

September 15, 2010

TO: Members of the MAG Air Quality Technical Advisory Committee

FROM: Doug Kukino, Glendale, Chair

SUBJECT: MEETING NOTIFICATION AND TRANSMITTAL OF TENTATIVE AGENDA

Thursday, September 23, 2010 - 1:30 p.m.
MAG Office, Suite 200 - Saguaro Room
302 North 1st Avenue, Phoenix

A meeting of the MAG Air Quality Technical Advisory Committee has been scheduled for the time and place noted above. Members of the Air Quality Technical Advisory Committee may attend the meeting either in person, by videoconference or by telephone conference call. Those attending by videoconference must notify the MAG site three business days prior to the meeting. If you have any questions regarding the meeting, please contact Chair Kukino or Lindy Bauer at 602-254-6300.

Please park in the garage underneath the building, bring your ticket, and parking will be validated. For those using transit, Valley Metro/Regional Public Transportation Authority will provide transit tickets for your trip. For those using bicycles, please lock your bicycle in the bike rack in the garage.

In 1996, the Regional Council approved a simple majority quorum for all MAG advisory committees. If the MAG Air Quality Technical Advisory Committee does not meet the quorum requirement, members who arrived at the meeting will be instructed a legal meeting cannot occur and subsequently be dismissed. Your attendance at the meeting is strongly encouraged. If you are unable to attend the meeting, please make arrangements for a proxy from your entity to represent you.

Pursuant to Title II of the Americans with Disabilities Act (ADA), MAG does not discriminate on the basis of disability in admissions to or participation in its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Jason Stephens at the MAG office. Requests should be made as early as possible to allow time to arrange the accommodation.

TENTATIVE AGENDA

1. Call to Order

2. Call to the Audience

An opportunity will be provided to members of the public to address the Air Quality Technical Advisory Committee on items not scheduled on the agenda that fall under the jurisdiction of MAG, or on items on the agenda for discussion but not for action. Members of the public will be requested not to exceed a three minute time period for their comments. A total of 15 minutes will be provided for the Call to the Audience agenda item, unless the Air Quality Technical Advisory Committee requests an exception to this limit. Please note that those wishing to comment on action agenda items will be given an opportunity at the time the item is heard.

3. Approval of the July 29, 2010 Meeting Minutes

4. Update on CMAQ Projects for the Federal Fiscal Year 2010 Interim Year End Closeout

On May 25, 2010, the MAG Air Quality Technical Advisory Committee made a recommendation to forward the evaluation of the proposed Congestion Mitigation and Air Quality Improvement (CMAQ) Projects submitted for Federal Fiscal Year 2010 Interim Year End Closeout to the Transportation Review Committee for use in prioritizing projects. The MAG Regional Council took action on the projects in July 2010. An update on the Federal Fiscal Year 2010 Year End Final Closeout will be provided.

COMMITTEE ACTION REQUESTED

2. For information.

3. Review and approve the July 29, 2010 meeting minutes.

4. For information and discussion.

5. Update on Exceptional Events and MAG Five Percent Plan for PM-10

On July 2, 2010, the Environmental Protection Agency (EPA) published the proposed consent decree in the Federal Register, which indicated that EPA would propose action on the MAG Five Percent Plan for PM-10 by September 3, 2010, and finalize the action by January 28, 2011. The Arizona Department of Environmental Quality (ADEQ) submitted comments requesting that the schedule in the consent decree be delayed for at least six months to ensure that a final decision on exceptional events will be made by EPA based upon the best scientific information available. The Salt River Pima-Maricopa Indian Community, Maricopa County and MAG submitted comments in support of the ADEQ comments.

On August 2, 2010, the ADEQ transmitted supplemental information to EPA regarding the June 4, 2008 exceptional event and again requested that Region IX revisit its May 21, 2010 decision to not concur with the ADEQ exceptional events documentation. On August 24, 2010, EPA sent a letter to ADEQ indicating that EPA will be proposing action on the Five Percent Plan on September 3, 2010, and that EPA will be addressing the exceptional events in that action. On August 27, 2010, ADEQ and MAG submitted additional exceptional event documentation to EPA for review and consideration.

MAG has also been conducting outreach to the Congressional Delegation as directed by the Regional Council. On August 30, 2010, the Arizona Congressional Delegation sent a letter to EPA expressing concern with recent EPA decisions on exceptional events and the MAG Five Percent Plan for PM-10. In addition, the California Air Resources Board sent a letter to EPA expressing concern with the EPA denial of the Imperial County exceptional events. On

5. For information and discussion.

August 17, 2010, the Imperial County Air Pollution Control District approved the pursuit of all appropriate legal remedies to challenge EPA's limited disapproval of their dust control rules, tied to the disapproval of the exceptional events. On September 1, 2010, ADEQ and MAG sent a joint letter to EPA to express concern with the process used by EPA to implement the Exceptional Events Rule and to request an extension of at least six months before EPA proposes action on the Five Percent Plan. On September 2, 2010, EPA sent a letter to the Delegation, ADEQ, and MAG indicating that the proposed action will occur on September 3, 2010.

On September 3, 2010, the EPA Regional Administrator signed a notice that proposed partial approval and partial disapproval of the Five Percent Plan for PM-10 for the Maricopa County nonattainment area. The notice was published in the Federal Register on September 9, 2010, and comments are due by October 12, 2010. Please refer to the enclosed material.

6. EPA Delays Release of Final Ozone Standards

On August 23, 2010, the Environmental Protection Agency indicated that the new revised eight-hour ozone standard would be announced at the end of October 2010. EPA had originally intended to announce the new standard by August 31, 2010. Please refer to the enclosed material.

7. Call for Future Agenda Items

The next meeting of the Committee has been tentatively scheduled for Thursday, October 28, 2010 at 1:30 p.m. The Chairman will invite the Committee members to suggest future agenda items.

6. For information and discussion.

7. For information and discussion.

MINUTES OF THE
MARICOPA ASSOCIATION OF GOVERNMENTS
AIR QUALITY TECHNICAL ADVISORY COMMITTEE MEETING

Thursday, July 29, 2010
MAG Office
Phoenix, Arizona

MEMBERS ATTENDING

Doug Kukino, Glendale, Chairman
Gaye Knight, Phoenix, Vice Chair
Paul Lopez for Sue McDermott, Avondale
#Elizabeth Biggins-Ramer, Buckeye
#Jim Weiss, Chandler
#Jamie McCullough, El Mirage
Kurt Sharp for Tami Ryall, Gilbert
*Cato Esquivel, Goodyear
Greg Edwards for Scott Bouchie, Mesa
William Mattingly, City of Peoria
Larry Person, Scottsdale
Antonio DeLaCruz, Surprise
Oddvar Tveit, Tempe
*Mark Hannah, Youngtown
Ramona Simpson, Queen Creek
*American Lung Association of Arizona
#Wendy Crites for Grant Smedley, Salt River Project
Brian O'Donnell, Southwest Gas Corporation
*Mark Hajduk, Arizona Public Service Company
#Gina Grey, Western States Petroleum Association
*Valley Metro/RPTA
Dave Berry, Arizona Motor Transport Association
Jeannette Fish, Maricopa County Farm Bureau

*Russell Bowers, Arizona Rock Products Association
*Greater Phoenix Chamber of Commerce
#Amanda McGennis, Associated General Contractors
*Spencer Kamps, Homebuilders Association of Central Arizona
#Mannie Carpenter, Valley Forward
Erin Taylor, University of Arizona Cooperative Extension
Beverly Chenausky, Arizona Department of Transportation
Diane Arnst, Arizona Department of Environmental Quality
*Environmental Protection Agency
Bob Downing for Jo Crumbaker, Maricopa County Air Quality Department
Duane Yantorno, Arizona Department of Weights and Measures
*Ed Stillings, Federal Highway Administration
*Judi Nelson, Arizona State University
Christopher Horan, Salt River Pima-Maricopa Indian Community

*Members neither present nor represented by proxy.
#Participated via telephone conference call.
+Participated via video conference call.

OTHERS PRESENT

Lindy Bauer, Maricopa Association of Governments
Dean Giles, Maricopa Association of Governments
Patrisia Magallon, Maricopa Association of Governments
Julie Hoffman, Maricopa Association of Governments
Feng Liu, Maricopa Association of Governments
Taejoo Shin, Maricopa Association of Governments
Ieesuck Jung, Maricopa Association of Governments
Adam Xia, Maricopa Association of Governments
Mike Sabatini, Maricopa County Department of Transportation
Mitch Wagner, Maricopa County Department of Transportation
Joe Gibbs, City of Phoenix
Dan Blair, Gila River Indian Community

Scott DiBiase, Pinal County Air Quality
Shane Kiesow, City of Apache Junction
Heather Hodgman, City of Apache Junction
Dan Catlin, Fort McDowell Yavapai Nation
Russell Van Leuven, Arizona Department of Agriculture
Joonwon Joo, Arizona Department of Transportation
Hannah Rosen, Soilworks, LLC
Jamie Wilson, Trinity Consultants
Frank Schinzel, Maricopa County Air Quality Department
Michele Mellott, Arizona Department of Weights and Measures

1. Call to Order

A meeting of the MAG Air Quality Technical Advisory Committee was conducted on July 29, 2010. Doug Kukino, City of Glendale, Chair, called the meeting to order at approximately 1:30 p.m. Wendy Crites, Salt River Project; Amanda McGennis, Associated General Contractors; Jamie McCullough, City of El Mirage; Elizabeth Biggins-Ramer, Town of Buckeye; Mannie Carpenter, Valley Forward; Jim Weiss, City of Chandler; and Gina Grey, Western States Petroleum Association, attended the meeting via telephone conference call.

Mr. Kukino stated that Gaye Knight, City of Phoenix, Vice Chair, is retiring. He mentioned that Ms. Knight is one of only a few original members of the Committee. Mr. Kukino stated that she is the author of many if not all of the City's Air Quality Plans and is a constant voice of reason on the Committee. He added that Ms. Knight is a friend and trusted colleague that will be missed. Mr. Kukino presented Ms. Knight with a Resolution of Appreciation for her work on the MAG Air Quality Technical Advisory Committee.

Ms. Knight thanked Mr. Kukino and the Committee for the recognition. She indicated that she was volunteering as the Arizona Clean Air Coalition representative when she began working with Lindy Bauer, MAG. Ms. Knight stated that she also worked at the Arizona Department of Environmental Quality (ADEQ). She mentioned that her work in air quality has spanned 25 years. Prior to air quality Ms. Knight had a career in ultrasound and X-ray for a number of years. Ms. Knight stated that it has been a difficult decision to retire; however, it is time to move on to find her next passion.

Ms. Bauer expressed appreciation to Ms. Knight on behalf of the MAG staff. She stated that it has been a pleasure working with Ms. Knight and she has been a go-to person in the City of Phoenix. Ms. Bauer indicated that she will be missed. Ms. Knight mentioned that her last day with the City of Phoenix is August 13, 2010. She noted that there will be a reception on the first floor of City Hall at 10:30 a.m. on August 13th and indicated that Committee members are welcome to attend.

2. Call to the Audience

Mr. Kukino stated that according to the MAG public comment process, members of the audience who wish to speak are requested to fill out comment cards, which are available on the tables adjacent to the doorways inside the meeting room. Citizens are asked not to exceed a three minute time period for their comments. Public comment is provided at the beginning of the meeting for nonagenda items and nonaction agenda items. He noted that no public comment cards had been received.

3. Approval of the June 24, 2010 Meeting Minutes

The Committee reviewed the minutes from the June 24, 2010 meeting. Larry Person, City of Scottsdale, moved and Jeannette Fish, Maricopa County Farm Bureau, seconded and the motion to approve the June 24, 2010 meeting minutes carried unanimously.

4. Request for Project Change from Surprise

Dean Giles, MAG, briefed the Committee on a request for project change from the City of Surprise. He indicated that the request is a change to the project location of a FY 2012 PM-10 paving project SUR12-801, from Dove Valley Road: 163rd Avenue to 179th Avenue to Dove Valley Road: 187th Avenue to 203rd Avenue. Mr. Giles stated that the change is requested due to significant drainage

features associated with the prior project location. He noted that there is no change to the project length or estimated emission reductions.

Mr. Giles indicated that this project was originally approved in a ranking by the Committee on December 11, 2008. He stated that in accordance with the MAG Federal Fund Programming Principles, a project change request comes back to this Committee and any recommendation is forwarded to the MAG Transportation Review Committee (TRC). Mr. Giles mentioned that this item is on the agenda for information, discussion, and recommendation for approval of the City of Surprise request to change the project location for SUR12-801, to Dove Valley Road: 187th Avenue to 203rd Avenue and forward the recommendation to the MAG TRC.

Brian O'Donnell, Southwest Gas Corporation, inquired if there is a change to the project cost. Mr. Giles responded that there is no change to the project cost. Dave Berry, Arizona Motor Transport Association, recommended approval of the City of Surprise request to change the location for SUR12-801, to Dove Valley Road: 187th Avenue to 203rd Avenue and forward the recommendation to the MAG TRC. Ms. Knight seconded, and the motion carried unanimously.

5. Update on Exceptional Events and MAG Five Percent Plan for PM-10

Ms. Bauer provided an update on the exceptional events and MAG Five Percent Plan for PM-10. She indicated that on June 21, 2010, the MAG Regional Council Executive Committee had directed staff to retain legal counsel and other consultants to take administrative action needed regarding the Environmental Protection Agency (EPA) nonconcurrence on the four high wind exceptional events and EPA's intent to disapprove the MAG Five Percent Plan for PM-10. Ms. Bauer reported that MAG has now engaged Mr. Roger Ferland and associates from the law firm of Quarles and Brady, LLP to assist MAG with these matters. In addition, MAG is seeking additional expertise in air quality communications and intergovernmental relations with the public and EPA. Due to the tight timeframes, it is anticipated that this expertise will be available in mid-August 2010.

Ms. Bauer stated that it was previously reported to the Committee that on June 23, 2010, EPA and the Center for Law in the Public Interest had come to agreement on a timetable for EPA to take action on the MAG Five Percent Plan for PM-10. According to the proposed consent decree, EPA has to propose action on the Plan by September 3, 2010, and finalize the action by January 28, 2011. She indicated that the proposed consent decree has now been published in the Federal Register and public comments are due by August 2, 2010.

Ms. Bauer mentioned that MAG is working on comments to be submitted and coordinating closely with ADEQ and the Maricopa County Air Quality Department. She stated that it was reported at the last meeting that comments were being prepared on the EPA technical support document in which EPA said it did not concur with the exceptional events. Ms. Bauer noted that those comments have now been submitted to EPA. She added that the ADEQ Director submitted the ADEQ comments on June 30, 2010.

Ms. Bauer indicated that there are three principal concerns with EPA's review of the exceptional event request. First, EPA is not always consistent with its own Exceptional Events Rule. Second, EPA failed to take into account some of the ADEQ supporting data and analysis. In fact, ADEQ issued a press release stating that EPA did not review a great deal of the scientific information associated with the exceptional events. Third, EPA is also not consistent with its August 27, 2007 concurrence with

California's request to exclude data from the determination of attainment status for the San Joaquin Valley. Ms. Bauer added that ironically, the State of Arizona made the same comment regarding exceptional events as San Joaquin; however, EPA does not agree with our State. She stated that the demonstrations were substantially identical.

Ms. Bauer stated that the process was unfair. She mentioned that when MAG and ADEQ knew EPA had concerns with four exceptional events, additional supplemental information was submitted by the State. It was anticipated that EPA would report back and provide their thinking on the information. Instead, EPA held a meeting on May 25, 2010 and said no. Ms. Bauer mentioned that additional supplemental information for the four high wind exceptional events will be submitted by August 2010. She noted that this is also mentioned in the ADEQ letter.

Ms. Bauer mentioned that ADEQ also submitted MAG's comments to EPA on July 2, 2010 which are in support of the ADEQ comments. She indicated that a letter from the Western States Air Resources (WESTAR) Council has been included in the agenda packet. Ms. Bauer stated that WESTAR has expressed concern that EPA has not yet addressed the Exceptional Events Rule implementation issues pointed out by 15 western states. The letter indicates that solving these issues are more critical than ever. She noted that EPA has turned down requests for exceptional events for Arizona and California. Ms. Bauer mentioned that both states feel that they have met the exceptional events requirements and EPA's own rule. She discussed additional information provided in the meeting agenda packets. Ms. Bauer noted that there is a letter in the packet from State Senator Carolyn Allen as well.

Antonio DeLaCruz, City of Surprise, inquired if EPA is asking for more measures or changes at the monitor sites. Ms. Bauer replied that MAG has asked EPA for the approvability issues with the Five Percent Plan for PM-10. She noted that there are several next steps and we cannot wait to see if this is going to be successful. Ms. Bauer stated that there were a series of emails that went back and forth and Colleen McKaughan, EPA, has indicated that she cannot discuss the approvability issues with us since they have to be cleared through EPA Region IX and EPA Headquarters. To date, MAG does not have a list of the approvability issues from EPA.

Ms. Bauer noted that MAG has received the Maricopa County 2008 PM-10 Periodic Emissions Inventory. She added that MAG had discussed with the Committee in a previous meeting the types of changes that may be needed in the Plan. Ms. Bauer stated that new measures may need to be added to the Plan if clearance is not given for the 2008 and 2009 monitoring data. She indicated that the modeling will need to be revised and three years of clean data is necessary at all the PM-10 monitors.

Amanda McGennis, Associated General Contractors, asked about the timeline. Ms. Bauer responded that EPA needs to provide the approvability issues. She noted that the Serious Area PM-10 Plan already has 77 measures and there are 53 measures in the Five Percent Plan. Ms. Bauer added that there have been no exceedances of the PM-10 standard in 2010. She stated that some technical questions have also been posed to EPA; however, a response has not yet been provided. Ms. McGennis inquired if EPA gave a timeline for providing the approvability issues. Ms. Bauer replied no timeline has been given. She added that typically when EPA publishes the proposed action on a plan, it will state the approvability issues in the Federal Register notice. According to the proposed consent decree, that would be September 3, 2010. Ms. Bauer stated that the approvability issues have been requested from EPA as soon as possible since time is necessary to deal with these types of issues. Ms. McGennis asked if MAG would like the Committee members to also provide comments by August 2, 2010. Ms. Bauer responded that is up to each stakeholder.

Diane Arnst, ADEQ, commented that starting in October 2009 there has been a Five Percent Plan Technical Study Committee that includes MAG, City of Phoenix, Maricopa County Air Quality Department, Arizona Department of Transportation, and others. She mentioned the five temporary monitors that have been installed along the Salt River bed, visibility cameras, soil sampling effort, and particle speciation effort. Ms. Arnst indicated that we are trying to understand better what it is that we may not understand about the exceptional events that may help us in formulating a more effective control strategy or explaining why there is no better control strategy.

Ms. Knight stated that it is difficult to develop new measures when all the research has not been completed. She mentioned that phenomenal research is being done. Ms. Knight added that until the data is completed it is hard to go back and develop measures until the sources are known. She indicated that the region has been working hard to determine the sources in the Salt River Area. Ms. Knight discussed the difficulties with determining the sources in that area. Ms. Bauer added that the intent is to find out what is happening during high wind exceptional events. She noted that there have been no PM-10 violations under stagnant conditions since the Five Percent Plan was submitted. Ms. Bauer indicated that MAG has reviewed the ADEQ exceptional events documentation and has had the MAG consultant drill down into the information. She stated that MAG believes they are exceptional events and should be approved by EPA.

Mr. Kukino referred to MAG engaging Mr. Ferland on the issue and inquired about the timeframe and general scope of the legal aspect. Ms. Bauer replied that as indicated in the agenda packet, MAG has engaged Mr. Ferland to give legal advice and MAG will be submitting comments for the docket on the proposed consent decree by August 2, 2010. She added that MAG is working with ADEQ and Maricopa County.

Larry Person, City of Scottsdale, stated that EPA has been an important partner in this process to improve air quality in the region for a number of years. He noted that there is an EPA representative on the MAG Air Quality Technical Advisory Committee that has not attended in several meetings. Mr. Person referred to earlier comments regarding the EPA liaison for Arizona being unable to assist the region. He asked if the region is still effectively partnering with EPA to help work through these issues. Ms. Bauer stated that it is difficult to call it a collaborative process based on the events that took place at the May 25, 2010 meeting with EPA. She indicated that ADEQ has conducted a lot of diligent, hard, scientific work on these exceptional events. Ms. Bauer added that at the meeting with EPA, the feeling from MAG, ADEQ, Maricopa County, and the City of Phoenix was that the process was unfair. She indicated that there was no warning on what EPA was going to say at the meeting.

Ms. Bauer stated that it was known EPA had some concerns and supplemental information was submitted to EPA to address those concerns. It was expected that EPA would come back with a response to the supplemental information. She noted that it is supposed to be a collaborative process and it did not appear to be collaborative on at the meeting. Ms. Bauer stated that MAG, ADEQ, and Maricopa County would like to have a good cooperative relationship with EPA; however, at this time it is difficult given the lack of collaboration by EPA. Mr. Kukino thanked Ms. Bauer for the update.

