township. This table also includes the definition of "Area A" and the new requirement for a Dust Action General Permit in A.R.S. § 49-457.05.

Four appendices to this 2012 plan listed in the table are also submitted for approval into the plan: (A) certified copies of the Arizona Revised Statutes to be approved into the plan (B) the ADEQ Dust Action General Permit issued December 30, 2011 (C) the ADEQ Commitment to Assess the Effectiveness of the Dust Action General Permit and (D) 2009 Negative Declaration for Commercial Agriculture.

The General Permit ensures that dust is controlled at otherwise unpermitted sources both before and during a high risk event predicted by ADEQ's Maricopa County Dust Control Forecast, which also covers this township. The ADEQ Director is responsible for enforcement of the Dust Action General Permit in this township. If the General Permit does not achieve the necessary emissions reductions, ADEQ commits to submitting a SIP revision that contains replacement measures.

Table 1— Arizona Statutes and Appendices for Approval into the Arizona SIP For the *2012 Five Percent Plan for PM-10 for Pinal County Township 1 North, Range 8 East Nonattainment Area*

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ARS § 9-500.27	Off-road vehicle ordinances; applicability; violation; classification	9/19/07
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ARS §11-877	Air quality control measures [county leaf blower restrictions]	9/19/07
ARS §28-1098 Only A. and C.1.	Vehicle loads; restrictions; civil penalties [for safety or air pollution prevention purpose]	9/19/07
ARS § 49-424 Only 11.	Duties of department [develop and disseminate air quality dust forecasts for Maricopa County PM-10 Nonattainment Area	7/20/11
ARS § 49-457.01	Leaf blower use restrictions and training; leaf blower equipment sellers; informational material; outreach; applicability	9/19/07

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ARS § 49-501 Only A.2., B.1., C., F. and G.	Unlawful open burning; exceptions; civil penalty; definitions [ban on outdoor fires from ay 1 to September 30 in Area A; deletion of recreational purpose exemption; no burn day restrictions; penalty provision]	9/19/07
ARS § 49-541 Only 1	Definitions [Area A]	8/9/01
Appendices	Description	Effective Dates
A	Certified copies of Arizona Revised Statutes listed above	See dates above
B	Arizona Department of Environmental Quality Dust Action General Permit	12/30/11
C	Arizona Department of Environmental Quality Commitment to Assess the Effectiveness of the Voluntary and Emerging Control Measure	Upon SIP submittal
D	Negative Declaration for Commercial Agriculture	June 2009

This list of Arizona Revised Statutes is identical to the list in Appendix C, Exhibit 1 of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area,* adopted by ADEQ and submitted as a companion to this plan.

Chapter V. FIVE PERCENT ANNUAL EMISSIONS REDUCTIONS DEMONSTRATION

The Section 189(d) demonstration of annual five percent PM-10 emissions reductions through December 31, 2012, has been developed by MAG and reviewed in a series of Technical Workgroup meetings and Stakeholder meetings at ADEQ, including participation by the Pinal County Air Quality Control District and Environmental Protection Agency. Because the revised Emission Inventory reduced total emissions, the annual tons of reductions requirement has also been reduced.

The annual five percent reduction target was calculated by multiplying the total 2007 PM-10 emissions (59,218 tons) by 5%, which results in 2,961 tons. To meet the Section 189(d) requirement, 2008 emissions must be at least 2,961 tons less than the 2007 base case emissions. Each year after 2008 requires an additional 2,961 ton reduction. Cumulative reduction requirements (relative to 2007 base case emissions) are at least 5,922 tons in 2009; 8,883 tons in 2010; 11,844 tons in 2011; and 14,805 tons in 2012.

See Chapter Five Demonstration of Annual Five Percent Reductions in PM-10 Emissions of *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area;* Appendix B, Exhibit 1 *Technical Document in Support of the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area*, all of which have been adopted by ADEQ and submitted as a companion to this plan, for a more detailed explanation.

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Chapter VI. ATTAINMENT DEMONSTRATION

The control measures quantified to meet the five percent reduction requirement in the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* and in this 2012 plan reduce PM-10 emissions between 2007 and 2012 by 16,089 tons, a 27.2 percent reduction in total 2007 base case emissions.

See Chapter Six Attainment Demonstration of *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area;* Appendix B, Exhibit 1 *Technical Document in Support of the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area;* and Appendix B, Exhibit 2 *Calculation of Benefits from PM-10 Certified Street Sweepers Purchased with CMAQ Funds in 2001-2009*, all of which have been adopted by ADEQ and submitted as a companion to this plan, for a more detailed explanation and the modeling demonstration. Chapter Six of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* also provides a demonstration of reasonable further progress and an onroad mobile source emissions budget for the PM-10 nonattainment area. Chapter Six also contains an explanation of the contingency measures, and a request for extension of the attainment date from June 6, 2012 to December 31, 2012.

EPA guidance indicates that contingency measures should provide emissions reductions equivalent to one year of reasonable further progress. The contingency requirement is met in the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* by quantifying projects that were already completed in 2008-2011 but not relied upon for numeric credit in the attainment demonstration. Early implementation of the contingency measures provide an additional 3,439 tons of reductions, which when added to the RFP reductions reduces the 2007 base case PM-10 emissions by 19,527 tons in 2012. That constitutes a 33 percent reduction in total 2007 base case emissions.

The 2012 plan models and demonstrates attainment throughout the nonattainment area, including this township. Because EPA published the nonattainment finding for the metropolitan Phoenix area on June 6, 2007, the new attainment deadline is June 6, 2012. Modeled attainment can only be achieved in 2012, as the Dust Action General Permit measure does not become fully implemented until January 1, 2012. Modeled attainment cannot be demonstrated at all the monitors without taking emission reduction credit for this new measure. ADEQ requests extension of the attainment deadline to December 31, 2012, for the entire nonattainment area, including this township in Pinal County.

Appendix A
Certified Copies of Arizona Revised Statutes

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ARIZONA STATE
LIBRARY, ARCHIVES AND PUBLIC RECORDS
GladysAnn Wells, Director

PROVIDING ACCESS Preserving Arizona

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

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 Statues §§ 9-500.04, 9-500.27 (2008); §§ 11-871, 11-877, 28-1098 (2007 pocket parts); 49-104, 49-404, 49-406 (2007 compact edition of the statutes); §§ 49-457.01, 49-457.03, 49-457.04, 49-474.01, 49-474.05, 49-474.06, 49-501 (2007 pocket part); §§ 49-424, 49-457.05 (2011 pocket part); § 49 451 (2001 pocket part).

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

Barb Howe
Signature

Subscribed and sworn to before me this 5/3/2012
Date

Signature, Notary Public

My commission expires April 23, 2014.
Date

OFFICIAL SEAL
LILY PINA
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires April 23, 2014

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STATE OF ARIZONA

Department Of State

UNITED STATES OF AMERICA
STATE OF ARIZONA SS.

I, JANICE K. BREWER, Secretary of State, do hereby certify that the text of the laws contained in this volume of ARIZONA REVISED STATUTES, Annotated Edition, is a true and correct copy of Title 9, §§ 9–101 to 9–End, of the Arizona Revised Statutes, as amended and supplemented by the general and permanent laws enacted to the end of the First Regular Session (2007) of the Forty-Eighth Legislature, and the original or engrossed copies of which are on file and a matter of record in this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Arizona. Done at Phoenix, the capital, this 1st day of April A.D., 2008.

GREAT SEAL OF THE STATE OF ARIZONA
DITAT DEUS
1912

Janice K. Brewer

JANICE K. BREWER
SECRETARY OF STATE

ARIZONA REVISED STATUTES

ANNOTATED

Prepared Under Legislative Authority
Laws 1956, Chapter 129

Volume 2B

Title 9
Cities and Towns

THOMSON
WEST

Mat #40577266

Historical and Statutory Notes

Reviser's Notes:

1987 Note. Laws 1987, Ch. 365, § 2 added another § 9-500.03 which was renumbered as § 9-500.04 pursuant to authority of § 41-1304.02.

Library References

Municipal Corporations ⟹210.
Westlaw Topic No. 268.

§ 9-500.04. Air quality control; definitions

A. The governing body of a city or town in area A or area B as defined in § 49-541 shall:

1. If the city has a population exceeding fifty thousand persons according to the 1995 special census, adjust the work hours of at least eighty-five per cent of municipal employees each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide, ozone and particulate matter concentrations caused by vehicular travel.

2. In area A, in consultation with the designated metropolitan planning organization, synchronize traffic control signals on all existing and new roadways, within and across jurisdictional boundaries, that have average daily trips exceeding fifteen thousand motor vehicles per day.

3. In area A, beginning on 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.

4. 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.

5. In area A, in order to reduce particulate matter in ambient air:

(a) Beginning March 31, 2008, on any high pollution advisory day forecast by the department of environmental quality prohibit employees or contractors of that city or town from operating leaf blowers except while in vacuum mode and prohibit those employees or contractors from blowing landscape debris into public roadways at any time.

(b) No later than March 31, 2008, adopt, implement and enforce an ordinance that bans the blowing of landscape debris into public roadways at any time by any person.

6. In area A, 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 city or town.

7. In area A, 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 that are three thousand square feet or more in size at residential buildings with four or fewer units are maintained with a paving or stabilization method authorized by the city or town by code, ordinance or permit.

8. In area A, no later than March 31, 2008, adopt or amend codes or ordinances as necessary to restrict vehicle parking and use on unpaved or unstabilized vacant lots.

9. In area A, no later than March 31, 2008, require that new or renewed contracts for street sweeping on city streets must be conducted with street sweepers that meet the south coast air quality management district rule 1186 street sweeper certification specifications for pick up efficiency and PM–10 emissions in effect on January 1, 2007.

10. In area B, synchronize traffic control signals on all roadways that have average daily trips exceeding fifteen thousand motor vehicles per day.

B. The governing body of a city or town in area B as defined in § 49–541 may make and enforce ordinances to reduce or encourage the reduction of the commuter use of motor vehicles by employees of the city or town and employees whose place of employment is within the city or town.

C. Except as provided in subsection F of this section, the governing body of a city or town in area A as defined in § 49–541 in a county with a population of more than one million two hundred thousand persons according to the most recent United States decennial census shall develop and implement a vehicle fleet plan for the purpose of encouraging and progressively increasing the use of alternative fuels and clean burning fuels in city or town owned vehicles. The plan shall include a timetable for increasing the use of alternative fuels and clean burning fuels in fleet vehicles either through purchase or conversion.

D. The timetable shall reflect the following schedule and percentage of vehicles that operate on alternative fuels and clean burning fuels:

1. At least eighteen per cent of the total fleet by December 31, 1995.

2. At least twenty-five per cent of the total fleet by December 31, 1996.

3. At least fifty per cent of the total fleet by December 31, 1998.

4. At least seventy-five per cent of the total fleet by December 31, 2000 and each year thereafter.

E. The requirements of subsections C and D of this section may be waived on receipt of evidence acceptable to the city or town council that the city or town is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using alternative fuels or clean burning fuels at a projected cost that is reasonably expected to result in net costs of no greater than ten per cent more than the net costs associated with the continued use of conventional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied. Applications for waivers shall be filed with the department of environmental quality pursuant to § 49-412. An entity that receives a waiver pursuant to this section shall retrofit fleet heavy-duty diesel vehicles with a gross vehicle weight of eight thousand five hundred pounds or more, that were manufactured in or before model year 1993 and that are the subject of the waiver with a technology that is effective at reducing particulate matter emissions at least twenty-five per cent or more and that has been approved by the United States environmental protection agency pursuant to the urban bus engine retrofit/rebuild program. The entity shall comply with the implementation schedule pursuant to § 49-555.

F. The plan prescribed by subsection C of this section shall include provisions for the use of alternative fuels and clean burning fuels in the bus fleet operated by that city or town or a regional public transportation authority, except that all newly purchased buses shall use alternative fuel or clean burning fuel. The bus fleet shall comply with the timetable prescribed by subsection D of this section, except that the requirements of subsections C and D of this section may be waived on receipt of certification supported by evidence acceptable to the department of environmental quality that the city or town is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using alternative fuels or clean burning fuels at a projected cost that is reasonably expected to result in net costs of no greater than twenty per cent more than the net costs associated with the continued use of conventional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied.

G. If the requirements of subsections C, D and F of this section are met by the use of clean burning fuel, vehicle equivalents under those requirements shall be calculated as follows:

1. One vehicle equivalent for every four hundred fifty gallons of neat biodiesel or two thousand two hundred fifty gallons of a diesel fuel substitute prescribed in § 1-215, paragraph 7, subdivision (b).

2. One vehicle equivalent for every five hundred thirty gallons of the fuel prescribed in § 1-215, paragraph 7, subdivision (d).

H. Subsection A, paragraphs 5 through 8 of this section do not apply to any site that has a permit issued by a control officer as defined in § 49-471 for the control of fugitive dust from dust generating operations.

I. For the purposes of this section, "alternative fuel" and "clean burning fuel" have the same meanings prescribed in § 1-215.

Added as § 9-500.03 by Laws 1987, Ch. 365, § 2, eff. Jan. 1, 1989. Renumbered as § 9-500.04. Amended by Laws 1993, 6th S.S., Ch. 1, § 3; Laws 1994, Ch. 84, § 1; Laws 1994, Ch. 353, § 1, eff. April 26, 1994; Laws 1996, 7th S.S., Ch. 6, § 6; Laws 1997, Ch. 269, § 1; Laws 1998, Ch. 217, § 2; Laws 1999, Ch. 168, § 2, eff. May 5, 1999; Laws 2000, Ch. 148, § 2; Laws 2001, Ch. 70, § 1; Laws 2002, Ch. 260, § 2; Laws 2004, Ch. 95, § 2; Laws 2006, Ch. 349, § 2; Laws 2006, Ch. 388, § 1; Laws 2007, Ch. 292, § 1.

Historical and Statutory Notes

Laws 1987, Ch. 365, § 28, subsec. B provides:

"**B.** Sections 2 and 19 of this act are effective from and after December 31, 1988."

Laws 1998, Ch. 217, § 42, as amended by Laws 1999, Ch. 168, § 27, effective May 5, 1999, provides:

"**Sec. 42. Area A expansion; compliance dates; air quality programs; Pinal county**

"**A.** Notwithstanding § 41 as added by this act, and section 49-541, paragraph 1, Arizona Revised Statutes, as amended by this act, relating to the geographical definition of area A, all air quality measures and programs added or modified by this act which are not listed in subsection B of this section, shall be effective from and after December 31, 2000 in the portion of area A which includes Pinal county.

"**B.** Cities, counties and school districts that are located in Pinal county and that have been included within the boundaries of area A shall comply with the provisions of § 9-500.04, subsections C through G, § 15-349 and § 49-474.01, subsections C through E, Arizona Revised Statutes, relating to the conversions of fleet vehicles to alternative fuels according to the following schedule:

"1. At least eighteen per cent of the total fleet by December 31, 2000.

"2. At least twenty-five per cent of the total fleet by December 31, 2001.

"3. At least fifty per cent of the total fleet by December 31, 2003.

"4. At least seventy-five per cent of the total fleet by December 31, 2005."

Laws 1998, Ch. 217, § 42, as amended by Laws 1999, Ch. 295, § 51 provides:

"**Sec. 42. Area A expansion; compliance dates; air quality programs; Pinal county**

"**A.** Notwithstanding § 41 as added by this act, and § 49-541, paragraph 1, Arizona Revised Statutes, as amended by this act, relating to the geographical definition of area A, all air quality measures and programs added or modified by this act which are not listed in subsection B of this section, shall be effective from and after December 31, 2000 in the portion of area A which includes Pinal county.

"**B.** Cities, counties and school districts that are located in Pinal county and that have been included within the boundaries of area A shall comply with the provisions of § 9-500.04, subsections C through G, § 15-349 and § 49-474.01, subsections C through E, Arizona Revised Statutes, relating to the conversions of fleet vehicles to alternative fuels according to the following schedule:

"1. At least eighteen per cent of the total fleet by December 31, 2000.

"2. At least twenty-five per cent of the total fleet by December 31, 2001.

"3. At least fifty per cent of the total fleet by December 31, 2003.

"4. At least seventy-five per cent of the total fleet by December 31, 2005."

Laws 2001, Ch. 371, § 18, subsec. B, provides:

"**Sec. 18. Area A expansion; compliance date; air quality programs**"

"**B.** Cities, counties and school districts that have been included within the boundaries of area A shall comply with the provisions of § 9-500.04, subsections C through G, § 15-349 and § 49-474.01, subsections C through E, Arizona Revised Statutes, relating to the conversions of fleet vehicles to alternative fuels according to the following schedule:

"1. At least eighteen per cent of the total fleet by December 31, 2003.

or town to prevent the entry from this state into the republic of Mexico at the border by any resident of this state who is under eighteen years of age if the minor is unaccompanied by a parent or guardian or does not have written consent for entry from a parent or guardian. The authority of the peace officer is only to prevent entry and not to otherwise detain the minor.

B. This section shall not be construed to limit the authority of a peace officer pursuant to any other law.

C. A city or town is not civilly or criminally liable for not adopting an ordinance pursuant to this section.

Added by Laws 2006, Ch. 174, § 1.

[1] Section 9-801 et seq.

Library References

Infants ⇐13.
Westlaw Topic No. 211.
C.J.S. Infants §§ 110 to 114, 118 to 121.

§ 9-500.27. Off-road vehicle ordinance; applicability; violation; classification

A. No later than March 31, 2008, in area A, as defined in § 49-541, a city or town shall adopt, implement and enforce an ordinance that prohibits the operation of any vehicle, including an off-highway vehicle, an all-terrain vehicle or an off-road recreational motor vehicle, on an unpaved surface that is not a public or private road, street or lawful easement and that is closed by the landowner by rule or regulation of a federal agency, this state, a county or a municipality or by proper posting if the land is private land.

B. This section does not apply to the operation of vehicles used in the normal course of business or the normal course of government operations.

C. This section does not prohibit or preempt the enforcement of any similar ordinance that is adopted by a city or town in area A, as defined in § 49-541, before March 31, 2008 for purposes of dust abatement.

D. A person who violates an ordinance adopted pursuant to subsection A of this section is guilty of a class 3 misdemeanor.

E. In addition to or in lieu of a fine pursuant to this section, a judge may order the person to perform at least eight but not more than twenty-four hours of community restitution or to complete an approved safety course related to the off-highway operation of motor vehicles, or both.

Added by Laws 2007, Ch. 292, § 2.

Library References

Automobiles ⇐7.
Westlaw Topic No. 48A.
C.J.S. Motor Vehicles §§ 24, 26 to 27, 29 to 33.

ARIZONA
REVISED STATUTES

ANNOTATED

2007
Cumulative Pocket Part

For Use in 2007–2008

Replacing 2006 Pocket Part supplementing 2001 main volume

Volume 3A

Title 11

Including Legislation Enacted Through
The First Regular Session
of The Forty-Eighth Legislature (2007)

THOMSON
WEST

Mat #40630539

Notes of Decisions

1. Power and authority

County had authority to adopt only portions of standards, which, through mandatory language, set forth comprehensive collection of rules for builders to facilitate building access to people confined to wheelchairs; community's interests were advanced by adopting only specific portions of standards, and standards themselves contemplated, through scoping provision, need for governmental authorities to adapt standards to specific needs of communities. Washburn v. Pima County (App. Div.2 2003) 206 Ariz. 571, 81 P.3d 1030, review denied. Civil Rights ⟹ 1021; Zoning And Planning ⟹ 11.1

County did not exceed its statutory authority in adopting ordinance requiring builders of single-family homes to incorporate design features allowing for greater wheelchair access; although builders contended that county could not adopt standards which set forth rules for builders to facilitate building access under statute authorizing counties to adopt building codes, since standards were not classified as a "code," statute limited counties' choice of building regulations to those that had been developed by knowledgeable professionals, but did not limit definition of word "code." Washburn v. Pima County (App. Div.2 2003) 206 Ariz. 571, 81 P.3d 1030, review denied. Civil Rights ⟹ 1021; Zoning And Planning ⟹ 11.1

Counties have the authority to enforce adopted wildland-urban interface fire codes. The provisions of these and other fire codes supersede conflicting provisions in Declarations of Covenants, Conditions, and Restrictions (CC&Rs). CC&Rs incorporate the provisions of only those fire codes in effect when the CC&Rs were adopted. Counties generally cannot enforce the terms of CC&Rs. Op.Atty.Gen. No. I06–005.

§ 11–865. Exemptions; exception

Notes of Decisions

Employee housing 2
Validity 1

1. Validity

Statutes, which exempted farm owners from complying with building permit process when constructing or renovating free on-site housing for full-time farm workers, did not deny farm workers as a class of equal protection; statutes, which exempted a broad array of entities that collectively comprised the agricultural industry from complying with zoning and building code requirements, were not directed at farm workers per se, let alone farm workers of any particular racial or ethnic background. Trust v. County of Yuma (App. Div.1 2003) 205 Ariz. 272, 69 P.3d 510. Constitutional Law ⟹ 3261; Constitutional Law ⟹ 3498; Health ⟹ 358

2. Employee housing

Free, on-site housing for full-time farm workers was "incidental to farming," and thus farm owner did not have to comply with building permit process in order to construct and renovate workers' residential quarters, pursuant to statutes stating "nothing in any ordinance...shall...prevent...use or occupation of land...for general agricultural purposes" and "provisions of...article shall not...apply to...[c]onstruction or operation incidental to...farming;" incidental language encompassed tangential and subordinate functions, housing workers was a subordinate accommodation to workers' primary role as employees, and free, on-site housing benefited employer and worker. Trust v. County of Yuma (App. Div.1 2003) 205 Ariz. 272, 69 P.3d 510. Health ⟹ 392

ARTICLE 4. AIR QUALITY

§ 11–871. Emissions control; no burn; exemptions; penalty

A. A county that contains any part of area A, as defined in § 49–541, shall develop, implement and enforce in area A, as defined in § 49–541, an ordinance relating to residential wood burning restrictions, including a no burn restriction when monitoring or forecasting by the department of environmental quality predicts the carbon monoxide standard is likely to be exceeded.

