	Waste Programs Division Substantive Policy Statement	Page 1 of 3
	Mining Operations that are Exempt from Pollution Prevention Plans	Rev. 001
		Effective:

This Substantive Policy Statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

1.0 Purpose

This policy statement explains ADEQ’s current position on whether sand and gravel, ready-mix concrete, hot-mix asphalt and cement production facilities are “mining or metallurgical operations” for purposes of the requirement to do a pollution prevention plan.

2.0 Definitions

“Cement production facility” means a facility that manufactures Portland, natural, masonry, pozzolanic, and other hydraulic cements.

“Hot-mix asphalt facility” means a facility that combines aggregates such as sand and gravel or crushed stone with bitumen or tar and adds heat for delivery to a work site.

“Pollution prevention plan” means the required facility analysis and report to ADEQ on ways to reduce the use of toxic substances and the generation of hazardous waste as described in A.R.S. § 49-961 et seq.

“Ready-mix concrete facility” means a facility that mixes Portland cement, water and aggregates such as sand and gravel or crushed stone in a precise mixture for delivery to a work site in an unhardened state.

3.0 Directive Statement

A.R.S. § 49-963(A) specifies that persons who use and release threshold amounts of toxic substances are required to do a pollution prevention plan (P2 plan). A.R.S. § 49-963(A) further provides that “toxic substance” does not include material used or produced in connection with a “mining or metallurgical operation.” ADEQ is interpreting A.R.S. § 49-963(A) such that sand and gravel operations are mining operations, and thereby exempt from the P2 plan requirements in Title 49, Chapter 5, Article 4 based on the use or production of toxic substances. In addition, ADEQ considers ready-mix concrete, hot-mix asphalt, and cement production facilities that are physically connected to a sand and gravel or other mining operation or are so interdependent with the operation so as to form one integral enterprise, to also be mining operations, and thereby exempt from the same P2 plan requirements based on the use or production of toxic substances. Any of these facilities may still be subject to P2 plan

requirements based on their generation of hazardous waste according to A.R.S. § 49-962(A)(2).

The physical connection or interdependence criteria are currently used to classify these facilities for safety inspections by the Arizona Division of Occupational Safety and Health (ADOSH) and the Arizona State Mine Inspector. A.R.S. § 23-408(B) authorizes ADOSH to *“inspect at least every six months any operation that mixes rock, sand, gravel or similar materials with water and cement or with asphalt and that is not included in the definition of mine in section 27-301.”* In A.R.S. § 27-301, *“Mine includes that portion of an operation which mixes rock, sand, gravel or similar materials with water and cement or with asphalt, provided that the operation is either physically connected to the mine or is so interdependent with the mine as to form one integral enterprise.”* The Arizona State Mine Inspector is required to inspect every mine at least once a year (A.R.S. § 27-124). ADEQ will use a list from the Arizona State Mine Inspector as guidance in determining which entities are mining or metallurgical operations and exempt from P2 Plan requirements.

4.0 Directive Owner (Person Responsible for Implementing & Maintaining the Directive – Title/Unit/Section/Division)

Sustainability Programs Unit Supervisor

5.0 Audience

Arizona industry as described above that may have to file a pollution prevention plan and ADEQ employees who implement the Arizona Pollution Prevention Plan requirement.

6.0 Communication & Training

The Sustainability Programs Unit Supervisor will schedule a unit meeting within 30 days of the policy effective date and annually thereafter to review policy and insure that Sustainability Programs Unit employees are familiar with its content, including procedures for compliance, audit and review.

7.0 Compliance & Audit Plan

Prior to each annual review, the Sustainability Programs Unit Supervisor will arrange for a records review to estimate the number of potential filers that have been determined exempt under the policy. Each annual review shall evaluate whether applicable external stakeholders are aware of the policy and explore methods to increase awareness if needed.

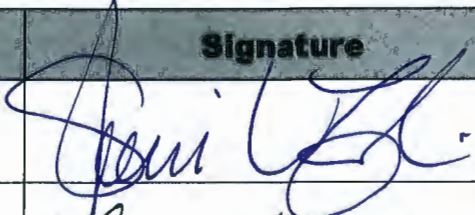

8.0 Review & Revision

This directive will be reviewed on an annual basis.

9.0 Additional Documentation

None

10.0 Approved by:

Title	Name	Signature	Date
Administrative Counsel	Sherri Zendri		2/11/15
Division Director	Laura Malone		2/9/15

11.0 Historical Note

[Describes the changes or updates to a directive, which serves as a reference for the reader to understand any past changes.]

Date	Change	Ref. Section