6. Final 2008 PM-10 Periodic Emissions Inventory

Bob Downing, Maricopa County Air Quality Department, provided an overview of the 2008 PM-10 Periodic Emissions Inventory. He indicated that a draft of the inventory was presented to the MAG Air Quality Technical Advisory Committee on April 29, 2010 at the beginning of a 30-day public

comment period. Mr. Downing stated that there was a public hearing on May 14, 2010 and no public comments were received. He mentioned that internally, some technical corrections were made to a few source categories. In addition, new mobile source data was received from Luke Air Force Base in late June. Mr. Downing stated that this new data has been included in the final inventory.

Mr. Downing discussed key highlights from the 2008 PM-10 Periodic Emissions Inventory. He mentioned that overall the PM-10 emissions are 13 percent less than in 2005. Mr. Downing indicated that a lot of the reductions are from construction and overall stationary sources. He stated that compared to the previous inventory, there are increased contributions from paved and unpaved roads and windblown dust. Some of the changes are due to better information on the activities and new or improved methods of calculating emissions.

Mr. Person referred to the 2005 PM-10 Periodic Emissions Inventory which was 84,753 tons per year. He stated that the unpaved road portion of the inventory was 16 percent or approximately 13,000 tons. Mr. Person indicated that the 2008 PM-10 Periodic Emissions Inventory shows that the unpaved road fugitive dust emissions are 11,710 tons per year, which is a reduction. However, Mr. Downing just stated that unpaved road emissions have increased since 2005. Mr. Person inquired about why the numbers do not support the statement. Mr. Downing responded that he does not have the 2005 data with him and would need to report back to Mr. Person. Ms. Bauer inquired if Mr. Downing is referring to the fact that emissions have decreased; however, unpaved road emissions are now a larger piece of the pie chart. Mr. Downing discussed the changes that occur when comparing the pie charts from 2005 to 2008.

Mr. Person commented that he has made the point at a previous meeting that the pie chart can convey a message that is not intended. He added that nobody in the region would agree that a lot more unpaved roads and emissions from unpaved roads have been created from 2005 to 2008. From his perspective it has gone in the opposite direction. Mr. Person stated that the numbers provided by Mr. Downing indicate a reduction as well. He mentioned that he is troubled by the statement made and the pie chart representation. Mr. Downing replied that the pie chart is only one representation. He discussed the difficulties in presenting the data which is why Maricopa County is providing the information in three forms: the one-page pie chart; the two-page tabular summary; and the 150-page 2008 PM-10 Periodic Emissions Inventory. Those with questions or concerns on any of the categories are encouraged to drill down in the full document.

Ms. Knight commented that the issue may be the communication. She suspects that the reason some categories increased as a percent of the pie chart is because construction decreased. Ms. Knight noted that construction will increase again. She asked that as Maricopa County communicates the 2008 PM-10 Periodic Emissions Inventory, that they indicate road emissions decreased even though it appears they increased. Ms. Knight indicated that the region has accomplished reduced emissions and that could be a powerful message. Mr. Downing noted the comments. He added that Maricopa County is working on a new stacked bar format with both sets of information, which should address some of these concerns.

Ms. Fish referred to comments by Cathy Arthur, MAG, at a previous meeting on different methodologies used to determine the windblown contributions. She noted that these are broken down in the 2008 inventory versus the 2005 inventory. Mr. Downing added that the land use categories used by MAG have changed in the interim as well. Ms. Fish stated that this may also be part of the

explanation. Mr. Downing mentioned that knowledge of the activity on the unpaved roads has also changed in the interim. He referred to the MAG unpaved roads study.

Ms. Bauer stated that she had a copy of the pie chart where MAG projected the emissions for 2010 as a result of the implementation of the committed measures and contingency measures. She stated that Ms. Arthur pointed out at a previous meeting that MAG projected in 2010 that the total emissions would be 73,670 tons per year. Ms. Bauer noted that the 2008 PM-10 Periodic Emissions Inventory is 73,410 tons per year, which is close. She added that the big change is the windblown dust category.

Mr. O'Donnell commented that it would be interesting to show what the emissions would be if the region just had untouched land. He stated that the vacant land is 9,500 tons per year. Mr. O'Donnell inquired what the emissions in the region would be if all the land was vacant. He asked if this would assist the region in making its case. Mr. Downing responded that analysis has not been conducted. Mr. O'Donnell commented on wind blowing in a desert. Mr. Downing indicated that the appendix of the inventory discusses the methodology used. He added that there has been many discussions on the assumptions, which are conservative.

Ms. Knight stated that the comment of living in a desert does not hold since there are not PM-10 violations at Organ Pipe National Monument. She indicated that vacant lots have been disturbed by human activity. Ms. Knight mentioned that if the whole Valley was vacant lots, the control measures would be to stabilize them since they have been disturbed by human activity. Mr. O'Donnell stated that there is significant PM-10 during wind disturbances. Ms. Knight replied that is true where the land has been disturbed, but not in the virgin desert. She stated that she has been told for years there is a monitor at Organ Pipe National Monument that does not violate the PM-10 standard since it has a desert crust.

Mr. Person inquired if the Maricopa County Rule Effectiveness Study was folded into the 2008 PM-10 Periodic Emissions Inventory. He recalled that there have been no exceedance in 2010 and it appears the measures that are in place are working. Mr. Person stated that it was his understanding that the rule effectiveness for unpaved roads has improved in recent years. Mr. Downing responded that the Rule Effectiveness Studies are found in Appendix Three of the 2008 PM-10 Periodic Emissions Inventory. He mentioned the six Rule Effectiveness Studies conducted. Mr. Downing indicated that these are reflected in the emissions being presented in the inventory.

Mr. Downing addressed an earlier comment by Mr. O'Donnell. He stated that the list of land use categories is not exhaustive. Categories such as the natural desert where there is no activity and it is assumed to be crusted over, emissions are assumed to be zero. Therefore, this category does not even appear on the emissions summary. Mr. O'Donnell asked if there is no baseline. Mr. Downing replied that the emissions on natural desert are assumed to be zero and vacant refers to land that has some level of disturbance.

Mr. Downing indicated that the Maricopa County Air Quality Department is currently working on the 2008 ozone precursor inventory (volatile organic compounds, nitrogen oxides, and carbon monoxide) for the County and the eight-hour ozone nonattainment area. He stated that an agency review draft is expected in mid-August 2010 with the final report to be completed in September 2010. Mr. Downing added that the data would then be submitted electronically for inclusion in the National Emissions Inventory.

Mr. Kukino asked about the date for the next PM-10 Periodic Emissions Inventory. Mr. Downing responded that 2011 will be the next periodic reporting year. Mr. Kukino inquired if there would be another inventory between the 2008 and 2011 reporting years. Mr. Downing replied that there will be interim assessments as done for the Five Percent Plan; however, the full inventory is only conducted every three years. Mr. Kukino thanked Mr. Downing and the Maricopa County Air Quality Department staff for their efforts in producing the 2008 PM-10 Periodic Emissions Inventory.

7. Call for Future Agenda Items

Mr. Kukino announced that the next meeting of the Committee has been tentatively scheduled for Thursday, August 26, 2010 at 1:30 p.m. Ms. Arnst asked if MAG will be posting its comments on the proposed consent decree to the MAG website. Ms. Bauer replied that the comments will be public information. With no further comments, the meeting was adjourned at 2:22 p.m.



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September 15, 2010

TO: Members of the MAG Air Quality Technical Advisory Committee

FROM: Lindy Bauer, Environmental Director

SUBJECT: EPA PROPOSED PARTIAL APPROVAL AND DISAPPROVAL OF THE MAG 2007 FIVE PERCENT PLAN FOR PM-10

On September 3, 2010, the Environmental Protection Agency (EPA) signed a notice to propose partial approval and disapproval of the MAG 2007 Five Percent Plan for PM-10 based on the timetable in the consent decree with the Arizona Center for Law in the Public Interest. The notice was published in the Federal Register on September 9, 2010 and comments are due by October 12, 2010. If EPA finalizes the partial disapproval on January 28, 2011, a conformity freeze on the MAG Transportation Improvement Program (TIP) and Regional Transportation Plan (RTP) would occur in approximately thirty days; only projects in the first four years could proceed. If the problem is not corrected within eighteen months, tighter controls on major industries would be imposed. If the problem is still not corrected within twenty-four months of the disapproval, the loss of federal highway funds (\$1.7 billion) and a federal implementation plan would be imposed. Conformity would also lapse, which would place the \$7.4 billion TIP at risk. Background information is provided below.

EPA NONCONCURRENCE WITH EXCEPTIONAL EVENTS AND FLAWED EXCEPTIONAL EVENTS RULE

The MAG 2007 Five Percent Plan for PM-10 was submitted to the Environmental Protection Agency by the December 31, 2007 deadline. The plan contained fifty-three aggressive measures designed to reduce PM-10 emissions by five percent per year and attain the standard by 2010. Commitments to implement measures were received from the twenty-three cities and towns in the PM-10 nonattainment area, Maricopa County, and the State. In order for the region to be deemed in attainment, three years of clean data were needed at the monitors in 2008, 2009, and 2010.

The Arizona Department of Environmental Quality (ADEQ) and MAG believe that the plan has been effective. There have been no violations of the standard during stagnant conditions since the plan was submitted in 2007. The Arizona Department of Environmental Quality had submitted documentation to EPA on 2008 high wind exceptional events, since high wind exceptional events should not count against the region. On April 21, 2010, the Arizona Department of Environmental Quality indicated that the exceedances in 2009 were due to high wind exceptional events. To date, there have been no exceedances of the standard in 2010.

A Voluntary Association of Local Governments in Maricopa County

On December 2, 2009, the Arizona Center for Law in the Public Interest filed a lawsuit against EPA for failure to take action on the plan by June 30, 2009 in accordance with the Clean Air Act. The Environmental Protection Agency reviewed the plan that was submitted two years ago and issues began to emerge. The plan was based upon a 2005 emissions inventory that is now outdated with the downturn in the economy; the mix of sources has changed. The EPA had concerns with the Arizona Department of Environmental Quality exceptional events documentation of four high wind exceedances in 2008 at the West 43rd Avenue monitor. If these were not approved as high wind exceptional events, this would count as a violation at the West 43rd Avenue monitor and the region would not have its first year of clean data needed for attainment.

At a December 15, 2009 meeting with EPA, the Arizona Department of Environmental Quality, Maricopa County, and MAG committed that they would thoroughly investigate why the West 43rd Avenue monitor was having high readings during high wind conditions. To address the EPA concerns, the Arizona Department of Environmental Quality prepared extensive additional scientific information and submitted it to EPA regarding the four high wind exceedances being questioned. The Maricopa Association of Governments staff and Sierra Research, MAG consultant, assisted the ADEQ with the research and documentation. The additional scientific information indicated that the four exceedances were due to high speed winds blowing dust toward the monitor, as the winds moved over a smooth terrain where they picked up dry, fine, silty soil from a dry riverbed. Also, a data collection effort was initiated in the vicinity of the West 43rd Avenue monitor to determine the cause of the high wind exceedances by ADEQ, MAG, Maricopa County Air Quality Department, and Arizona State University. EPA staff also participated in the research effort.

On May 25, 2010, the EPA Region IX Administrator conducted a meeting to announce that EPA would not concur with the ADEQ documentation for the four high wind exceptional events at the West 43rd monitor. It is important to note that the EPA Region IX Administrator acknowledged that the EPA Exceptional Events Rule was flawed, but EPA was forced to use it. As a result, the four exceedances would constitute a violation at the monitor and the region would not have its first of three years of clean data needed to attain the standard by 2010. Therefore, EPA intended to propose disapproval of the MAG Five Percent Plan for PM-10. There was no discussion by EPA on the additional scientific data that had been submitted by ADEQ. Instead, EPA announced that a final decision had been made. At the meeting, MAG expressed concern that there was disagreement with the EPA technical analysis and that this had not been a fair and collaborative process.

For the May 25, 2010 meeting, MAG had been prepared to discuss the merits of the City of Phoenix Rio Salado Oeste Project that will be a permanent long-term solution for stabilization of the Salt River area where the West 43rd Avenue monitor is located. Rio Salado is an environmental restoration project with the Army Corps of Engineers that includes flood control improvements and recreation features. A five-mile stretch of the Salt riverbed is already constructed from 24th Street to 19th Avenue. The Rio Salado Oeste Project will connect and continue the restoration of the Salt River area from 19th to 83rd avenues. The project corrects years of ecosystem damage to the riverbed. The City of Phoenix received the 404 permit in December 2009, which was necessary to start the project. Unfortunately, EPA announced at the meeting that their decision was final and there was no opportunity provided to discuss the project.

Regarding the flawed Exceptional Events Rule, the Western States Air Resources Council (WESTAR), an association of fifteen western state air quality management agencies, had identified several issues with the

implementation of the rule in a September 11, 2009 letter. Many of the problems are traced to the lack of clarity surrounding EPA's expectation about what a state should submit in its exceptional events documentation. On July 6, 2010, WESTAR sent another letter expressing concern that EPA has not addressed the issues with the Exceptional Events Rule. Solving these issues is more critical than ever. The letter further indicates that EPA has issued decisions not to concur with California and Arizona exceptional events where both states are highly confident that these exceedances do meet the criteria in the Rule for qualifying as exceptional events.

Following the May 25, 2010 meeting, ADEQ and MAG reviewed the EPA technical support document on the review of the four exceptional events. It was apparent that the EPA review was not always consistent with the Exceptional Events Rule, failed to take into account all of the scientific information provided by ADEQ, and was not consistent with the way that EPA had handled other areas. Over the next few months, ADEQ and MAG continued to generate additional documentation for the four exceptional events and submitted the information to EPA for consideration.

On June 23, 2010, EPA entered into a proposed consent decree with the Arizona Center for Law in the Public Interest to sign a notice of proposed action on the plan by September 3, 2010 and sign a notice of final action by January 28, 2011. The Arizona Department of Environmental Quality, Maricopa County, Salt River Pima-Maricopa Indian Community, and MAG submitted comments on the proposed consent decree requesting that both actions be delayed for six months to give EPA sufficient time to review and consider the additional scientific data on the four high wind exceptional events. On August 30, 2010, the Arizona Congressional Delegation sent a letter to EPA requesting a delay and then conducted a conference call with EPA on September 2, 2010. However, EPA indicated that the extension of time would not be granted.

PROPOSED PARTIAL APPROVAL AND DISAPPROVAL OF THE PLAN

On September 3, 2010, the Environmental Protection Agency signed a notice to propose partial approval and disapproval of the MAG 2007 Five Percent Plan for PM-10 based on the timetable in the consent decree with the Arizona Center for Law in the Public Interest. On September 9, 2010, the notice was published in the Federal Register and comments are due by October 12, 2010. EPA proposed disapproval of the emissions inventories, attainment demonstration, five percent annual reductions in emissions, reasonable further progress and milestones, contingency measures, and the 2010 motor vehicle emissions budget. EPA proposed limited approval and disapproval for agricultural regulations. EPA proposed approval of the Arizona Revised Statutes that mandate twenty measures in the plan and the Agricultural Best Management Practices Guidance Booklet and Pocket Guide. The approved plan measures are listed in Attachment One.

According to EPA, there are two major reasons for the proposed partial disapproval of the plan:

1. EPA contended that the 2005 baseline emissions inventory is inaccurate since it overestimated construction emissions and other emissions - The 2005 emissions inventory prepared by the Maricopa County Air Quality Department is the foundation upon which the plan is developed. The emissions inventory is tied to the air quality modeling prepared by MAG for the five percent reductions in emissions; impact of the committed plan measures and contingency measures;

reasonable further progress (annual incremental emissions reductions to ensure attainment); milestone demonstrations every three years; and the attainment demonstration. The critical role of the inventory is depicted in Attachment Two.

2. EPA contended that the modeling attainment demonstration cannot be approved if actual monitor data show that the area cannot attain the standard by the attainment date of December 31, 2010. This is directly tied to the EPA nonconcurrency with the four high wind exceptional events at the West 43rd Avenue monitor in 2008. The four exceedances constitute a violation of the standard. EPA further indicated that it was not necessary to review the exceptional event claims for 2009 since the region did not have its first of clean data in 2008 needed to attain by 2010.

CONSEQUENCES OF A FINAL PARTIAL DISAPPROVAL

Based upon the consent decree, EPA will sign a notice of final action by January 28, 2011. If EPA finalizes the partial disapproval on January 28, 2011, a conformity freeze on the MAG Transportation Improvement Program and Regional Transportation Plan would occur in approximately thirty days. If the problem is not corrected within eighteen months, tighter controls on major industries would be imposed. If the problem is still not corrected within twenty-four months of the disapproval, the loss of federal highway funds (\$1.7 billion) and a federal implementation plan would be imposed. Conformity would also lapse, which would place the \$7.4 billion TIP at risk.

In a conformity freeze, only projects in the first four years of the currently conforming TIP and Regional Transportation Plan (RTP) can proceed. No new TIPs, RTPs, or TIP/RTP amendments to add major projects may be done until a Five Percent Plan revision is submitted that fulfills the Clean Air Act requirements, EPA finds the conformity budget adequate or approves the submission, and conformity to the plan revision is determined. Since the conformity freeze would occur relatively quickly, there is concern that the region may not be able to take advantage of additional stimulus funding if it becomes available while a freeze is in effect. Major projects that would require a conformity determination would not be able to be included in the TIP and be able to proceed for construction.

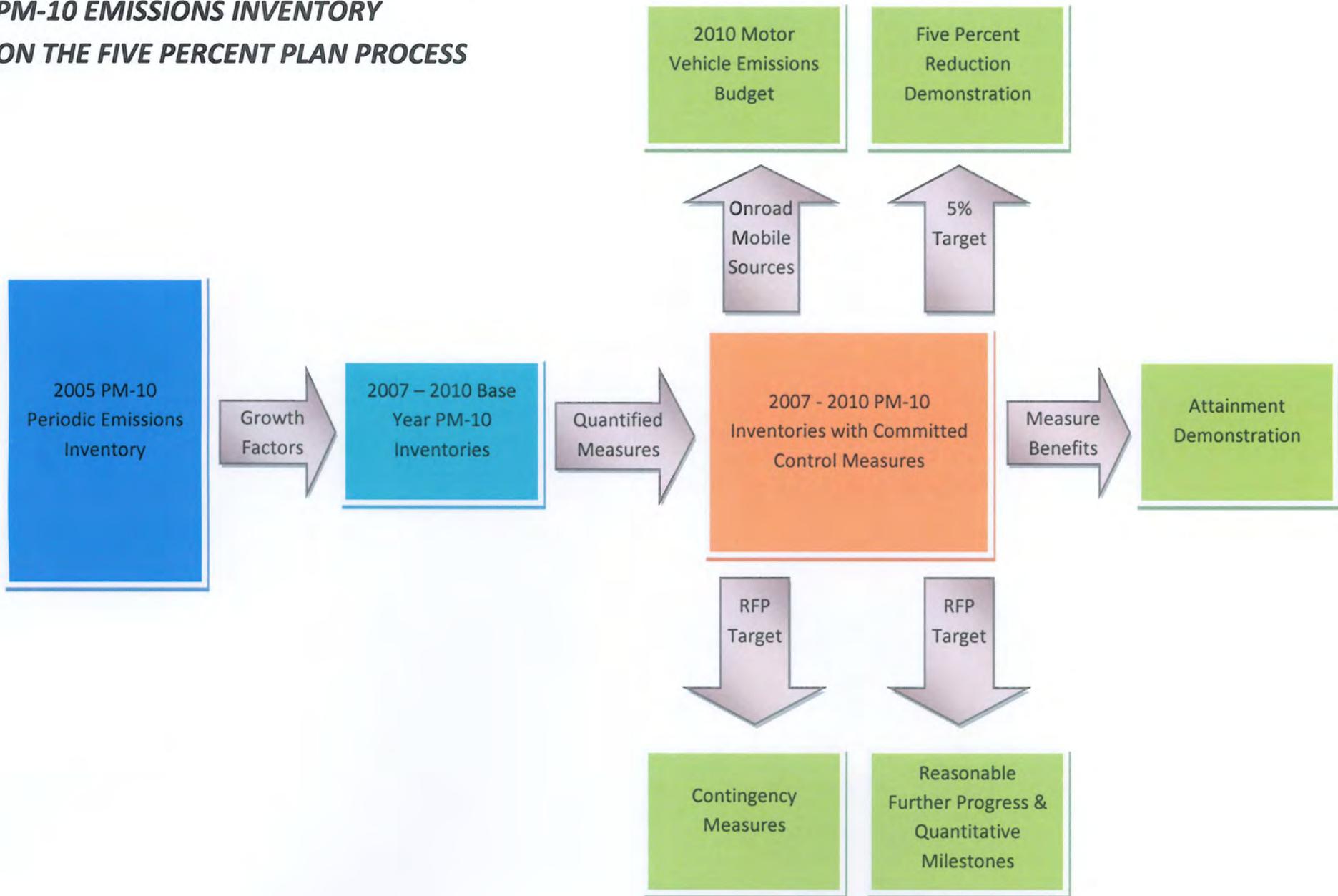
If you have any questions, please do not hesitate to contact me at (602) 254-6300.