B. On or before October 31, 2007, a county that contains any part of area A, as defined in § 49–541, shall amend the ordinance prescribed by subsection A of this section to include a no burn restriction for any high pollution advisory day forecast by the department of environmental quality for particulate matter.

C. The ordinance shall provide an exemption for the use of residential wood stoves, wood fireplaces or gas fired fireplaces that comply with any of the following:

1. Provides the sole or primary source of heat or fuel for cooking for a residence.

2. Meets performance standards for new residential wood heaters manufactured on or after July 1, 1990 or sold at retail on or after July 1, 1992 as prescribed by 40 Code of Federal Regulations part 60, subpart AAA.

3. Burns gaseous fuels, including gas logs.

4. Meets rules adopted by the board of supervisors as prescribed in § 49-479 for burning wood in approved appliances.

D. The ordinance shall provide that a person who violates an ordinance adopted pursuant to this section is subject to:

1. A warning for the first violation.

2. The imposition of a civil penalty of fifty dollars for the second violation.

3. The imposition of a civil penalty of one hundred dollars for the third violation.

4. The imposition of a civil penalty of two hundred fifty dollars for the fourth or any subsequent violation.

E. For violations of ordinances adopted pursuant to this section, the control officer shall use a uniform civil ticket and complaint substantially similar to a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the supreme court. The control officer may issue citations to persons in violation of ordinances adopted pursuant to this section.

Added by Laws 1993, 6th S.S., Ch. 1, § 4. Amended by Laws 1994, Ch. 353, § 2, eff. April 26, 1994; Laws 1995, Ch. 293, § 1; Laws 1998, Ch. 217, § 4; Laws 2007, Ch. 292, § 3.

Historical and Statutory Notes

The 2007 amendment by Ch. 292 rewrote the section, which had read:

"A. A county that contains any part of area A as defined in § 49-541, shall, by September 1, 1999, develop, implement and enforce in area A, as defined in § 49-541, an ordinance relating to residential wood burning restrictions, including a no burn restriction when monitoring or forecasting indicates the carbon monoxide standard is likely to be exceeded.

"B. The ordinance shall provide an exemption for the use of residential wood stoves, wood fireplaces or gas fired fireplaces that comply with any of the following:

"1. Provides the sole or primary source of heat or fuel for cooking for a residence.

"2. Meets performance standards for new residential wood heaters manufactured on or after July 1, 1990 or sold at retail on or after July 1, 1992 as prescribed by 40 Code of Federal Regulations part 60, subpart AAA.

"3. Burns gaseous fuels, including gas logs.

"4. Meets rules adopted by the board of supervisors as prescribed in § 49-479 for burning wood in approved appliances.

"C. The ordinance shall provide that a person who violates an ordinance adopted pursuant to this section is subject to:

"1. A warning for the first violation.

"2. The imposition of a civil penalty of fifty dollars for the second violation.

"3. The imposition of a civil penalty of one hundred dollars for a third or any subsequent violation.

"D. For violations of ordinances adopted pursuant to this section, the control officer shall use a uniform civil ticket and complaint substantially similar to a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the supreme court. The control officer may issue citations to persons in violation of ordinances adopted pursuant to this section."

§ 11-872. Control techniques; rules; schedule for adoption

A. If the administrator of the United States environmental protection agency makes a finding relating to area A, as defined in § 49-541, pursuant to the clean air act amendments of 1990 (P.L. 101-549), § 172, the county shall adopt by rule the necessary emission limitations or other standards reflecting control techniques guidelines issued by the United States environmental protection agency pursuant to the clean air act amendments of 1990, § 183 in order to achieve emissions reductions sufficient to respond to the finding.

B. The county shall begin to develop rules that incorporate the provisions of the control techniques guidelines being developed by the United States environmental protection agency. The rule making process shall parallel as closely as possible the United States environmental protection agency process and incorporate adequate public notice and comment. The county

G. For the purposes of this section, "idling" means the operation of an engine in the operating mode where the engine is not engaged in gear, where the engine operates at a speed at the revolutions per minute specified by the engine or vehicle manufacturer for when the accelerator is fully released and there is no load on the engine.

Added as § 11-877 by Laws 2001, Ch. 371, § 1. Renumbered as § 11-876. Amended by Laws 2002, Ch. 296, § 1, eff. July 1, 2003.

Historical and Statutory Notes

The 2002 amendment by Ch. 296, rewrote subsecs. D, E and F, which had read:

"D. A driver who violates this section is subject to:

"1. The imposition of a civil penalty of one hundred dollars for the first violation.

"2. The imposition of a civil penalty of three hundred dollars for a second or any subsequent violation.

"E. Ordinances adopted pursuant to this section may be enforced by a county control officer or any law enforcement officer who is authorized to enforce traffic laws. For violations of this section, a control officer shall use a uniform civil ticket and complaint substantially similar to a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the supreme court. The control officer may issue citations to persons who violate this section.

"F. In enforcing the provisions of this section, a county control officer or authorized law enforcement officer shall only issue one citation per traffic stop or investigation of a driver whose vehicle exceeds the maximum idling limits established pursuant to this section."

§ 11-877. Air quality control measures

A. In order to reduce particulate matter in ambient air, the board of supervisors of any county that contains any portion of area A, as defined in § 49-541, shall develop, implement and enforce in area A the following air quality control measures:

1. Beginning on the effective date of this section, prohibit employees or contractors of that county from operating leaf blowers on any high pollution advisory day forecast by the department of environmental quality except while in vacuum mode and prohibit those employees or contractors from blowing landscape debris into public roadways at any time.

2. No later than March 31, 2008, adopt, implement and enforce an ordinance that bans the blowing of landscape debris into public roadways at any time by any person.

3. No later than March 31, 2008, adopt, implement and enforce an ordinance that prohibits the operation of leaf blowers except on surfaces that have been stabilized with asphaltic concrete, cement concrete, hardscape, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, decomposed granite cover, crushed granite cover, aggregate cover, gravel cover, or grass or other continuous vegetative cover, or any combination of those stabilizers.

B. This section does not apply to any site that has a permit issued by a control officer as defined in § 49-471 for the control of fugitive dust from dust generating operations.

Added by Laws 2007, Ch. 292, § 5.

Historical and Statutory Notes

Former § 11-877 was renumbered as § 11-876.

CHAPTER 7

INTERGOVERNMENTAL OPERATIONS

ARTICLE 3. JOINT EXERCISE OF POWERS

ARIZONA
REVISED STATUTES

ANNOTATED

2007
Cumulative Pocket Part

For Use in 2007–2008

Replacing 2006 Pocket Part supplementing 2004 main volume

Volume 9A

Title 28
§§ 28–101 to 28–3000

Including Legislation Enacted Through
The First Regular Session
of The Forty-Eighth Legislature (2007)

THOMSON
WEST

Mat #40630558

H. For purposes of this section:

1. "Farm vehicle" has the same meaning prescribed in § 28-2514.

2. "Recreational vehicle" means a motor vehicle that is designed and customarily used for private pleasure, including vehicles commonly called motor homes, pickup trucks with campers and pickup trucks with a fifth wheel trailing device.

Added by Laws 1996, Ch. 76, § 18, eff. Oct. 1, 1997. Amended by Laws 1997, Ch. 1, § 91, eff. Oct. 1, 1997; Laws 2001, Ch. 52, § 1; Laws 2006, Ch. 226, § 1.

Administrative Code References

Tow truck registration, changes in ownership, see A.A.C. R13-3-903.

§ 28-1098. Vehicle loads; restrictions; civil penalties

A. For the purpose of highway safety or air pollution prevention, a person shall not drive or move a vehicle on a highway unless the vehicle is constructed or loaded in a manner to prevent any of its load from dropping, sifting, leaking or otherwise escaping from the vehicle, except the following are permitted:

1. Sufficient sand may be dropped for the purpose of securing traction.

2. Water or another substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

3. Minor pieces of agricultural materials such as leaves and stems from agricultural loads.

B. A person shall not operate a vehicle on a highway with a load unless the load and any covering on the load are securely fastened in a manner to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

C. If a person is found in violation of this section and the violation:

1. Does not cause any damage or injury and is the person's:

(a) First violation in a sixty month period, the person is subject to a civil penalty of not more than two hundred fifty dollars.

(b) Second or subsequent violation in a sixty month period, the person is subject to a civil penalty of not more than three hundred fifty dollars.

2. Results in an accident causing serious physical injury as defined in § 13-105 to another person, the person is subject to a civil penalty of not more than five hundred dollars.

3. Results in an accident causing the death of another person, the person is subject to a civil penalty of not more than one thousand dollars.

Added by Laws 1996, Ch. 76, § 18, eff. Oct. 1, 1997. Amended by Laws 2003, Ch. 258, § 2; Laws 2007, Ch. 292, § 6.

Historical and Statutory Notes

The 2007 amendment by Ch. 292 rewrote the section, which had read:

"A. A person shall not drive or move a vehicle on a highway unless the vehicle is constructed or loaded in a manner to prevent any of its load from dropping, sifting, leaking or otherwise escaping from the vehicle, except that either:

"1. Sand may be dropped for the purpose of securing traction.

"2. Water or another substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

"B. A person shall not operate a vehicle on a highway with a load unless the load and any covering on the load are securely fastened in a manner to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

"C. If a person is found in violation of this section and the violation:

"1. Does not cause any damage or injury and is the person's:

"(a) First violation in a sixty month period, the person is subject to a civil penalty of up to two hundred fifty dollars.

"(b) Second or subsequent violation in a sixty month period, the person is subject to a civil penalty of up to three hundred fifty dollars.

"2. Results in an accident causing serious physical injury as defined in § 13-105 to another per-

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ARIZONA

REVISED STATUTES

2007–2008
COMPACT EDITION

REVISED STATUTES

Sections 44–101 to 49–End

THOMSON
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§ 49-101. Definitions

In this title, unless the context otherwise requires:

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

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

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 perform such services shall be a charge against appropriations to the department. The attorney general shall prosecute and defend in the name of this state all actions necessary to carry out the provisions of this title.

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.

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

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

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

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

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

B. The department, through the director, shall:

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

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

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

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

5. Contract with other agencies including laboratories in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified min-

imum 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.

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) [2] and title 26, chapter 2, article 3. [3]

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

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

D. The director may:

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

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

Added by Laws 1986, Ch. 368, § 34, eff. July 1, 1987. Amended by Laws 1987, Ch. 317, § 14, eff. Aug. 15, 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.

12. Fixed lanes for buses and carpools.

13. Encouragement of pedestrian travel.

14. Encouragement of bicycle travel.

15. Development of bicycle travel facilities.

16. Employer incentives regarding ride share programs.

17. Modification of work schedules.

18. Strategies for controlling the generation of air pollution by nonresidents of nonattainment or maintenance areas.

19. Use of alternative fuels.

20. Use of emission control devices on public diesel powered vehicles.

21. Paving of roads.

22. Restricting off-road vehicle travel.

23. Construction site air pollution control.

24. Other air quality control measures.

F. Each regional planning agency shall consult with the department of transportation to coordinate the plans developed pursuant to subsection E of this section with transportation plans developed by the department of transportation pursuant to any other law.

Added as § 36–1706 by Laws 1967, Ch. 2, § 9. Amended by Laws 1969, Ch. 53, § 17; Laws 1970, Ch. 164, § 28, eff. May 18, 1970; Laws 1971, Ch. 190, § 12; Laws 1973, Ch. 158, § 201; Laws 1982, Ch. 259, § 2; Laws 1986, Ch. 319, § 2, eff. Jan. 1, 1987. Renumbered as § 49–402 by Laws 1986, Ch. 368, § 37, subsec. B, eff. July 1, 1987. Amended by Laws 1987, Ch. 317, § 35, eff. Aug. 18, 1987, retroactively effective to July 1, 1987; Laws 1992, Ch. 299, § 8, eff. Sept. 1, 1993; Laws 1994, Ch. 353, § 21, eff. April 26, 1994; Laws 1999, Ch. 295, § 41; Laws 2002, Ch. 110, § 1.

[1] Section 49–541 et seq.

[2] Section 49–471 et seq.

§ 49–403. Repealed by Laws 1988, Ch. 252, § 16, eff. Nov. 2, 1992

§ 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.

Added by Laws 1992, Ch. 299, § 9.

§ 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 § 134 [1] as the agency responsible for the development of a nonattainment or maintenance area plan for that area.

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

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

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

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

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

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

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

3. Assurances for adequate plan implementation.

4. Procedures and responsibilities for tracking plan implementation.

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

6. Coordination with transportation programs.

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

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

9. Responsibility for conducting air quality modeling.

10. Responsibility for administering and enforcing stationary source controls.

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

(a) Demographics.

(b) Transportation.

(c) Emissions inventories.

(d) Assumptions used in developing the model.

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

(f) Monitoring data.

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

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

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

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

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

I. After adoption of a nonattainment or maintenance area plan, if on the basis of the reasonable

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

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

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

Added by Laws 1992, Ch. 299, § 9. Amended by Laws 1994, Ch. 134, § 1; Laws 1998, Ch. 217, § 15.

[1] 23 U.S.C.A. § 134.

§ 49–407. Private right of action; citizen suits

A. Except as provided in subsection B, a person having an interest which is or may be adversely affected may commence a civil action in superior court on his own behalf against the director alleging a failure of the director to perform an act or duty under this article or article 2 of this chapter [1] that is not discretionary with the director. The court has jurisdiction to order the director to perform the act or duty.

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

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

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

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

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

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

Added by Laws 1992, Ch. 299, § 9. Amended by Laws 1995, Ch. 231, § 7.

[1] Sections 49–401 et seq. or 49–421 et seq.

§ 49–408. Air quality conformity; definition

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

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

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

ARIZONA
REVISED STATUTES

ANNOTATED

2007
Cumulative Pocket Part

For Use in 2007–2008

Replacing 2006 Pocket Part supplementing 2005 main volume

Volume 15C

Title 49

Including Legislation Enacted Through
The First Regular Session
of The Forty-Eighth Legislature (2007)

THOMSON
WEST

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Historical and Statutory Notes

Laws 2007, Ch. 292, §§ 20 to 22, provide:

"Sec. 20. **Interim rule making; publication**

"Notwithstanding title 41, chapter 6, article 3, Arizona Revised Statutes, the best management practices committee for regulated agricultural activities established under § 49–457, Arizona Revised Statutes, shall adopt the rules required by § 49–457, Arizona Revised Statutes, as amended by this act, as interim rules with an immediate effective date in compliance with § 41–1032, Arizona Revised Statutes, in order to comply with the December 31, 2007 deadline imposed by the United States environmental protection agency for failure to attain the national ambient air quality standard for PM–10 on or before December 31, 2006. The rules shall have an immediate effective date. Interim rules are exempt from title 41, chapter 6, article 3, Arizona Revised Statutes, except that the committee shall submit the rules for publication and the secretary of state shall publish the rules in the Arizona administrative register.

"Sec. 21. **Construction contracts with public entities; definition**

"A. If this state or an agency or political subdivision of this state is party to a construction contract executed before enactment of this act, the state, agency or political subdivision may agree to a contract amendment to provide for supplemental payments to reimburse the contractor for costs incurred solely and directly as a result of new dust control requirements imposed under this act if the following conditions are satisfied:

"1. The measures taken to comply with the new dust control requirements were necessary and appropriate.

"2. The measures taken to comply with the new dust control requirements were not necessary or appropriate to comply with dust control requirements or any other legal or contractual requirements in existence before enactment of this act.

"3. The contractor provides the state, agency or political subdivision with complete documentation for the costs for which supplemental payment is requested.

"4. The contractor did not expressly or impliedly assume the risk that additional costs would be incurred as a result of changes in dust control requirements.

"B. Any invitation to bid or request for proposals issued by this state or an agency or political subdivision of this state for a construction project in area A as defined in § 49–541, Arizona Revised Statutes, shall require that the offer address compliance with all dust control requirements applicable to the project.

"C. For the purposes of this section, "political subdivision" means an entity supported in whole or in part by tax revenues.

"Sec. 22. **Delayed repeal**

"Section 21 of this act, relating to public contracts and dust control requirements, is repealed from and after September 30, 2009."

§ 49–457.01. Leaf blower use restrictions and training; leaf blower equipment sellers; informational material; outreach; applicability

A. This section applies in a county with a population of two million or more persons or any portion of a county within an area designated by the environmental protection agency as a serious PM–10 nonattainment area or a maintenance area that was designated as a serious PM–10 nonattainment area.

B. After March 31, 2008, no person may use a leaf blower to blow landscape debris into public roadways.

C. After March 31, 2008, no person may operate a leaf blower except on surfaces that have been stabilized with asphaltic concrete, cement concrete, hardscape, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, decomposed granite cover, crushed granite cover, aggregate cover, gravel cover, or grass or other continuous vegetative cover, or any combination of those stabilizers.

D. At least once every three years, any person operating a leaf blower for remuneration shall successfully complete training approved by the department on how to operate a leaf blower in a manner designed to minimize the generation of fugitive dust emissions. Any person who is required to be trained under this subsection shall complete initial training no later than December 31, 2008.

E. Any person who rents or sells in the normal course of business equipment that is used for blowing landscape debris shall provide to the buyer or renter of the equipment printed materials that are approved by the department pursuant to this section.

F. The department shall produce printed materials and distribute those materials to persons who sell or rent equipment used for blowing landscape debris. The printed materials shall be designed to educate and inform the user of the equipment on the safe and efficient

use of the equipment, including methods for reducing the generation of dust, and shall include information regarding dust control ordinances and restrictions that may be applicable.

G. This section does not apply to any site that has a permit issued by a control officer as defined in § 49–471 for the control of fugitive dust from dust generating operations.

Added by Laws 2007, Ch. 292, § 15.

§ 49–457.02. Dust-free developments program; certification; seal

A. The department shall establish the dust-free developments program to encourage and recognize persons and entities that demonstrate exceptional commitment to the reduction of airborne dust in a county with a population of more than two million persons and in the PM–10 nonattainment area that contains the city of apache junction. The program shall include a voluntary certification process based on criteria developed by the department.

B. Any person or entity may apply for certification under the program, and if approved, may lawfully use a certification, seal, logo or other similar indicator established by the department. A person or entity that is certified under the program may use the certification for promotional, civic, public relations or public involvement purposes.

C. Notwithstanding § 41–3102, this program does not include a specific expiration date.

Added by Laws 2007, Ch. 292, § 15.

§ 49–457.03. Off-road vehicles; pollution advisory days; applicability; penalties

A. In area A, as defined in § 49–541, a person shall not operate an off-highway vehicle, an all-terrain vehicle or an off-road recreational motor vehicle on an unpaved surface that is not a public or private road, street or lawful easement during any high pollution advisory day forecast for particulate matter by the department.

B. This section does not apply to:

1. An event that is intended for off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles and that is endorsed, authorized, permitted or sponsored by a public agency, that occurs on a designated route or area and that includes dust abatement measures at all staging areas, parking areas and entrances.

2. An event that occurs at a facility for which an admission or user fee is charged and that includes dust abatement measures.

3. A closed course that is maintained with dust abatement measures.

4. An off-highway vehicle, all-terrain vehicle or off-road recreational motor vehicle used in the normal course of business or the normal course of government operations.

5. Golf carts that are used as part of a private or public golf course operation.

C. A person who violates this section is subject to:

1. A warning for the first violation.

2. The imposition of a civil penalty of fifty dollars for the second violation.

3. The imposition of a civil penalty of one hundred dollars for the third violation.

4. The imposition of a civil penalty of two hundred fifty dollars for the fourth or any subsequent violation.

D. For violations of this section, the control officer or other enforcement officer shall use a uniform civil ticket and complaint substantially similar to a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the supreme court. The control officer or other enforcement officer may issue citations to persons in violation of this section.

Added by Laws 2007, Ch. 292, § 15.

§ 49–457.04. Off–highway vehicle and all-terrain vehicle dealers; informational material; outreach; applicability

A. Any person who rents or sells in the normal course of business off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles, other than golf carts sold to public or private golf courses, shall provide to the buyer or renter of the vehicle printed materials that are approved by the department pursuant to this section.

B. The department shall produce printed materials and distribute those materials to persons who sell or rent off-highway vehicles, all- terrain vehicles or off-road recreational motor vehicles. The printed materials shall be designed to educate and inform the user of the vehicle on methods for reducing the generation of dust and shall include information regarding dust control ordinances and restrictions that may be applicable. The department shall make available on the department's website the printed materials in a format that is accessible to the public.

C. This section applies in a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM–10 nonattainment area or a maintenance area that was designated as a serious PM–10 nonattainment area.

Added by Laws 2007, Ch. 292, § 15.

ARTICLE 3. COUNTY AIR POLLUTION CONTROL

§ 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 method authorized by the county by code, ordinance or permit.

7. In area A, no later than March 31, 2008, adopt or amend codes or ordinances as necessary to restrict vehicle parking and use on unpaved or unstabilized vacant lots.

8. In area A, require that new or renewed contracts for street sweeping on city streets must be conducted with street sweepers that meet the south coast air quality management district rule 1186 street sweeper certification specifications for pick up efficiency and PM–10 emissions in effect on January 1, 2007.

9. In area B, synchronize traffic control signals on roadways with a traffic flow exceeding fifteen thousand motor vehicles per day.