FIVE PERCENT PLAN MEASURES ASSOCIATED WITH ARIZONA REVISED STATUTES
PROPOSED FOR APPROVAL BY EPA

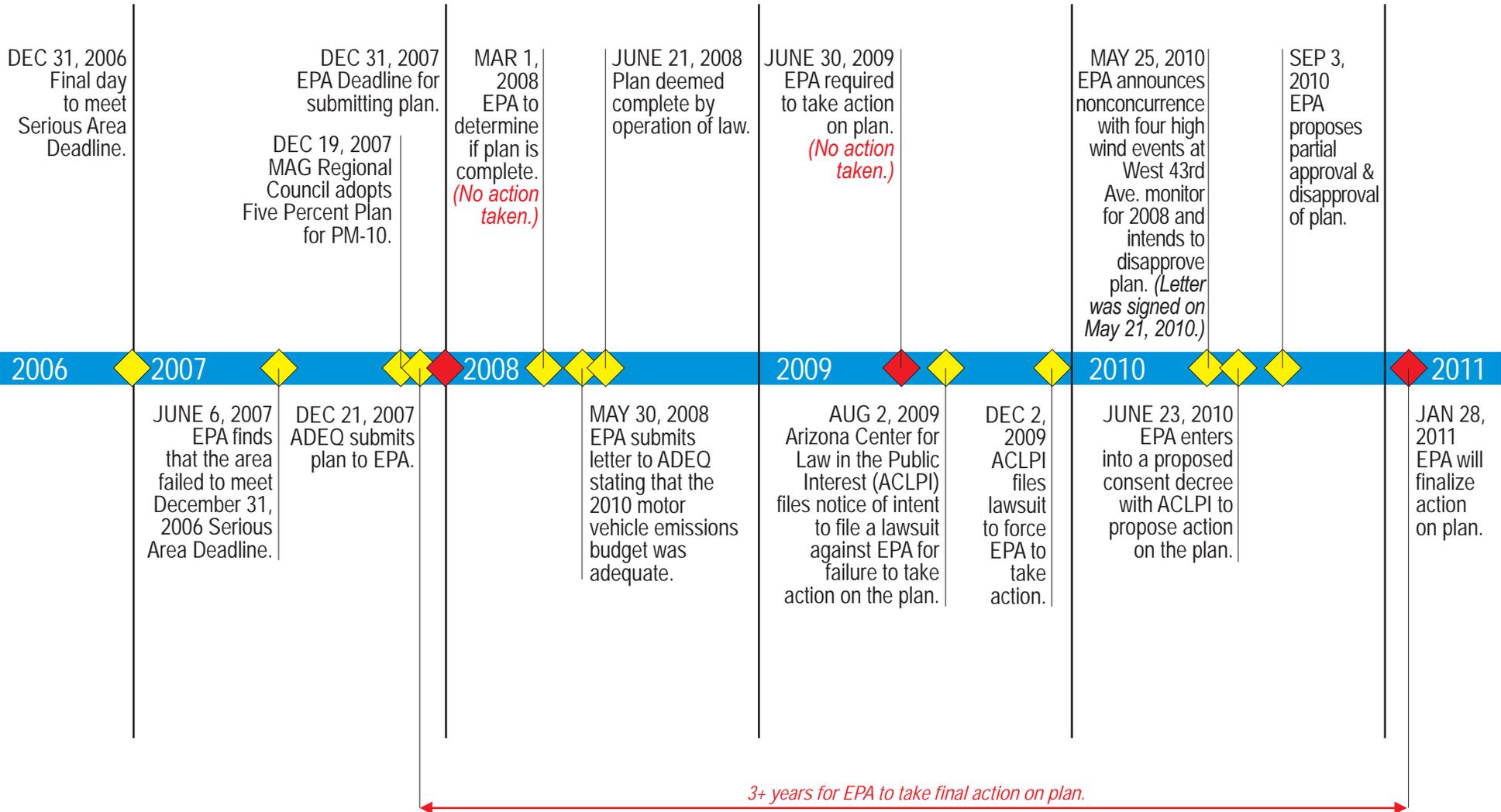
- Measure 2. Extensive Dust Control Training Program - A.R.S. Title 49-474.05
- Measure 3. Dust Managers required at construction sites- A.R.S. Title 49-474.05
- Measure 16. Require dust coordinator at earthmoving sites of 5-50 acres - A.R.S. Title 49-474.05
- Measure 5. Establish a certification program for Dust-Free Development to serve as an industry standard - A.R.S. Title 49-457.02
- Measure 24. Sweep street with PM-10 certified street sweepers - A.R.S. Title 9-500.04, A.R.S. Title 49-474.01
- Measure 19. Reduce off-road vehicle use in areas with high off-road vehicle activity-impoundment or confiscation of vehicles for repeat violations - A.R.S. Title 9-500.27
- Measure 23. Ban ATV use on high pollution days - A.R.S. Title 49-457.03
- Measure 31. Restrict vehicular use and parking on vacant lots - A.R.S. Title 9-500.04, A.R.S. Title 49-474.01
- Measure 46. Outreach to off-road vehicle purchasers - A.R.S. Title 49-457.04
- Measure 18. Ban or discourage use of leaf blowers on high pollution advisory days - A.R.S. Title 9-500.04, A.R.S. Title 11-877
- Measure 21. Ban leaf blowers from blowing debris into streets - A.R.S. Title 9-500.04, A.R.S. Title 11-877, A.R.S. Title 49-457.01
- Measure 22. Implement a leaf blower outreach program - A.R.S. Title 49-457.01
- Measure 45. Prohibit use of leaf blowers on unstabilized surfaces - A.R.S. Title 11-877, A.R.S. Title 49-457.01
- Measure 25. Pave or stabilize existing unpaved parking lots - A.R.S. Title 9-500.04, A.R.S. Title 49-474.01
- Measure 26. Pave or stabilize existing public dirt roads and alleys - A.R.S. Title 9-500.04, A.R.S. Title 28-6705, A.R.S. Title 49-474.01
- Measure 28. Pave or stabilize unpaved shoulders - A.R.S. Title 9-500.04, A.R.S. Title 28-6705, A.R.S. Title-49-474.01

- Measure 33. Ability to assess liens on parcels to cover the cost of stabilizing them (Recover costs of stabilizing vacant lots) - A.R.S. Title 49-474.01
- Measure 35. Restrict use of outdoor fireplaces and pits and ambience fireplaces in the hospitality industry - A.R.S. Title 49-501
- Measure 47. Ban open burning during the ozone season - A.R.S. Title 49-501
- Measure 50. Require two agricultural best management practices - A.R.S. 49-457

**ROLE OF THE 2005
PM-10 EMISSIONS INVENTORY
ON THE FIVE PERCENT PLAN PROCESS**



TIMELINE OF PM-10 AIR QUALITY ACTIONS 2006-2011



submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 26, 2010.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 2010-22339 Filed 9-8-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2010-0715; FRL-9200-3]

Approval and Promulgation of Implementation Plans—Maricopa County (Phoenix) PM-10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour PM-10 Standard; Clean Air Act Section 189(d)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

EPA is proposing to approve in part and disapprove in part State implementation plan (SIP) revisions submitted by the State of Arizona to meet the Clean Air Act (CAA) requirements applicable to the serious Maricopa County (Phoenix) nonattainment area (Maricopa area). These requirements apply to the Maricopa area following EPA's June 6, 2007 finding that the area failed to meet its December 31, 2006 serious area deadline to attain the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM-10). Under CAA section 189(d), Arizona was required to submit a plan by December 31, 2007 providing for expeditious attainment of the PM-10

NAAQS and for an annual emission reduction in PM-10 or PM-10 precursors of not less than five percent per year until attainment (189(d) plan). EPA is proposing to disapprove provisions of the 189(d) plan for the Maricopa area because they do not meet applicable CAA requirements for emissions inventories as well as for attainment, five percent annual emission reductions, reasonable further progress and milestones, and contingency measures. EPA is also proposing to disapprove the 2010 motor vehicle emission budget in the 189(d) plan as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4). EPA is also proposing a limited approval and limited disapproval of State regulations for the control of PM-10 from agricultural sources. Finally, EPA is proposing to approve various provisions of State statutes relating to the control of PM-10 emissions in the Maricopa area.

DATES: Any comments must arrive by October 12, 2010.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2010-0715, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* nudd.gregory@epa.gov.

3. *Mail or deliver:* Gregory Nudd (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard

copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA Region 9, 415-947-4107, nudd.gregory@epa.gov or <http://www.epa.gov/region09/air/actions>.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" mean U.S. EPA.

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- V. Statutory and Executive Order Reviews

I. PM-10 Air Quality Planning in the Maricopa Area

The NAAQS are standards for certain ambient air pollutants set by EPA to protect public health and welfare. PM-10 is among the ambient air pollutants for which EPA has established health-based standards. PM-10 causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 EPA revised the health-based national ambient air quality standards (52 FR 24672), replacing the standards for total suspended particulates with new standards applying only to particulate matter up to ten microns in diameter (PM-10). At that time, EPA established two PM-10 standards, annual standards and 24-hour standards. Effective December 18, 2006, EPA revoked the annual PM-10 standards but retained the 24-hour PM-10 standards. 71 FR 61144 (October 17, 2006). The 24-hour PM-10 standards of 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) are attained when the expected number of days per calendar year with a 24-hour average concentration above $150 \mu\text{g}/\text{m}^3$, as determined in accordance with appendix K to 40 CFR part 50, is equal to or less than one. 40 CFR 50.6 and 40 CFR part 50, appendix K.

On the date of enactment of the 1990 Clean Air Act Amendments (CAA or the

Act), many areas, including the Maricopa area, meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. 56 FR 11101 (March 15, 1991). The Maricopa area is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, as well as 17 other jurisdictions and unincorporated County lands. The nonattainment area also includes the town of Apache Junction in Pinal County. EPA codified the boundaries of the Maricopa area at 40 CFR 81.303.

Once an area is designated nonattainment for PM-10, section 188 of the CAA outlines the process for classifying the area as moderate or serious and establishes the area's attainment deadline. In accordance with section 188(a), at the time of designation, all PM-10 nonattainment areas, including the Maricopa area, were initially classified as moderate.

A moderate PM-10 nonattainment area must be reclassified to serious PM-10 nonattainment by operation of law if EPA determines after the applicable attainment date that, based on air quality, the area failed to attain by that date. CAA sections 179(c) and 188(b)(2). On May 10, 1996, EPA reclassified the Maricopa area as a serious PM-10 nonattainment area. 61 FR 21372.

As a serious PM-10 nonattainment area, the Maricopa area acquired a new attainment deadline of no later than December 31, 2001. CAA section 188(c)(2). However CAA section 188(e) allows states to apply for up to a 5-year extension of that deadline if certain conditions are met. In order to obtain the extension, there must be a showing that: (1) Attainment by the applicable attainment date would be impracticable; (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area; and (3) the state demonstrates that the plan for the area includes the most stringent measures (MSM) that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the specific area. Arizona requested an attainment date extension under CAA section 188(e) from December 31, 2001 to December 31, 2006.

On July 25, 2002, EPA approved the serious PM-10 plan for the Maricopa area as meeting the requirements for such areas in CAA sections 189(b) and (c), including the requirements for implementation of best available control measures (BACM) in section

189(b)(1)(B) and MSM in section 188(e). In the same action, EPA granted Arizona's request to extend the attainment date for the area to December 31, 2006. 67 FR 48718. This final action, as well as the two proposals preceding it, provide a more detailed discussion of the history of PM-10 planning in the Maricopa area. See 65 FR 19964 (April 13, 2000) and 66 FR 50252 (October 2, 2001).

On June 6, 2007, EPA found that the Maricopa area failed to attain the 24-hour PM-10 NAAQS by December 31, 2006 (72 FR 31183) and required the submittal of a new plan meeting the requirements of section 189(d) by December 31, 2007.

On December 19, 2007, the Maricopa Association of Governments (MAG) adopted the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area." In this proposal, we refer to this plan as the "189(d) plan." On December 21, 2007 the Arizona Department of Environmental Quality (ADEQ) submitted the 189(d) plan and two Pinal County resolutions.¹ MAG adopted and ADEQ submitted this SIP revision in order to address the CAA requirements in section 189(d).

CAA section 110(k)(1) requires EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that any plan that has not been affirmatively determined to be complete or incomplete shall become complete within 6 months by operation of law. EPA's completeness criteria are found in 40 CFR part 51, appendix V. The 189(d) plan submittal became complete by operation of law on June 21, 2008.

II. Overview of Applicable CAA Requirements

As a serious PM-10 nonattainment area that failed to meet its applicable attainment date, December 31, 2006, the Maricopa area is subject to CAA section 189(d) which provides that the state shall "submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction of PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for the area."

¹ Subsequently, in June 4, 2008 and February 23, 2009 letters from Nancy C. Wrona, ADEQ, to Deborah Jordan, EPA, the State submitted "Supplemental Information to Section 189(d) 5% Reasonable Further Progress PM-10 SIP Revisions for the Maricopa County and Apache Junction (Metropolitan Phoenix) Nonattainment Area."

The general planning and control requirements for all nonattainment plans are found in CAA sections 110 and 172. EPA has issued a General Preamble² and Addendum to the General Preamble³ describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for the PM-10 NAAQS. The General Preamble mainly addresses the requirements for moderate nonattainment areas and the Addendum, the requirements for serious nonattainment areas. EPA has also issued other guidance documents related to PM-10 plans which are cited as necessary below. In addition, EPA addresses the adequacy of the motor vehicle budget for transportation conformity (CAA section 176(c)) in this proposed plan action. The PM-10 plan requirements addressed by this proposed action are summarized below.

A. Emissions Inventories

CAA section 172(c)(3) requires that an attainment plan include a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutants.

B. Attainment Demonstration

The attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than 5 years from the publication date of the nonattainment finding notice. EPA may, however, extend the attainment deadline to the extent it deems appropriate for a period no greater than 10 years from the publication date, "considering the severity of nonattainment and the availability and feasibility of pollution control measures." CAA sections 179(d)(3) and 189(d).

C. Five Percent (5%) Requirement

A 189(d) plan must provide for an annual reduction of PM-10 or PM-10 precursor emissions within the area of not less than 5% of the amount of such emissions as reported in the most recent inventory prepared for the area.

² "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (General Preamble) and 57 FR 18070 (April 28, 1992).

³ "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994) (Addendum).

D. Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires that implementation plans demonstrate reasonable further progress (RFP) as defined in section 171(1). Section 171(1) defines RFP as “such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.”

Section 189(c)(1) requires the plan to contain quantitative milestones which will be achieved every 3 years and which will demonstrate that RFP is being met.

E. Contingency Measures

CAA section 172(c)(9) requires that implementation plans provide for “the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the [NAAQS] by the attainment date applicable under this part [part D of title I]. Such measures are to take effect in any such case without further action by the State or the Administrator.”

F. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestone. Once a SIP that contains motor vehicle emissions budgets (MVEBs) has been submitted to EPA, and EPA has found it adequate, these budgets are used for determining conformity: emissions from planned transportation activities must be less than or equal to the budgets.

G. Adequate Legal Authority and Resources

CAA section 110(a)(2)(E)(i) requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (51.230–51.232) and for resources in 40 CFR 51.280. States and

responsible local agencies must also demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal of the SIP.

III. Evaluation of the 189(d) Plan's Compliance With CAA Requirements

A. Emissions Inventories

CAA section 172(c)(3) requires all nonattainment area plans to contain a comprehensive, accurate, and current inventory of emissions from all sources of the relevant pollutants in the geographic area encompassed in the plan. EPA believes that the inventories submitted by Arizona as part of the 189(d) plan for the Maricopa area are comprehensive and current, but are not sufficiently accurate as discussed below.

MAG developed the 189(d) plan using the “2005 Periodic Emissions Inventory for the Maricopa County, Arizona Nonattainment Area,” May 2007 (2005 Periodic Inventory). 189(d) plan, appendices, volume one, appendix B, exhibit 1. This inventory was developed by the Maricopa County Air Quality Department (MCAQD) as the baseline inventory for the area. 189(d) plan, p. 3–2.

MAG used economic growth estimates to project 2007, 2008, 2009 and 2010 emissions inventories for the area from the 2005 Periodic Inventory baseline. MAG then used these projected inventories to calculate the 5% reduction target required by section 189(d) and as the baseline for the RFP demonstration required by section 189(c).⁴ See 189(d) plan, appendices, volume three, “Technical Document in Support of the MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area,” (189(d) plan TSD), chapter II.

The 2005 Periodic Inventory prepared for the Maricopa area describes and quantifies the annual and daily emissions of PM–10 from point, area, nonroad, on-road, and nonanthropogenic sources in the 2,880 square mile nonattainment area.⁵ The

⁴ The 189(d) plan projects that the Maricopa area will attain the PM–10 standard by December 31, 2010. For the 5% demonstration, the plan projects emission reductions in 2008, 2009 and 2010. The RFP demonstration shows annual emission reductions in a downward linear trend from 2007 to 2010. See 189(d) plan, chapters 7 and 8, and discussions of these demonstrations below.

⁵ The 2005 Periodic Inventory in the 189(d) plan also includes data on PM–10 precursors. However,

2005 Periodic Inventory indicates that the dominant sources of PM–10 emissions in the Maricopa area are construction-related fugitive dust, including residential, commercial, road and other land clearing (38 percent); paved road dust, including trackout (16 percent); unpaved roads (10 percent); and windblown dust (9 percent). 2005 Periodic Inventory, table 1.6–11.

EPA has evaluated the base year inventory relied on by MAG in light of the three criteria in section 172(c)(3) and our conclusions follow.

Current: The base year, 2005, is a reasonably current year, considering the length of time needed to develop an inventory and thereafter to develop a plan based on it. The 2005 Periodic Inventory was the most recent inventory available when the 189(d) plan was developed.

Comprehensive: The 189(d) plan's inventories are sufficiently complete. All of the relevant source categories are quantified.

Accurate: The 2005 Periodic Inventory is not sufficiently accurate for the purposes of the 189(d) plan. As discussed below, this inventory and the subsequent year inventories that MAG derived from it overestimate the baseline emissions for construction and other sources. The accuracy of the baseline inventory is particularly important for this plan because it relies heavily on reductions from improving the effectiveness of existing rules⁶ for construction and other sources in order to meet the CAA's 5%, RFP and attainment requirements. See 189(d) plan, chapters 7 and 8.

MCAQD Rule 310 requires control measures for dust generating activities such as excavation, construction, demolition and bulk material handling. According to the 2005 Periodic Inventory, the majority of emissions subject to control under Rule 310 are from residential, commercial and road

a scientific analysis of the particulate matter found on filters on exceedance days indicates that the vast majority of PM–10 on these days is directly emitted PM–10 such as soil dust. See attachment, “On speciated PM in the Salt River industrial area in 2002,” dated January 22, 2010, to E-mail from Peter Hyde, Arizona State University, to Gregory Nudd, EPA, July 30, 2010. Therefore, the 189(d) plan appropriately focuses on directly emitted PM–10.

⁶ Rule effectiveness is an estimate of the ability of a regulatory program to achieve all of the emission reductions that could have been achieved by full compliance with the applicable regulations at all sources at all times. EPA requires a state to account for rule effectiveness when estimating emissions from source categories that are subject to regulations that reduce emissions. See “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,” EPA–454/R–05–001, November 2005 (2005 Emissions Inventory Guidance), p. B–3.

construction. Measure #8 in the 189(d) plan is a commitment to implement proactive and complaint based inspections during night-time and on weekends and is a telling example of how the 189(d) plan depends primarily on improving Rule 310 effectiveness to demonstrate the required annual 5% reductions and RFP. The plan asserts that Measure #8 will reduce PM-10 emissions by 1,884 tons per year (tpy). 189(d) plan, p. 7-3. Of that, 1,694 tpy are attributed to increases in compliance, and therefore in the effectiveness, of Rule 310. 189(d) plan TSD, p. III-5. This pattern is repeated in Measures #2, #3, #9, #10, #16, and #44, with a large majority of the 189(d) plan's

total emissions reductions derived from increased compliance with Rule 310. This pattern is further detailed in table 2 below.

For the 2005 Periodic Inventory, MCAQD used a set of 63 sample inspections of sources subject to Rule 310 in order to estimate its effectiveness.⁷ An analysis of these inspections yielded an estimated rule effectiveness of 51 percent. However, an analysis conducted by MCAQD of the entire database of over 11,000 relevant inspections during the time period of the sample inspections yielded an estimated rule effectiveness of 64.5 percent. In other words, examination of the larger database suggests that a significantly higher percentage of

sources were in compliance, and accordingly the aggregate emissions inventory for this source category could be proportionately smaller than that suggested by the smaller set of sample inspections. While MCAQD conducted this analysis in 2010, after the development of the 189(d) plan, the data and the method were available at the time it produced the 2005 Periodic Inventory.⁸ Table 1 below shows the impact of these two different rule effectiveness values on the estimate of fugitive dust emissions from construction sources in the Maricopa area. The data in table 1 are from the emission rate back-casting analysis conducted by MCAQD in 2010.⁹

TABLE 1—IMPACT OF RULE 310 EFFECTIVENESS METHODOLOGY ON ESTIMATED EMISSIONS FROM CONSTRUCTION ACTIVITY

Estimation method	Rule effectiveness (percent)	Estimated 2005 emissions for construction activity (tons per year)
Sample Rule 310 inspections (63 total inspections between July and December 2006)	51	32,130
All Rule 310 inspections (over 11,000 between July 2006 and June 2007)	64.5	24,968
Difference in emissions		7,162 (-22%)

EPA believes that analysis of the full database of 11,000 Rule 310 inspections provides a more accurate measure of rule effectiveness than using a sample of 63 inspections. This is because the 63 inspections may not be representative of the entire population of sources covered by the rule. The larger data set is much more likely to be free of sample biases. Therefore, based on this analysis of the larger data set, EPA has determined that

the initial estimate of rule effectiveness for Rule 310 was not accurate.

There is a similar inaccuracy in the rule effectiveness calculations for MCAQD Rule 310.01¹⁰ for unpaved parking lots, unpaved roads and similar sources of fugitive dust emissions. For the 2005 Periodic Inventory, MCAQD used a set of 124 sample inspections to estimate the effectiveness of Rule 310.01. 2005 Periodic Inventory, appendix 2.2. An analysis of these

inspections yielded an estimated rule effectiveness of 68 percent. However, an analysis conducted by MCAQD of the entire database of over 4,500 relevant inspections during the time period of the sample inspections yielded an estimated rule effectiveness of 90 percent. See Poppen Email.

The significance of the inventory inaccuracies discussed above is graphically depicted in table 2:

TABLE 2¹¹—MEASURES TO IMPROVE COMPLIANCE WITH RULES 310 AND 310.01 COMPARED TO ALL MEASURES SUPPORTING THE ATTAINMENT, 5% AND RFP DEMONSTRATIONS

	2008	2009	2010
Total reductions from attainment, 5% and RFP measures [tpy]	6,603	15,422	19,840
Reductions from measures to improve rule effectiveness of Rule 310	4,658	11,292	15,244
Reductions from measures to improve rule effectiveness of Rule 310.01	360	1,061	1,063
% of reductions from such measures	76%	80%	82%

As shown in table 2, the 189(d) plan is designed to achieve the additional

reductions in emissions required for the attainment, 5% and RFP demonstrations

primarily through improvements in rule effectiveness for the sources regulated

⁷ 2005 Periodic Inventory, appendix 2.2, "Rule Effectiveness Study for the Maricopa County Rules 310, 310.01, and 316."

⁸ The data from the 2010 analysis were from inspections conducted at the time the original rule effectiveness calculation was being developed, so that information should have been in the MCAQD's database. The analytical method was a hybrid of a

simple average of the results in the inspection database and the 2005 Emissions Inventory Guidance.

⁹ E-mail from Matthew Poppen, MCAQD, to Gregory Nudd, EPA, "Back-casting of RE rates," April 19, 2010 (Poppen E-mail).

¹⁰ EPA is also concerned that the method MCAQD used to estimate rule effectiveness for non-metallic

mineral processing and other sources subject to Rule 316 is dependent on qualitative factors rather than compliance data.

¹¹ This data summary was compiled from the emission reduction calculations found in the 189(d) plan TSD, chapter III.

by Rules 310 and 310.01. The inaccuracies in the baseline emissions inventory were carried through into the future year emission inventories and the calculations of emission reductions for those demonstrations.

Moreover, the underestimation of the effectiveness of Rules 310 and 310.01 resulted in a control strategy with a high probability of failure because the over-

emphasis on achieving emission reductions from the sources regulated by these rules likely resulted in a corresponding de-emphasis on emission reductions from other sources contributing to the nonattainment problem in the Maricopa area. In table 3 below we compare the projected percentage of 2010 emissions attributable to certain source categories

before implementation of the 189(d) plan's controls to the projected percentage of emission reductions attributed to controls for these categories in 2010. The source categories are those contributing more than 5% to the projected 2010 inventory of annual PM-10 emissions. See 189(d) TSD, pp. II-17 and chapter III.

TABLE 3—COMPARISON OF THE 2010 EMISSIONS REDUCTIONS EXPECTED FROM THE CONTROL MEASURES TO THE PROPORTION OF 2010 EMISSIONS FOR PRINCIPAL SOURCES OF PM-10 IN THE NONATTAINMENT AREA

Source category	Percentage of pre-control 2010 emissions	Percentage of estimated 2010 emission reductions
Construction	33.1	82.5
Paved Roads (including trackout)	19.1	5.1
Unpaved Roads	17.4	0.0
Fuel Combustion and Fires	5.6	0.2
Windblown dust from vacant land	5.4	7.7
Other Sources (<5% each)	19.4	4.5

As can be seen from this comparison, the plan's emphasis on reducing emissions from the construction industry is out of proportion to that source category's relative contribution to the projected 2010 inventory.

For the reasons discussed above, EPA is proposing to disapprove under CAA section 110(k)(3) the 2005 baseline emissions inventory in the 189(d) plan and all of the projected inventories as not meeting the requirements of section 172(c)(3).

B. Measures in the 189(d) Plan

1. Introduction

The 189(d) plan contains 53 measures designed to reduce emissions of PM-10. A detailed description and implementation schedule for each measure is provided in chapter 6 of the plan. Of the 53 measures, 25 measures are intended to support the attainment, RFP and 5% demonstrations provided in the plan, and 9 are contingency measures. These measures incorporate differing strategies to target emissions from a variety of activities within the Maricopa area. The remaining measures are included to represent additional efforts by the State and local jurisdictions to reduce emissions beyond those quantified in the plan. As those measures are implemented, the 189(d) plan provides that a more detailed assessment of the air quality benefits may be developed and reported in the future.

EPA is proposing action on the measures in the 189(d) plan that constitute mandatory directives to the

regulated community or to various local jurisdictions to adopt certain legislative requirements. These measures typically involve emissions reductions that can be reasonably quantified, and/or regulatory components that are enforceable. The 189(d) plan does not take specific emission reduction credits for the additional measures referred to above where the ability to quantify emission reductions was considered to be limited.

In reviewing a statute, regulation, or rule for SIP approval, EPA looks to ensure that the provision is enforceable as required by CAA section 110(a), is consistent with all applicable EPA guidance, and does not relax existing SIP requirements as required by CAA sections 110(l) and 193. Guidance and policy documents that we use to evaluate enforceability and PM-10 rules include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) (General Preamble); 57 FR 18070 (April 28, 1992).

4. "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994) (Addendum).

5. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.

2. Measures Proposed for Approval

EPA has identified the State statutory provisions submitted with the 189(d) plan that implement the directives in each measure for which we are proposing action. Many of the 189(d) plan measures refer to Arizona Senate Bill 1552 (SB 1552). In 2007, the Arizona Legislature passed SB 1552, which includes several air quality provisions designed to reduce PM-10. SB 1552 adds new and amends existing provisions of the Arizona Revised Statutes (ARS) and is included in the 189(d) plan submittal. 189(d) plan, chapter 10, "Commitments for Implementation," volume two. We are proposing to approve the sections of the ARS that implement the plan measures identified in table 4 below. For ease of discussion, the statutory provisions that we are proposing to approve are associated with measures that can be generally grouped into seven categories: on-site dust management, certification programs, vehicle use, leaf blowers, unpaved areas, burning and agriculture. A brief discussion of each category is provided after the table.

TABLE 4—189(d) PLAN MEASURE CATEGORIES AND ASSOCIATED STATUTORY PROVISIONS

Category	Measure numbers from 189(d) plan	Associated statutory provisions
On-site management	2, 3, 16	ARS 49-474.05.
Certification programs	5*, 24*	ARS 9-500.04, ARS 49-457.02, ARS 49-474.01.
Vehicle Use	19*, 23, 31, 46	ARS 9-500.04, ARS 9-500.27, ARS 49-457.03, ARS 49-457.04, ARS 49-474.01.
Leaf blowers	18, 21, 22, 45	ARS 9-500.04, ARS 11-877, ARS 49-457.01.
Unpaved areas	25, 26*, 28, 33	ARS 9-500.04, ARS 28-6705, ARS 49-474.01.
Burning	35, 47	ARS 49-501.
Agriculture	50*	ARS 49-457. ¹²

* The State submitted these measures as contingency measures pursuant to CAA section 172(c)(9). See section III.F below for further discussion.

With the exception of ARS 49-457, discussed in section III.B.3 below, and ARS 49-474.01, the ARS sections listed above are not currently in the Arizona SIP. On August 10, 1988, we approved an earlier version of ARS 49-474.01 that was submitted by the State to EPA on May 22, 1987. 53 FR 30224. In comparison to this previously approved version, the newly submitted version of ARS 49-474.01 contains several additional requirements regarding unstabilized areas and vehicle use that make the statutory provision more stringent. Therefore, we believe the current submitted version of ARS 49-474.01 represents a strengthening of the SIP and is consistent with the relevant policy and guidance regarding SIP relaxations.

On-Site Management

Many of the 189(d) plan measures are related to the reduction of PM-10 emissions through dust control training and on-site management by trained personnel. Measures #2 and #3 address development of basic and comprehensive training programs for the suppression of emissions. The program requires completion of dust control training for water truck and water pull drivers, and on-site representatives of sites with more than one acre of disturbed surface area subject to a permit requiring control of PM-10 emissions. Any site with five or more acres of disturbed surface area subject to a permit requiring control of PM-10 emissions will be required to

¹² Measure #50 concerns the State statutory and regulatory program for the control of PM-10 from agricultural sources in the Maricopa area. The program is codified in ARS 49-457 and Arizona Administrative Code (AsAC) R18-2-610 and R18-2-611. ARS 49-457 established the program and authorized a committee to adopt implementing regulations. While we are proposing to fully approve the amendment to ARS-457 which was submitted with the 189(d) plan, we do not describe it further in this section because we address the agricultural program in detail in section III.B.3 below.

have a trained dust control coordinator on site. Measure #16 involves the requirement for subcontractors engaged in dust generating operations to be registered with the control officer. These measures are implemented through ARS 49-474.05. See 189(d) plan, pp. 6-20, 6-24, 6-42, and 6-46.

Certification Programs

Some of the 189(d) plan measures seek to achieve emissions reductions through certification of equipment or personnel. In certain cases, the certification program is intended to provide an incentive for voluntary emission reductions and good operating practices. In other cases, the certification program seeks to maintain an appropriate level of emissions control from regularly used equipment. Measure #5 directs ADEQ to establish the Dust-Free Developments Program. The purpose of this program is to certify persons and entities that demonstrate exceptional commitment to the reduction of airborne dust. See ARS 49-457.02 and 189(d) plan, p. 6-29. Measure #24 directs cities and towns to require that new or renewed contracts for sweeping of city streets must be conducted with certified street sweepers. Street sweepers must meet the certification specifications contained in South Coast Air Quality Management District (SCAQMD) Rule 1186. See ARS 9-500.04, ARS 49-474.01, and 189(d) plan, p. 6-72.

Vehicle Use

Because vehicle use often generates PM-10 emissions, the 189(d) plan addresses several different activities related to vehicle use. Measures #19, #23, and #46 restrict off-road vehicle use in certain areas and on high pollution advisory days, and prescribe outreach to off-road vehicle purchasers to inform them of methods for reducing generation of dust. See ARS 9-500.27, ARS 49-457.03, ARS 49-457.04, and 189(d) plan, pp. 6-53, 6-71 and 6-190.

Measure #31 restricts vehicle use and parking on unpaved or unstabilized vacant lots. See ARS 9-500.04, ARS 49-474.01 and 189(d) plan, p. 6-141.

Leaf Blowers

The 189(d) plan seeks to reduce PM-10 emissions from the operation of leaf blowers. Measures #18 and #45 restrict the use of leaf blowers on high pollution advisory days or on unstabilized surfaces. Measure #21 involves the banning of leaf blowers from blowing landscape debris into public roadways. Measure #22 requires outreach to buyers and sellers of leaf blowing equipment to inform them of safe and efficient use, methods for reducing generation of dust, and dust control ordinances and restrictions. See ARS 9-500.04, ARS 11-877, ARS 49-457.01 and 189(d) plan, pp. 6-50, 6-69, 6-70 and 6-189.

Unpaved Areas

The 189(d) plan contains several measures that seek to reduce PM-10 emissions by reducing the number of unpaved or unstabilized areas. Measures #25, #26, and #28 direct cities and towns to pave or stabilize parking lots, dirt roads, alleys, and shoulders. Measure #33 allows counties the ability to assess fines to recover the cost of stabilizing lots. See ARS 9-500.04, ARS 49-474.01, ARS 28-6705 and 189(d) plan, pp. 6-86, 6-103, 6-124, and 6-169.

Burning

Several measures are designed to regulate burning activities. Measure #35 bans the use of outdoor fireplaces in the hospitality industry on "no burn" days. Measure #47 bans open burning during the ozone season. See ARS 49-501 and 189(d) plan, pp. 6-174 and 6-190.

3. Measure Proposed for Limited Approval/Disapproval

Measure #50 is included in the 189(d) plan as a contingency measure and is designed to achieve emission reductions

from agricultural sources of PM-10. 189(d) plan, pp. 6–191 and 8–73. Measure #50 is implemented through SB 1552 which amended ARS 49–457 and requires in section 20 that the best management practices (BMP) committee for regulated agricultural activities adopt revised rules. These rules, AAC R18–2–610 and R18–2–611, were revised pursuant to amended ARS 49–457 and submitted with the 189(d) plan. 189(d) plan, chapter 10, “Commitments for Implementation,” volume two. See also 189(d) plan, Measure #41, p. 6–185. On May 6, 2010, Arizona again submitted the revised versions of AAC R18–2–610 and R18–2–611 with additional documentation and the “Agricultural Best Management Practices Guidance Booklet and Pocket Guide” (Handbook). Letter from Benjamin Grumbles, ADEQ, to Jared Blumenfeld, EPA, with enclosures, May 6, 2010. The Handbook provides regulated sources with guidance on how to implement BMPs and provides information to the public and farm organizations about AAC R18–2–610 and R18–2–611 (Handbook, p. 5).

We describe the history of agricultural PM-10 controls in the Maricopa area and we evaluate amended ARS 49–457 and revised AAC R18–2–610 and R18–2–611 below.

a. History

The analysis done for the “Plan for Attainment of the 24-hour PM-10 Standard—Maricopa County PM-10 Nonattainment Area,” May 1997—(Microscale Plan)—revealed the contribution agricultural sources make to exceedances of the 24-hour PM-10 standard in the Maricopa area. See Microscale plan, pp. 18–19. In order to develop adequate controls for this source category, Arizona passed legislation, the original version of ARS 49–457, in 1997 establishing the agricultural BMP committee and directing the committee to adopt by rule by June 10, 2000, an agricultural general permit specifying best management practices for reducing PM-10 from agricultural activities. The legislation also required that implementation of the agricultural controls begin by June 10, 2000, with an education program and full compliance with the rule to be achieved by December 31, 2001.

In September 1998, the State submitted ARS 49–457 and on June 29, 1999 we approved the statute as meeting the reasonably available control measure (RACM) requirements of the CAA.¹³ 64 FR 34726.

After a series of meetings during 1999 and 2000, the agricultural BMP committee in 2000 adopted the original versions of AAC R18–2–610, “Definitions for R18–2–611,” and AAC R18–2–611, “Agricultural PM-10 General Permit; Maricopa PM10 Nonattainment Area” (collectively, general permit rule). 66 FR 34598. The BMPs are defined in AAC R18–2–610. AAC R18–2–611 groups the BMPs into three categories (tilling and harvest, noncropland, and cropland). The original version of AAC R18–2–611 required that commercial farmers select one practice from each of these categories. AAC R18–2–611 also requires that commercial farmers maintain records demonstrating compliance with the general permit rule.

In July 2000, the State submitted the general permit rule. The State also submitted an analysis quantifying the emission reductions expected from the rule and the demonstration that the rule meets the CAA’s RACM, BACM and MSM requirements. We approved the general permit rule as meeting the RACM requirement in CAA section 189(a)(1)(C) on October 11, 2001. 66 FR 51869. We approved the general permit rule as meeting the requirements for BACM and MSM in CAA sections 189(b)(1)(B) and 188(e) on July 25, 2002. 67 FR 48718.

b. Amendments to ARS 49–457 and Revisions to the General Permit Rule

SB 1552 amended ARS 49–457 to increase the number of required BMPs from one to two in the general permit rule by December 31, 2007. SB 1552 also expanded the scope of the applicability of the general permit rule by amending the definition of regulated area to include any portion of Area A¹⁴ that is located in a county with a population of two million or more persons.

The agricultural BMP committee added definitions for the following terms to AAC R18–2–610: “Area A,” “cessation of night tilling,” “forage crop,” “genetically modified,” “genetically modified organism,” “global position satellite system,” “green chop,” “high pollution advisory,” “integrated pest management,” “night tilling,” “organic

area, was required to implement RACM pursuant to CAA section 189(a)(1)(C).

¹⁴ Area A is defined in ARS 49–541. The 189(d) plan does not take any credit for emission reductions from the general permit rule’s expansion to Area A because it extends beyond the boundaries of the Maricopa area. 189(d) plan, p. 8–73. ARS 49–451 was not submitted for inclusion into the SIP. While not a basis for our proposed action here, we recommend that ADEQ either insert the definition from ARS 49–451 into the general permit rule or submit ARS 49–451 to EPA.

farming practices,” “precision farming,” and “transgenic crops.” The definitions for “commercial farm” and “regulated agricultural activity” were amended to include Area A.

The agricultural BMP committee also amended AAC R18–2–611. Section C of AAC R18–2–611 was amended to require commercial farmers to implement two BMPs each from the categories of tillage and harvest, noncropland, and cropland. The following additional BMPs were added to the tillage and harvest category in Section E of AAC R18–2–611: Green chop, integrated pest management, cessation of night tilling, precision farming, and transgenic crops. The cropland category in Section G was augmented with the following additional options: Integrated pest management and precision farming.

c. Evaluation of Amendments to ARS 49–457 and Revisions to the General Permit Rule

As stated above, in reviewing a statute, regulation, or rule for SIP approval, EPA looks to ensure that the provision is enforceable as required by CAA section 110(a), is consistent with all applicable EPA guidance, and does not relax existing SIP requirements as required by CAA sections 110(l) and 193. ARS 49–457 and the general permit rule generally meet the applicable requirements and guidance. We are proposing to approve amended ARS 49–457 because it strengthens the SIP by requiring an increase in the number of required BMPs and expanding the geographical scope of the agricultural BMP program. With regard to the general permit rule, we are proposing a limited approval and limited disapproval and we discuss the bases for that proposal below.

As stated above, we approved the general permit rule as meeting the CAA requirements for BACM in 2002. Since then, several air pollution control agencies in California, including the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD) and the Imperial County Air Pollution Control District (ICAPCD), have adopted analogous rules for controlling PM-10 emissions from agricultural sources. The relevant State and local rules in Arizona, California and Nevada are summarized in our recent action on ICAPCD’s Rule 806. 75 FR 39366, 39383 (July 8, 2010).

Since the adoption of controls for agricultural sources in the Maricopa area, other State and local agencies which have adopted such controls, as well as EPA, have acquired additional expertise about how to control

¹³ Prior to its classification as serious, the Maricopa area, as a moderate PM-10 nonattainment

emissions from these sources and implement regulations for them. As a result, we no longer believe that the requirements in the general permit rule that we approved in 2002 for the Maricopa area fully meet CAA requirements.

AAC R18–2–611 Sections E, F and G list BMPs intended to control emissions from tillage and harvest, noncropland and cropland, and the BMPs on these lists are defined in AAC R18–2–610. However, as discussed below, the definitions in AAC R18–2–610 are overly broad. Moreover, there is no mechanism in the rule to provide sufficient specificity to ensure a BACM level of control.¹⁵

As an example of the breadth of the BMPs, one of the BMPs in AAC R18–2–611 Section E, the tillage and harvest category, is “equipment modification.” This term is defined in AAC R18–2–610 Section 18 as “modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.” The types of equipment modification are not specified in the rule, and according to the Handbook, examples of this practice include using shields to redirect the fan exhaust of the equipment or using spray bars that emit a mist to knock down PM–10. Handbook, p. 10. Because most of the PM–10 generated during active agricultural operations is due to disturbance from parts of agricultural equipment that come into direct contact with the soil, we expect that using appropriately designed spray bars would be far more effective at reducing PM–10 than redirecting a machine’s fan exhaust. However, there is no provision in the general permit rule that requires a source or regulatory agency to evaluate whether the more effective version of this BMP is economically and technologically feasible. Moreover, while AAC R18–2–611 Section I requires that a farmer record that he has selected the “equipment modification” BMP, it does not require the farmer to record what type of equipment modification he will be implementing. Hence, neither ADEQ nor the public can verify whether what is being implemented is a best available control measure.

¹⁵ For example, SJVAPCD’s Rule 4550 has an application submittal and approval process. Great Basin Unified Air Pollution Control District’s (GBUAPCD) Rule 502 has a similar application submittal and approval process. SJVAPCD’s and GBUAPCD’s application forms require sources to select conservation management practices (CMPs), the analogue to Arizona’s BMPs, and to describe the specifics of the practices chosen. Such an application submittal and approval process provides a mechanism to ensure that controls are implemented at a BACM level.