10. Implement adjusted work hours for at least eighty-five per cent of county employees in area A each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

11. In a county with a population of two million or more persons or any portion of a county within an area designated by the environmental protection agency as a serious PM–10 nonattainment area or a maintenance area that was designated as a serious PM–10 nonattainment area, no later than March 31, 2008, adopt rule provisions, and, no later than October 1, 2008, commence enforcement of those rule provisions regarding the stabilization of disturbed surfaces of vacant lots that include the following:

(a) Reasonable written notice to the owner or the owner's authorized agent or the owner's statutory agent that the unpaved disturbed surface of a vacant lot is required to be stabilized. The notice shall be given not less than thirty days before the day set for compliance and shall include a legal description of the property and the estimated cost to the county for the stabilization if the owner does not comply. The notice shall be either personally served or mailed by certified mail to the owner's statutory agent, to the owner at the owner's last known address or to the address to which the tax bill for the property was last mailed.

(b) Authority for the county to enter the lot to stabilize the disturbed surface at the expense of the owner if the vacant lot has not been stabilized by the day set for compliance.

(c) Methods for stabilization of the disturbed surface of the vacant lot, the actual cost of stabilization and the fine that may be imposed for a violation of this section.

B. For the purposes of subsection A, paragraph 11 of this section:

1. "Disturbed surface" means a portion of the earth's surface or material placed on the earth's surface that has been physically moved, uncovered, destabilized or otherwise modified from its undisturbed native condition if the potential for the emission of fugitive dust is increased by the movement, destabilization or modification.

2. Vacant lots do not include any site of disturbed surface area that is subject to a permit issued by a control officer that requires control of PM–10 emissions from dust generating operations.

C. The board of supervisors of a county that contains any portion of area A as defined in § 49–541 shall make and enforce ordinances consistent with § 49–588 to reduce or encourage the reduction of the commuter use of motor vehicles by employees of the county and employees whose place of employment is within area A.

D. The board of supervisors in a county that contains any portion of area A shall develop and implement a vehicle fleet plan for the purpose of encouraging and progressively increasing the use of alternative fuels and clean burning fuels in county owned vehicles operating in area A.

E. The plan shall include a timetable for increasing the use of alternative fuels and clean burning fuels in fleet vehicles either through purchase or conversion. The timetable shall reflect the following schedule and percentage of vehicles that operate on alternative fuels or clean burning fuels:

1. At least eighteen per cent of the total fleet by December 31, 1995.

2. At least twenty-five per cent of the total fleet by December 31, 1996.

3. At least fifty per cent of the total fleet by December 31, 1998.

4. At least seventy-five per cent of the total fleet by December 31, 2000 and each year thereafter.

F. The requirements of subsections D and E of this section may be waived on receipt of certification supported by evidence acceptable to the department that the county is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using alternative fuels or clean burning fuels at a projected cost that is reasonably expected to result in net costs of no greater than ten per cent more than the net costs associated with the continued use of conventional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied. Applications for waivers shall be filed with the department pursuant to § 49–412. An entity that receives a waiver pursuant to this section shall retrofit fleet heavy-duty diesel vehicles with a gross vehicle weight of eight thousand five hundred pounds or more, that were manufactured in or before model year 1993 and that are the subject of the waiver with a technology that is effective at reducing particulate emissions at least twenty-five per cent or more and that has been approved by the United States environmental protection agency pursuant to the urban bus engine retrofit/rebuild program. The entity shall comply with the implementation schedule pursuant to § 49–555.

G. If the requirements of subsections D and E of this section are met by the use of clean burning fuel, vehicle equivalents under those requirements shall be calculated as follows:

1. One vehicle equivalent for every four hundred fifty gallons of neat biodiesel or two thousand two hundred fifty gallons of a diesel fuel substitute prescribed in § 1–215, paragraph 7, subdivision (b).

2. One vehicle equivalent for every five hundred thirty gallons of the fuel prescribed in § 1–215, paragraph 7, subdivision (d).

H. Subsection A, paragraphs 5, 6 and 7 of this section do not apply to any site that has a permit issued by a control officer as defined in § 49–471 for the control of fugitive dust from dust generating operations.

I. For the purposes of this section, " alternative fuel" and "clean burning fuel" have the same meanings prescribed in § 1–215.

Added by Laws 1987, Ch. 365, § 18. Amended by Laws 1993, 6th S.S., Ch. 1, § 24; Laws 1994, Ch. 353, § 22, eff. April 26, 1994; Laws 1996, 7th S.S., Ch. 6, § 30; Laws 1997, Ch. 269, § 10; Laws 1998, Ch. 217, § 17; Laws 1999, Ch. 168, § 23, eff. May 5, 1999; Laws 2000, Ch. 148, § 5; Laws 2001, Ch. 70, § 4; Laws 2002, Ch. 260, § 14; Laws 2004, Ch. 95, § 3; Laws 2006, Ch. 349, § 8; Laws 2006, Ch. 388, § 5; Laws 2007, Ch. 292, § 16.

Historical and Statutory Notes

Reviser's Notes:

2006 Note. Prior to the 2007 amendment, this section contained the amendments made by Laws 2006, Ch. 349, sec. 8 and Ch. 388, sec. 5 that were blended together pursuant to authority of § 41–1304.03.

§ 49–474.05. Dust control; training; site coordinators

A. This section applies in a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM–10 nonattainment area or a maintenance area that was designated as a serious PM–10 nonattainment area.

B. No later than January 1, 2008, the control officer shall develop and implement basic and comprehensive training programs for the suppression of PM–10 emissions from sources of PM–10 that are subject to a permit issued by a control officer that requires control of PM–10 emissions from dust generating operations. The control officer may approve training developed and provided by a third party and the board of supervisors may adopt rules prescribing standards for dust control training.

C. At least once every three years, the following persons are required to successfully complete basic dust control training:

1. The site superintendent or other designated on-site representative of the permit holder if present at a site that has more than one acre of disturbed surface area that is subject to a permit issued by a control officer requiring control of PM–10 emissions from dust generating operations.

2. Water truck and water pull drivers.

D. Persons who are required to be trained under this section shall complete the training no later than December 31, 2008. All persons who have successfully completed training during the 2006 and 2007 calendar years are deemed to have satisfied this requirement if the training program completed was conducted or approved by a county air pollution control officer. Completion of the training required under subsection G satisfies the requirements of this subsection.

E. No later than June 30, 2008, the permittee for any site of five acres or more of disturbed surface area subject to a permit issued by a control officer requiring control of PM–10 emissions from dust generating operations shall have on site at least one dust control coordinator trained in accordance with this section at all times during primary dust generating operations related to the purposes for which the dust control permit was obtained.

F. A dust control coordinator has full authority to ensure that dust control measures are implemented on site, including conducting inspections, deployment of dust suppression resources and modification or shutdown of activities as needed to control dust. The dust control coordinator shall be responsible for managing dust prevention and dust control on the site.

G. At least once every three years, the dust control coordinator shall successfully complete a comprehensive dust control class conducted or approved under subsection A by the county air pollution control officer with jurisdiction over the site. The dust control coordinator shall have a valid dust training certification identification card readily accessible on site while acting as a dust control coordinator. All persons having successfully completed training during the 2006 and 2007 calendar years are deemed to have satisfied this requirement if the training program completed was conducted or approved by a county air pollution control officer.

H. Subsections C and D do not apply when on-site dust generating operations are conducted by a permittee who is required to obtain a single permit for multiple noncontiguous sites that is issued by a control officer and that requires control of PM–10 emissions.

I. The requirements of subsections E and F lapse if all of the following apply:

1. The area of the disturbed surface area is less than five acres.

2. The previously disturbed areas are stabilized in accordance with the requirements of applicable rules.

3. The permittee provides notice of the acreage stabilized to the control officer.

J. Permittees who are required to obtain a single permit for multiple noncontiguous sites that is issued by a control officer and that requires control of PM–10 emissions from dust generating operations shall have on sites with greater than one acre of disturbed surface area at least one individual who is designated by the permittee as a dust control coordinator trained in accordance with subsection C. The dust control coordinator shall be present on site at all times during primary dust generating activities that are related to the purposes for which the permit was obtained. This subsection does not apply to permittees subject to subsections B and C.

Added by Laws 2007, Ch. 292, § 17.

§ 49–474.06. Dust control; subcontractor registration; fee

A. In an area designated by the environmental protection agency as a serious PM–10 nonattainment area or a maintenance area that was designated as a serious PM–10 nonattainment area, a subcontractor who is engaged in dust generating operations at a site that is subject to a permit that is issued by a control officer and that requires control of PM–10 emissions from dust generating operations shall register with the control officer by submitting information in the manner prescribed by the control officer. The control officer shall issue a registration number after payment of the fee authorized under subsection C.

B. The subcontractor shall have its registration number readily accessible on site while conducting any dust generating operations.

C. The control officer may establish and assess a fee for the registration required under subsection A based on the total cost of processing the registration and issuance of a registration number.

Added by Laws 2007, Ch. 292, § 17.

§ 49–474.07. Voluntary diesel equipment retrofit program; criteria; inventory; permits

A. A county with a population of more than four hundred thousand persons shall operate and administer a voluntary diesel emissions retrofit program in the county for the purpose of reducing particulate emissions from diesel equipment. The program shall provide for real and quantifiable emissions reductions based on actual emissions reductions by an amount greater than that already required by applicable law, rule, permit or order and computed based on the percentage emissions reductions from the testing of the diesel retrofit equipment prescribed in subsection C as applied to the rated emissions of the engine and using the standard operating hours of the equipment.

B. A person may participate in the program if both of the following apply:

1. The person is the owner of diesel powered equipment that requires a permit issued pursuant to this article for lawful operation.

2. The person reports to the control officer on the type of equipment that is retrofitted, provides a method for calculating the emissions reductions achieved that is approved by the control officer and provides evidence that the retrofitted equipment is actually used in a manner that results in lower particulate emissions with no increase in emissions of other pollutants.

C. The voluntary diesel retrofit program shall provide for the following:

1. Each person who participates shall allocate to the air quality emissions reduction inventory for that county one-half of the total particulate emissions reduction achieved through that person's retrofit of diesel equipment operating at the permitted site whether or not that equipment is required to have a permit.

2. Each person who participates shall retain one-half of the total particulate emissions reduction achieved through that person's retrofit of equipment at the site for purposes of receiving a modification to an existing permit or a provision in a new permit that allows for extended hours of operation for the permitted equipment, as compared to the existing permit, or for new permits, as compared to permits for similar equipment.

3. The diesel emissions reduction equipment that is retrofitted shall be registered with the department of environmental quality with notice to the applicable county, shall be tested with an ISO 8178 test by a properly equipped laboratory and shall demonstrate at least a thirty-five per cent reduction in particulate pollution with no increase in the generation or emission of other regulated pollutants. This paragraph applies without regard to whether the participant is required to obtain an air quality permit for the equipment.

4. The control officer shall provide a method for determining the participant's eligibility for the program and for the modification of existing permits or for incorporating this program's provisions into the terms of any applicable new permits as well as any reporting requirements to ensure continued use of the emissions reduction measures.

D. This section does not authorize a permit condition or a modification to a permit condition that would violate a requirement of the clean air act, this chapter or a rule adopted under this chapter, including the national ambient air quality standards. This section does not authorize the use of reductions in mobile source emissions for purposes of determining the applicability of new source review requirements.

Added by Laws 2007, Ch. 292, § 17.

§ 49–501. Unlawful open burning; exceptions; civil penalty; definition

A. Notwithstanding the provisions of any other section of this article:

1. It is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.

2. From May 1 through September 30 each year, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited or suffer, allow or maintain any open outdoor fire in area A as defined in § 49–541.

B. The following fires are excepted from this section:

1. Fires used only for cooking of food or for providing warmth for human beings or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.

2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.

3. Fires set by or permitted by the director of the department of agriculture or county agricultural agents of the county for the purpose of disease and pest prevention.

4. Fires set by or permitted by the federal government or any of its departments, agencies or agents or the state or any of its agencies, departments or political subdivisions for the purpose of watershed rehabilitation or control through vegetative manipulation.

5. Fires permitted by any rule or regulation issued pursuant to this article, by any conditional permit issued by a hearing board established under this article or by any rule or conditional permit issued pursuant to article 2 of this chapter when the department of environmental quality pursuant to § 49–402 has assumed jurisdiction of the county in which the fire is located.

6. Fires set for the disposal of dangerous materials where there is no safe alternate method of disposal.

C. Permission for the setting of any fire given by a public officer in the performance of official duty under subsection B, paragraph 2, 3 or 4 of this section shall be given in writing and a copy of the written permission shall be transmitted immediately to the director of environmental quality and the control officer of the county, district or region in which such fire is allowed. The setting of any such fire shall be conducted in a manner and at such time as approved by the control officer or the director of environmental quality, unless doing so would defeat the purpose of the exemption.

D. Notwithstanding § 49–107, the director may delegate authority for the issuance of open burning permits to a county, city, town or fire district. A county, city, town or fire district that has been delegated authority for the issuance of open burning permits may assign the issuance of these permits to a private fire protection service provider that perform fire protection services within that county, city, town or fire district. Any private fire protection service provider that is authorized to issue open burning permits pursuant to this subsection shall maintain a copy of all currently effective permits issued including a means of contacting the person authorized by the permit to set the fire in the event that an order to extinguish the open burning is issued. Permits issued pursuant to this subsection shall contain both of the following:

1. Conditions that limit the manner and time of setting the fire and that are consistent with this section and rules adopted pursuant to this section.

2. A provision that all burning be extinguished at the discretion of the director or the director's authorized representative during periods of inadequate atmospheric smoke dispersion, periods of excessive visibility impairment that could adversely affect public safety or periods when smoke is blown into populated areas so as to create a public nuisance.

E. The director may issue a general permit to allow persons engaged in farming or ranching on forty acres or more in an unincorporated area to burn household waste, as defined in § 49–701, that is generated on site, if no household waste collection and disposal service is available. The general permit shall include the following:

1. Conditions governing the method, manner and times for burning.

2. Limitation on materials which may be burned, including a prohibition on burning of materials which generate noxious fumes.

3. A requirement that any person seeking coverage under the general permit shall register with the director on a form prescribed by the director. Upon receipt of a registration form, the director shall notify the county in which the farm or ranch is located of such registration.

4. A statement that the director, a local air pollution control officer, or any other public officer may order the extinguishment of burning or may prohibit burning during periods of inadequate smoke dispersion or excessive visibility impairment or at other times when public health or safety could be adversely affected.

F. Nothing in this section is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation in a county with a population in excess of one million two hundred thousand persons. Notwithstanding any other law, such a county shall prohibit by ordinance the use of wood burning chimineas, outdoor fire pits and similar outdoor fires on those days for which the county has issued a no burn day restriction.

G. A person who violates any provision of this section may be served a notice of violation and be subject to the enforcement provisions of this article to the same extent as a person violating any rule or regulation adopted pursuant to this article, except that a violation that lasts no more than twenty-four hours and that is the first violation committed by that person is subject to a civil penalty of no more than five hundred dollars.

H. For the purposes of this section, "open outdoor fire" means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. For the purposes of this subsection, "flue" means any duct or passage for air, gases or the like, such as a stack or chimney.

Added as § 36–789 by Laws 1967, Ch. 2, § 8. Amended by Laws 1969, Ch. 58, § 14; Laws 1970, Ch. 164, § 21, eff. May 18, 1970; Laws 1971, Ch. 190, § 7; Laws 1973, Ch. 158, § 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.

Historical and Statutory Notes

The 2007 amendment by Ch. 292 rewrote the section, which had read:

"A. Notwithstanding the provisions of any other section of this article, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.

"B. 'Open outdoor fire', as used in this section, means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. 'Flue', as used in this subsection, means any duct or passage for air, gases or the like, such as a stack or chimney.

"C. The following fires are excepted from the provisions of this section:

"1. Fires used only for cooking of food or for providing warmth for human beings or for recreational purposes or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.

"2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.

"3. Fires set by or permitted by the director of the department of agriculture or county agricultural agents of the county for the purpose of disease and pest prevention.

"4. Fires set by or permitted by the federal government or any of its departments, agencies or agents or the state or any of its agencies, depart-

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For Use in 2011–2012

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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.

Historical and Statutory Notes

Reviser's Notes:

2007 Note. Pursuant to authority of § 41–1304.02, in the section heading "and duties; definition" was added and subsection E, paragraph 4 was redesignated as subsection F.

§ 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.

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

Administrative Code References

Air pollution control modifications; permits; permit revisions, see A.A.C. R18-2-1704.

§ 49–427. Grant or denial of applications; revisions

Text of conditional amendment. See, also, text of section pending conditional amendment.

A. The director shall deny a permit or revision if the applicant does not show that every such source is so designed, controlled or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of this article and the rules adopted by the director.

B. Before acting on an application for a permit, the director may require the applicant to provide and maintain such facilities as are necessary for sampling and testing purposes in order to secure information that will disclose the nature, extent, quantity or degree of air contaminants discharged into the atmosphere from the source described in the application. In the event of such a requirement, the director shall notify the applicant in writing of the type and characteristics of such facilities.

C. In acting on an application for a permit renewal, if the director finds that such a source has been constructed not in accordance with any prior permit or revision issued pursuant to § 49–426.01, the director shall require the person to obtain a permit revision or shall deny the application for such permit. The director shall not accept any further application for a source so constructed until the director finds that such source has been reconstructed in accordance with the prior permit or a revision, or until a revision to the permit has been obtained.

D. An applicant's performance of any activities that are excluded from the definition of "begin actual construction" under § 49–401.01, paragraph 7, subdivision (a) or (b) shall be at the applicant's risk and shall not reduce the applicant's obligations under this chapter or rules adopted pursuant to this chapter. The director shall evaluate an application for a permit or permit revision and make a decision on the same basis as if the activities allowed under § 49–401.01, paragraph 7, subdivision (a) or (b) had not occurred.

E. After a decision on a permit or revision, the director shall notify the applicant and any person who filed a comment to the permit pursuant to § 49–426 or the revision pursuant to § 49–426.01 in writing of the decision, and if the permit is denied, the reasons for such denial. Service of this notification may be made in person or by first class mail. The director shall not accept a further application

4. The imposition of a civil penalty of two hundred fifty dollars for the fourth or any subsequent violation.

D. For violations of this section, the control officer or other enforcement officer shall use a uniform civil ticket and complaint substantially similar to a uniform traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the supreme court. The control officer or other enforcement officer may issue citations to persons in violation of this section.

Added by Laws 2007, Ch. 292, § 15.

Cross References

Inspections, see § 41–1009.

§ 49–457.04. Off-highway vehicle and all-terrain vehicle dealers; informational material; outreach; applicability

A. Any person who rents or sells in the normal course of business off-highway vehicles, all-terrain vehicles or off-road recreational motor vehicles, other than golf carts sold to public or private golf courses, shall provide to the buyer or renter of the vehicle printed materials that are approved by the department pursuant to this section.

B. The department shall produce printed materials and distribute those materials to persons who sell or rent off-highway vehicles, all- terrain vehicles or off-road recreational motor vehicles. The printed materials shall be designed to educate and inform the user of the vehicle on methods for reducing the generation of dust and shall include information regarding dust control ordinances and restrictions that may be applicable. The department shall make available on the department's website the printed materials in a format that is accessible to the public.

C. This section applies in a county with a population of two million or more persons or any portion of a county in an area designated by the environmental protection agency as a serious PM–10 nonattainment area or a maintenance area that was designated as a serious PM–10 nonattainment area.

Added by Laws 2007, Ch. 292, § 15.

§ 49–457.05. Dust action general permit; best management practices; applicability; definitions

A. This section applies in a county with a population of two million or more persons or any portion of a county within an area designated by the environmental protection agency as a serious PM–10 nonattainment area or a maintenance area that was designated as a serious PM–10 nonattainment area.

B. The director shall issue a dust action general permit for regulated activities, which shall specify the best management practices necessary to reduce or to prevent PM–10 particulate emissions as soon as practicable before and during a day that is forecast to be at high risk of dust generation under a forecast issued by the department pursuant to § 49–424.

C. A person that has a permit issued by the director or a control officer for the control of fugitive dust from dust-generating operations is not required to obtain a dust action general permit under subsection D of this section, except that the person shall implement the control measures required in the permit issued by the director or control officer, including those measures related to wind, to reduce or to prevent PM–10 particulate emissions as soon as practicable before and during a day that is forecast to be at high risk of dust generation under a forecast issued by the

department pursuant to § 49–424. Failure to implement a control measure under this subsection shall only be enforced by the director or control officer that issued the permit. The director or control officer shall not recover penalties for violations of both this subsection and the permit based on the same act or omission.

D. A dust action general permit may be required for any person that owns or conducts a dust-generating operation that is found by the director to have failed to choose and implement an applicable best management practice listed in the dust action general permit as soon as practicable before and during a day that is forecast to be at high risk of dust generation.

E. The dust action general permit shall:

1. Conform to the requirements of § 49–426, subsection H, paragraphs 2 through 6.

2. Specify categories and lists of best management practices that may vary according to regional, site-specific or activity-specific conditions.

3. Include the appropriate monitoring, record keeping and reporting requirements to ensure the enforceability of the provisions.

4. Specify the process by which the director will determine that a person has failed to choose and implement an applicable best management practice and is therefore subject to a permit prescribed by subsection D of this section. The process shall include a means of providing notice to the person of the person's failure and a means by which the person may challenge the determination.

5. Expire after a period of five years, and may be renewed as prescribed by this section.

F. The director may periodically reexamine, evaluate and modify the dust action general permit as prescribed in § 49–426, subsection H, paragraphs 2 through 6. After approval by the director, any modifications to the dust action general permit shall be provided to the control officer and shall be submitted to the United States environmental protection agency as a revision to the applicable implementation plan.

G. A best management practice adopted pursuant to this section does not affect any applicable requirement in an applicable implementation plan or any other applicable requirements of the clean air act, including section 110(*l*) of the act (42 United States Code section 7410(*l*)).