An example from AAC R18–2–611 Section F, the category for noncropland, is the “watering” BMP. AAC R18–2–610 Section 52 defines watering as “applying water to noncropland.” The level of control achieved would depend on the amount of water that was applied, the frequency with which it was applied, as well as the size and conditions of the area to which it was applied. However, the rule does not specify the frequency or amount of water application or otherwise ensure that watering under this measure is effective. Moreover, the definition for “noncropland” in Section 31 of AAC R18–2–611 states that it “includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.” It is not clear which of these areas a farmer would need to control upon selecting the “watering” BMP. As written, the rule allows regulated sources to implement the “watering” BMP in a manner that may not be as effective as best available controls. Furthermore, while AAC R18–2–611 Section I requires that a farmer record that he has selected the “watering” BMP, it does not require the farmer to record how he will be implementing this BMP. Hence, neither ADEQ nor the public can verify whether the BMP that is being implemented is in fact a best available control measure.

An example from AAC R18–2–611 Section G, the category for cropland, is the “artificial wind barrier” BMP. AAC R18–2–610 Section 4 defines “artificial wind barrier” as “a physical barrier to the wind.” The control effectiveness of the barrier will depend on what the barrier is constructed of, the size of the barrier, as well as the placement of the barrier. In fact, the Handbook suggests that certain materials (e.g., board fences, burlap fences, crate walls, and bales of hay) be used, notes that the distance of 10 times the barrier height is considered the protected area downwind of a barrier, and states that the barrier should be aligned across the prevailing wind direction. Handbook, p. 20. However, the general permit rule does not specify any parameters that need to be met for the implementation of the “artificial wind barrier” BMP. Hence a source can construct a barrier that is not a best available control and still be in compliance with the general permit rule.

The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and ensure compliance with the requirements, and makes it difficult for ADEQ or others to verify compliance with the general permit rule. The general permit rule needs to be revised to ensure that the BMPs are enforceable

as required by CAA section 110(a) and are implemented at a BACM level as required by section 189(b)(1)(B).

4. Summary of Proposed Action on Measures in 189(d) Plan

EPA believes the statutory provisions associated with the 189(d) plan measures in table 4 in section III.B.2 above are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Therefore, we are proposing to fully approve under CAA section 110(k)(3) the following Arizona statutory provisions, as submitted with the 189(d) plan:

ARS 9–500.04
ARS 9–500.27
ARS 11–877
ARS 28–6705
ARS 49–457
ARS 49–457.01
ARS 49–457.02
ARS 49–457.03
ARS 49–457.04
ARS 49–474.01
ARS 49–474.05
ARS 49–501

EPA is also proposing pursuant to CAA section 110(k)(3) to approve the “Agricultural Best Management Practices Guidance Booklet and Pocket Guide” as submitted on May 6, 2010.

EPA is also proposing pursuant to CAA section 110(k)(3) a limited approval and limited disapproval of AAC R18–2–610 and AAC R18–2–611, as submitted in the 189(d) plan. We are proposing a limited approval because AAC R18–2–610 and AAC R18–2–611 strengthen the SIP. We are proposing a limited disapproval because the general permit rule does not meet the enforceability requirements of CAA section 110(a) and no longer ensures that controls for agricultural sources in the Maricopa area are implemented at a BACM level as required by section 189(b)(1)(B).

C. Attainment Demonstration

CAA section 189(d) requires the submittal of plan revisions that provide for expeditious attainment of the PM–10 NAAQS. The attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than five years from the publication date of the notice of a nonattainment finding unless extended by EPA as meeting certain specified requirements. CAA section 179(d)(3). Because, as stated previously, EPA published the nonattainment finding for the Maricopa area on June 6, 2007 (72 FR 31183), the attainment deadline for the area is as expeditiously

as practicable but no later than June 6, 2012.

The 189(d) plan projects through a modeled attainment demonstration that the Maricopa area will attain the PM-10 standard by December 31, 2010. 189(d) plan, chapter 8. According to the plan, modeling was conducted for the two areas, the Salt River area and the Higley monitor, that have the mix and density of sources that caused the highest 24-hour PM-10 monitor readings in the Maricopa area from 2004 through 2006. The Salt River area includes the three monitors (West 43rd Avenue, Durango Complex and Bethune Elementary) that recorded violations during those years. The Higley monitor did not violate the PM-10 standard for that period but had one exceedance in 2004 and one in 2006 and the surrounding area has a different mix of sources than the Salt River area. The plan also provides a modeled attainment demonstration for the remainder of the nonattainment area. AERMOD was used for the attainment demonstration for the Salt River area. Attainment for the Higley monitor area and the remainder of the nonattainment area was shown using a proportional rollback approach.

AERMOD is an EPA-approved model and was appropriately used in the 189(d) plan. The proportional rollback approach was also appropriate because of the lack of good models for PM-10 on large geographic scales. However, EPA cannot approve an attainment demonstration for PM-10 nonattainment areas based on modeled projections of attainment if actual ambient air quality monitoring data show that the area cannot attain by the projected date. Under 40 CFR 50.6(a), the 24-hour PM-10 standard is attained when the expected number of exceedances per year at each monitoring site is less than or equal to one. The number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past 3 calendar years. 40 CFR part 50, appendix K. Thus, in order for the Maricopa area to attain the standard by December 31, 2010, there can be no more than one exceedance at any one monitor in the nonattainment area in calendar years 2008, 2009 and 2010.

There were 11 recorded exceedances of the PM-10 standard in 2008 in the Maricopa area. Five of these exceedances were recorded at the West 43rd Avenue monitor, two at the Durango Complex monitor, two at the South Phoenix monitor, and two at the Coyote Lakes monitor. In 2009, there were 22 exceedances recorded in the Maricopa Area. Seven of these

exceedances were recorded at the West 43rd Avenue monitor, three at the Durango Complex monitor, three at the South Phoenix monitor, two at the Higley monitor, two at the West Chandler monitor, one at the West Phoenix monitor, one at the Glendale monitor, one at Greenwood monitor, one at the Dysart monitor, and one at the Bethune Elementary School monitor.¹⁶

Of the eleven 2008 exceedances, ten were flagged by the State as due to exceptional events under EPA's Exceptional Events Rule (EER)¹⁷ which allows the Agency to exclude air quality monitoring data from regulatory determinations related to exceedances or violations of the NAAQS if the requirements of the EER are met. All of the 2009 exceedances were flagged as exceptional events under the EER.¹⁸

Under the EER, EPA may exclude monitored exceedances of the NAAQS from regulatory determinations if a state adequately demonstrates that an exceptional event caused the exceedances. 40 CFR 50.14(a). Before EPA will exclude data from these regulatory determinations, the state must flag the data in EPA's Air Quality System (AQS) database and, after notice and an opportunity for public comment, submit a demonstration to justify the exclusion. After considering the weight of evidence provided in the demonstration, EPA will decide whether or not to concur on each flag.

EPA has evaluated four of the 2008 exceedances recorded at the West 43rd Avenue monitor in south-central Phoenix that the State claims to be due to exceptional events.¹⁹ The exceedances were recorded on March 14, April 30, May 21, and June 4. On May 21, 2010 EPA determined that the events do not meet the requirements of

¹⁶ USEPA Quick Look Report for Maricopa County (01/01/2008–12/31/2010) Air Quality System database, run date: August 26, 2010" (AQS 2008–2010 Quick Look Report). The Air Quality System Identifier numbers for the monitors referenced in this section are as follows: West 43rd Avenue (04–013–4009), Durango Complex (04–013–9812), South Phoenix (04–013–4003), Coyote Lakes (04–013–4014), Higley (04–013–4006), West Chandler (04–013–4004), West Phoenix (04–013–0019), Glendale (04–013–2001), Greenwood (04–013–3010), Dysart (04–013–4010), Bethune Elementary School (04–013–8006).

¹⁷ See "Treatment of Data Influenced by Exceptional Events," 72 FR 13560 (March 22, 2007). The EER is codified at 40 CFR 50.1 and 50.14. For the state flagging requirements, see 40 CFR 50.14(c)(2).

¹⁸ AQS 2008–2010 Quick Look Report.

¹⁹ EPA has not evaluated the remaining exceptional event claims for 2008 or those for 2009. As discussed below, such an evaluation was not necessary for us to determine that the Maricopa area cannot attain the PM-10 standard by December 31, 2010.

the EER and therefore do not qualify as exceptional events for regulatory purposes. Letter from Jared Blumenfeld, EPA, to Benjamin H. Grumbles, ADEQ, re: PM₁₀ National Ambient Air Quality Standard in Phoenix; Request for Concurrence for Treatment as "Exceptional Events," May 21, 2010, with enclosures. As a result, EPA is not excluding the exceedances recorded on these dates from regulatory determinations regarding NAAQS exceedances in the Maricopa area.

Under 40 CFR part 50, appendix K, because there have been four exceedances in 2008 at the West 43rd Avenue monitor, the area cannot attain the standard by December 31, 2010 as projected in the 189(d) plan. Therefore, EPA is proposing to disapprove under CAA section 110(k)(3) the attainment demonstration in the plan as not meeting the requirements of sections 189(d) and 179(d)(3).

Finally, we note here, as we address in more detail in section III.A above, that most of the emission reductions relied on in the 189(d) plan are projected to be achieved by increased compliance with MCAQD Rules 310, 310.01 and 316. This is the case for the attainment demonstration, as well as for the 5% and RFP demonstrations discussed in sections III.D and III.F below. The 189(d) plan provides little or no support for the emission reductions attributed to these increased compliance measures. See, e.g., Measure #8 (Conduct Nighttime and Weekend Inspections) which, with no explanation, estimates that compliance with MCAQD Rules 310 and 316 will increase by 4 percent in 2008, 6 percent in 2009 and 8 percent in 2010. 189(d) plan TSD, pp. III–4 through III–6. We recognize that calculating accurate emission reduction estimates for increased compliance measures is challenging. It is, however, important for such estimates to have a technical basis, especially when such measures are expected to achieve the majority of the emission reductions in a SIP. One way to begin to address this issue would be to initiate an ongoing process to verify that compliance rates are increasing as expected and that, as a result, the projected emission reductions are actually being realized.

D. 5% Requirement

The demonstration addressing the 5% requirement of CAA section 189(d) is presented in chapter 7 of the 189(d) plan. Chapter 7 shows the annual 5% emission reductions of PM-10²⁰ for

²⁰ While the 5% requirement of section 189(d) can be met by emission reductions of PM-10 or

2008 through 2010, the projected attainment year. The plan quantifies emission reductions attributable to 25 of the 53 measures in the plan to meet the annual 5% targets. Table 7-2 in the 189(d) plan shows the base case PM-10 emissions from the 2005 Periodic Inventory discussed in section III.A above. Table 7-3 presents the controlled emissions for 2007 through 2010, i.e., the emissions after the emission reductions from the 25 quantified measures have been applied. The plan explains that the annual target is obtained by multiplying the controlled 2007 emissions in table 7-3 by 5% and concludes that the 5% targets are met in 2008, 2009 and 2010 with a surplus margin of benefit in each year. 189(d) plan, table 7-4, p. 7-19.

EPA believes the methodology for determining the 5% targets for the years 2008, 2009 and 2010 is generally appropriate. However, because we have determined that the 2005 Periodic Inventory on which the State based these calculations is inaccurate, the emission reduction targets themselves are also necessarily inaccurate. Because the 189(d) plan projects emission reductions surplus to the 5% targets in each year, it is theoretically possible that creditable reductions from the 25 quantified measures would still achieve the 5% reductions when recalculated from an accurate base year inventory. However that could only be determined by an EPA review of a revised plan based on adjusted calculations.

Furthermore, the language of section 189(d) compels us to conclude that the 5% demonstration in the 189(d) plan does not meet that section's requirement. CAA section 189(d) requires that the plan provide for annual reductions of PM-10 or PM-10 precursors of not less than 5% each year from the date of submission of the plan until attainment. The 189(d) plan submitted by Arizona does not provide for reductions after 2010 because it projects attainment of the PM-10 standard by the end of that year. As discussed in section III.C above, the Maricopa area cannot attain by December 31, 2010.

For the above reasons, EPA is proposing to disapprove under section 110(k)(3) the demonstration of the 5% annual emission reductions in the 189(d) plan as not meeting the 5% requirement in CAA section 189(d).

PM-10 precursors, the 189(d) plan relies on PM-10 reductions. This reliance is consistent with the nature of the particulate matter problem in the Maricopa area. See footnote 5.

E. Reasonable Further Progress and Quantitative Milestones

Under section 189(c)(1), the 189(d) plan must demonstrate RFP. We have explained in guidance that for those areas, such as the Maricopa area, where "the nonattainment problem is attributed to area type sources (e.g., fugitive dust, residential wood combustion, etc.), RFP should be met by showing annual incremental emission reductions sufficient generally to maintain linear progress towards attainment. Total PM-10 emissions should not remain constant or increase from 1 year to the next in such an area." Further, we stated that "in reviewing the SIP, EPA will determine whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective to ensure timely attainment of the PM-10 NAAQS." Addendum at 42015-42016.

PM-10 nonattainment SIPs are required by section 189(c) to contain quantitative milestones to be achieved every three years and which are consistent with RFP for the area. These quantitative milestones should consist of elements which allow progress to be quantified or measured. Specifically, states should identify and submit quantitative milestones providing for the amount of emission reductions adequate to achieve the NAAQS by the applicable attainment date. *Id.* at 42016.

The 189(d) plan provides a graph showing a RFP line representing total emissions in the Maricopa area after emission reduction credit is applied for the 25 measures described in chapter 6 of the plan which are quantified for the purpose of meeting the section 189(c) requirements. 189(d) plan, figure 8-25; pp. 8-65 through 8-66. The graph shows an annual downward linear trend in emissions from 2007 through 2010, the modeled attainment date in the plan. The plan explains that the appropriate milestone year is 2010. *Id.*

The statutory purpose of RFP is to "ensure attainment" and the quantitative milestones are "to be achieved until the area is redesignated to attainment" under CAA sections 171(1) and 189(c) respectively. As discussed in section III.C above, we are proposing to disapprove the attainment demonstration in the 189(d) plan because, as a result of exceedances of the PM-10 standard recorded at the West 43rd Avenue monitor in 2008, the area cannot attain the standard by 2010 as projected in the plan. As a result, the RFP and milestone demonstrations in the plan do not achieve the statutory purposes of sections 171(1) and 189(c). We are therefore proposing to

disapprove these demonstrations under CAA section 110(k)(3) as not meeting the requirements of section 189(c).

F. Contingency Measures

CAA section 172(c)(9) requires that the 189(d) plan provide for the implementation of specific measures to be undertaken if the area fails to make RFP or to attain the PM-10 standard as projected in the plan. That section further requires that such measures are to take effect in any such case without further action by the state or EPA. The CAA does not specify how many contingency measures are necessary nor does it specify the level of emission reductions they must produce.

In guidance we have explained that the purpose of contingency measures is to ensure that additional emission reductions beyond those relied on in the attainment and RFP demonstrations are available if there is a failure to make RFP or to attain by the applicable statutory date. Addendum at 42014-42015. These additional emission reductions will ensure continued progress towards attainment while the SIP is being revised to fully correct the failure. To that end, we recommend that contingency measures for PM-10 nonattainment areas provide emission reductions equivalent to one year's average increment of RFP. *Id.*

In interpreting the requirement that the contingency measures must "take effect without further action by the State or the Administrator," the General Preamble provides the following general guidance: "[s]tates must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review." General Preamble at 13512.²¹ Further, "[i]n general, EPA will expect all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of its failure." *Id.* The Addendum at 42015 reiterates this interpretation.

We have also interpreted section 172(c)(9) to allow states to implement contingency measures before they are triggered by a failure of RFP or attainment as long as those measures are intended to achieve reductions over and beyond those relied on in the attainment and RFP demonstrations. *Id.*, and see

²¹ EPA elaborated on its interpretation of this language in section 172(c)(9) in the General Preamble in the context of the ozone standard: "The EPA recognizes that certain actions, such as notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented effectively." General Preamble at 13512.

LEAN v. EPA, 382 F.3d 575 (5th Cir. 2004).

The 189(d) plan addresses the section 172(c)(9) contingency measure requirement in chapter 8, pp. 8–65 through 8–74. Of the 53 measures in the plan, nine are designated and quantified as contingency measures: Measures #1, #5, #19, #24, #26, #27, #43, #50 and a measure identified as “multiple” which consists of Measures #14, #15 and #17. Chapter 8 of the 189(d) plan includes a discussion of each of these measures along with associated emission reductions for each of the years 2008, 2009 and 2010. Additional information

on the emission reductions claimed is in the 189(d) plan TSD, chapter IV. The measures are also individually discussed in chapter 6 of the 189(d) plan.

In calculating the target emission reductions that the contingency measures must meet, the 189(d) plan cites EPA’s recommendation that they provide reductions equivalent to one year’s average increment of RFP. The plan subtracts the total controlled emissions in 2010 from the total controlled emissions in 2007 and divides this sum by three years to produce an annual average of 4,869 tpy

as the target for the contingency measures to meet in each of the years 2008, 2009 and 2010. 189(d) plan, p. 8–67. Table 8–14 in the 189(d) plan lists the projected emission reductions for the nine contingency measures for each of these years and shows emission reductions in excess of the target for each of them. Table 5 below shows the contingency measures in the plan identified by number and reproduces the corresponding projected PM–10 reductions as depicted in table 8–14 in the plan:

TABLE 5—SUMMARY OF PM–10 EMISSIONS REDUCTIONS FOR CONTINGENCY MEASURES

Contingency measures		PM–10 reductions [tons/year]		
No.	Measure title	2008	2009	2010
1	Public education and outreach program	47.6	47.5	48.5
5	Certification program for dust free developments	28.9	21.5	17.6
19	Reduce off-road vehicle use	140.3	174.6	179.1
24	Sweep streets with certified PM–10 certified street sweepers	1,027.7	1,563.1	2,129.2
26	Pave or stabilize existing public dirt roads and alleys	1,488.0	2,313.3	3,723.6
27	Limit speeds to 15 mph on high traffic dirt roads	390.4	390.2	390.2
43	Additional \$5M in FY07 MAG TIP for paving roads/shoulders	205.2	820.9	820.9
50	Agricultural Best Management Practices	637.6	608.0	579.7
Multiple	Reduce trackout onto paved roads	1,256.9	1,273.4	1,270.0
Total for All Quantified Contingency Measures		5,222.5	7,212.6	9,158.9
Contingency Measure Reduction Target		4,869	4,869	4,869

As stated above, CAA section 172(c)(9) requires that the plan provide for the implementation of contingency measures to be undertaken if the area fails to attain the PM–10 standard by the applicable attainment date. The Maricopa area cannot attain the PM–10 standard by the projected date in the 189(d) plan because of monitored exceedances of the NAAQS in 2008.²² As a result, any emission reductions from contingency measures in the 189(d) plan that are intended to take effect upon an EPA finding that the area failed to attain the standard cannot currently be determined to be surplus to the attainment demonstration as required by section 172(c)(9). Therefore we are proposing to disapprove the attainment contingency measures under CAA section 110(k)(3) as not meeting the requirements of section 172(c)(9).

As also stated above, contingency measures are required to be implemented upon a failure of the Maricopa area to meet RFP. The 189(d)

plan bases the emission reduction target for these measures on reductions between 2007 and 2010 calculated from the 2005 Periodic Inventory that we have determined to be inaccurate. See section III.A above. Thus the emission reduction target for the RFP contingency measures is necessarily also inaccurate.

In addition to the inaccurate emission reduction target for the RFP contingency measures, many of the measures themselves do not meet the requirements of section 172(c)(9). These deficiencies generally fall into three categories: (1) Measures in the form of commitments in resolutions adopted by local or State governmental entities to take legislative or other substantial future action; (2) commitments in such resolutions for which implementation is conditioned on good faith efforts and funding availability and are therefore unenforceable; and (3) measures for which no basis is provided for the emission reductions claimed. While we illustrate these individual deficiencies below by reference to one or more of the 189(d) plan’s designated contingency measures, it is important to note that many of the measures are deficient for multiple reasons.

1. Some of the commitments by local governments or State agencies to implement measures that are intended to achieve the required emission reductions in 2008, 2009 and 2010 do not meet the requirement of section 172(c)(9) that such measures are to take effect without further regulatory or legislative action.

For example, Measure #19 is intended to reduce off-road vehicle use in areas with high off-road vehicle activity. For this measure, the 189(d) plan assigns emission reduction credit to the requirement in ARS 9–500.27.A, as submitted in the 189(d) plan, that cities and towns in the Maricopa area adopt, implement and enforce ordinances no later than March 31, 2008 prohibiting the use of such vehicles on unpaved surfaces closed by the landowner. 189(d) plan, p. 8–69; 189(d) plan TSD, p. IV–3. The 189(d) plan includes a number of resolutions adopted by cities and towns committing to adopt such ordinances to address the vehicle use prohibition in the statute. However, because the 189(d) plan was submitted at the end of 2007, the contingency measure, *i.e.*, the vehicle use prohibition, could not be fully

²² Note that because the modeled attainment demonstration projected attainment by the end of 2010, the 189(d) plan does not address the outside applicable statutory deadline under section 179(d)(3), June 6, 2012. See section III.B above.

implemented throughout the Maricopa area without additional future legislative action on the part of a number of governmental entities.²³

Furthermore, not only do some of the contingency measure commitments fail to meet the requirement of section 172(c)(9) that such measures are to be implemented with minimal further action, but because they depend on future actions that may or may not occur, it is also impossible to accurately quantify emission reductions from them at the time of plan development and adoption. Thus it would not be possible to determine at the time of plan development and adoption whether in the aggregate the measures designated as contingency would meet or approximate the target of one year's average increment of RFP. This is the case with Measure #19, mentioned above. For that measure, the 189(d) plan claims emission reduction credit assuming that all jurisdictions subject to the 2008 statutory requirement will comply. 189(d) plan TSD, p. IV-3. However, there is no way to determine at the time of the 189(d) plan adoption which, if any, of the multiple jurisdictions would in fact implement such requirements by the statutory deadline.