H. Voluntary best management practices that are implemented during a day that is forecast by the department pursuant to § 49–424 to be at moderate risk for dust generation shall be considered by the director or control officer as a mitigating factor in any action taken against that person for failing to implement a dust control measure for that day as required by this chapter, a rule or ordinance adopted pursuant to this chapter or a permit issued pursuant to this chapter.

I. For the purposes of this section:

1. "Applicable implementation plan" means that term as defined in 42 United States Code section 7602(q).

2. "Best management practices" means techniques that are verified by scientific research and that on a case-by-case basis are practical, economically feasible and effective in reducing PM–10 particulate emissions from a regulated activity.

3. "Control officer" has the same meaning prescribed in § 49–471.

4. "Disturbed surface area" means a portion of the earth's surface or material that is placed on the earth's surface that has been physically moved, uncovered, destabilized or otherwise modified from its undisturbed native condition if the

potential for the emission of fugitive dust is increased by the movement, destabilization or modification.

5. "Dust-generating operation" means disturbed surface areas, including those of open areas or vacant lots that are not defined as agricultural land and are not used for agricultural purposes according to §§ 42–12151 and 42–12152, or any other area or activity capable of generating fugitive dust, including the following:

(a) Land clearing, maintenance and land clean up using mechanized equipment.

(b) Earthmoving.

(c) Weed abatement by discing or blading.

(d) Excavating.

(e) Construction.

(f) Demolition.

(g) Bulk material handling, including hauling, transporting, stacking, loading and unloading operations.

(h) Storage or transporting operations, including storage piles.

(i) Operation of outdoor equipment.

(j) Operation of motorized machinery.

(k) Establishing or using staging areas, parking areas, material storage areas or access routes.

(*l*) Establishing or using unpaved haul or access roads.

(m) Installing initial landscapes using mechanized equipment.

6. "Fugitive dust" means particulate matter that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening, that can be entrained in the ambient air and that is caused by human or natural activities, including the movement of soil, vehicles, equipment, blasting and wind. Fugitive dust does not include particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering or welding equipment or from pile drivers.

7. "Regulated activity" means all dust-generating operations except for the following:

(a) Normal farm cultural practices as prescribed in § 49–504, paragraph 4 or § 49–457.

(b) Emergency activities that may disturb the soil and that are conducted by any utility or government agency in order to prevent public injury or to restore critical utilities to a functional status.

(c) Establishment of initial landscapes without the use of mechanized equipment, conducting landscape maintenance without the use of mechanized equipment and playing on or maintaining a field used for nonmotorized sports, except that these activities shall not include grading or trenching performed to establish initial landscapes or to redesign existing landscapes.

(d) Rooftop operations for cutting, drilling, grinding or coring roofing tile if that activity is occurring on a pitched roof.

Added by Laws 2011, Ch. 214, § 3.

Historical and Statutory Notes

Laws 2011, Ch. 214, § 5, provides: "Sec. 5. **Legislative findings; intent**

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Cumulative Pocket Part

For Use In 2001–2002

Replacing 2000 Pocket Part supplementing 1997 main volume

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Title 49
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"D. The contractor shall report to the director of environmental quality at least every six months on research results pursuant to a work plan approved by the director. The director of environmental quality shall submit those reports to the governor, the speaker of the house of representatives, the president of the senate, the joint legislative budget committee and the vehicle emissions identification, testing and repair research study oversight committee. By June 30, 2002, the director of environmental quality shall submit a preliminary progress report of the research study, including major findings and conclusions, to the governor, the speaker of the house of representatives, the president of the senate, the joint legislative budget committee and the vehicle emissions identification, testing and repair research study oversight committee.

"E. The director of environmental quality and the contractor shall report to the vehicle emissions identification, testing and repair research study oversight committee as requested by the committee.

"F. The research study shall be concluded not later than June 30, 2005, by which time the contractor shall submit a final report of its findings to the director of environmental quality. The director of environmental quality shall review the final report, prepare recommendations based on the report and submit the final report and recommendations to the governor, the speaker of the house of representatives, the president of the senate, the joint legislative budget committee and the vehicle emissions identification, testing and repair research study oversight committee by September 30, 2005, after the opportunity for a thirty day public review and comment period.

"Sec. 11. **Vehicle emissions identification, testing and repair research study oversight committee**

"A. The vehicle emissions identification, testing and repair research study oversight committee is established consisting of the following members:

"1. Three members of the senate appointed by the president of the senate, not more than two of whom shall be from the same political party.

"2. Three members of the house of representatives appointed by the speaker of the house of representatives, not more than two of whom shall be from the same political party.

"B. The oversight committee shall meet to review the progress of the vehicle emissions identification, testing and repair research project established pursuant to this act. The department of environmental quality and the contractor hired to conduct the research project shall report to the oversight committee at the committee's request on the status of the project.

"Sec. 12. **Delayed repeal**

"Sections 10 and 11 of this act relating to the vehicle emissions identification, testing and repair research study and oversight committee, are repealed from and after December 31, 2005."

49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east

Township 7 north, range 2 west through range 5 east

Township 6 north, range 5 west through range 6 east

Township 5 north, range 5 west through range 7 east

Township 4 north, range 5 west through range 8 east

Township 3 north, range 5 west through range 8 east

Township 2 north, range 5 west through range 8 east

Township 1 north, range 5 west through range 7 east

Township 1 south, range 5 west through range 7 east

Township 2 south, range 5 west through range 7 east

Township 3 south, range 5 west through range 1 east

Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east

Township 1 south, range 8 east and range 9 east

Township 2 south, range 8 east and range 9 east

Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west

Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of § 49–546 and has passed inspection.

4. "Certificate of waiver" means a serially numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.

5. "Conditioning mode" means either a fast idle test condition or a loaded test condition.

6. "Curb idle test condition" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.

7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.

8. "Fast idle test condition" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.

9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.

11. "Gross weight" has the same meaning prescribed in § 28–5431.

12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to § 49–545.

13. "Loaded test condition" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.

14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.

15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.

16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.

17. "Vehicle emissions control area" means area A or area B.

Amended by Laws 1997, Ch. 1, § 495, eff. Oct. 1, 1997; Laws 1998, Ch. 217, § 21; Laws 1999, Ch. 295, § 44; Laws 2001, Ch. 371, § 8.

Appendix B
Dust Action General Permit

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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
Air Quality Division
1110 West Washington Street • Phoenix, AZ 85007 • Phone: (602) 771-2308

DUST ACTION GENERAL PERMIT

(As required by Arizona Revised Statutes, Title 49, Chapter 3, Article 2, Section 49-457.05)

This air quality control permit does not relieve applicant of responsibility for meeting all air pollution regulations

THIS GENERAL PERMIT ISSUED SUBJECT TO THE FOLLOWING **Conditions contained in Attachments "A", "B" and "C"**

ADEQ GENERAL PERMIT NUMBER **NA** EXPIRATION DATE **December 30, 2016**

PERMIT ISSUED THIS **30th** DAY OF **December**, **2011**

SIGNATURE

Eric C. Massey, Director, Air Quality Division
TITLE

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DUST ACTION GENERAL PERMIT

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DUST ACTION GENERAL PERMIT

INTRODUCTION

Since the start of Calendar Year 2008, the majority of exceedances of the PM_{10} National Ambient Air Quality Standard (NAAQS) in the Maricopa County serious PM_{10} nonattainment area have been related to high wind events. High wind events, along with a number of other meteorological conditions that can lead to the generation of dust can be predicted through meteorological forecasts.

In accordance with A.R.S. § 49-424(11), ADEQ is developing and disseminating an air quality dust forecast for the Maricopa County serious PM_{10} nonattainment area. Based upon knowledge of historical and recent meteorological conditions, and the prediction of such factors as wind speed and wind direction, forecasts identify the potential risk of dust entrainment as "Low", "Moderate" or "High" for the next five consecutive days. ADEQ updates this five-day *Maricopa County Dust Control Forecast* every Sunday through Friday, and posts it on its website at http://www.azdeq.gov/environ/air/ozone/mcdust.pdf.

In accordance with A.R.S. § 49-457.05, this Dust Action General Permit identifies a series of Best Management Practices (BMPs) for specific dust generating operations. When ADEQ's Maricopa County Dust Control Forecast predicts that a day is at high risk for dust generation, those dust generating operations that are not already required to control dust through a permit issued by the Arizona Department of Environmental Quality (ADEQ) or the Maricopa County Air Quality Department (MCAQD) are expected to choose and implement at least one BMP to reduce or prevent PM_{10} emissions. Implementation of a BMP is expected to occur as soon as practicable before and during the high risk event. Although the BMPs in the Dust Action General Permit only apply to those sources that do not already have a permit, dust generating operations with an air quality permit are also expected to implement the dust controls in their permit at the same time.

According to statute, BMPs identified in the Dust Action General Permit are expected to be employed absent the requirement to obtain an air quality permit. If the owner or operator of a dust-generating operation is found by ADEQ's Director to have failed to choose and implement an applicable BMP as soon as practicable before and during a day that is forecast to be at high risk of dust generation, then the owner or operator can be required to obtain a Requirement to Operate (RTO) under the Dust Action General Permit. The process by which ADEQ's Director makes such a finding is identified within the Dust Action General Permit. Violations of the Dust Action General Permit are subject to the enforcement requirements of Arizona Revised Statutes Title 49, Chapter 3, Article 2, including civil penalties of up to ten thousand dollars per day, per violation, pursuant to Section 463.

In accordance with A.R.S. § 49-457.05(E) this Dust Action General Permit is subject to a 30-day public comment period and shall be effective for a period of five-years.

DUST ACTION GENERAL PERMIT

ATTACHMENT "A": GENERAL PROVISIONS

I. APPLICABILITY

A. This Dust Action General Permit is applicable to the owner or operator of a regulated activity within a county with a population of two million or more persons, or any portion of a county within areas designated by the environmental protection agency as a serious PM_{10} nonattainment area or a maintenance area that was previously designated as a serious PM_{10} nonattainment area who is required by the Director to obtain a general permit in accordance with Condition IV of this Attachment.

B. Each owner or operator of a regulated activity that is required by the Director to obtain this Dust Action General Permit shall obtain a Requirement to Operate that includes the following information:

1. The regulated activity;
2. The legal owner or operator of the regulated activity; and
3. The physical address, location, or parcel number where the regulated activity occurs.

C. Each Requirement to Operate (RTO) issued under this general permit shall only apply to those regulated activities that are identified pursuant to Section V of this attachment and in the RTO, are under the control of the same Permittee, and are located on one or more properties that are adjacent or contiguous to the location of the regulated activity.

II. DEFINITIONS

For the purposes of the Dust Action General Permit the following terms are defined as follows:

A. "Applicable implementation plan" means that term as defined in 42 United States Code section 7602(q).

B. "Best management practices" means techniques that are verified by scientific research and that on a case-by-case basis are practical, economically feasible and effective in reducing PM_{10} particulate emissions from a regulated activity.

C. "Control officer" has the same meaning prescribed in Arizona Revised Statutes § 49-471.

D. "Designated, managed or open trail system" means roads, highways, multiple use corridors, trails or routes that are part of a system of trails and routes that are designated, managed or opened to public motor vehicle travel by government land management agency by rule, order, travel management plan, sign, or map approved by such agency.

E. "Disturbed surface area" means a portion of the earth's surface or material that is placed on the earth's surface that has been physically moved, uncovered, destabilized or otherwise modified from its undisturbed native condition if the potential for the emission of fugitive dust is increased by the movement, destabilization or modification.

F. "Dust-generating operation" means disturbed surface areas, including those of open areas

or vacant lots that are not defined as agricultural land and are not used for agricultural purposes according to Arizona Revised Statutes §§ 42-12151 and 42-12152, or any other area or activity capable of generating fugitive dust, including the following:

1. Land clearing, maintenance and land clean-up using mechanized equipment.
2. Earthmoving.
3. Weed abatement by discing or blading.
4. Excavating.
5. Construction.
6. Demolition.
7. Bulk material handling, including hauling, transporting, stacking, loading and unloading operations.
8. Storage or transporting operations, including storage piles.
9. Operation of outdoor equipment.
10. Operation of motorized machinery.
11. Establishing or using staging areas, parking areas, material storage areas or access routes.
12. Establishing or using unpaved haul or access roads.
13. Installing initial landscapes using mechanized equipment.

G. "Dust Suppressant" means water, hygroscopic material, a solution of water and chemical surfactant, foam, non-toxic chemical stabilizer, or any other dust palliative, which is not prohibited for ground surface application by the Environmental Protection Agency (EPA) or the Arizona Department of Environmental Quality (ADEQ), or any applicable law, rule, or regulation, as a treatment material for reducing fugitive dust emissions.

H. "Fugitive dust" means particulate matter that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening, that can be entrained in the ambient air and that is caused by human or natural activities, including the movement of soil, vehicles, equipment, blasting and wind. Fugitive dust does not include particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering or welding equipment or from pile drivers.

I. "Livestock special event" means displaying, racing, training or exercising livestock during an event at which a fee is collected, or is open to 24 or more persons including staff, participants and spectators, and is conducted at a facility specifically designed for this purpose and is not already subject to A.R.S. § 49-457."

J. "Owner or operator" means any person who owns, leases, operates, controls, or supervises a regulated activity subject to the requirements of this general permit.

K. "Regulated activity" means all dust-generating operations except for the following:

1. Normal farm cultural practices as prescribed in A.R.S. §§ 49-504(4) or 49-457.

2. Emergency activities that may disturb the soil and that are conducted by any utility or government agency in order to prevent public injury or to restore critical utilities to a functional status.

3. Establishment of initial landscapes without the use of mechanized equipment, conducting landscape maintenance without the use of mechanized equipment and playing on or maintaining a field used for nonmotorized sports, except that these activities shall not include grading or trenching performed to establish initial landscapes or to redesign existing landscapes.

4. Rooftop operations for cutting, drilling, grinding or coring roofing tile if that activity is occurring on a pitched roof.

III. GENERAL PERMIT EXPIRATION, RENEWAL AND RE-OPENING

A. This Dust Action General Permit is valid for a period of five years from the date of issuance. The Director of ADEQ (Director) shall review and may renew this General Permit every five years from its date of issuance. The Permittee's RTOs shall coincide with the term of this General Permit, regardless of when the RTO was issued during this five year period. The Director may require an existing RTO to be renewed at the time that this General Permit is renewed.

B. The Director may periodically reexamine, evaluate and modify the Dust Action General Permit as prescribed in A.R.S. Section 49-426(H)(2) through (6). After approval by the Director, any modifications to the Dust Action General Permit shall be provided to the Control Officer and shall be submitted to the United States Environmental Protection Agency as a revision to the applicable State Implementation Plan.

C. At the time that the public notice is required, pursuant to issuance of the proposed General Permit renewal, the Director shall notify in writing all Permittees with existing RTOs that have been renewed. The written notice shall describe the source's duty to comply with the conditions of the General Permit.

IV. COMPLIANCE WITH PERMIT CONDITIONS

A. The Permittee shall comply with all Conditions of this General Permit including all applicable requirements of Arizona air quality statutes and the air quality rules. Any permit noncompliance constitutes a violation of the Arizona Revised Statutes and is grounds for enforcement action, including, but not limited to civil penalties. In addition, non-compliance with any federally enforceable requirements constitutes a violation of the Clean Air Act.

B. It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this General Permit.

V. ISSUANCE OF A DUST ACTION GENERAL PERMIT FOR CAUSE

A. The Director may require the owner or operator of a regulated activity to obtain a

Requirement to Operate under the Dust Action General Permit at any time if it can be demonstrated that:

1. The regulated activity is not otherwise subject to an air quality permit issued by the Director or the Maricopa County Air Quality Department Control Officer; and

2. The owner or operator of a regulated activity did not choose or implement a Best Management Practice as soon as practicable before and during a day forecast to be at high risk of dust generation.

B. A demonstration that the owner or operator of a regulated activity did not choose or implement a Best Management Practice shall include the following:

1. Documentation that includes a description of the regulated activity;

2. Documentation that clearly identifies the legal owner or operator of the regulated activity;

3. Documentation that clearly identifies the physical address(es), location(s), or parcel number(s) where the regulated activity occurred;

4. Documentation that includes records, field reports or photographic evidence that demonstrates that the owner or operator of the regulated activity was not implementing a Best Management Practice as soon as practicable before and during a day forecast to be at high risk of dust generation;

5. A description of the actions taken by the owner or operator of the regulated activity to comply with the required Best Management Practice(s) at the time of the inspection;

6. Documentation that identifies any previous inspections associated with the owner, operator, physical address(es), location(s), or parcel number(s) as well as results of those inspections; and

7. Documentation that demonstrates that the owner or operator of the regulated activity has been provided with a copy of the documentation identified in Condition III.B.1 through 6 above.

C. Upon receipt of a demonstration that the owner or operator of a regulated activity did not choose or implement a Best Management Practice, the Director shall:

1. Notify the owner or operator of the receipt of the demonstration; and

2. Provide the owner or operator with five (5) business days to demonstrate that a Best Management Practice was employed at the time of the inspection; or provide a document that identifies the Best Management Practice(s) that will be employed at the address(es), location(s), or parcel number(s) identified in the Director's letter.

D. If the Director determines that the owner or operator of a regulated activity was not in compliance with the required Best Management Practices as soon as practicable before and during a day forecast to be at high risk of dust generation, and has not adequately

identified the Best Management Practices that will be employed as soon as practicable before and during future days forecast to be at high risk of dust generation the Director shall issue a RTO under the Dust Action General Permit and shall require the owner or operator to choose and implement Best Management Practices within five (5) business days of the determination.

VI. TERMINATION FOR CAUSE

A. The Permittee may apply to the Director for termination of a RTO under the general permit if it can be demonstrated that:

1. The regulated activity is subject to an air quality permit issued by the Director or the Maricopa County Air Quality Department Control Officer;

2. The Permittee is no longer the legal owner or operator of the regulated activity by demonstrating one of the following;

   a. The regulated activity has been sold, transferred or otherwise been dispossessed by the Permittee; or

   b. The regulated activity is no longer capable of being operated at the physical address(es), location(s), or parcel number(s) where the regulated activity occurred; or

3. The Permittee provides documentation that a Best Management Practice has been chosen and implemented for each applicable regulated activity as soon as practicable before and during a day forecast to be at high risk of dust generation by submitting one of the following:

   a. Demonstrating that a Best Management Practice of a permanent nature has been applied to the regulated activity;

   b. Submitting a copy of the records required in Attachment "B" Conditions I.D and II.C for the two most recent consecutive years after the time that the Dust Action General Permit has been issued; or

   c. Submitting a copy of the records required in Attachment "B" Conditions I.D and II.C for a different time period than that prescribed in Condition VI.A.3.b above based upon a demonstration that:

      (1) A regulated activity was not owned or operated at the location during the two most recent consecutive years; or

      (2) There were no days forecast to be at high risk of dust generation during the two most recent consecutive years.

B. The Director may terminate a RTO under the general permit if the Director makes an independent finding that:

1. The regulated activity is subject to an air quality permit issued by the Director or the Maricopa County Air Quality Department Control Officer;

2. In accordance with Condition VI.A.2 above, the Permittee is no longer the legal

owner or operator of the regulated activity.

VII. COMPLIANCE CERTIFICATION

A. The Permittee shall submit to the Director a compliance certification once each year, which describes the compliance status of the source with respect to each General Permit condition and the methods used for determining the compliance status. This certification shall be submitted by January 31st and shall cover the previous calendar year.

The compliance certification shall include the following:

1. Identification of the dust-generating operation owner or operated by the Permittee.

2. Identification of the Best Management Practice(s) used by the Permittee to comply with the terms and conditions of this General Permit.

B. The Director may request additional information to support the compliance certification.

VIII. INSPECTION AND ENTRY

Upon presentation of credentials and other documents as may be required by law, the Permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the Department), to perform the following:

A. Enter upon the Permittee's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of this General Permit;

B. Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of this General Permit;

C. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this General Permit;

D. Sample or monitor at reasonable times, substances or parameters for the purpose of assuring compliance with the General Permit or other applicable requirements; and

E. Record any inspection by use of written, electronic, magnetic and photographic media.

IX. RECORD KEEPING REQUIREMENTS

Until the RTO under the general permit is terminated pursuant to Section XIII of Attachment "A", the Permittee shall retain records of all required records and supporting information and shall make the records available to the Director upon request.

X. REPORTING REQUIREMENTS

The Permittee shall submit the following reports:

A. Compliance certifications in accordance with Section IV of Attachment "A".

B. Other reports required by any condition in Attachment "B".

XI. DUTY TO PROVIDE INFORMATION

A. The Permittee shall furnish to the Director, within a reasonable time, any information that the Director may request in writing to determine whether cause exists for revoking the General Permit coverage, or to determine compliance with this General Permit. Upon request, the Permittee shall also furnish to the Director copies of records that the Permittee is required to keep under the General Permit. For information claimed confidential, the Permittee shall furnish an additional copy of such records directly to the Director along with a claim of confidentiality.

B. If the Permittee has failed to submit any relevant facts or if the Permittee has submitted incorrect information in a General Permit coverage application, the Permittee shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

XII. PROPERTY RIGHTS

This General Permit does not convey any property rights of any sort, or any exclusive privilege.

XIII. SEVERABILITY CLAUSE

The provisions of this General Permit are severable. In the event of a challenge to any portion of this General Permit, or if any portion of this permit is held invalid, the remaining permit conditions remain valid and in force.

XIV. RENTING OR LEASING A REGULATED ACTIVITY

In the case that a regulated activity covered under this general permit is rented or leased, a copy of this General Permit and relevant RTOs shall be provided by the owner to the renter or lessee, and the renter or lessee shall be bound by this permit's provisions. In the event a copy of this General Permit and relevant RTOs are not provided to the renter or lessee, both the owner and the renter or lessee shall be responsible for the implementation of a Best Management Practice in compliance with the General Permit conditions and any violations thereof.

DUST ACTION GENERAL PERMIT

ATTACHMENT "B": SPECIFIC CONDITIONS

I. GENERAL CONDITIONS

A. The Permittee shall obtain a copy of the *Maricopa County Dust Control Forecast* each day that it is updated by:

1. Accessing the forecast through ADEQ's website at: http://www.azdeq.gov/environ/air/ozone/mcdust.pdf; or

2. Signing up for ADEQ's electronic mailing system.

B. The Permittee shall register to receive all available electronic updates from all Maricopa County Air Quality Department air quality monitors within 4 miles of the regulated activity.

C. The Permittee shall notify employees who conduct or operate a regulated activity when the *Maricopa County Dust Control Forecast* identifies the following day as being at high risk of dust generation.

D. The Permittee shall keep a record of each *Maricopa County Dust Action Control Forecast* that identifies the next calendar day as being at high risk of dust generation and a log of the date, time and method used to notify employees.

II. BEST MANAGEMENT PRACTICES REQUIREMENT

A. As soon as practicable before, and during a day identified by the *Maricopa County Dust Control Forecast* as being at high risk of dust generation, the Permittee shall take reasonable precautions to reduce or prevent particulate matter from becoming airborne. Examples of Best Management Practices for specific source categories are included in Attachment "C" of this permit.

B. The Permittee shall choose and implement a Best Management Practice for each regulated activity owned or operated by the Permittee.

C. The Permittee shall keep records of the Best Management Practices that are employed in advance of and during a day identified by the *Maricopa County Dust Control Forecast* as being at high risk of dust generation.

III. ALTERNATIVE BEST MANAGEMENT PRACTICES NOT INCLUDED IN THE GENERAL PERMIT

A. The Permittee may choose and implement an alternative Best Management Practice that is not included in Attachment "C" of this permit provided that the Permittee maintains records of documentation demonstrating that the alternative Best Management Practice that was selected and implemented achieves an equivalent or greater control of PM_{10} particle emissions than an example included in Attachment "C";

B. Any person may petition the Director to make a determination that an alternative Best

Management Practice achieves an equivalent or greater control of PM_{10} emissions than the examples included in Attachment "C". These petitions shall include the following:

1. A description of the alternative Best Management Practice; and

2. A demonstration that the alternative Best Management Practice achieves an equivalent or greater control of PM_{10} emissions than an example included in Attachment "C".

C. Upon renewal or re-opening of this general permit, the Director shall add to the Best Management Practices examples in Attachment "C" any alternative Best Management Practices that were approved under Condition III.B above.

DUST ACTION GENERAL PERMIT

ATTACHMENT "C": BEST MANAGEMENT PRACTICE EXAMPLES

I. VEHICLE USE IN OPEN AREAS AND VACANT LOTS

A. This condition does not apply to designated, managed or opened trail systems.

B. As soon as practicable before and during a day forecast to be at high risk of dust generation, the Permittee shall:

1. Reduce or prevent motor vehicle access to the open area or vacant lots by:

   a. Installing barriers, curbs, fences, gates, posts, shrubs, trees or other effective control measures; or

   b. Installing no trespassing, no parking or no access signs that comply with local, County, State or Federal sign standards; or

2. Uniformly apply and maintain surface gravel or chemical or organic stabilizers to all areas disturbed by motor vehicles.

C. As soon as practicable before and during the day forecast to be at high risk of dust generation the Permittee shall inspect, maintain and repair as necessary the best management practice selected in Condition I.B. above.

II. OPEN AREAS AND VACANT LOTS

A. This condition does not apply to designated, managed or opened trail systems.

B. As soon as practicable before and during a day forecast to be at high risk of dust generation, the Permittee shall control PM_{10} emissions from open areas and vacant lots by:

1. Establishing vegetative ground cover on all disturbed surface area; or

2. Increasing the use of dust suppressants on the open area or vacant lot; or

3. Uniformly applying and maintaining surface gravel or chemical or organic stabilizers to all disturbed areas.

C. As soon as practicable before and during the day forecast to be at high risk of dust generation the Permittee shall inspect, maintain, and repair, as necessary, the best management practice selected in Condition II.B above.

III. UNPAVED PARKING LOTS

A. This condition does not apply to designated, managed or opened trail systems.

B. This condition applies to parking, maneuvering, ingress and egress areas at developments other than residential buildings with four or fewer units.

C. As soon as practicable before and during a day forecast to be at high risk of dust generation, the Permittee shall control PM_{10} emissions from unpaved parking lots by:

1. Increasing the use of dust suppressants other than water on the unpaved parking lot; or

2. Uniformly applying and maintaining surface gravel or chemical or organic stabilizers to all disturbed areas.

D. As soon as practicable before and during the day forecast to be at high risk of dust generation the Permittee shall inspect, maintain, and repair, as necessary, the best management practice selected in Condition III.C above.

IV. UNPAVED ROADWAYS, ALLEYWAYS AND ROAD SHOULDERS

A. This condition does not apply to designated, managed or opened trail systems.

B. This condition applies to unpaved roadways or alleyways that experience an average of 150 vehicle trips or more per day.

C. As soon as practicable before and during a day forecast to be at high risk of dust generation, the Permittee shall control PM_{10} emissions by:

1. Reducing or preventing motor vehicle access as prescribed in Condition I.B above;

2. Increasing the use of dust suppressants other than water on the unpaved roadway or alleyway; or

3. Uniformly applying and maintaining surface gravel or chemical or organic stabilizers to the unpaved roadway or alleyway.

D. As soon as practicable before and during the day forecast to be at high risk of dust generation the Permittee shall inspect, maintain, and repair, as necessary, the best management practice selected in Condition IV.C above.

V. LIVESTOCK SPECIAL EVENTS NOT COVERED UNDER A.R.S. § 49-457

A. This condition applies to livestock facilities at which special events that are not already covered under A.R.S. § 49-457 occur.

B. As soon as practicable before and during the day forecast to be at high risk of dust generation the Permittee shall control PM_{10} emissions by:

1. Increasing the use of dust suppressants, including water, on unpaved access connections and feed lane access areas at the livestock special event; or

2. Uniformly applying and maintaining surface gravel or chemical or organic stabilizers to all areas disturbed by motor vehicles other than areas where such application will create a documentable hazard for livestock activities; or.

3. Reducing or preventing motor vehicle access on unpaved access connections and feed lane access areas at the livestock special event by:

   a. Installing barriers, curbs, fences, gates, posts, shrubs, trees or other effective control measures; or

   b. Installing no trespassing, no parking or no access signs that comply with local, County, State or Federal sign standards; or

C. As soon as practicable before and during the day forecast to be at high risk of dust generation the Permittee shall inspect, maintain, and repair, as necessary, the best management practice selected in Condition V.B above.

VI. EASEMENTS, RIGHTS-OF-WAY, AND ACCESS ROADS FOR UTILITIES

A. This condition does not apply to designated, managed or opened trail systems.

B. This condition applies to easements, rights-of-way, and access roads for utilities (transmission of electricity, natural gas, oil, water, and gas) that experience an average of 150 vehicle trips or more per day.

C. As soon as practicable before and during a day forecast to be at high risk of dust generation, the Permittee shall control PM_{10} emissions by:

   1. Reducing or preventing motor vehicle access as prescribed in Condition I.B above;

   2. Increasing the use of dust suppressants other than water on the easement, right-of-way or access road; or

   3. Uniformly applying and maintaining surface gravel or chemical or organic stabilizers to the easement, right-of-way or access road.

D. As soon as practicable before and during the day forecast to be at high risk of dust generation the Permittee shall inspect, maintain, and repair, as necessary, the best management practice selected in Condition VI.C above.

VII. TRACKOUT OR DEPOSITS OF BULK MATERIAL

As soon as practicable before and during a day forecast to be at high risk of dust generation, the Permittee shall clean-up loose material or remove deposits of bulk material from areas accessible to the public on day before and during high risk day.

VIII. DESIGNATED, MANAGED OR OPENED TRAIL SYSTEMS

A. During the course of each calendar year, the Permittee shall control PM_{10} emissions from designated, managed or opened trail systems by employing adaptive management techniques such as:

   1. Posting public information to educate the riding public about at the impacts of air quality regulation on the use of off-highway vehicles,

including the restriction of operation during high pollution advisories, through methods similar to kiosks, distribution of material at major events and dealerships, and other Public Service Announcements; and

2. Conducting mechanized trail repair and maintenance at slow speeds that:

   a. Reduce the speed of water run-off on the designated, managed or opened trail system;
   b. Reduce the amount of silt that would otherwise accumulate on the designated, managed or open trail system;
   c. Add grade dip or water controls to the designated, managed or open trail system; or
   d. Add or repair silt traps on water drains; or

3. Re-routing an existing designated, managed or opened trail that causes traffic to avoid soils susceptible to dust generation; or constructing a new designated, managed or opened trails that allow for appropriate trail repair and maintenance and include speed limiting features such as turns and climbs; or

4. Rehabilitating open parking areas, mine sites, and old unpaved roads that are not designated, managed or opened trail systems. Rehabilitation includes re-contouring the areas, replanting trees and spreading native seed to hold soil together and reduce windblown dust; or

B. As soon as practicable before and during a day forecast to be at high risk of dust generation, the Permittee shall control PM_{10} emissions from disturbed areas along the designated, managed or opened trail system by employing adaptive management techniques such as:

1. Applying a proven dust surfactant;

2. Repairing roads and other unpaved surfaces to control the water run-off and silt;

3. Using soil binders and compaction to allow for light to moderate traffic flow; or

4. Installing an engineered road or surface that:

   a. Raises the road or surface bed above grade;
   b. Uses an ABC road mix and binder;
   c. Compacts the road or surface; and
   d. Crowns to drain water; or

C. As soon as practicable before and during the day forecast to be at high risk of dust generation the Permittee shall inspect, maintain, and repair, as necessary, the best management practice selected in Conditions VI.A or B above; or

D. When the *Maricopa County Dust Control Forecast* identifies the following day as being at high risk of dust the Permittee shall post information at kiosks or use equivalent methods to notify users of designated, managed or opened trail system.

Enclosure 2

SIP Completeness Checklist

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STATE IMPLEMENTATION PLAN COMPLETENESS CHECKLIST

SUBMITTAL OF STATE IMPLEMENTATION PLAN (SIP) REVISION

2012 Five Percent Plan for PM_{10} for the Pinal County Township 1 North, Range 8 East Nonattainment Area

1. SUBMITTAL LETTER FROM GOVERNOR/DESIGNEE

   See cover letter.

2. EVIDENCE OF ADOPTION

   See cover letter.

3. STATE LEGAL AUTHORITY FOR ADOPTION/IMPLEMENTATION

   See Enclosure 1 for certified copies of Arizona Revised Statutes listed in cover letter.

4. COMPLETE COPY OF ACTUAL REGULATION

   See Enclosure 1 for certified copies of Arizona Revised Statutes listed in cover letter.

5. EVIDENCE THAT ARIZONA ADMINISTRATIVE PROCEDURE ACT REQUIREMENTS (ARS §§ 41-1021 through 1036) WERE MET FOR RULE

   See Enclosure 2.

6 EVIDENCE OF PUBLIC HEARING PER 40 CFR 51.102

   See Enclosure 2.

7 PUBLIC COMMENTS AND AGENCY RESPONSE

   See Enclosure 2.

8. IDENTIFICATION OF POLLUTANTS REGULATED BY RULE

   Particulate Matter 10 microns and smaller in size (PM10)

9. IDENTIFICATION OF SOURCES/ATTAINMENT STATUS

   See Enclosure 3 and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area

10. WRITTEN SUMMARY OF RULE/RULE CHANGE

Not applicable.

11. RULE CHANGES INDICATED BY UNDERLINING AND CROSS-OUTS

Not applicable.

12. RULE'S EFFECT ON EMISSIONS

See Enclosure 3 and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area revised emission inventory, Section 189(d) reasonable further progress demonstration, and attainment demonstration

13 DEMONSTRATION THAT NAAQS, PSD INCREMENTS AND RFP ARE PROTECTED

See Enclosure 3 and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area revised emission inventory, Section 189(d) reasonable further progress demonstration, and attainment demonstration.

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

Not applicable.

15. MODELING SUPPORT

See Enclosure 3 and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area attainment demonstration.

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

See Enclosure 1 for certified copies of Arizona Revised Statutes listed in cover letter for approval. See also companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area.

17. COMPLIANCE/ENFORCEMENT STRATEGIES

See Enclosure 3, Dust Action General Permit in Appendix B, and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area.

18 ECONOMIC TECHNICAL JUSTIFICATION FOR DEVIATION FROM EPA POLICIES

No known deviation from EPA policy.

Appendix C

Arizona Department of Environmental Quality Commitment to Revise the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area and the 2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North Range 8 East Nonattainment Area if Necessary for the Emerging and Voluntary Measure

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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Janice K. Brewer
Governor

Henry R. Darwin
Director

Deborah Jordan, Director
Air Division
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: Commitment to Revise the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area if Necessary for the Emerging and Voluntary Measure

Dear Ms. Jordan:

EPA's September 2004 guidance entitled *Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP)* allows air pollution planning organizations to take credit for emissions reductions associated with new and emerging measures. As part of the proposed *MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area* (Five Percent Plan), the Arizona Department of Environmental Quality (ADEQ), the Maricopa County Air Quality Department (MCAQD) and the Maricopa Association of Governments (MAG) are taking emissions reductions credit for the implementation of Dust Action Forecasts and the Dust Action General Permit.

The Arizona Department of Environmental Quality is required by Arizona Revised Statute § 49-424(11) to develop and disseminate an air quality dust forecast for the Maricopa County PM-10 non-attainment area. These forecasts use projected meteorological conditions, wind speed and direction, recent precipitation and historical air pollution concentrations that have occurred under the predicted condition to identify days that are at low, moderate or high risk of dust generation.

A.R.S. § 49-457.05(B) requires ADEQ to develop a Dust Action General Permit that specifies the best management practices (BMPs) that are necessary to reduce or to prevent PM-10 particulate emissions and requires those BMPs to be implemented as soon as practicable before and during a day that ADEQ forecasts to be at high risk of dust generation. Individuals that are subject to BMPs under the Dust Action General Permit are already subject to the requirements of Maricopa County Air Quality Department Rule 310.01. If it can be demonstrated that these individuals did not choose and implement a BMP as soon as practicable before and during a day forecast to be at high risk of dust generation, the ADEQ Director can issue the Dust Action General Permit to that individual. The permit requires additional monitoring, record keeping and reporting requirements to ensure that BMPs are being applied as required.

Because these methods of air pollution control are new, the estimation of emissions reductions due to the use of forecasts and the Dust Action General Permit was completed using the best information and methods possible, specifically an increase in the effectiveness of MCAQD Rule 310.01. To ensure that the projected emissions reductions are achieved, Maricopa County has provided a commitment to evaluate the effectiveness of MCAQD Rule 310.01 in calendar year 2013. If the evaluation does not result in sufficient emissions reductions, a replacement SIP measure must be adopted as a replacement.

A.R.S. § 49-404 requires ADEQ to maintain a State Implementation Plan that provides for the implementation, maintenance and enforcement of national ambient air quality standards. Should it be demonstrated through Maricopa County's April 2013 final program evaluation reports that the emerging and voluntary measure contained within the Five Percent Plan did not achieve the necessary emissions reductions, the Arizona Department of Environmental Quality commits to submitting a SIP revision that contains replacement measures to reduce PM-10 emissions by an amount equal to or more than the total PM-10 emissions reductions that were not achieved by these measures. An implementation schedule for the submission of this revised plan is as follows:

May 2013	ADEQ will consult with MAG to determine if additional emissions reductions are necessary.
June 2013	If additional controls are required, ADEQ will work with MAG to identify potential replacement measures.
April 2014	If additional controls are required, ADEQ will submit a SIP revision that contains the necessary replacement measure(s).

ADEQ does not anticipate the need for additional personnel or funding to comply with this commitment as any required SIP revisions will be accommodated as part of its normal air quality planning process.

If you have any questions, please contact me at (602) 771-2288.

Sincerely,

Eric C. Massey, Director
Air Quality Division

cc. Bill Wiley, Maricopa County Air Quality Department
Lindy Bauer, Maricopa Association of Governments
Colleen McKaughan, U.S. EPA Region IX

Appendix D
Negative Declaration for Commercial Agriculture

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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Janice K. Brewer
Governor

Patrick J. Cunningham
Acting Director

JUN 1 2 2009

Ms. Laura Yoshii, Acting Regional Administrator
U.S. Environmental Protection Agency, Region IX
Mail Code: ORA-1
75 Hawthorne Street
San Francisco, CA 94105

RE: Submittal revising the Pinal County Portion of the Arizona PM_{10} State Implementation Plan

Dear Ms. Yoshii:

Consistent with the provisions of Arizona Revised Statutes §§ 49-104, 49-404, 49-406, and the Code of Federal Regulation, Title 40, the Arizona Department of Environmental Quality hereby adopts and submits to the U.S. Environmental Protection Agency (EPA) the following revisions to the Pinal County portion of the Arizona SIP:

- New and amended rules in Chapter Four of the Pinal County Code of Regulations for PM_{10} nonattainment areas. These rules were adopted in response to EPA's limited disapproval of existing reasonable further precaution rules for the Apache Junction portion of the Area A PM_{10} Nonattainment Area. Also included is an analysis published in the Arizona Administrative Record which justifies identification of the rules as best available control measures (BACM).
- Amended rule § 2-8-320, establishing a twenty percent opacity standard for the Hayden PM_{10} nonattainment area (HNA); a technical support document which establishes the standard as reasonably available control measures (RACM) for the HNA; and a justification for the standard's use as RACM.
- Rules in Chapter Four, Article One of the Pima County Code of Regulations, for which EPA issued a limited disapproval due to exemptions for agriculture emissions and which were subsequently amended to address EPA's findings.
- A negative declaration adopted by the Pinal County Board of Supervisors affirming that agricultural practices are not present in the Apache Junction portion of Pinal County, which is part of the Area A PM_{10} Nonattainment Area.

Part one of the submittal contains new and amended rules in Article Four, applicable to PM_{10} nonattainment areas, which establish fugitive dust mitigation requirements for unpaved commercial parking areas, drives, and work yards. The rules also establish requirements for trackout maintenance and

record keeping. The following tables provide a brief overview of rules in this Article. Part one also contains a negative declaration approved by the Pinal County Board of Supervisors on June 3, 2009, affirming that agricultural activity is not present in the Apache Junction portion of Pinal County and therefore does not warrant the adoption of dust control rules specific to that emission category. The negative declaration can be found under tab number eight in the binder labeled "Apache Junction BACM".

§ 4-4-100	General Provisions	Establishes applicability to the Apache Junction area.
§ 4-4-110	Definitions	Defines terms used in Article Four.
§ 4-4-120	Objective Standards	Establishes stabilization requirements for commercial parking areas and drives, a 20 percent internal opacity standard, and a zero percent property line opacity standard.
§ 4-4-130	Work Practice Standards	Establishes surface stabilization requirements for commercial and low-use commercial parking areas and drives, and trackout cleanup requirements.
§ 4-4-140	Recordkeeping and Records Retention	Establishes requirements for record keeping and retention.

New and amended rules in Article Five, applicable to the Apache Junction portion of Pinal County, require the stabilization of residential parking areas and drives. The following table provides a brief overview of rules in this Article.

§ 4-5-150	Stabilization for Residential Parking and Drives; Applicability	Establishes applicability to the Apache Junction area and criteria for qualifying property.
§ 4-5-160	Residential Parking Control Requirement	Establishes stabilization requirements for residential parking areas and trackout cleanup guidelines.
§ 4-5-170	Deferred enforcement date	Establishes October 1, 2009, as the implementation date for enforcement.

Article Seven contains a new series of rules applicable to construction sites in nonattainment areas. The table below provides a brief synopsis for each rule. The following table provides a brief overview of rules in this Article.

§ 4-7-210	Definitions	Defines terms used in Article Seven.
§ 4-7-214	General Provisions	Establishes applicability to the Apache Junction area.
§ 4-7-218	Applicability; Development Activity	Establishes the requirement of provisions in §§ 4-7-226 and 4-7-230 for development activity at any site, regardless of the size of the disturbed area - unless the activity qualifies for an area block permit. Entities that regularly engage in development activity are subject to the requirements of §§ 4-7-234 and 4-7-242.

§ 4-7-222	Owner and/or Operator Liability	Establishes compliance obligations for owners and/or operators, and affirmative defenses for opacity violations.
§ 4-7-226	Objective Standards; Sites	Establishes opacity tests, trackout limitations, active and inactive site stabilization standards, stabilization duration standards.
§ 4-7-230	Obligatory Work Practice Standards; Sites	Establishes access control; roadway stabilization; bulk material handling, storage, loading, and transportation standards; trackout monitoring and cleanup; signage; training for dust inspectors, water pull drivers, and superintendents; dust suppression for active work sites, roadways, and parking areas; dust suppression during bulk material excavations; emission mitigation during demolition, weed abatement, and blasting; and subcontractor registration.
§ 4-7-234	Nonattainment-Area Dust Permit Program; General Provisions	Specifies applicability; outlines the application process; establishes fee schedule and permittee obligations.
§ 4-7-238	Nonattainment Area Site Permits	Specifies applicability; outlines the application process; establishes requirements for site plan, identification of planned dust-producing activities, a dust control plan, and the option to propose a closeout plan. Also establishes permittee obligations.
§ 4-7-242	Nonattainment Area Block Permits	Applicable only to earthmoving activity related to utilities.
§ 4-7-246	Record-keeping and Records Retention	Establishes requirements for record keeping and retention.

Article Nine contains rules that establish test methods to determine compliance with the rules requiring the stabilization of unpaved roads and parking lots and for conducting visible opacity tests.