Another example of this quantification issue is Measure #26 regarding the paving or stabilization of existing public dirt roads and alleys. 189(d) plan, pp. 6-103 and 8-72; 189(d) plan TSD, p. IV-9. This measure includes commitments in resolutions adopted by 11 cities and towns to pave roads from 2007 through 2010 and claims emission reduction credit assuming full compliance. See also Measure #5 which quantifies as a contingency measure a requirement in ARS 49-457.02 that ADEQ establish a dust-free development program by September 19, 2007.²⁴ 189(d) plan TSD, p. 8-69. However, a 2010 report prepared by MAG addressing the 2008 implementation status of the 53 measures in the 189(d) plan states that "[t]his measure was not implemented because ADEQ delayed the certification program indefinitely due to budgetary

constraints." Letter from Lindy Bauer, MAG to Jared Blumenfeld, EPA, March 9, 2010, enclosing "2008 Implementation Status of Committed Measures in the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Areas," February 2010, MAG (2008 Status Report), table 1, p. 4.

See also Measure #24 which includes, among others, a commitment by the Arizona Department of Transportation (ADOT) to require in the contract awarded in January 2008 that contractors use PM-10 certified street sweepers on all State highways in the Maricopa area. 189(d) plan, p. 8-70; 189(d) plan TSD, p. IV-5; ADOT "Resolution to Implement Measures in the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area." 189(d) plan, chapter 10, "Commitments for Implementation," volume two. The 2008, 2009 and 2010 emission reductions claimed for Measure #24 assume implementation of the ADOT component of the measure. However, the 2008 Status Report states that "ADOT's current contract * * * does not require the use of PM-10 certified street sweepers * * *." 2008 Status Report, p. 15.

2. In addition to the above issue regarding commitments to take future action, a number of the commitments quantified for credit in the 189(d) plan as contingency measures are in the form of city, town and county resolutions that specifically recognize that the funding or schedules for such actions may be modified depending on the availability of funding or other contingencies. These commitments are also qualified by the statement that the agency making the commitment "agrees to proceed with a good faith effort to implement the identified measures."²⁵ See, e.g., Measure #1 regarding public education and outreach, 189(d) plan, pp. 6-2 through 6-20 and related resolutions in chapter 10, "Commitments for Implementation," volumes one and two. See also *id.*, p. 8-67. See also Measure #26 regarding the paving or stabilization of existing public dirt roads and alleys, *id.*, pp. 6-103 and 8-72; 189(d) plan TSD, p. IV-7.

The language in the above commitments regarding good faith efforts and funding availability makes the measures that are intended to achieve the required emission reductions virtually impossible to enforce. Section 110(a)(2) of the Act

requires that SIPs include "enforceable emission limitations and other control measures" and "a program to provide for the enforcement of the measures" in the plan. As we have explained, "[m]easures are enforceable when they are duly adopted, and specify clear, unambiguous, and measurable requirements. Court decisions made clear that regulations must be enforceable in practice. A regulatory limit is not enforceable if, for example, it is impractical to determine compliance with the published limit." General Preamble at 13568. In the case of most of the contingency measure commitments in the 189(d) plan, the implementation of the underlying measure cannot be ensured because the entity making the commitment can avoid having to implement it by asserting that it made good faith efforts, but failed to do so and/or that implementation did not occur due to insufficient funds.

3. The 189(d) plan provides no methodology or support for the PM-10 emission reductions credited to a number of the contingency measures. For example, the group of Measures #14, #15 and #17 designated in the plan as "multiple" is intended to reduce trackout onto paved roads. 189(d) plan, p. 8-74. The 189(d) plan TSD, p. IV-13, states that "[t]he reduction in trackout emissions in the PM-10 nonattainment area due to the impact of these three committed measures is expected to be at least 15 percent in 2008-2010" and credits these measures with the following emission reductions: 1256.9 tpy in 2008, 1273.4 tpy in 2009 and 1270 tpy in 2010. No information is provided in the 189(d) plan regarding how the 15 percent was determined. Furthermore, the reductions from each measure are not disaggregated so it is impossible to determine the source of the claimed emission reductions or how they were calculated for each measure.

Similarly, for Measure #1, the plan identifies annual emission reductions from seven source categories resulting from public education and outreach in various local jurisdictions but does not explain how these reductions were calculated. 189(d) plan TSD, p. IV-1. See also Measure #5 which provides annual emission reduction credits without any supporting information. The 189(d) plan TSD merely states: "[d]ue to the implementation of this program [certification program for dust-free developments to serve as an industry standard], the construction emissions are expected to decline by 0.10% in 2008-2010." 189(d) plan TSD, p. IV-2.

²³ In some cases, e.g., the City of Goodyear, ordinances implementing the commitments in resolutions were also submitted with the 189(d) plan. In others, however, e.g., the City of Apache Junction and the Town of Buckeye, the submitted resolutions include a schedule for the future adoption and implementation of ordinances. ADEQ forwarded these ordinances to EPA in 2008 as supplemental information, but not as SIP submittals. See footnote 1. This distinction is significant because here the ordinances are the ultimate regulatory vehicle.

²⁴ While the 189(d) plan refers to a deadline in ARS 49-457.02 for the establishment of this program, that statutory provision, as submitted with the 189(d) plan, does not contain a deadline.

²⁵ While EPA has approved the commitments with this language into the Arizona SIP in past plan actions as strengthening the SIP, we did not approve specific emission reduction credits for them.

For the reasons discussed above we are proposing to disapprove under CAA section 110(k)(3) the contingency measures in the 189(d) plan as not meeting the requirements of section 172(c)(9).

G. Transportation Conformity and Motor Vehicle Emissions Budgets

Transportation conformity is required by CAA section 176(c). Our conformity rule (40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or the timely achievement of interim milestones.

The 189(d) plan specifies the maximum transportation-related PM-10 emissions allowed in the proposed attainment year, 2010, i.e., the MVEB. 189(d) plan, p. 8-75. This budget includes emissions from road construction, vehicle exhaust, tire and brake wear, dust generated from unpaved roads and re-entrained dust from vehicles traveling on paved roads. This budget is based on the 2010 emissions inventory that was projected from the 2005 Periodic Inventory and reflects emission reductions that the plan expects will result from the control measures. The budget is consistent with the attainment, 5% and RFP demonstrations in the 189(d) plan. However, as explained elsewhere in this proposed rule, the area cannot attain by the end of 2010 as projected in the plan and we are, in addition to the attainment demonstration, proposing to disapprove the plan's emissions inventories, 5% and RFP demonstrations. Therefore we must also propose to disapprove the MVEB.

In order for us to find the emission level or "budget" in the 189(d) plan adequate and subsequently approvable, the plan must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity Web site at: <http://www.epa.gov/otaq/stateresources/transconf/index.htm>. The 189(d) plan includes the PM-10 MVEB shown in table 6 below.

TABLE 6—189(d) PLAN, MOTOR VEHICLE EMISSIONS BUDGET
(Annual-average emissions in metric tons per day (mtpd))

Year	MVEB
2010	103.3

On March 13, 2008, we announced receipt of the 189(d) plan on the Internet and requested public comment on the adequacy of the motor vehicle emissions budget by April 14, 2008. We did not receive any comments during the comment period. During that time we reviewed the MVEB and preliminarily determined that it met the adequacy criteria in 40 CFR 93.118(e)(4) and (5). We sent a letter to ADEQ and MAG on May 30, 2008 stating that the 2010 motor vehicle PM-10 emissions budget for the Maricopa area in the submitted 189(d) plan was adequate. Our finding was published in the **Federal Register** on June 16, 2008 (73 FR 34013), effective on July 1, 2008.

As explained in the June 16, 2008 **Federal Register** notice, an adequacy review is separate from EPA's completeness and full plan review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP and the associated budget can later be disapproved for reasons beyond those in 40 CFR 93.118(e).

Because we are proposing to disapprove the emission inventories, and the attainment 5% and RFP demonstrations, we are also now proposing to disapprove the 189(d) plan's 2010 PM-10 MVEB. Under 40 CFR 93.118(e)(4)(iv), we review a submitted plan to determine whether the MVEB, when considered together with all other emissions sources, are consistent with applicable requirements for RFP, attainment, or maintenance (whichever is relevant to a given SIP submission). Because we have now concluded that the area cannot attain by 2010 as projected in the 189(d) plan, the MVEB cannot be consistent with the attainment requirement. In addition, because we are proposing to disapprove the 5% and RFP demonstrations, the MVEB is not consistent with the applicable requirements to show 5% annual reductions and RFP. Given the overemphasis in the plan on reducing emissions from construction activities, it is quite possible that more reductions in onroad emissions will be required to meet the applicable requirements. Consequently, we find that the plan and related budget do not meet the requirements for adequacy and approval.

The consequences of plan disapproval on transportation conformity are explained in 40 CFR 93.120. First, if a plan is disapproved by EPA, a conformity "freeze" takes effect once the action becomes effective (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Program (TIP) can proceed. See 40 CFR 93.120(a). During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform. The conformity status of these plans would then lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the CAA. See 40 CFR 93.120(a)(1). Generally, highway sanctions are triggered 24 months after the effective date of the disapproval of a required SIP revision for a nonattainment area. During a conformity lapse, no new transportation plans, programs, or projects may be found to conform until another SIP revision fulfilling the same CAA requirements is submitted and conformity of this submission is determined.

If EPA were proposing to disapprove the plan for administrative reasons unrelated to the attainment, 5% and RFP demonstrations, EPA could issue the disapproval with a protective finding. See 40 CFR 93.120(a)(3). This would avoid the conformity freeze. Because this is not the case, EPA does not believe that a protective finding should be proposed in connection with our proposed disapproval action on the 189(d) plan. Therefore, a conformity freeze will be in place upon the effective date of any final disapproval of the 189(d) plan.

H. Adequate Legal Authority and Resources

Section 110(a)(2)(E)(i) of the Clean Air Act requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (section 51.230-232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be

available to the state and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal. These requirements are addressed in chapter 10 of the 189(d) plan. We evaluate these requirements for the plan in general and for those measures for which we are proposing approval or limited approval.

MAG derives its authority to develop and adopt the 189(d) plan and other nonattainment area plans from ARS 49-406 and from a February 7, 1978 letter from the Governor of Arizona²⁶ designating MAG as responsible for those tasks. ADEQ is authorized to adopt and submit the 189(d) plan by ARS 49-404 and ARS 49-406.

We are proposing for full approval statutes that have been adopted by the Arizona legislature, signed by the Governor and incorporated into the Arizona Revised Statutes. We are also proposing a limited approval of regulations authorized and mandated by Arizona statute. *See* section III.B above. Because the requirements in these statutes and regulations are directly imposed by State law, no further demonstration of legal authority to adopt emission standards and limitations is needed under CAA section 110(a)(2)(E)(i) and 40 CFR part 51, subpart L.

Section 51.230 of 40 CFR also requires that the State have the authority to "[e]nforce applicable laws, regulations, and standards, and seek injunctive relief." ARS 49-462, 49-463 and 49-464 provide the general authorities adequate to meet these requirements. We note that EPA, in undertaking enforcement actions under CAA section 113, is not constrained by provisions it approves into SIPs that circumscribe the enforcement authorities available to state and local governments.

Several of the State statutory provisions proposed for full approval and the regulations proposed for limited approval are direct mandates to the regulated community and require ADEQ to implement and enforce programs in whole or in part. *See, e.g.,* ARS 49-457, 49-457.01, 49-457.03 and 49-457.04. There is no description in the 189(d) plan of the resources available to the State to implement and enforce these statutory and regulatory provisions. Thus it is not possible for EPA to ascertain whether the State has adequate personnel and funding under CAA section 110(a)(2)(E)(i) and EPA's related

regulations to carry out these State statutes.

Many of the Arizona statutory provisions proposed for approval are directives to local governmental entities to take action. For example, ARS 49-474.05 requires specified local jurisdictions to develop extensive dust control programs. Developing such programs will require resources and legal authority at the local level. However, we are not proposing approval of such programs at this time. This action is merely proposing approval of the statutory mandate to develop the program. Therefore, for these statutory provisions, a demonstration that adequate authority and resources are available is not required.

Section 110(a)(2)(E)(iii) requires SIPs to include necessary assurances that where a state has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision. We have previously found that Arizona law provides such assurances. 60 FR 18010, 18019 (April 10, 1995).

For the reasons discussed above, we propose to find that the requirements of section 110(a)(2)(E) and related regulations have been met with respect to legal authority. However, we propose to find that the 189(d) plan does not demonstrate that ADEQ has adequate personnel and funding to implement the State statutes and regulations proposed for full or limited approval for which the State has implementation and enforcement responsibility and authority.

IV. Summary of Proposed Actions

EPA is proposing to approve in part and disapprove in part, the 189(d) plan for the Maricopa County (Phoenix) PM-10 nonattainment area as follows:

A. EPA is proposing to disapprove pursuant to CAA section 110(k)(3) the following elements of the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area":

- (1) The 2005 baseline emissions inventory and the projected emission inventories as not meeting the requirements of CAA sections 172(c)(3);
- (2) The attainment demonstration as not meeting the requirements of CAA sections 189(d) and 179(d)(3);
- (3) The 5% demonstration as not meeting the requirements of CAA sections 189(d);

(4) The reasonable further progress and milestone demonstrations as not meeting the requirements of CAA section 189(c);

(5) The contingency measures as not meeting the requirements of CAA sections 172(c)(9); and

(6) The 2010 MVEB as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4).

B. EPA is proposing a limited approval and disapproval of AAC R18-2-610 and AAC R18-2-611 as submitted in the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" pursuant to CAA section 110(k)(3). EPA is proposing a limited approval because these regulations strengthen the SIP and a limited disapproval because they do not fully meet the requirements of CAA sections 110(a) and 189(b)(1)(B) for enforceable BACM for agricultural sources of PM-10 in the Maricopa area.

C. EPA is proposing to approve pursuant to CAA section 110(k)(3) the following sections of the Arizona Revised Statutes as submitted in the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" as strengthening the SIP: ARS 9-500.04, ARS 9-500.27, ARS 11-877, ARS 28-6705, ARS 49-457, ARS 49-457.01, ARS 49-457.02, ARS 49-457.03, ARS 49-457.04, ARS 49-474.01, ARS 49-474.05, and ARS 49-501.

D. EPA is proposing to approve pursuant to CAA section 110(k)(3) the "Agricultural Best Management Practices Guidance Booklet and Pocket Guide" as submitted on May 6, 2010.

E. Effect of Finalizing the Proposed Disapproval Actions

If we finalize disapprovals of the emissions inventories, attainment demonstration, RFP and milestone demonstrations, 5% demonstration and contingency measures, the offset sanction in CAA section 179(b)(2) will be applied in the Maricopa area 18 months after the effective date of any final disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if Arizona submits and we approve prior to the implementation of the sanctions SIP revisions meeting the relevant requirements of the CAA. *See* 40 CFR 52.31 which sets forth in detail the sanctions consequences of a final disapproval.

If EPA takes final action on the 189(d) plan as proposed, Arizona will need to develop and submit a revised plan for the Maricopa area that again addresses applicable CAA requirements, including section 189(d). While EPA is proposing to approve many of the measures relied on in the submitted 189(d) plan,

²⁶ Letter from Wesley Bolin, Governor of Arizona, to Douglas M. Costle, Administrator of EPA, February 7, 1978, found in the 189(d) plan, chapter 10, "Commitments for Implementation," Volume one, "Maricopa Association of Governments."

additional emission reductions will be needed. In pursuing such reductions, we expect Arizona to investigate all potential additional controls for source categories in the Maricopa area that contribute to PM-10 exceedances. This investigation should include, but not be limited to, analysis of BACM controls in other geographic areas. We also note that CAA section 179(d)(2) provides EPA the authority to prescribe specific additional controls for areas, such as the Maricopa area, that have failed to attain the NAAQS.

If we finalize a limited disapproval of AAC R18-2-610 and 611, the offset sanction in CAA section 179(b)(2) will be applied in the Maricopa area 18 months after the effective date of the final limited disapproval. The highway funding sanctions in CAA section 179(b)(1) will apply in the area 6 months after the offset sanction is imposed. Neither sanction will be imposed if Arizona submits and we approve prior to the implementation of the sanctions a measure for the control of agricultural sources meeting the requirements of CAA sections 110(a) and 189(b)(1)(B).

In addition to the sanctions, CAA section 110(c)(1) provides that EPA must promulgate a Federal implementation plan addressing any full or limited disapproved elements of the plan, as set forth above, two years after the effective date of a disapproval should we not be able to approve replacements submitted by the State.

Finally, if we take final action disapproving the 189(d) plan, a conformity freeze takes effect once the action becomes effective (usually 30 days after publication of the final action in the **Federal Register**). A conformity freeze means that only projects in the first four years of the most recent RTP and TIP can proceed. During a freeze, no new RTPs, TIPs or RTP/TIP amendments can be found to conform.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP partial approval/partial disapproval and limited approval/limited disapproval actions do not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the partial approval/partial disapproval and limited approval/limited disapproval actions proposed do not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal

governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or disapprove a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States. The Executive Order has informed the development and implementation of EPA's environmental justice program and policies. Consistent with the Executive Order and the associated Presidential Memorandum, the Agency's environmental justice policies

promote environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority, low-income and Tribal populations.

This action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or Tribal populations because the partial approval/partial disapproval and limited approval/limited disapproval actions proposed increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 3, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010-22616 Filed 9-8-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1983-0002; FRL-9198-7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List; Intent for Partial Deletion of the Denver Radium Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent to Delete each of the 11 operable units, with the exception of groundwater contamination associated with Operable Unit 8, of the Denver Radium Superfund Site (Site), located in the City and County of Denver, Colorado, from the National Priorities List (NPL) and requests public comments on this proposed action. Groundwater associated with Operable Unit 8 will remain on the NPL. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an Appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment, have determined that all appropriate response actions at these identified parcels under CERCLA, other than operations and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to each of the 11 operable units of the Denver Radium Superfund Site. Groundwater contamination associated with Operable Unit 8 will remain on the NPL and is not being considered for deletion at this time.

DATES: Comments must be received by October 12, 2010.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1983-0002, by one of the following methods:

- <http://www.regulations.gov>. Follow on-line instructions for submitting comments.
- *E-mail:* dalton.john@epa.gov.
- *Fax:* 303-312-7110 (Attention: John Dalton, Public Affairs and Involvement).
- *Mail:* John Dalton, Public Affairs and Involvement (8OCPI), U.S. EPA



The Bottom Line

A weekly commentary from inside the business community

Greater Phoenix transportation funds could be gone with the wind



July 29, 2010
by Glenn Hamer

The Environmental Protection Agency's plan to sanction the region encompassing most of Maricopa County over the area's air quality could initially jeopardize over \$1 billion worth of federal transportation funding, grinding project design and construction to a halt while eliminating thousands of jobs. The ultimate sanctions that EPA could impose could cause a loss of \$7 billion in transportation funds with devastating consequences. The emerging state versus federal showdown over an overly aggressive regulatory position by the EPA could make the battle between Washington, D.C. and Arizona over immigration look like a game of Tiddlywinks.

What unleashed the federal attack dogs on Arizona? The answer is blowing in the wind.

At issue is the level of particulate matter, known as PM-10. The Maricopa Association of Governments has investigated why an air quality monitor at West 43rd Avenue was registering unusually elevated concentrations of PM-10 above the EPA standard during high wind conditions.

MAG's analysis, along with that of the Arizona Department of Environmental Quality and consultant Sierra Research, indicated that the monitor's location adjacent to a dusty riverbed was responsible for the high PM-10 readings during exceptionally high wind conditions.

EPA, however, despite reams of data-backed documentation and strict adherence to EPA's own procedures for analyzing the documentation, has told MAG and ADEQ that it does not concur with the state's finding of four high wind exceptional events in 2008.

As MAG Executive Director Dennis Smith wrote in his May report, "We live in a desert, the monitor is on a riverbank where the wind blows toward the monitor over a smooth terrain and the soil is silty. Paving the riverbed is not an

option!"