§ 4-9-320	Test Methods for Stabilization For Unpaved Roads and Unpaved Parking Lots	Establishes guidelines to determine silt content, visible crust, threshold friction velocity, flat and standing vegetative cover, and the rock test method.
§ 4-9-340	Visual Opacity Test Methods	Establishes guidelines to conduct opacity tests for stationary sources, intermittent operations, and vehicles.

Part two of the submittal package contains a resolution by the Board of Supervisors adopting amendments to § 2-8-320 - Performance Standards for the Hayden PM_{10} Nonattainment Area. The amended rule establishes a twenty percent opacity standard during construction activities, roadway building and maintenance, and when handling, storing, or transporting bulk materials. Part two also includes a technical support document identifying the opacity standard as RACM and a public notice published in the Arizona Administrative Record justifying its use.

Part three of the submittal package contains amended rules in Article One of the Pinal County Code of Regulations. EPA issued a limited disapproval of the fugitive dust rules cited in §1-1-105 when the rules were initially submitted in 1995 due to an exemption for agricultural emissions. PCAQCD subsequently amended the rules to address EPA's finding, but did not submit the rules to EPA.

Enclosure 2 contains the collective SIP Completeness Checklist. Enclosure 3 contains two paper copies and one electronic copy of each new and amended rule, the Hayden TSD, and the negative declaration.

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

Sincerely,

Patrick J. Cunningham
Acting Director

Enclosures (3)

cc: Colleen McKaughan, EPA, w/o enclosures
Don Gabrielson, Pinal County Air Quality Control District, w/o enclosures
Nancy Wrona, ADEQ, w/o enclosures

Ken Buchanan
Assistant County
Manager

Development Services

Gabrielson
uality Director

PINAL•COUNTY
wide open opportunity

Terry Doolittle
County Manager

June 5, 2009

Ms. Laura Yoshii, Acting Regional Administrator
U.S. Environmental Protection Agency, Region IX
Mail Code ORA-1
75 Hawthorne Street
San Francisco, CA 94105

c/o Patrick Cunningham, Acting Director of Arizona Department of Environmental Quality
c/o Nancy Wrona, Director of ADEQ Air Quality Division
Mail Code 3415A-1
1110 W. Washington Street
Phoenix, AZ 85007-2952

Re: Proposed Revision to the Arizona State Implementation Plan; BACM for Apache Junction; Negative Declaration Regarding Agriculture

Dear Ms. Yoshii:

This letter will confirm that for purposes of establishing Best Available Control Measures ("BACM) for the Pinal County portion of the Phoenix Planning Area PM-10 Nonattainment Area, there are no meaningful agricultural operations in the affected area, nor is there any real prospect of such agricultural operations commencing in the future. More precisely, this letter refers to Township 1 North, Range 8 East, Gila & Salt River Base & Meridian, Pinal County, Arizona, or "T1N R8E."

Separately, Pinal County has conveyed a set of revised rules and a supporting package of information, requesting a corresponding revision to the Pinal County portion of the Arizona State Implementation Plan. That package included a copy of the underlying notice of proposed rulemaking, as published at 15 A.A.R. 653 (4/17/09). The notice included a preamble, which explained how those revisions, in combination with other measures and commitments, achieved BACM with respect to significant sources of PM-10 within the affected area. Notably, that preamble specifically explained that no commercial agriculture exists in T1N R8E. See 15 A.A.R. 655.

This letter will reaffirm the assertion in that preamble, namely that there is no commercial agriculture in the affected portion of Pinal County. That affected area consists of a 36-square mile township, situated in the Sonoran Desert. The eastern end of the area rises to the escarpment of the Superstition Mountains, and the northern end of the area rises into the Goldfield Mountains. Topographically, the entire area is "upland," meaning that it does not lie in the plain of any of the historic river channels, such as the Salt, the Gila or the Santa Cruz. Hydrologically, that meant that there never was even an attempt to develop a gravity irrigation system that would support agricultural operations. As a result, agriculture never developed in the area. More

8C

recently, the Central Arizona Project ("CAP") Canal was built, and does cross the very southwest corner of the area. However, the area down-gradient from the CAP has already developed into industrial uses, and the only local water drawn from the CAP has been used for municipal and industrial, rather than agricultural, uses.

Starting principally in the 1960's, the entire area was largely divided and subdivided for residential development. As a result, the privately property that covers about 75% of the area is nearly completely built out with residential development. As a practical matter, there are no large privately owned parcels that would support commercial scale agriculture.

Of the remaining 25% of the area, about 20% consists of Arizona State Trust Lands, and about 5% consists of federal lands managed by the BLM. To the extent those lands are ever sold off, reasonable conjecture could only conclude that those areas would be developed for residential or commercial purposes. That is, those lands sit in beautiful geographic setting, and are ripe for residential development. The surrounding areas are all already residential, and common knowledge amply demonstrates that land sold for development brings a higher price than land sold for agricultural development. Even more compelling, for all of those government-managed lands, there is no readily available source of irrigation water. They lie in the Phoenix Active Management Area, and I believe that designation precludes opening new wells to pump groundwater for agricultural irrigation. All of those lands are up-hill, and miles away from the only possible source of irrigation water, namely the CAP Canal.

In sum, there is no existing commercial agriculture in T1N R8E, and no realistic prospect exists that commercial agriculture will develop in the future.

Accordingly, development of local PM-10 BACM measures for the area would constitute nothing other than a superfluous, academic exercise.

If you have any questions, I can be reached at the number shown below.

Sincerely,

Donald P. Gabrielson
Director

AIR QUALITY CONTROL DISTRICT

31 North Pinal Street, Building F, PO Box 987 Florence, AZ 85232 T 520-866-6929 FREE 888-431-1311 F 520-866-6987 www.pinalcountyaz.gov

Enclosure 2

SIP Completeness Checklist
and
Proof of Public Participation

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STATE IMPLEMENTATION PLAN COMPLETENESS CHECKLIST

SUBMITTAL OF STATE IMPLEMENTATION PLAN (SIP) REVISION

2012 Five Percent Plan for PM_{10} for the Pinal County Township 1 North, Range 8 East Nonattainment Area

1. SUBMITTAL LETTER FROM GOVERNOR/DESIGNEE

   See cover letter.

2. EVIDENCE OF ADOPTION

   See cover letter.

3. STATE LEGAL AUTHORITY FOR ADOPTION/IMPLEMENTATION

   See Appendix A for certified copies of Arizona Revised Statutes listed in cover letter.

4. COMPLETE COPY OF ACTUAL REGULATION

   See Appendix A for certified copies of Arizona Revised Statutes listed in cover letter.

5. EVIDENCE THAT ARIZONA ADMINISTRATIVE PROCEDURE ACT REQUIREMENTS (ARS §§ 41-1021 through 1036) WERE MET FOR RULE

   See Enclosure 2.

6 EVIDENCE OF PUBLIC HEARING PER 40 CFR 51.102

   See Enclosure 2.

7 PUBLIC COMMENTS AND AGENCY RESPONSE

   See Enclosure 2.

8. IDENTIFICATION OF POLLUTANTS REGULATED BY RULE

   Particulate Matter 10 microns and smaller in size (PM10)

9. IDENTIFICATION OF SOURCES/ATTAINMENT STATUS

   See Enclosure 1 and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area

10. WRITTEN SUMMARY OF RULE/RULE CHANGE

Not applicable.

11. RULE CHANGES INDICATED BY UNDERLINING AND CROSS-OUTS

Not applicable.

12. RULE'S EFFECT ON EMISSIONS

See Enclosure 1 and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area revised emission inventory, Section 189(d) reasonable further progress demonstration, and attainment demonstration

13 DEMONSTRATION THAT NAAQS, PSD INCREMENTS AND RFP ARE PROTECTED

See Enclosure 1 and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area revised emission inventory, Section 189(d) reasonable further progress demonstration, and attainment demonstration.

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

Not applicable.

15. MODELING SUPPORT

See Enclosure 1 and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area attainment demonstration.

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

See Enclosure 1 and Appendix A for certified copies of Arizona Revised Statutes listed in cover letter for approval. See also companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area.

17. COMPLIANCE/ENFORCEMENT STRATEGIES

See Enclosure 1, Dust Action General Permit in Appendix B, and companion MAG 2012 Five Percent Plan for PM-10 for the Maricopa Nonattainment Area.

18 ECONOMIC TECHNICAL JUSTIFICATION FOR DEVIATION FROM EPA POLICIES

No known deviation from EPA policy.

STATE OF ARIZONA

COUNTY OF PINAL } ss.

PUBLIC NOTICE
ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ)
PUBLIC HEARING ON THE 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE PINAL COUNTY TOWNSHIP 1 NORTH, RANGE 8 EAST NONATTAINMENT AREA

ADEQ will hold a public hearing to receive comments on a proposed revision to the Arizona State Implementation Plan (SIP) to meet the requirements of §189(d) of the Clean Air Act for the 2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area. ADEQ also proposes to adopt four appendices to this plan: Appendix A Certified Copies of the Arizona Revised Statutes to be approved into the plan, Appendix B ADEQ Dust Action General Permit, Appendix C ADEQ Commitment to Assess Effectiveness of Dust Action General Permit and Appendix D Negative Declaration for Commercial Agriculture. The purpose of the revision is to demonstrate that consistent control measures are required throughout the metropolitan Phoenix serious nonattainment area for particulate matter (PM-10). ADEQ proposes to adopt for the Pinal County portion of this nonattainment area the following elements of the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area: Chapter One Introduction; Chapter Two Description of the Nonattainment Area; Chapter Three Assessment of Air Quality Conditions; Chapter Five Demonstration of Annual Five Percent Reductions in PM-10 Emissions; Chapter Six Attainment Demonstration by December 31, 2012 including a request for extension of the attainment date from June 6, 2012, to December 31, 2012; and Appendices A (emission inventory) and B (Technical Document in Support and Calculation of Benefits from Certified Street Sweepers). Consistent with the provisions of Arizona Revised Statutes §§ 49-104, 49-404, 49-406, and the Code of Federal Regulation, Title 40, §§ 51.102 through 51.104, and Appendix V to Part 51, this revision to Arizona's SIP must be submitted to the Environmental Protection Agency (EPA) by the director of ADEQ on

Affidavit of Publication

RUTH A. KRAMER first being duly sworn deposes and says: That he/she is a native born citizen of the United States of America, over 21 years of age, that I am an agent and/or publisher of the Casa Grande Dispatch, a daily newspaper published at Casa Grande, Pinal County, Arizona, Tuesday through Sunday of each week; that a notice, a full, true and complete printed copy of which is hereunto attached, was printed in the regular edition of said newspaper, and not in a supplement thereto, for TWO issues the first publication thereof having been on the

23RD day of MARCH A.D., 2012

Second publication MARCH 24, 2012

Third publication _____

Fourth publication _____

Fifth publication _____

Sixth publication _____

CASA GRANDE DISPATCH

By Ruth Kramer
agent and/or publisher of the Casa Grande Dispatch

Sworn to before me this 26th

day of March A.D. 2012

Debbie L Mumme

Notary Public in and for the County
of Pinal, State of Arizona

Official Seal
NOTARY PUBLIC
State of Arizona
County of Pinal
DEBBIE L. MUMME
My Comm. Expires 10-23-2013

ADEQ Arizona Department of Environmental Quality

Public Hearing Agenda

AIR QUALITY DIVISION

PUBLIC HEARING ON THE PROPOSED
ARIZONA AIR QUALITY
STATE IMPLEMENTATION PLAN (SIP)
for the
2012 Five Percent Plan for PM10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area

Room 145, ADEQ Building
1110 W. Washington Street
Phoenix, AZ 85007

Tuesday April 24, 2012 3:30 PM

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) Library, 1110 W. Washington St., Phoenix, Arizona; Pinal County Air Quality Control District at 31 N. Pinal Street, Bldg. F, in Florence AZ; and on the web at www.azdeq.gov. The Maricopa County plan is on the web at www.azmag.gov For additional information regarding the hearing please call Diane Arnst, ADEQ Air Quality Division, at (602) 771-2375 or 1-800-234-5677, Ext. 771-2375. 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.

ADEQ
Arizona Department of Environmental Quality

Air Quality Division Sign-In Sheet

Please Sign In

SUBJECT _____ DATE _____

	NAME	ORGANIZATION	PHONE	FAX	E-MAIL
1.	AGUSTIN FIGUEROA	CEMEX	(602) 416-2934	(602) 416-2974	AGUSTIN.FIGUEROA@CEMEX.COM
2.	KEVIN BOESCH	LOGAN SIMPSON	(480) 305-3637	(480) 966-9232	kboesch@logansimpson.com
3.	PATRICK HIGGINS	" "	480-967-1343	"	Phiggins@LoganSimpson.com
4.	LOU SNOW	SNOW CONSULTING	(602) 7997010	(602) 944-7038	SnowCensulo@AOL.com
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ADEQ
Arizona Department of Environmental Quality

Air Quality Division

Public Hearing Presiding Officer Certification

I, Bruce Friedl, the designated Presiding Officer, do hereby certify that the public hearing held by the Arizona Department of Environmental Quality on the March 2012, *Proposed Arizona State Implementation Plan, 2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area,* was conducted on April 24, 2012, at the Arizona Department of Environmental Quality, Conference Room 145, 1110 West Washington Street, Phoenix, Arizona, in accordance with public notice requirements by publication in the *Casa Grande Dispatch* and other locations beginning March 23, 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 26 day of April, 2012.

Bruce Friedl

State of Arizona)
) ss.
County of Maricopa)

Subscribed and sworn to before me on this 26 day of April 2012.

Notary Public State of Arizona
Maricopa County
Laura McFarland
My Commission Expires 04/02/2016

Laura McFarland
Notary Public

My commission expires: 4/02/2016

PROPOSED ARIZONA AIR QUALITY
STATE IMPLEMENTATION PLAN (SIP)
for the
2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East
Nonattainment Area

Oral Proceeding
TRANSCRIPT
3:30 PM, April 24, 2012

Bruce Friedl: Good afternoon and thank you for coming. I now open this hearing on a proposed revision to the Arizona State Implementation Plan for the 2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area.

It is April 24, 2012, and the time is 3:36 PM. The location is Room 145, ADEQ Building, 1110 W. Washington Street, Phoenix, AZ. My name is Bruce Friedl, 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 air quality plan 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 Department are Diane Arnst, Planning Section Manager and Eric Massey, Director of the Air Quality Division.

Public notice appeared in the Casa Grande Dispatch on March 23 and 24, 2012, and on ADEQ's website. The MAG documents subject to comment were made available for review online at www.azmag.gov. The ADEQ documents subject to comment were made available online at

www.azdeq.gov and in hard copy at the ADEQ Phoenix office and at the Pinal County Air Quality Control District at 31 N. Pinal Street, Building F, in Florence AZ.

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. Using 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 revision ends on April 24, 2012 at 5:00 PM. All comments must be postmarked or received at ADEQ by 5:00 PM on April 24, 2012 whether sent via U.S. mail or via e-mail or via FAX. Written comments can be mailed to Diane Arnst, Air Quality Planning Section, Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, Arizona 85007 or arnst.diane@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 state implementation plan. 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.

First, we will present a brief overview of the proposed revision to the state implementation plan.

Secondly, 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 given either in writing by the deadline or on the record at today's hearing during the oral comment period of this proceeding.

At this time, Diane Arnst will give a brief overview of the proposal.

* * * * *

Diane Arnst: The metropolitan Phoenix area has not yet attained the National Ambient Air Quality Standards (NAAQS) for PM-10 particulate matter pollution, and it is classified as a Serious Area under the Clean Air Act. This planning area is largely within Maricopa County, but it also includes one township in Pinal County due to its close commuting ties with Maricopa County: Township 1 North, Range 8 East. Due to failure to attain the NAAQS by December 31, 2006, Section 189(d) of the Clean Air Act applies.

The Clean Air Act requires that until the standard is attained, the plan must provide for reductions in PM-10 or PM-10 precursor emissions from the emission inventory of at least 5% annually. In addition, the plan must include an attainment modeling demonstration. Finally, concentrations of PM-10 recorded at the monitors in the planning area must demonstrate attainment. This plan demonstrates attainment by December 31, 2012.

ADEQ had adopted the *MAG 2007 Five Percent Plan for PM-10* and companion Technical Support Document and submitted them to the Environmental Protection Agency (EPA) by the federal deadline of December 31, 2007. ADEQ had also submitted Supplemental Information for Pinal County dated June 4, 2008, and January 21, 2009. The submittals for the Pinal County portion were never acted upon by EPA. ADEQ proposes to withdraw the 2008 and 2009 submittals when it submits the 2012 plan for this township. Pinal County Air Quality Control District had also transmitted a resolution and supporting materials to EPA dated December 20, 2007, that ADEQ proposes to withdraw. Under separate cover at a later date ADEQ will submit Supplemental Information consisting of Pinal County Air Quality Control District Code Revisions, Pinal County Resolutions, and an Ordinance adopted by Apache Junction.

The region needed three years of clean data at the monitors in 2008, 2009 and 2010 in order to attain the PM-10 standards in 2010. No violations of the standard during stagnant conditions

have been recorded since the plan was submitted in 2007. On September 9, 2010, EPA published a notice of proposed partial approval and partial disapproval of the 2007 plan in the Federal Register. EPA gave two major reasons for the proposed disapproval: (1) EPA did not concur with ADEQ documentation of four high wind exceptional events at the West 43rd Avenue monitor in 2008, which resulted in a violation that negated the attainment demonstration, and (2) EPA found the 2005 baseline emissions inventory inaccurate because in hindsight it overestimated construction and other emissions including paved road emissions. In January 2010, EPA revised its AP-42 emissions factor for paved road emissions, reducing the calculation of estimated emissions by 67% reduction for this category in metropolitan Phoenix.

On January 25, 2011, ADEQ voluntarily withdrew the *MAG 2007 Five Percent Plan for PM-10* to address the approvability issues. Although the plan was withdrawn, implementation of control measures in it continued, to reduce PM-10 and strive to attain the standards at the earliest possible date. A wide variety of the control measures in the withdrawn plan are in the replacement plan that we are discussing today.

The replacement plan has been developed by MAG and reviewed in a series of Technical Workgroup meetings and Stakeholder meetings at ADEQ, including participation by the Pinal County Air Quality Control District and the Environmental Protection Agency. Pursuant to Arizona Revised Statutes § 49-406, ADEQ develops particulate matter nonattainment plans for Pinal County. The Pinal County Air Quality Control District is responsible for rulemaking, permitting and enforcement in Pinal County.

ADEQ proposes adoption for Township 1 North, Range 8 East in Pinal County of the following elements of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area*, by cross-reference, because they are also applicable for this township in Pinal County: Chapter One Introduction; Chapter Two Description of the Nonattainment Area; Chapter Three Assessment of Air Quality Conditions; Chapter Five Demonstration of Annual Five Percent Reductions in PM-10 Emissions; Chapter Six Attainment Demonstration by December 31, 2012, including a request for extension of the attainment date from June 6, 2012,

to December 31, 2012; and Appendices A (emission inventory) and B (Technical Document in Support and Calculation of Benefits from Certified Street Sweepers).

On June 12, 2009, ADEQ submitted a negative declaration for commercial agricultural practices in Township 1 North, Range 8 East, including a letter dated June 5, 2009, from Pinal County. For that reason ADEQ is not proposing adoption of Appendix D of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* for this township.

ADEQ proposes adoption and submittal for approval of a table of Arizona Revised Statutes identical to those adopted in the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* to render the same control measures federally enforceable in this township in Pinal County. These control measures adopted in Senate Bill 1552 became effective September 19, 2007, and have been implemented to date in this township. This table also includes the definition of Area A and the new requirement for a Dust Action General Permit in A.R.S. § 49-457.05.

ADEQ also proposes to submit four appendices listed in the table: (A) certified copies of the Arizona Revised Statutes to be approved into the plan (B) the ADEQ Dust Action General Permit issued December 30, 2011 (C) the ADEQ Commitment to Assess the Effectiveness of the Dust Action General Permit and (D) the negative declaration for commercial agriculture in this township.

The General Permit ensures that dust is controlled at otherwise unpermitted sources both before and during a high risk event predicted by ADEQ's Maricopa County Dust Control Forecast, which also covers this township in Pinal County. The ADEQ Director is responsible for enforcement of the Dust Action General Permit in this township. If the General Permit does not achieve the necessary emissions reductions, ADEQ commits to submitting a SIP revision that contains replacement measures.

The replacement plan reduces PM-10 emissions between 2007 and 2012 by 16,089 tons, a 27.2 percent reduction in total 2007 base case emissions. Early implementation of contingency measures provides an additional 5.8% reduction (33% total reduction between 2007 and 2012).

The 2012 plan demonstrates that all of the requirements of the Clean Air Act for this township have been met. Because EPA published the nonattainment finding on June 6, 2007, the new attainment deadline is June 6, 2012. To include the entire 2012 calendar year of monitoring data and full effectiveness of the dust action general permit for that period, ADEQ proposes to request extension of the attainment deadline to December 31, 2012.

Arizona must submit the 2012 replacement plans that EPA finds complete by August 14, 2012, for the entire nonattainment area or EPA must impose the mandatory offset sanction by that date. EPA must either approve the 2012 plan for this township and the 2012 MAG plan by February 14, 2013 or impose the highway funding sanction and promulgate a Federal Implementation Plan [according to the February 14, 2011 Federal Register].

Mr. Friedl: Okay. This concludes the explanation period of this proceeding on the proposed revision to the state implementation plan.

* * * * *

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

Man: I am sorry, I missed that last one. What was the deadline for the last one, please? February 14, 2013?

Ms. Arnst: Yes, final action by EPA must happen by February 14, 2013.

Man: Okay.

Mr. Friedl: Are there any other questions?

Okay. This concludes the question and answer period of this proceeding on the proposed state implementation plan revision.

* * * * *

I now open this proceeding for oral comments.

Does anybody wish to make a comment?

Man: May I ask a question?

Mr. Friedl: Sure, you can.

Man: Who is exempt within this? I know that you have probably stated that the exemption is…is it agriculture? Is it…do we have an exemption that we know of?

Eric Massey: In the conversation that Diane gave, agriculture was listed as one of those that was not contributing to the issue in the one township section range area that we are looking at. So to that end, it is not included as part of the state implementation plan. That doesn't mean that it is exempt from the rules that automatically apply. What ends up happening is that EPA doesn't have federal oversight of that. So the State program would apply in that area. We are not submitting it to EPA saying you need to also have this second layer of enforceability.

Man: Okay.

Mr. Friedl: Are there any other comments? Yes sir.

Man: It is my understanding that you are revising the Area A map to exclude Township 1. Are you (undecipherable)?

Mr. Massey: I've not personally seen any plans on that. Do we have plans for the revision of Area A?

Ms. Arnst: I am not aware of any plans.

Mr. Massey: What was your statement about the Area A in the conversation? I think, I think what it was was

Ms. Arnst: I don't remember referring to Area A. It's just that The Plan consists of the two components: one component for Maricopa County, and one component for this township in Pinal County. The pre-existing Agricultural Best Management Practices program that was approved into the Arizona SIP in July of 2002 continues and that has some elements that apply in Area A, which is larger than the nonattainment area. But this particular township in Pinal County for PM-10 for the area that has been nonattainment for a long time does not have commercial agriculture. So for crops, there is not an issue.

Mr. Massey: Is the definition of Area A in the statute?

Ms. Arnst and Mr. Friedl: Yes.

Mr. Massey: So in order to change that

Ms. Arnst: Oh, I see where you are going. There is a table, yes, we were asked by EPA to include the Area A definition. I see where you are going. Yes, so that is in 49-541, is the definition of Area A.

Man: (undecipherable) That is the description.

Ms. Arnst: Yeah, and it has been in effect since August 9, 2001, and that is unchanged.

Mr. Massey: We are not proposing to change. What we are doing is we are including it.

Ms. Arnst: We are just saying, "Please approve it into the SIP."

Mr. Massey: Right, because they need that information for the federal enforceability it all hinges on where you are going to do it, and EPA didn't have a clear definition. So they asked us to include it.

Man: So we will just start over, it has always been established.

Mr. Massey: That is right.

Man: I see.

Ms. Arnst: Okay. Sorry I didn't key on the right part of your question.

Mr. Friedl: Okay. Does anybody else have any questions?

Ms. Arnst: Or comments?

Mr. Friedl: Well, or comments. (Laughter)

Man: Has any consideration been given to the new and as yet undetermined status that Pinal County has been using with EPA later this year (undecipherable)?

Ms. Arnst: That will be the subject of a separate plan.

Mr. Massey: So to be clear, what this plan is doing is making sure that it attaches just the Apache Junction piece, and just the piece of Apache Junction that doesn't necessarily fall clearly under MAG's jurisdiction, because Apache Junction is a member agency of the Maricopa Association of Governments, and there is a certain amount of planning that goes along with that, that MAG has taken care of in its plan. What we have identified is an area where it's not real clear that

MAG's plan actually applies. So what we thought to do was make sure that that plan actually continued to apply in Pinal County, given all this description. What you are asking about is the designation for the (other) Pinal County (PM-10) area. That is still pending in front of EPA. It will actually be treated as a separate planning process. We've undergone that planning process. We've kicked it off, so to speak, having an initial meeting. But we are not, we are just in the very formational stages of developing an emissions inventory, recognizing that we are limited by EPA's lack of a decision in this case. So when EPA makes a final decision, we will kind of know where we have to do our emissions inventory and start the planning process from that area. We are building as much as we can pre-EPA's decision.

Ms. Arnst: Right. EPA did promulgate a nonattainment area for PM-2.5 in Pinal County. And so there is a technical work group that's beginning to work on developing emission inventories for both of those pollutants that is wholly separate from what we are here at today, and as Eric was explaining, we just want to make sure there isn't a gap for the unincorporated parts of the county that may or may not be fully covered by the MAG planning process.

Man: So what was that 2.5 area? What was that?

Mr. Massey: The PM-2.5 area is largely around Cowtown in Maricopa.

Man: Okay. That's where the monitors are.

Mr. Massey: That's right. It is a pretty small area. The PM-2.5 area would actually be significantly larger and encompass that area as well.

Man: So in total would you say, segments, addressing Pinal County, how many different segments are we going to address with EPA? You've got Apache County, you've got your 2.5, what is it, four separate segments?

Mr. Massey: So right now, there would be three separate ones, right? We'd be doing this PM-10 plan today. There is a PM-2.5 plan that we'll have to do around the Cowtown monitor, and then a PM-2.5 plan that will encompass not only the PM-2.5 area, but also some additional area.

Man: That same area?

Mr. Massey: Right, exactly, around that same area. It is going to be larger. We know that, but we just don't know how much larger.

Ms. Arnst: I think you meant PM-10 is the third one. You said PM-2.5.

Mr. Massey: I am sorry. Yes. First, it's PM-10 at Apache Junction. Second, it's PM-2.5 around Cowtown. Third, it's PM-10 around Cowtown and that portion of Pinal County. We are intending as much as we can to try to do the PM-2.5 and PM-10 together, because of the PM-2.5 problem that we have observed in the past, and we should clearly state that the data doesn't show the PM-2.5 problem any more. But that PM-2.5 problem was heavily related to PM-10 concentrations. So if we were able to solve the PM-10 concentration issues in that area, our argument has been that we would solve the PM-2.5 at the same time. Since they are linked, we are trying to do that planning process together, and that's the on-going stakeholder meetings and technical work group that Diane just mentioned a few moments ago.

Man: Then you are done with the rest of Pinal County.

Mr. Massey: That is right.

Man: Does that include mines or are they exempt?

Mr. Massey: Mines are not exempt if they are included in a nonattainment area. When you are doing your nonattainment area planning, the first element is to build this emissions inventory so that you have a sense of what sources have emitted what sort of pollution you are looking for. Then you take that emissions inventory, and you kind of put that into a model to figure out what

sort of, we call it short of blame attribution, but essentially, you know, where is the problem coming from? Who's most likely responsible for the concentrations? What are the significant contributors to that? And then you start to build your emissions control strategy to reduce the emissions from that. So when you develop a nonattainment area, no one source is exempt until after you've been in demonstration that they are not a significant contributor. Is that right?

Ms. Arnst: Right, and we have a lot of work yet to do. But we are pursuing a clean data finding for the PM-2.5 planning area, and it's important to note that all of the measures undertaken so far on a voluntary basis have reduced the levels of the concentration. So that's why PM-2.5 has attained, but PM-10 is a much more difficult thing. So those levels have come down, just not far enough to meet the National Ambient Air Quality Standards. So we are still working at that.

Man: So you have two mines within Pinal County. Are they, are either one of those exempt?

Ms. Arnst: EPA has proposed boundaries for the western half of the county, but they have not finalized, and so that is posted. I believe it is on the ADEQ website, the proposed ones. If you'd like to leave your contact information, we can send that map to you.

Man: Yeah, that would be great.

Ms. Arnst: And then you can tell, I am not sure exactly where the mines fall within the county.

Mr. Massey: Yeah, I am not super familiar with Pinal sources and where they fall specifically, but my guess is if they are in the eastern half of the county, then they are separate issues and may not be addressed by these actions.

Ms. Arnst: Yes?

Man: About any of these claims, has EPA ever stipulated and put down in their writing their criteria for disqualifying a mine, or do they just say we agree or we disagree?

1 Mr. Massey: Yeah, they've said we agree or we disagree. And really about the only time we have
2 done any sort of official thing was under nonconcurrence here in Maricopa County for the event
3 that we documented in 2008. We are working through an exceptional event guidance document
4 with EPA. We have made some great strides with EPA on limiting how much work and effort
5 goes into these. More work needs to be done. But the general gist of it is we have submitted a
6 package to EPA that covers July 2 to July 8, 2011, about five or six days here in Maricopa
7 County. We have a high confidence level that they will approve that documentation. Everything
8 that I have seen, everybody I have talked to at EPA from top to bottom has said that it's an
9 approvable document. EPA will try to take action on it, try to concur with that document before
10 the end of July of this year is what they are committing to. So we will have something a little bit
11 more official. But we are kind of in a new era right now with high wind events and those PM-10
12 driven types of issues. We are hoping to have more of those under our belt soon. We have made
13 substantial progress forward. I think our documentation for July 2 to July 8 is available on our
14 web as well in case you want to see that.
15
16 Man: It just seems like you always have, you know, from what I understand a line in the sand.
17 (undecipherable)
18
19 Mr. Massey: It's a very iterative process right now. I am going to agree with that. It is not as
20 clear as you think.
21
22 Man: Is there a place where we can actually try to get some kind of a commitment from EPA as
23 far as actually approving what taking action is, so we don't actually bump them against the
24 deadline of August 2013 and then some of the sanctions will kick in?
25
26 Ms. Arnst: We will be submitting a parallel processing request.
27
28 Mr. Massey: That's right. So what we are doing with the parallel processing request is we have
29 just gone through, we wanted to make sure we got through our public comment period and have
30 the opportunity to select the comments and see if they were going to change our plan
31 substantially. To the extent that we don't receive comments that are going to change any of our

1 plan substantially, we are going to ask EPA to begin their processing of both the MAG and the
2 Pinal portion that we're submitting to say, "Hey, here it is. Please start acting on it."
3
4 Since EPA's technical people have been involved throughout the entire process, we expect they
5 are going to be able to act before the August deadline in a way to make sure that they complete
6 this determination before February 2013 in terms of approving it. So they are aware of those
7 deadlines. We have, again, a level of confidence that because they've been involved throughout
8 this whole process, we shouldn't be running into too many problems with those deadlines.
9
10 Ms. Arnst: And our goal is, of course, to attain the standard by the end of this year.
11
12 Mr. Massey: That's right.
13
14 Ms. Arnst: And get a clean data finding, which would be wonderful.
15
16 Man: How long after a clean data finding can you be removed from nonattainment?
17
18 Ms. Arnst: Then there's a requirement to submit a maintenance plan, but there is not a deadline
19 for submittal of a redesignation request with a maintenance plan. The maintenance plan would
20 cover the subsequent 10 years, and then in the eighth year of that 10 years, you have to submit
21 maintenance plan number two.
22
23 Mr. Massey: Which goes for another 10 years.
24
25 Ms. Arnst: Yes.
26
27 Mr. Massey: So everything that we've done to get to this point, we will have to maintain for at
28 least 10 years.
29
30 Ms. Arnst: Yes, but all that is to protect public health and we know we have a number of people
31 with asthma here and older people with COPD, so it benefits all of us.

Mr. Friedl: Any more questions?

Okay. Does anybody wish to make a comment that they want formally considered in the responsiveness summary?

Okay. Hearing none, 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 state implementation plan ends at 5:00 PM MST today, April 24, 2012.

Thank you for attending.

The time is now 4:05 PM. I now close this oral proceeding.

From: Matthew Poppen [MPoppen@azmag.gov]
Sent: Thursday, April 05, 2012 4:06 PM
To: Diane Arnst
Subject: Comments on the Proposed Arizona State Implementation Plan, 2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area

Thank you for the opportunity to comment on the Arizona Department of Environmental Quality, Proposed Arizona State Implementation Plan, 2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area. The comments submitted below are presented in order to accurately reflect the consistency between this proposed plan and the Draft MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area.

1. The sixth paragraph on page 3 of the proposed plan states that all of the control measures from the withdrawn MAG 2007 Five Percent Plan for PM-10 have been included in the Draft MAG 2012 Five Percent Plan for PM-10. To be consistent with language in the Draft MAG 2012 Five Percent Plan, this paragraph should state that a wide range of control measures from the 2007 Five Percent Plan continue to be implemented and are being resubmitted.

2. Page 5 of the proposed plan should make clear that Township 1 North, Range 8 East is included as part of the Maricopa County PM-10 nonattainment area. This particular township by itself was never designated as a nonattainment area, which is implied by the first paragraph on page 5.

3. Page 7 of the proposed plan is largely provided as reference link to the air quality monitoring data and PM-10 emissions inventory data provided in the Draft MAG 2012 Five Percent Plan. As such, the opening paragraph discussion about prior attainment dates and control measure improvements is misplaced. To provide consistency with the referenced Draft MAG 2012 Five Percent Plan, a phrase before the first sentence of the second paragraph should be added to say "For information on the air quality conditions in the nonattainment area..." and the first paragraph on page 7 deleted or altered to reflect the focus of this chapter on assessing air quality conditions.

4. Page 11 of the proposed plan contains an incorrect Chapter V title. Five percent reductions and reasonable further progress are two separate requirements in the Clean Air Act and should not be combined as a single demonstration as implied by the current title. Since this chapter of the proposed plan is only describing the five percent reductions requirement, references to reasonable further progress should be removed.

5. Page 11 of the proposed plan contains the following sentence, "The revised Emission Inventory has reduced the annual tons of reductions required." This sentence can easily be interpreted in nonsensical ways and should be deleted.

6. Page 11 directs the reader to see Appendix B, Exhibit 2, Calculation *of Benefits from PM-10 Certified Street Sweepers Purchased with CMAQ Funds in 2001-2009* of the Draft MAG 2012 Five Percent Plan. Since street sweeping benefits in the Draft MAG 2012 Five Percent Plan are associated with contingency measures in the plan, reference to this section should be removed. This section is appropriately referenced on page 13 of the proposed plan.

7. The first sentence on page 13 of the proposed plan should be clarified to read that the control measures quantified to meet the five percent reduction requirement in the Draft MAG 2012 Five Percent Plan reduce PM-10 emissions by 16,089 tons between 2007 and 2012. This sentence seems more appropriately placed on page 11 of the proposed plan as a summary statement describing how the five percent requirement was met as opposed to the opening statement of a new chapter meant to describe the attainment demonstration.

8. The second paragraph on page 13 of the proposed plan mentions that Chapter Six of the Draft MAG 2012 Five Percent Plan contains an explanation of contingency measures and a request for an extension of the

attainment date. This sentence should also state that Chapter Six of the Draft MAG 2012 Five Percent Plan provides a demonstration of reasonable further progress and an onroad mobile source emissions budget for the PM-10 nonattainment area.

9. The third paragraph on page 13 states that "Early implementation of the contingency reductions to the RFP reductions reduces base case PM-10 emissions by 19,527 tons". This sentence could be better clarified to state that early implementation of contingency measures reduce PM-10 emissions by 3,439 tons. The Draft MAG 2012 Five Percent Plan as a whole (five percent reductions and early implementation contingency reductions) reduce 2007 base case emissions by 19,527 tons in 2012.

10. The fourth paragraph on page 13 states that "The 2012 plan demonstrates that all requirements of the Clean Air Act for this township have been met". This sentence should be clarified to better match Chapter Six of the Draft MAG 2012 Five Percent Plan which states that attainment is modeled and demonstrated throughout the nonattainment area, which includes the township addressed in this proposed plan.

11. The sentence regarding the reason for the extension of the attainment deadline in the fourth paragraph of page 13 needs to be changed to match the rationale stated in the Draft MAG 2012 Five Percent Plan; which is that an extension of the attainment deadline was needed in order to model the benefits of the Dust Action General Permit which did not become fully effective until January 1, 2012.

12. In Appendix A of the proposed plan, the certified letter from the law reference librarian contains an error by stating that statute 49-507 is included as part of the certified copies. The letter should have referenced statute 49-501.

13. Appendix A of the proposed plan contains many other statutes than those listed in Table 1 of the proposed plan (pg. 9). To be consistent with the Draft MAG 2012 Five Percent Plan, the only copies of statutes that should be provided are the ones listed in Appendix C, Exhibit 1 of the Draft MAG 2012 Five Percent Plan. If ADEQ deems it necessary to include the whole copied page upon which a relevant statute appears, then the statutes that are not being submitted as part of this proposal should be blacked out; or alternatively, there should be a definitive statement in Appendix A that the only statutes being submitted for adoption into the Arizona SIP are the ones listed in Table 1 of the proposed plan.

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April 24, 2012

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Re: 2012 Five Percent Plan for PM-10 pertaining to the Apache Junction Township (T1N R8E, G&SRB&M)

Dear Ms. Arnst:

Thank you for the opportunity to comment on this proposal.

1. Initially, Pinal County renews it's long-standing assertion that in the first instance, the T1N R8E portion of Pinal County (Township 1 North, Range 8 East, Gila & Salt River Base and Meridian, Pinal County, Arizona) was improvidently included in the greater Phoenix PM-10 nonattainment area.

   The crux of that assertion was explained in a 1997 petition to the EPA Administrator. (Copy attached.) In sum, the EPA embraced an erroneous classification for the area in the late 1980's, and that 1990 Clean Air Act Amendments relied on that erroneous classification to inflict an unjustified nonattainment designation on the area. Pinal's 1997 petition sought a correction under Section 110(k) of the Clean Air Act, rescinding the erroneous inclusion of T1N R8E in the nonattainment area.

   Notably, in twenty years of monitoring PM-10 concentrations in the T1N R8E area, there was never a single observed exceedance of the PM-10 standard. If anything, that data amply demonstrated that the original nonattainment designation was improvident.

   Only in 2011 have there ever been any exceedances of the PM-10 standard. Each of those 2011 exceedance events directly resulted from what has now been recognized by acclamation as a linked series of dramatic exceptional events that afflicted the entire central basin of Arizona. But even those events do not validate the underlying erroneous regulatory action that resulted in a PM-10 nonattainment designation for T1N R8E.

   Although the EPA has not responded or even formally acknowledged the petition, we continue to maintain that T1N R8E does not belong in the nonattainment area. For that reason, we object to the continued expansion of additional PM-10-SIP-related regulatory measures upon that area.

2. Pinal County takes issue with the premise expressed in the public notice that "consistent control measures are required throughout the metropolitan Phoenix serious area nonattainment area," and in the ensuing application of the Dust Action General Permit to T1N R8E.

In litigation involving this very nonattainment area, the EPA previously vindicated the principle that perfect consistency is not a requirement for an approvable PM-10 SIP.

> *The CAA's requirements to implement ... [control measures applies] to the nonattainment area as a whole and not to each individual jurisdiction within that nonattainment area.* See 67 FR 48718, 48726 (7/25/02).

Specifically, Pinal County objects to the extension of the Dust Action General Permit to T1N R8E.

Pinal County lobbied to exclude T1N R8E from the scope of statutory authorization for the Permit. Pinal County requested that in adopting the Permit, ADEQ exclude T1N R8E. The legislature nonetheless authorized a Dust Action General Permit affecting T1N R8E, and ADEQ adopted a Permit affecting T1N R8E.

The Dust Action General Permit merely provides an additional procedural mechanism to force individuals, businesses and land owners to make reasonable anticipatory efforts to minimize dust emissions prior to and on "action days."

We already have enforceable rules that require "reasonable precautions" at all times. We also have the capacity and willingness to exercise already available enforcement tools to assure compliance. We are unaware of any problem with our current implementation of those rules.

With the exception of the truly aberrational 2011 high wind exceptional events alluded to above, Pinal sees no factual justification for extension of these measures to T1N R8E.

The underlying (low wind) PM-10 emission inventory prepared by MAG did include data from T1N R8E, including both the City of Apache Junction and unincorporated areas. Review of that data shows that emissions from T1N R8E represent a truly minuscule contribution.

Moreover, the principal objective of the Dust Action General Permit was to address wind erosion, and the underlying MAG analysis (2008 Serious Area Plan, Appendix 4) does not specifically attribute wind-driven emissions to T1N R8E. Anecdotally, there may well be real issues with windblown dust in Pinal County, but those issues are not associated with T1N R8E.

The only apparent justification for application of the Dust Action General Permit arises from an administrative desire to achieve perfect symmetry in applying new measures.

Pinal acknowledges the authority of the legislature, as well as ADEQ's authority to implement authority given. Nonetheless, to the extent the EPA has vindicated the principle that measures need not be uniformly applied in all cases, Pinal continues to object to the patently unnecessary application of the Dust Action General Permit to T1N R8E.

3. At least in the context of ARS §49-501, the statutory exclusions in Table 1 on page 10 seem to effectively re-write the underlying statute.

That is, the EPA's SIP-approval of a statute without recognition and inclusion of the exclusions provided by the statute would effectively amount to an administrative revision of a statute in a manner that expands the reach and applicability of the law. That would not appear to reconcile with either the authority of the agency or the underlying intent of the legislature.

4. Appendix A includes an affidavit affirming the accuracy of a series of copies of specific statutory provisions drawn from Thomson-West pocket parts. As a result, the statutes are not in numerical sequence.

To the extent there is justification for including only selected statutes, rather than the whole of ARS Title 49 Chapter 3, or to the extent there is justification for including statutory provisions from something other than the current, prevailing statutes, then those justifications should be documented so that others can appreciate that rationale.

If you have any questions, please contact me at 520-866-6915.

Sincerely yours,

/dpg/

Don Gabrielson
Director
Pinal County Air Quality

FILE COPY

Pinal County Air Quality Control District

P. O. Box 987
Florence, Arizona 85232

(520) 868-6760 Fax: (520) 868-6754

March 27, 1997

Carol Browner, Administrator
United States Environmental Protection Agency
401 M Street S.W.
Washington, D.C. 20460

Re: Petition for correction under CAA §110(k)(6)

Dear Ms. Browner:

This letter conveys a petition under CAA §110(k)(6), seeking correction of both a manifest error and the consequence of that error.

On behalf of Pinal County, I appreciate your consideration of this matter.