Because the high PM-10 readings from the West 43rd Avenue monitor are not being classified as exceptional events, the PM-10 concentrations measured by that monitor will not be excluded from the determination of whether the region is meeting the PM-10 standards. Citing the PM-10 concentrations, EPA has indicated that it intends to deny approval of MAG's Five Percent Plan for PM-10. The plan describes how the region will reduce PM-10 by five percent per year until PM-10 readings reach their EPA-mandated levels and contains control measures for PM-10 that are as stringent as any in the country

The potential sanctions facing Arizona for its perceived failure to attain proper air quality levels and the disapproval of its Five Percent Plan are stiff ones.

If the EPA finds that the region failed to attain three years of clean data for 2008, 2009 and 2010 and the Five Percent Plan is disapproved and that decision is finalized in the Federal Register, the region will enter a conformity freeze 30-90 days after the decision appears in the Register. That will mean that only those projects in the first four years of the Transportation Improvement Plan and Regional Transportation Plan can proceed. Projects would not move forward unless a new Five Percent Plan is submitted that meets Clean Air Act requirements.

If the problems are not corrected within 18 months, then harsher sanctions would be carried out, including stiff limits on the issuance of air quality permits for industry. Finally, if air quality standards haven't been met within 24 months, then over \$1 billion worth of federal highway funds could be withheld, putting over \$7 billion worth of transportation funds from all sources - and the jobs that come with them - at risk.

The EPA exceptional event rule specifically mentions high wind as legitimate cause of an exceptional event. EPA acknowledges that its exceptional event rule is flawed, but, despite its shortcomings, the rule must still be implemented. Moreover, the Arizona submission strictly followed the data requirements used by California's San Joaquin Valley when it successfully obtained EPA's approval of its demonstration. As a result of EPA's decision, the entire MAG region's transportation funding is in jeopardy due to naturally occurring high wind, local soil conditions and a flawed rule.

MAG and ADEQ are staffed by highly capable and dedicated public servants. They cannot, however, control the weather. ADEQ, which submits the exceptional event documentation on behalf of MAG, intends to submit documentation of seven more exceptional events for 2009. One can only wonder how the EPA will view those submittals. It's worth noting that, following a wet winter and spring, there have been no PM-10 exceedances in 2010. Sometimes Mother Nature works in our favor.

A clear rule with specific, rational requirements prescribing what constitutes an exceptional event needs to be issued by the EPA and codified through the rulemaking process. There are too many outstanding issues over the implementation of the current rule. As the 15-state Western State Air Resources Council recently wrote in a letter to EPA, "Our scarce air quality management resources need to focus on problems we can solve, not on problems over which we have little or no control."

MAG is exploring a legal challenge against the capricious EPA determination and is informing our congressional delegation of the potentially crippling

consequences of the sanctions.

One can't help but think of another more high profile issue when considering this latest difference of opinion between Arizona and the federal government.

The aggressive regulatory position taken by EPA in this air quality case stands in stark contrast to the federal government's passive approach to immigration. While the government drags its feet on immigration reform, yet lectures and litigates over Arizona's response to federal inaction, it ignores scientifically verifiable air quality data and pursues a set of draconian sanctions that could irreparably harm the region's economy. More than just a case of misplaced priorities, the EPA's actions constitute a serious abuse of government power.

Glenn Hamer is the president and CEO of the Arizona Chamber of Commerce and Industry.

The Arizona Chamber of Commerce and Industry is committed to advancing Arizona's competitive position in the global economy by advocating free-market policies that stimulate economic growth and prosperity for all Arizonans. <http://www.azchamber.com/>.



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July 30, 2010

VIA ELECTRONIC, U.S. MAIL AND OVERNIGHT DELIVERY

Lisa Jackson
Administrator
U. S. Environmental Protection Agency
EPA Docket Center
Mailcode: 2822T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460-0001

RE: Docket ID No. EPA-HQ-OGC-2010-0428
MAG Comments on the EPA/ACLPI Proposed Consent Decree

Dear Administrator Jackson:

In a separate submission, the State of Arizona, through its Department of Environmental Quality ("ADEQ"), has submitted comments on the above-referenced proposed Consent Decree. The primary purpose of this letter is to express the strong support of the Maricopa County, Arizona cities, towns, and member agencies that constitute the Maricopa Association of Governments ("MAG"), for those comments.

The "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" (the "Plan") that is the subject of the Consent Decree was developed by MAG in concert with ADEQ and Maricopa County. It contains controls on PM-10 emissions that are as stringent as any in the country. The ADEQ comments request that the schedule for action on the Plan be postponed for at least six months so that MAG and the other Arizona governmental entities and stakeholders can work cooperatively with EPA to determine what issues, if any, represent barriers to the approvability of the Plan and to resolve those issues cooperatively.

First, it is important to note that the issues raised by the Plan and the Exceptional Events Demonstration that are directly relevant to the effectiveness of the Plan, are not public health issues. As elected officials, our first priority is protection of the health of our citizens. These issues, to the extent that EPA has disclosed them to us, involve elevated levels of PM-10 measured at a single, somewhat isolated ambient air quality monitor. The elevated levels were caused primarily by the effect on the monitor of unusually high winds in a desert environment.

A Voluntary Association of Local Governments in Maricopa County

City of Apache Junction * City of Avondale * Town of Buckeye * Town of Carefree * Town of Cave Creek * City of Chandler * City of El Mirage * Fort McDowell Yavapai Nation * Town of Fountain Hills * Town of Gila Bend
Gila River Indian Community * Town of Gilbert * City of Glendale * City of Goodyear * Town of Guadalupe * City of Litchfield Park * Maricopa County * City of Mesa * Town of Paradise Valley * City of Peoria * City of Phoenix
Town of Queen Creek * Salt River Pima-Maricopa Indian Community * City of Scottsdale * City of Surprise * City of Tempe * City of Tolleson * Town of Wickenburg * Town of Youngtown * Arizona Department of Transportation

Second, what the ADEQ and MAG comments are about is fairness. MAG and ADEQ have submitted exceptional events demonstrations with voluminous technical support that followed the standards exactly that are set forth in Section 319 of the Clean Air Act and the EPA rules implementing that section. Indeed, EPA has approved a demonstration with substantially less technical support for a California Air Quality Control District. Also, the basis for EPA's initial action on the demonstration is entirely inconsistent with the agency's own rules for exceptional events. Fairness demands that EPA considers these facts as it acts upon the exceptional events demonstration.

Finally, few counties, if any, in the country have been as devastated by this recession as Maricopa County. The effect of even a proposed disapproval of the Plan as proposed in the Consent Decree, due to the uncertainty it would create about future transportation infrastructure, could further substantially damage our economic situation with significant negative impacts on individual families and communities. Since EPA's creation in 1970, we have always been able to work with the agency to resolve our differences informally through candid communications prior to formal agency action. That kind of communication takes time and the willingness of EPA to work with us. The schedule proposed in the Consent Decree is counterproductive as far as resolution of the issues since it precludes such a process. The six-month delay ADEQ is seeking, and that we endorse, will provide the needed time for us to work out our differences.

Thank you for your attention.

Sincerely,

The Regional Council of the Maricopa Association of Governments



Thomas L. Schoaf
Mayor, City of Litchfield Park
Chair, MAG Regional Council



Hugh Hallman
Mayor, City of Tempe
Vice Chair, MAG Regional Council



Marie Lopez Rogers
Mayor, City of Avondale
Treasurer, MAG Regional Council



Robin Barker
Councilmember, City of Apache Junction



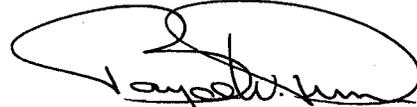
Jackie Meck
Mayor, Town of Buckeye



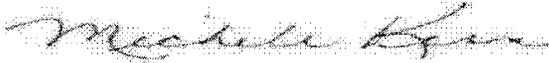
David Schwan
Mayor, Town of Carefree



Richard K. Esser
Councilmember, Town of Cave Creek



Boyd W. Dunn
Mayor, City of Chandler



Michele Kern
Mayor, City of El Mirage



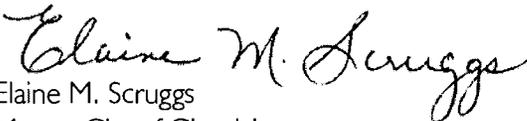
Jay Schlum
Mayor, Town of Fountain Hills



Ron Henry
Mayor, Town of Gila Bend



John Lewis
Mayor, Town of Gilbert



Elaine M. Scruggs
Mayor, City of Glendale



James M. Cavanaugh
Mayor, City of Goodyear



Mary Rose Wilcox
Supervisor, District 5, Maricopa County



Scott Smith
Mayor, City of Mesa



Scott LeMarr
Mayor, Town of Paradise Valley



Bob Barrett
Mayor, City of Peoria



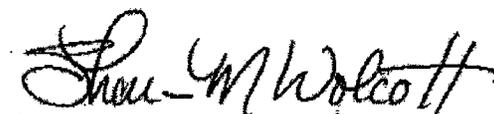
Peggy Neely
Councilmember, City of Phoenix



Gail Barney
Mayor, Town of Queen Creek



Jim Lane
Mayor, City of Scottsdale



Sharon Wolcott
Councilmember, City of Surprise



Adolfo Garnez
Mayor, City of Tolleson



Kelly Blunt
Mayor, Town of Wickenburg



Michael LeVault
Mayor, Town of Youngtown



F. Rockne Arnett
Chair, Citizens Transportation Oversight
Committee



Victor Flores
State Transportation Board

cc: Jared Blumenfeld, EPA Region IX Administrator
Joy E. Herr-Cardillo, Arizona Center for Law in the Public Interest



SALT RIVER
PIMA-MARICOPA INDIAN COMMUNITY
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July 30, 2010

VIA ELECTRONIC AND U.S. MAIL

Lisa Jackson
Administrator
U. S. Environmental Protection Agency
EPA Docket Center
Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

RE: Docket ID No. EPA-HQ-OGC-2010-0428

MAG Comments on the EPA/ACLPI Proposed Consent Decree

Dear Administrator Jackson:

In a separate submission, the State of Arizona, through its Department of Environmental Quality ("ADEQ"), has submitted comments on the above-referenced proposed Consent Decree. The primary purpose of this letter is to express the strong support of each of the Maricopa County, Arizona cities, towns, and member agencies that constitute the Maricopa Association of Governments ("MAG"), for those comments.

The "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" (the "Plan") that is the subject of the Consent Decree was developed by MAG in concert with ADEQ and Maricopa County. It contains controls on PM-10 emissions that are as stringent as any in the country. The ADEQ comments request that the schedule for action on the Plan be postponed for at least six months so that MAG and the other Arizona governmental entities and stakeholders can work cooperatively with EPA to determine what issues, if any, represent barriers to the approvability of the Plan and to resolve those issues cooperatively.

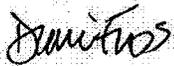
First, it is important to note that the issues raised by the Plan and the Exceptional Events Demonstration that are directly relevant to the effectiveness of the Plan, are not public health issues. As elected officials, our first priority is protection of the health of our citizens. These issues, to the extent that EPA has disclosed them to us, involve elevated levels of PM-10 measured at a single, somewhat isolated ambient air quality monitor. The elevated levels were caused primarily by the effect on the monitor of unusually high winds in a desert environment.

Second, what the ADEQ and our comments are about is fairness. MAG and ADEQ have submitted exceptional events demonstrations with voluminous technical support that followed the standards exactly that are set forth in Section 319 of the Clean Air Act and the EPA rules implementing that section. Indeed, EPA has approved a demonstration with substantially less technical support for a California Air Quality Control District. Also, the basis for EPA's initial action on the demonstration is entirely inconsistent with the agency's own rules for exceptional events. Fairness demands that EPA consider these facts as it acts upon the exceptional events demonstration.

Finally, few counties, if any, in the country have been as devastated by this recession as Maricopa County. The effect of even a proposed disapproval of the Plan as proposed in the Consent Decree, because of the uncertainty it would create about future transportation infrastructure, could further substantially damage our economic situation with significant negative impacts on individual families and communities. Since its creation in 1970, we have always been able to work with EPA to resolve our differences informally through candid communications prior to formal agency action. That kind of communication takes time and the willingness of EPA to work with us. The schedule proposed in the Consent Decree is counterproductive as far as resolution of the issues because it precludes such a process. The six-month delay ADEQ is seeking and that we endorse, will provide the needed time for us to work out our differences.

Thank you for your attention.

Sincerely,



Diane Enos
President



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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(602) 771-2300 • www.azdeq.gov



Benjamin H. Grumbles
Director

VIA U.S. Mail and Electronic Mail

August 2, 2010

Ms. Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Docket ID Number EPA-HQ-OGC-2010-0428
EPA Docket Center, Mailcode 2822T
1200 Pennsylvania Ave, N.W.
Washington, DC 20460-001

Subject: Docket ID Number EPA-HQ-OGC-2010-0428 – Comments on Proposed Consent Decree

Dear Administrator Jackson:

The Arizona Department of Environmental Quality (ADEQ) provides the following comments on the proposed Consent Decree in Docket ID Number EPA-HQ-OGC-2010-0428. This proposed Consent Decree would resolve a lawsuit that seeks to compel EPA's Administrator to take final action under section 110(k)(2) of the Clean Air Act on the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" (the 5% Plan) developed by the Maricopa Association of Governments in 2007, and submitted by the State of Arizona to EPA as a revision to the State Implementation Plan (SIP) for the Maricopa County serious PM-10 non-attainment area. For the reasons stated below, the schedule agreed upon within the Consent Decree, without consultation with the State of Arizona, should be delayed for at least six months.

BACKGROUND

Based upon the 1990 Clean Air Act amendments, the Maricopa County nonattainment area was initially classified as Moderate for PM-10 particulate pollution. Since that time, ADEQ has provided EPA with a series of plans that continue to reduce the amount PM-10 particulate pollution generated by man-made activity. Despite scientific studies indicating that implementation of the increasingly stringent control measures in these plans would achieve compliance with the EPA PM-10 National Ambient Air Quality Standards (NAAQS), the area had not achieved compliance with the standard. On June 6, 2007, EPA published a final notice finding that the Maricopa County nonattainment area failed to comply with the national ambient air quality standard. As a result, the State of Arizona was required to submit a plan to reduce PM-10 emissions within the nonattainment area by at least five percent per year until the standards is attained (aka the 5% Plan).

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In December of 2007, ADEQ submitted the 5% Plan within the deadlines set by EPA. According to the 5% Plan, implementation of new and more stringent control measures would sufficiently reduce emissions in the nonattainment area to reach attainment of the PM-10 standard by calendar year 2010. In fact, the predicted reductions associated with these additional control measures exceeded the annual 5% reduction targets for calendar years 2008, 2009 and 2010. Despite submission of the plan in 2007, and its successful implementation beginning in 2008, EPA has failed to act on the plan. Now, after almost three years, the State of Arizona is being asked to quickly resolve with EPA a very complicated issue that will determine whether EPA can approve the 5% Plan.

EXCEPTIONAL EVENTS

To demonstrate compliance with the PM-10 NAAQS, the State has established an array of ambient air quality monitors throughout the non-attainment area. According to the requirements for the PM-10 NAAQS, if any of these ambient air quality monitors records a daily PM-10 concentration greater than the standard more than once per year on average, over a three-year period (i.e., four or more exceedances in a three year period), then the area is deemed to be nonattainment for the standard. During 2008, the monitoring network observed 11 days with concentrations of PM-10 in excess of the standard. In 2009, the monitoring network observed another seven days in excess of the standard.

The exception to this standard is when an exceedance is determined to be the result of an "Exceptional Event" as defined in 40 CFR § 50.1(j). Under 40 CFR § 50.14(a)(1):

A State may request EPA to exclude data showing exceedances or violations of the national ambient air quality standard that are directly due to an exceptional event from use in determinations by demonstrating to EPA's satisfaction that such event caused a specific air pollution concentration at a particular air quality monitoring location.

While 40 CFR § 50.14(b) requires EPA to exclude exceedances caused by exceptional events from a determination of nonattainment, EPA's rule does not specify with particularity the minimum requirements for documenting such events. As a result, the exceptional event demonstration process is wrought with uncertainty, delay, and potentially unjustifiable decisions. On July 6, 2010, the Western States Air Resources (WESTAR) Council, an association of 15 western state air quality managers, wrote EPA's Assistant Administrator for the Office of Air and Radiation expressing concern about "...wait[ing] for decisions from EPA that, in some cases, are several years old." The letter went on to state that "...EPA has recently issued decisions not to concur with California and Arizona requests for several exceptional events where both states are highly confident that these exceedances do, in fact, meet all the criteria in the rule for qualifying as exceptional events" (see Attachment 1). Conversations with other WESTAR members revealed that other Western States did not clearly understand EPA's criteria either, resulting in WESTAR's reminder to EPA that there is a need for "...following through on [EPA's] commitment to work with WESTAR on this important issue..."

Despite the lack of clarity in the exceptional event regulations, ADEQ has provided EPA with what it believes to be documentation demonstrating that ten of the exceedances measured in 2008, and seven exceedances measured in 2009 were the result of exceptional events. ADEQ made numerous efforts to consult with EPA Region IX on the exceptional events that occurred in 2008, but did not receive a definitive position from EPA until May 21, 2010, only a few weeks before the announcement of the schedule within this proposed Consent Decree. ADEQ is still trying to work with EPA to document that the exceedances in 2008 were due to exceptional events. We simply need more time to ensure that a final decision on exceptional events will be made upon the best scientific information available.

CONSULTATION PROCESS

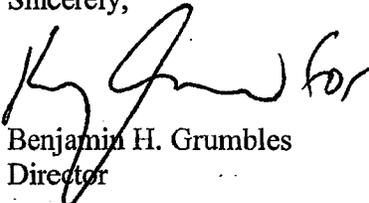
Throughout the process of demonstrating that the exceedances in 2008 were due to exceptional events, ADEQ has invited EPA Region IX's participation and direction. Between October 2009 and May of 2010, ADEQ and EPA staff attended numerous technical meetings regarding the 5% Plan, but EPA rarely provided ADEQ with feedback regarding exceptional events. The most substantive discussions occurred at a technical meeting in December of 2009. During the meeting, EPA provided a brief presentation identifying several concerns with ADEQ's 2008 exceptional events demonstrations. On March 17, 2010, ADEQ provided a supplemental response intended to satisfy EPA's concerns (see Attachment 2). On May 21, 2010, with no additional consultation and with no apparent review of ADEQ's supplemental response, EPA provided ADEQ with a letter explaining its non-concurrence with four exceptional event demonstrations for calendar year 2008. On June 30, 2010, ADEQ provided EPA with documentation responsive to the concerns raised in EPA's May 21, 2010 letter (see Attachment 3). On July 2, 2010, ADEQ also submitted comments from the Maricopa Association of Governments (see Attachment 4). We have not yet heard back from EPA on this supplemental information. Again on August 2, 2010, ADEQ submitted additional documentation on the June 4, 2008 exceptional event (see Attachment 5). EPA needs time to review this information before making a decision on the 5% plan.

In the absence of additional consultation regarding the documentation that continues to be submitted, EPA may have no other recourse than to propose the disapproval of the 5% Plan. The potential consequences of such a decision could have a devastating impact on Arizona's already battered economy. Some estimates project that EPA sanctions resulting from disapproval of the 5% Plan would jeopardize over \$1 billion worth of federal transportation funding, halting growth and potentially eliminating thousands of Arizona jobs. Those same projections estimate that final sanctions could be seven times more severe. As a result, we ask the court provide us enough time to complete the exceptional events consultation process, prior to EPA's having to make such an important decision on the 5% Plan under the proposed Consent Decree.

PROPOSED SCHEDULE

The Arizona Department of Environmental Quality respectfully requests that the schedule in the proposed Consent Decree be extended by a total of six months, such that EPA's proposed action on the 5% Plan occur no later than March 3, 2011, and that EPA's final action occur no later than July 28, 2011. These additional six months will provide EPA with the time that is necessary to review the additional information that ADEQ has submitted in response to EPA's May 21, 2010 letter, and consult with ADEQ on the exceptional event demonstrations that will play a dispositive role in the final decision that EPA must propose pursuant to this Consent Decree. If you have any questions regarding this correspondence, please contact Eric Massey, the Director of ADEQ's Air Quality Division, at (602) 771-2288.

Sincerely,



Benjamin H. Grumbles
Director

Attachments (5):

1. July 6, 2010, WESTAR Letter to EPA Assistant Administrator of the Office of Air and Radiation
 2. March 17, 2010, DRAFT – Supplemental Report – Assessment of Qualification for Treatment under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Events in the Phoenix and Yuma Areas on July 4, 2008
 3. June 30, 2010, ADEQ response to EPA May 21, 2010 Letter and Enclosure
 4. July 2, 2010, ADEQ transmission of comments prepared by Maricopa Association of Governments and Enclosure.
 5. August 2, 2010, ADEQ transmission of Supplemental Information Letter and Enclosure
- cc: Jared Blumenfeld, EPA Region IX (w/o attachments)
Dennis Smith, Maricopa Association of Governments (w/o attachments)
Joy Rich, Maricopa County (w/o attachments)



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Benjamin H. Grumbles
Director

August 2, 2010

Mr. Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: Transmittal of supplemental information regarding June 4, 2008, Exceptional Event

Dear Mr. Blumenfeld:

I am writing to transmit a revised draft report addressing the issues raised by you and your staff regarding the exceptional event documentation for the PM₁₀ exceedances at four monitors in Arizona on June 4, 2008, and to ask that you reconsider the position articulated in your May 21, 2010, letter as it relates to implementation of the EPA Exceptional Events Regulation (EER) and its ultimate impact on the approvability of the *MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area* (MAG 5% Plan).