Sincerely yours,

Donald P. Gabrielson

Donald P. Gabrielson

enc.

cc w/enc.: Felicia Marcus, USEPA RIX
Frances Wicher, USEPA RIX
Nancy Wrona, ADEQ Air Quality Division
Ira Domsky, ADEQ Air Quality Division

BEFORE THE ADMINISTRATOR

United States Environmental Protection Agency
401 M Street Southwest
Washington, D.C. 20460

In the matter of	)	
	)	**PETITION FOR CORRECTION**
Phoenix Planning Area	)	**PURSUANT TO CLEAN AIR**
PM_{10} Particulate Group Classification/	)	**ACT §110(k)(6)**
Nonattainment Area Designation	)	
	)	

This constitutes a request that the Administrator of the Environmental Protection Agency ("EPA") correct a 1987-vintage PM_{10} "Group" designation, and thereby work a *de jure* redesignation to "attainment" status for a 36-square-mile area of Pinal County. The undersigned submits that the original "Group" classification, which ultimately triggered a "nonattainment" designation, was made in violation of EPA's stated procedure, without a rational factual analysis, contrary to the results of any factual analysis that could have been performed, without meaningful consultation with the affected units of local government, and generally without the due process of law necessarily required for effecting such an area redesignation.

Jurisdiction

1. Clean Air Act ("CAA") §110(k)(6) confers upon the Administrator express authority to correct a prior action that resulted in, among other things, an area redesignation.

Factual and Procedural Background

2. I am the Control Officer of the Pinal County Air Quality Control District, an administrative branch of Pinal County. Pinal County constitutes a political subdivision of the State of Arizona. The Board of Supervisors of Pinal County has vested primary responsibility for air pollution control and abatement in the District, and has designated the Control Officer as the executive head of the District.

3. The City of Apache Junction, and surrounding environs, lie within Pinal County, just east of the Maricopa County border, and about 35 miles east of Phoenix. That specific portion of Pinal County in question is precisely described as Township 1 North, Range 8 East, Gila & Salt River Base & Meridian, Pinal County, Arizona, and can be fairly labelled the "Apache Junction Township."

4. Prior to the Clean Air Act Amendments of 1990, the Apache Junction Township was designated "attainment" for all purposes. Specifically, at 43 Fed. Reg. 8967 (3/3/78), the EPA apparently designated that area as "attainment" with regard to total suspended particulates ("TSP") or particulate matter ("PM"). Notably, the Apache Junction Township did not constitute part of the TSP nonattainment area that had been designated in adjoining Maricopa County.

5. The Apache Junction Township lies within the Central Arizona Intrastate Air Quality Control Region. as defined by the EPA at 45 Fed. Reg. 67345 (10/10/80). to consist of the whole of the area of Pinal and Gila Counties. In explaining the action, the EPA noted that it was "approving this redesignation because ... [it is for] purposes of improved air quality management ...." See 40 CFR §81.271.

6. At some time prior to August 7. 1987, the City of Apache Junction, Arizona, and/or Pinal County, Arizona, requested inclusion of at least portions of the Apache Junction Township in the Phoenix Planning Area, as defined by the Federal Highway Administration for purposes of administering the Federal Aid Urban System.

7. In December, 1986, the EPA published an analytical outline for determining whether various areas would be expected to violate the impending new PM_{10} standards. See *Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate Matter or PM_{10} Data*, EPA 450/4-86-017, December 1986 ("Probability Guideline").

8. On July 1, 1987, the EPA promulgated the new ambient standard for PM_{10} (See 52 FR 24634), as well as regulations ("Implementing Regulations") for implementing the revised ambient PM_{10} standard (See 52 FR 24672).

In the preamble to the Implementing Regulations, the EPA discussed the need to determine which portions of the country complied with or violated the revised standard. Rather than repeating the area-designation process outlined in CAA §107, the EPA proposed to administratively classify areas into three "groups," and for at least the Group I and Group II areas, call upon the States to submit SIP revisions that would both clarify the appropriate bounds for the designated areas, as well as present curative measures to the extent required.

In making those designations, the EPA indicated:

> For purposes of this program, "areas" are conceptually the same as "areas" for which classifications are designated in Part 81 .... The spatial extent of a PM_{10} attainment or nonattainment situation may differ from TSP area boundaries. Guidance is provided in the probability guideline for determining the area of exceedence of the PM_{10} NAAQS.

The EPA went on to explain that where actual data was not adequate to designate "Group areas," "EPA in cooperation with State agencies will use ... [available] data and the probability guideline to classify areas preliminarily ...."

In a footnote @ 24680, the EPA discussed the application of the "probability guideline" algorithm:

> The EPA has computerized the procedures described in the probability guideline and has made the computer software available to States to calculate nonattainment probabilities. The EPA has also made the results of its own calculations available to the States.

The EPA continued, explaining that even after preliminary "Group" designation on the basis of the "probability guideline," the Agency would then consult "with the appropriate State and local agencies ... to see whether information other than the probability of nonattainment justifies changing the group for an area," as well as to address classification of areas that lacked sufficient data to even apply the probability guideline analysis.

9. Five weeks later, on August 7, 1987 (52 FR 29383), the EPA published a listing ("Classification Regulation") of areas with classifications reflecting their respective likelihood of violating the PM_{10} NAAQS. Those with the greatest danger of failing to meet the standard were designated a "Group I" areas.

In explaining how it selected the "Group" designations, the EPA asserted that it had followed the methodology set forth in the Implementation Regulation preamble:

> An analysis of ambient total suspended particulate (TSP) data for 1984-1986 in conjunction with the methodology described in EPA's "probability guideline" (Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate Matter or PM_{10} Data, EPA 450/4-86-017) indicates that there could be from 50 to 150 counties in which the PM_{10} NAAQS will not be attained. ...
>
> The EPA presumed that ... areas with a probability of not attaining the PM 10 standard of at least 95 percent fit into Group I ....
>
> ... EPA's Regional Offices, after consulting with the appropriate State and local agencies, evaluated the existing TSP SIP's, available existing source data, and other relevant information for each area in their jurisdiction (1) to see whether information other than the probability of nonattainment justified changing the group for an area, and (2) to determine the appropriate group for areas that the EPA could not classify under the first step because ambient TSP data were unavailable.

10. In applying that group-designation standard in central Arizona, the Classification Regulation did not merely impose a "Group I" designation on the existing Maricopa County PM nonattainment area, but newly defined a regulatory domain to include the "Phoenix Planning Area," which included the Apache Junction Township.

11. The Clean Air Act Amendments of 1990 amended CAA §107(d)(4)(B), thereby invoking the outstanding preliminary "Group I" classification to effectively redesignate as a PM_{10} nonattainment area the entire Phoenix Planning Area, including the Apache Junction Township.

12. Review of available TSP monitoring data for the 1983-to-1986 period, using the Probability Guideline, shows that, in 1987, the Apache Junction Township had a predictive probability of not attaining the PM_{10} standard that did not exceed 20%.

13. Since 1987, Pinal County has maintained a PM_{10} monitor at the approximate geographic and population centroid of the Apache Junction Township. Since 1991, Pinal County has maintained parallel, adjoining, PM_{10} monitors at that site. In that period, the highest monitored 24-hour PM_{10} concentration only reached 51% of the 150 μg./m.^3 standard; the highest monitored annual average only reached 52% of the 50 μg./m.^3 annual PM_{10} standard. All monitored values fall well below the actual PM_{10} standards.

14. The closest "hot spots," exhibiting monitored PM_{10} exceedences, lie in Maricopa County some 15 or more miles to the southwest. Industrial development in the Apache Junction Township is minimal; even with a permit threshold set at a potential to emit of 1-ton-per-year, Pinal County permits only five particulate sources in the 36-square-mile area. The total inventory of regulated PM_{10} emission only reaches about 23 tons-per-year. There is no agricultural activity in the area. To the extent that unpaved roadways give rise to emissions, those roadways generally lie north and east of the monitoring site described above. Since those monitors lie between those unpaved roadways and the "hot spots" described above, even a cursory analysis will demonstrate that those roadways contribute virtually nothing to those far-removed exceedences in Maricopa County.

Argument

15. The Administrator's action in the Group Regulation, imposing a "Group I" designation on the Apache Junction Township, effectively resulted in the redesignation of the Apache Junction Township to "nonattainment." To the extent that action was in error, then under CAA §110(k)(6), the Administrator has authority to correct both the underlying "Group" classification, as well as the resulting "nonattainment" designation.

16. Based on information and belief, prior to classifying the Apache Junction Township as a "Group I" area in August of 1987, the EPA did not perform an analysis of locally generated ambient data for the 1984-through-1986 period, and thereby failed to meet the procedural standard established in the Implementing Regulations and the Classification Regulations. Further, lacking such an analysis, the EPA had no factual or technical basis to justify imposition of a "Group I" classification on the Apache Junction Township.

17. Based on information and belief, prior to classifying the Apache Junction Township as a "Group I" area in August of 1987, the EPA did not consult with affected local units of government, and thereby failed to meet the procedural standard established in the Implementing Regulations and the Classification Regulations.

18. Expansion of the Maricopa County TSP nonattainment area to a PM_{10} "Group I" area that included the Apache Junction Township, and thereby extended for the first time into the Central Arizona Intrastate Air Quality Control Region, violated the "norm" established in the Implementing Regulations, namely that the new "Group" areas would conform to the geographic boundaries of the areas previously classified in 40 CFR Part 81.

19. The conclusion that, as of 1987, the Apache Junction Township had a probability of not attaining the PM_{10} standard that did not exceed 20%, clearly shows that the EPA's action in the Classification Regulation, imposing a "Group I" designation on the Apache Junction Township, failed to conform to the standard of the Classification Regulation, which itself stated that a "Group I" designation would require "a probability of not attaining the PM 10 standard of at least 95 percent ...." Subsequent actual monitoring results resoundingly affirm the prediction of a remote likelihood of violating the PM_{10} standards.

Petition

20. In view of the clear error in the original imposition of a PM_{10} "Group I" label on the Apache Junction Township, the undersigned hereby petitions on behalf of Pinal County and its concerned citizens that the Administrator correct that classification as well as correspondingly correct the classification of the Apache Junction Township from PM_{10} "nonattainment" to PM_{10} "attainment."

Respectfully submitted,

Dated 3/27/97

Donald P. Gabrielson

Donald P. Gabrielson, Director
Pinal County Air Quality Control District

RESPONSIVENESS SUMMARY
to
Testimony Taken at Oral Proceeding and Written Comments Received on Proposed
2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area **Arizona State Implementation Plan**

The oral proceeding on the *2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area* (SIP) was held at 3:30 p.m., Tuesday, April 24, 2012, at the Arizona Department of Environmental Quality, Room 145, 1110 W. Washington Street, Phoenix, Arizona. No oral comments were received during the proceeding. Written comments from two parties were received during the public comment period. The public comment period closed Tuesday, April 24, 2012, at 5:00 p.m. The Arizona Department of Environmental Quality's (ADEQ) responses to the written comments that were received are described below.

Responses to comments from the Maricopa Association of Governments (MAG)

1. Comment: The sixth paragraph on page 3 of the proposed plan states that all of the control measures from the withdrawn MAG 2007 Five Percent Plan for PM-10 have been included in the Draft MAG 2012 Five Percent Plan for PM-10. To be consistent with language in the Draft MAG 2012 Five Percent Plan, this paragraph should state that a wide range of control measures from the 2007 Five Percent Plan continue to be implemented and are being resubmitted.

Response: The statement in the sixth paragraph on page 3 of the proposed plan that "all" of the control measures from the withdrawn MAG 2007 Five Percent Plan for PM-10 have been included in the Draft MAG 2012 Five Percent Plan for PM-10 has been revised to state that "a wide range" of control measures from the 2007 Five Percent Plan continue to be implemented and are being resubmitted.

2. Comment: Page 5 of the proposed plan should make clear that Township 1 North, Range 8 East is included as part of the Maricopa County PM-10 nonattainment area. This particular township by itself was never designated as a nonattainment area, which is implied by the first paragraph on page .

Response: Page 5 has been clarified to state that Township 1 North, Range 8 East is included as part of the Maricopa County PM-10 nonattainment area.

3. Comment: Page 7 of the proposed plan is largely provided as reference link to the air quality monitoring data and PM-10 emissions inventory data provided in the Draft MAG 2012 Five Percent Plan. As such, the opening paragraph discussion about prior attainment dates and control measure improvements is misplaced. To provide consistency with the referenced Draft MAG 2012 Five Percent Plan, a phrase before the first sentence of the second paragraph should be added to say "For information on the air quality conditions in the nonattainment area…" and the first paragraph on page 7 deleted or altered to reflect the focus of this chapter on assessing air quality conditions.

Response: The following phrase has been added before the first sentence of the second paragraph on page 7: "For information on the air quality conditions in the nonattainment area..." The first paragraph focuses on improvements in air monitoring conditions.

4. Comment: Page 11 of the proposed plan contains an incorrect Chapter V title. Five percent reductions and reasonable further progress are two separate requirements in the Clean Air Act and should not be combined as a single demonstration as implied by the current title. Since this chapter of the proposed plan is only describing the five percent reductions requirement, references to reasonable further progress should be removed.

Response: The title of Chapter V on page 11 of the proposed plan was changed to delete the reference to reasonable further progress.

5. Comment: Page 11 of the proposed plan contains the following sentence, "The revised Emission Inventory has reduced the annual tons of reductions required." This sentence can easily be interpreted in nonsensical ways and should be deleted.

Response: On page 11, the third sentence in the first paragraph "The revised Emission Inventory has reduced the annual tons of reductions required" has been changed to "Because the revised Emission Inventory reduced total emissions, the annual tons of reductions requirement has also been reduced."

6. Comment: Page 11 directs the reader to see Appendix B, Exhibit 2, Calculation *of Benefits from PM-10 Certified Street Sweepers Purchased with CMAQ Funds in 2001-2009* of the Draft MAG 2012 Five Percent Plan. Since street sweeping benefits in the Draft MAG 2012 Five Percent Plan are associated with contingency measures in the plan, reference to this section should be removed. This section is appropriately referenced on page 13 of the proposed plan.

Response: The reference to Appendix B, Exhibit 2, *Calculation of Benefits from PM-10 Certified Street Sweepers Purchased with CMAQ Funds in 2001-2009* of the Draft MAG 2012 Five Percent Plan has been removed from page 11 and retained on page 13.

7. Comment: The first sentence on page 13 of the proposed plan should be clarified to read that the control measures quantified to meet the five percent reduction requirement in the Draft MAG 2012 Five Percent Plan reduce PM-10 emissions by 16,089 tons between 2007 and 2012. This sentence seems more appropriately placed on page 11 of the proposed plan as a summary statement describing how the five percent requirement was met as opposed to the opening statement of a new chapter meant to describe the attainment demonstration.

Response: The first sentence on page 13 of the proposed plan has been clarified by removing the phrase "replacement plan" and revising the sentence to read as follows: "The control measures quantified to meet the five percent reduction requirement in the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* and in this 2012 plan reduce PM-10 emissions between 2007 and 2012 by 16,089 tons, a 27.2 percent reduction in total 2007 base case emissions."

8. Comment: The second paragraph on page 13 of the proposed plan mentions that Chapter Six of the Draft MAG 2012 Five Percent Plan contains an explanation of contingency measures and a request for an extension of the attainment date. This sentence should also state that Chapter Six of the Draft MAG 2012 Five Percent Plan provides a demonstration of reasonable further progress and an onroad mobile source emissions budget for the PM-10 nonattainment area.

Response: The following sentence has been added to the second paragraph on page 13 of the proposed plan: "Chapter Six of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* also provides a demonstration of reasonable further progress and an onroad mobile source emissions budget for the PM-10 nonattainment area."

9. Comment: The third paragraph on page 13 states that "Early implementation of the contingency reductions to the RFP reductions reduces base case PM-10 emissions by 19,527 tons". This sentence could be better clarified to state that early implementation of contingency measures reduce PM-10 emissions by 3,439 tons. The Draft MAG 2012 Five Percent Plan as a whole (five percent reductions and early implementation contingency reductions) reduces 2007 base case emissions by 19,527 tons in 2012.

Response: The sentence in the third paragraph on page 13 of the proposed plan concerning early implementation of contingency measures has been clarified to read as follows: "Early implementation of the contingency measures provides an additional 3,439 tons of reductions, which when added to the RFP reductions and the five percent reductions reduces the 2007 base case PM-10 emissions by 19,527 tons."

10. Comment: The fourth paragraph on page 13 states that "The 2012 plan demonstrates that all requirements of the Clean Air Act for this township have been met". This sentence should be clarified to better match Chapter Six of the Draft MAG 2012 Five Percent Plan which states that attainment is modeled and demonstrated throughout the nonattainment area, which includes the township addressed in this proposed plan.

Response: The first sentence of the fourth paragraph on page 13 has been clarified to read as follows: "The 2012 plan models and demonstrates attainment throughout the nonattainment area, including this township."

11. Comment: The sentence regarding the reason for the extension of the attainment deadline in the fourth paragraph of page 13 needs to be changed to match the rationale stated in the Draft MAG 2012 Five Percent Plan; which is that an extension of the attainment deadline was needed in order to model the benefits of the Dust Action General Permit which did not become fully effective until January 1, 2012.

Response: The sentence in the fourth paragraph of page 13 of the proposed plan "To include the entire 2012 calendar year of monitoring data, ADEQ requests extension of the attainment deadline to December 31, 2012, for the Pinal County portion of this nonattainment area." has been replaced with the following three sentences: "Modeled attainment can only be achieved in 2012, as the Dust Action General Permit measure does not become fully implemented until January 1, 2012. Modeled attainment cannot be demonstrated at all the monitors without taking

emission reduction credit for this new measure. ADEQ requests extension of the attainment deadline to December 31, 2012, for the entire nonattainment area, including this township in Pinal County."

12. Comment: In Appendix A of the proposed plan, the certified letter from the law reference librarian contains an error by stating that statute 49-507 is included as part of the certified copies. The letter should have referenced statute 49-501.

Response: The typographical error listing Arizona Revised Statute (A.R.S.) §49-507 instead of §49-501 in the certified letter from the Law Reference Librarian of the Arizona State Library, Archives and Public Records in Appendix A of the proposed plan has been corrected in a replacement certified letter provided by the Law Reference Librarian.

13. Comment: Appendix A of the proposed plan contains many other statutes than those listed in Table 1 of the proposed plan (pg. 9). To be consistent with the Draft MAG 2012 Five Percent Plan, the only copies of statutes that should be provided are the ones listed in Appendix C, Exhibit 1 of the Draft MAG 2012 Five Percent Plan. If ADEQ deems it necessary to include the whole copied page upon which a relevant statute appears, then the statutes that are not being submitted as part of this proposal should be blacked out; or alternatively, there should be a definitive statement in Appendix A that the only statutes being submitted for adoption into the Arizona SIP are the ones listed in Table 1 of the proposed plan.

Response: ADEQ has no authority to tamper with the certification of the Law Reference Librarian of the Arizona State Library, Archives and Public Records in Appendix A of the proposed plan. Although the pages attached to the certification include statutes in addition to those listed in her certification, the Law Reference Librarian has only certified those statutes listed in her certification and not other statutes included on the same pages. Table 1 on pages 9 and 10 of the proposed plan and the submittal letter to EPA each contain a definitive statement that the only statutes being submitted for adoption into the Arizona SIP are those listed in Table 1 of the proposed plan *2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area* and the corresponding table in the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area.*

Responses to comments from the Pinal County Air Quality Control Department (PCAQCD)

1. Comment: In 1987, Township 1 North, Range 8 East, Pinal County, Arizona was incorrectly designated a Group I Area with a 95% probability of nonattainment of the PM-10 standard, was incorrectly designated nonattainment pursuant to the 1990 Clean Air Act Amendments, and EPA never acted on Pinal County's 1997 petition for correction under Section 110(k) of the Clean Air Act.

Response: Group I areas were classified nonattainment by operation of law effective November 15, 1990, pursuant to Section 107 of the Clean Air Act. Section 110(k)(6) corrections of area designations are discretionary on the part of the Administrator of the Environmental Protection Agency. Since EPA has not acted on the petition, Section 110 planning requirements apply to the entire designated nonattainment area, including this township.

2. Comment: Pinal County takes issue with the assertion that "consistent control measures are required throughout the metropolitan Phoenix serious nonattainment area" and the application of the Dust Action General Permit to this township in Pinal County.

Response: The Department acknowledges Pinal County's comment regarding consistent control measures. The Dust Action General Permit applies to the entire nonattainment area, including this township in Pinal County, pursuant to A.R.S. §49-457.05. PCAQD's existing authority to enforce its own rules and to conduct outreach to prevent exceedances remains in effect. The Dust Action General Permit adopted by the Arizona Legislature is an additional tool that can be used, if necessary, to ensure that all sources are appropriately controlled.

3. Comment: Statutory exclusions in Table 1 on page 10 related to Arizona Revised Statutes §49-501 seem to rewrite the statute.

Response: Those portions of the A.R.S. revised by the legislature in 2007 and relied upon by MAG to demonstrate 5% annual reductions, reasonable further progress, and attainment are included in Table 1 for approval in this plan. All other portions of A.R.S. §49-501 were already approved into the Plan for the Serious Area on July 25, 2002.

4. Comment: The certification in Appendix A does not list statutes in numerical sequence because they are drawn from Thomson-West pocket parts, and it includes only portions of some statutes. The rationale for including only portions of some statutes should be provided.

Response: The Arizona Revised Statutes Annotated are trademarked and used under license by the publishing firm Thomson-West, including "pocket parts" that are inserted in the back cover of a volume to update the statutes instead of publishing an entire new statute volume. ADEQ has no authority to tamper with the certification of the Law Reference Librarian of the Arizona State Library, Archives and Public Records in Appendix A of the proposed plan. Only those portions of the Arizona Revised Statutes relied upon by MAG to demonstrate 5% annual reductions, reasonable further progress, and attainment are included in Table 1. While portions of other statutes are included on the same page as the certified sections, those noncertified portions are not being submitted as part of this plan.