ADEQ is again requesting that Region 9 revisit its May 21, 2010, decision not to concur with ADEQ's request to exclude for determination of compliance with the PM₁₀ NAAQS at the West 43rd monitor because those exceedances were the result of exceptional events. ADEQ disagrees with the statement that the ADEQ submittal of November 17, 2009, was inconsistent with the EER and the preamble for the final rule (72 Fed. Reg. 13560, March 22, 2007). At the same time, ADEQ is concerned that the decision did not take into consideration much of the supporting data and analysis that ADEQ submitted in support of its request.

ADEQ also believes that EPA's decision is not consistent with the August 27, 2007, concurrence with California's request to exclude data from the determination of the attainment status for the San Joaquin Valley. According to the EER preamble:

The EPA's final rule concerning high wind events states that ambient particulate matter concentrations due to dust being raised by unusually high winds will be treated as due to uncontrollable natural events where ... the dust originated from anthropogenic sources within the State, that are determined to have been reasonably well-controlled at the time that the event occurred....

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Mr. Jared Blumenfeld
August 2, 2010
Page 2 of 2

73 Fed. Reg. at 13576. California and Arizona submitted substantially identical demonstrations that anthropogenic sources were sufficiently controlled, with opposite results.

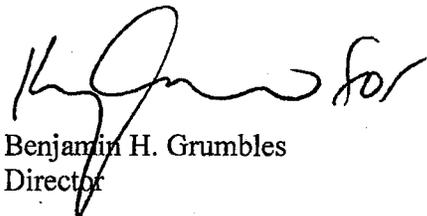
The reports ADEQ submitted to EPA on November 17, 2009, met all of the requirements of Section 319 of the Clean Air Act and the EER to qualify the exceedances measured on June 4, 2008, as being the result of exceptional events. The reports were released for public review and discussed at a public meeting followed by a formal comment period. ADEQ received no comments from any member of the public, including EPA Region 9.

ADEQ is disappointed that EPA Region 9 did not work with ADEQ to "ensure that proper documentation is submitted to justify data exclusion." (See 72 Fed. Reg. 13560 at 13574). Had the collaborative process envisioned in the EER been followed, the additional information and analyses contained in the enclosed report would have been prepared and submitted before EPA's taking a written position on such an important issue. ADEQ did not receive comprehensive feedback on its attempts to submit documentation "demonstrating to EPA's satisfaction that such event[s] caused a specific air pollution concentration ..." (40 CFR 50.14(a)(1)) until your May 21, 2010 letter. ADEQ believes that the information that we are providing today should be used to reconsider non-concurrence with ADEQ's demonstration that the exceedances measured on June 4, 2008, were the result of exceptional events.

I am also requesting to continue the consultation process with Region 9 under the EER and that no final decision be made on these exceptional events until ADEQ and EPA have an opportunity to publicly discuss the enclosed report and complete the research regarding sources contributing to windblown dust in the Salt River.

Thank you for your consideration. If your staff has any questions, please have them contact Nancy Wrona at (602) 771-2311.

Sincerely,



Benjamin H. Grumbles
Director

Enclosure

cc: Colleen McKaughan, EPA Region 9 (w/o attachments)
Deborah Jordon, EPA Region 9 (w/o attachments)
Joy Rich, Maricopa County (w/o attachments)
Dennis Smith, MAG (w/o attachments)



Janice K. Brewer
Governor

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Benjamin H. Grumbles
Director

August 2, 2010

Mr. Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

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Mr. Jared Blumenfeld
August 2, 2010
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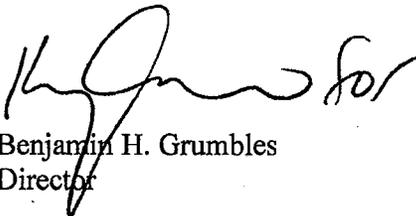
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Thank you for your consideration. If your staff has any questions, please have them contact Nancy Wrona at (602) 771-2311.

Sincerely,



Benjamin H. Grumbles
Director

Enclosure

cc: Colleen McKaughan, EPA Region 9 (w/o attachments)
Deborah Jordon, EPA Region 9 (w/o attachments)
Joy Rich, Maricopa County (w/o attachments)
Dennis Smith, MAG (w/o attachments)



Maricopa County
Board of Supervisors

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August 4, 2010

VIA ELECTRONIC MAIL

Lisa Jackson
Administrator
U. S. Environmental Protection Agency
EPA Docket Center
Mailcode: 2822T
1200 Pennsylvania Avenue NW
Washington, DC 20460-0001

RE: Docket ID No. EPA-HQ-OGC-2010-0428
Maricopa County Arizona Comments on the EPA/ACLPI
Proposed Consent Decree

Dear Administrator Jackson:

On July 30, 2010, you received a letter from the Maricopa Association of Governments ("MAG") that was signed by representatives of Arizona cities, towns and member agencies of MAG. Also signing the letter was Maricopa County Supervisor Mary Rose Wilcox. Supervisor Wilcox' signature was intended to show the strong support of the County Board of Supervisors for the comments of MAG and the Arizona Department of Environmental Quality ("ADEQ") on which the MAG comments were based. More specifically, Maricopa County urges your agreement to delay any action on the MAG 2007 Five Percent Plan for PM-10 (the "Plan") for six months to allow Maricopa County and the other public and private stakeholders to resolve any issues that jeopardize the approvability of the Plan.

This letter is intended to further support each of the comments described above from the perspective of a county that has devoted thousands of hours and millions of dollars to develop, implement and enforce regulations that are a key component of the Plan and that are the most stringent regulations for the control of PM-10 emissions in the country. These regulations were developed in consultation with and with the benefit of direct input from your agency. After all of this effort by all concerned, we think it would be extremely unfortunate if the agency would rush to judgment on the Plan as compelled by the schedule in the proposed Consent Decree and we would urge you and the Arizona Center for Law in the Public Interest to consider the six-month delay in acting on the Plan as proposed by ADEQ and the other parties we have named.

Maricopa County comments on proposed consent decree
August 4, 2010
Page 2 of 2

Very truly yours,

A handwritten signature in black ink, appearing to read "Don Stapley". The signature is written in a cursive, slightly slanted style.

Don Stapley, Chairman
Maricopa County Board of Supervisors, District 2

cc: Jared Blumenfeld
EPA Region 9 Administrator

Joy E. Herr-Cardillo
Arizona Center for Law in the Public Interest



Air Resources Board



Linda S. Adams
Secretary for
Environmental Protection

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Arnold Schwarzenegger
Governor

July 22, 2010

Ms. Gina McCarthy
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Ms. McCarthy:

We need your assistance to improve the procedure for addressing uncontrollable events such as high winds and wildfires in the federal air quality planning process. The intent of U.S. Environmental Protection Agency's (U.S. EPA) rule on exceptional events is to exclude "events for which normal planning and regulatory processes established by the Clean Air Act are not appropriate." Unfortunately, our recent request to exclude high wind events in Imperial County from PM10 planning requirements was denied. The planning implications of this action are detailed in Attachment 1.

In reviewing natural events, U.S. EPA staff is requiring extensive emissions evaluations and rule assessments, rather than focusing on whether the occurrence of an uncontrollable high wind or wildfire event was adequately documented. While the California Air Resources Board has worked with local air districts to provide extensive documentation of the timing and location of these events, U.S. EPA staff has expanded its technical review far beyond the event itself. Establishing that natural high wind and wildfire events occurred, and that they caused atypical elevated concentrations, can be accomplished with a straightforward technical assessment. We are suggesting specific improvements (Attachment 2) to rule implementation to ensure that our air quality planning efforts are appropriately focused to maximize the public health benefits of our programs.

Thank you for your commitment to clean air, and we look forward to working with you to develop a more workable approach to implementing the exceptional events rule.

Sincerely,



Mary D. Nichols
Chairman

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

ATTACHMENT 1

**Planning Implications of the Exceptional Event Process
in Imperial County**

U.S. EPA's December 22, 2009 disapproval of several natural windblown dust events in Imperial County has had serious impacts on the PM10 State Implementation Plan (SIP) process for the region. U.S. EPA's review of these events, and the related planning implications, are discussed below to highlight our concerns regarding implementation of the Exceptional Events Rule (Rule).

Imperial County is located in the far southeastern corner of California. Most of Imperial County consists of large expanses of open desert, primarily managed by the federal government, with average rainfall of less than 3 inches per year. Due to the arid, desert nature of the region, PM10 emissions are dominated by fugitive dust. Windblown dust from open desert lands comprises more than half of these emissions. The federal 24-hour PM10 standard is exceeded on average only two to three times a year. These infrequent occurrences are due to two distinct types of conditions – transport of emissions from Mexico, or naturally occurring high winds.

In 2007 two high wind events occurred impacting a number of sites in the county. ARB and the Imperial County Air Pollution Control District (District) developed comprehensive technical documentation that was submitted to U.S. EPA in 2008. This documentation demonstrated that winds gusting 30 to 40 miles per hour caused elevated PM10 concentrations throughout Southern California as well as Arizona, with PM10 concentrations in Imperial reaching 291 ug/m³. The winds that contributed to both of these events were at least three standard deviations above those seen in the previous three years. A clear causal connection was made between the timing of the increasing winds and a shift in direction to winds blowing over the Anza Borrego Desert and the elevated PM10 concentrations. The documentation also demonstrated that concentrations before and after the events were well below the federal standard. Documentation of these events was supplemented by news media reports and airport observations.

Preparation of the exceptional events documentation was a significant drain on limited resources. Over the past two years, documentation for the Imperial County high wind events involved substantial resources by Imperial County and ARB staff, as well as lengthy review time by U.S. EPA staff. Initial documentation was submitted by ARB in June 2008, and later supplemented with additional information requested by U.S. EPA in July 2009. All told, the documentation submitted on these events totaled over 200 pages, with extensive citations to BACM rule assessment and documentation on the development of a windblown dust emissions model for the region. Throughout the U.S. EPA's review, ARB and Imperial County staff also worked closely with U.S. EPA staff on additional emissions inventory clarifications to help further support the natural events request.

As noted above, on December 22, 2009, U.S. EPA Region 9 issued a letter to ARB stating that they could not concur with the events (Laura Yoshii's letter to James Goldstone – Review of Exceptional Event Request (December 22, 2009)). In their review, U.S. EPA agreed that there were unusually high winds and that the evidence made a “compelling case of a causal relationship” between the wind-driven dust source and the PM10 exceedances (*id.* at p. 22) and that there was evidence that “the event was caused by wind-driven emissions stemming from a regional meteorological occurrence.” (*id.* at p. 23.) U.S. EPA concluded that the evidence presented “demonstrates that the April 12, and June 5, 2007 PM10 exceedances were probably caused by wind-driven PM10 emissions from some sources west of the monitors.” (*id.* at p. 25.) However, U.S. EPA subsequently concluded that the events could not be considered natural events under the Rule because the contribution of individual sources could not be quantified and linked to specific rules. U.S. EPA also raised concerns about the level of control for certain fugitive dust sources. (*id.* at p. 29.) This is a level of analysis that goes far beyond the simple requirements specified in the section 50.14(c)(3)(iii) of the Rule and what is needed for the necessary technical demonstration that a high wind event caused the exceedances.

The District has worked closely with the ARB and U.S. EPA to develop appropriate fugitive dust rules for the region. In 2004, Imperial County was reclassified as a serious PM10 nonattainment area, triggering a Clean Air Act requirement to implement BACM within four years. The District conducted a comprehensive BACM analysis and adopted a suite of fugitive dust controls in 2005 to implement these requirements. At the District's rule adoption hearing, U.S. EPA staff testified that the rules represented BACM and ARB subsequently submitted them U.S. EPA in 2006. While the District moved expeditiously to implement BACM, it was not required to be in place at the time of the 2007 natural events as four years had not passed since the reclassification for PM10.

In reviewing the high wind events, U.S. EPA Region 9 staff's initial written comments from July 2008 acknowledged that the Rule does not require implementation of BACM level controls for contributing anthropogenic sources. (Sean Hogan's letter to Karen Magliano – Evaluation of April 12, 2007 Exceptional Event Request for the Imperial County California PM-10 Nonattainment Area (July 30, 2008), at p. 2.) However, in their final review of these events in December 2009, U.S. EPA concluded “Because BACM is required in serious PM10 nonattainment areas such as Imperial County under CAA Section 189(b), it is appropriate to consider that level of control in evaluating whether reasonable controls are in place for purposes of the Exceptional Events Rule.” (Laura Yoshii's letter to James Goldstone – Review of Exceptional Event Request (December 22, 2009), at p. 9.) The review then went on to discuss several deficiencies in what U.S. EPA considered a BACM level of control for the region. We note that the Rule does not specify a required level of control, indeed it only specifies that the event itself not be reasonably preventable or controllable

(40 C.F.R. § 50.1(j)). In addition, at the time the events occurred, U.S. EPA had not raised any complaints regarding the appropriateness of the District's rules.

As a result of the disapproval, Imperial County must now implement serious area planning requirements using a design value based on a natural event. For example, the attainment demonstration would need to show a nearly fifty percent reduction in emissions to reduce wind generated concentrations of almost 300 ug/m³ down to the level of the standard. This is clearly not feasible and is precisely what the Rule was intended to avoid. The disapproval also has implications for which sources must be included in the BACM assessment. While the District has committed to working with U.S. EPA on further control measure improvements, development of a serious area SIP will not be possible until future natural events can be approved. Therefore it is essential that U.S. EPA and ARB work together to implement a more workable and appropriate process for approving natural events.

ATTACHMENT 2

**Air Resources Board Recommendations to Improve
U.S. EPA's Exceptional Events Rule**

Focus U.S. EPA Technical Review on the "Event"

The Rule provides the following definition of an exceptional event: "Exceptional event means an event that affects air quality, is not reasonably preventable or controllable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event . . ." (40 C.F.R. § 50.1(j) (2007).) The Rule's preamble repeatedly describes an exceptional event as the **physical phenomena** that subsequently results in an air quality exceedance. For example, the Rule refers to *high winds*, rather than the dust entrained from the winds (72 Fed.Reg. 13565 (March 22, 2007).), as well as *wildfires*, not the smoke generated by these fires (72 Fed.Reg. 13566 (March 22, 2007).). In California and throughout the west, both high winds and wildfires can be common occurrences due to the west's unique geography, vegetation, and climate.

By their very nature, these physical phenomena are fundamentally not preventable or controllable. Thus we believe that evaluation of whether an event qualifies as exceptional under the Rule should initially focus upon whether the **event** in question is a natural phenomenon, rather than upon an analysis of the emissions caused by the natural phenomenon. Demonstrating that an event occurred resulting in elevated concentrations should not require detailed analysis of individual emissions source categories impacting each monitor, but rather a straightforward technical analysis of air quality and weather conditions to show that the elements justifying the exclusion of an event are met. The fact that the exceptional event analysis should be focused upon the nature of the event is shown by the language of 40 C.F.R. section 50.14(c)(3)(iii) which describes the demonstration necessary to exclude an event. Under section 50.14(c)(3)(iii) an exclusion of data must be supported by evidence that

- there is a clear causal relationship between the measurement under consideration and the **event** that is claimed to have affected air quality;
- the **event** is associated with a measured concentration in excess of normal historical fluctuations, including background; and
- there would have been no exceedance but for the **event**.

Link Rule Assessments to Controllable Emissions

Once this technical evaluation has been completed, a separate step should assess the existing control program. Because the natural events themselves are fundamentally not reasonably preventable or controllable, the rules assessment should focus on whether the control program is reasonable and appropriate for preventing exceedances under the typical range of weather conditions and emission events. It is neither reasonable nor cost-effective for a state to develop rules for events that occur only rarely under extreme circumstances.

We do agree that existing elements of the Rule requiring public notification and mitigation strategies are appropriate to help minimize public exposure during

these events. However, we wish to highlight the Rule's focus on a State's role in developing and enforcing such measures. The Rule's preamble makes clear that it is a State's responsibility to take "reasonable and adequate actions to protect public health." (72 Fed.Reg. 13576 (March 22, 2007).) A State is charged with deciding what actions are reasonable and adequate because "it is EPA's belief that States are in a better position to make decisions concerning what actions should be taken to protect the public when an exceptional event occurs." (*Id.* at p. 13575.)

Additionally, control measures satisfying the Rule's requirements are legally distinct from any RACM or BACM that may be required. As stated in the Rule's preamble, "the implementation of RACM or BACM is not required [under the Rule], but [instead] the State has the necessary flexibility to determine if, and what, controls should be implemented following an event, as well as the level of control that is required." (*Id.* at p. 13575.) Additional support for the distinction between RACM/BACM and "reasonable and adequate" control measures under the Rule is the fact that a State does not need to submit documentation of its mitigation actions to the U.S. EPA to allow for an exceptional event determination (*id.* at p. 13576.); this lack of required documentation stands in contrast to the documentation of control measures a State is required to provide to the U.S. EPA under a RACM or BACM requirement.

Streamline Documentation

Finally, we believe that in order for both states and U.S. EPA to effectively address preparation and review of exceptional events documentation in a timely manner, the documentation process needs to be streamlined. The determination should be based on the overall weight-of-evidence presented, given data availability and considering whether more detailed and time intensive analyses are truly needed. As such, the level of documentation should be commensurate with the complexity of the event. Widespread and severe events such as the historic wildfire outbreak that occurred during the summer of 2008 in California, or windstorms affecting multiple regions and/or states, should require much less documentation than more isolated or lesser magnitude events.



News

From Imperial County

Ralph Cordova, Jr.

COUNTY EXECUTIVE OFFICER

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FOR IMMEDIATE RELEASE:

AIR DISTRICT BOARD APPROVES PURSUIT OF CHALLENGE TO EPA DISAPPROVAL OF DUST RULES

After meeting in closed session, the Imperial County Board of Supervisors, sitting in their capacity as the Imperial County Air Pollution Control District (ICAPCD) Board, today reported that it has formally approved action to pursue all appropriate legal remedies, including litigation if necessary, to challenge the Environmental Protection Agency's July 8, 2010 limited disapproval of the ICAPCD's Regulation VIII fugitive dust rules.

"The Regulation VIII rules are a critical part of the ICAPCD's strategy to implement best available control measures for dust and other particulate matter in the County," explained Brad Poiriez, Air Pollution Control Officer. "We feel EPA's decision not to approve the rules was unjustified, and it is vitally important for the County to challenge the disapproval and ultimately achieve the ability to move forward with these rules under an approved SIP."

The Board proactively adopted the Regulation VIII rules (District Rules 800-806) on November 8, 2005, over 3½ years before there was a specific legal requirement to do so. The Regulation VIII rules were adopted after nearly a year of active participation and workshops involving members of this community, EPA, the California Air Resources Board (ARB), representatives of the agricultural community, representatives of environmental groups, and other local organizations. On June 16, 2006, the California Air Resources Board (ARB) submitted the approved rules to EPA for formal approval as revisions to the California State Implementation Plan (SIP) for the ICAPCD. The rules mirror stringent dust requirements used in other "serious" PM10 nonattainment areas such as the San Joaquin Valley, the South Coast Air Basin and Maricopa County, Arizona, yet EPA disapproved the rules when submitted on behalf of Imperial County.

If any member of the public has any questions regarding the Board's action, please call County Counsel Mike Rood at 760.482.4400.



March 3, 2010

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency (EPA), Region IX
75 Hawthorne Street
San Francisco, CA 94105-39001

SUBJECT: Response to the December 22, 2009 letter from the U.S. Environmental Protection Agency regarding the California Air Resources Board's Imperial County's Exceptional Events Request

Dear Mr. Blumenfeld:

The California Air Resources Board (ARB) submitted documentation of three exceptional events (September 2, 2006, April 12, 2007 and June 5, 2007) in May 2009 to the U.S. Environmental Protection Agency (EPA). In a December 22, 2009 letter (EPA Events Letter) from Laura Yoshii, Acting Regional Director of EPA Region IX to James Goldstene, ARB Executive Officer, EPA refused to concur with ARB's request to flag these exceedences as exceptional events. We have reviewed the EPA Events Letter and are greatly troubled by EPA's interpretation of the Exceptional Event Rule (EER) and the technical information available for these days, both of which we believe are plainly inconsistent with existing regulations and guidance on exceptional event determinations. The implications of EPA's refusal to flag these data, if it is allowed to stand, are far-reaching and could adversely impact air quality planning and policy in Imperial County and throughout the southwestern United States. Our concerns and objections are presented in more detail in Attachment A. The key issues are summarized briefly below:

- We do not agree with EPA's interpretation of the Exceptional Event Rule (EER) or the conclusion that the flagged natural events somehow do not merit EPA's concurrence because of its desire to see certain control measures on anthropogenic sources improved. As discussed herein, EPA's objections that dust controls were insufficient or inadequate on the event days is tantamount to a conclusion that the events were reasonably controllable or preventable. That conclusion is completely unsupported by the available evidence. EPA has provided no evidence to refute the critical conclusion legally required under the EER - that the exceptional **events** (i.e., the combination of the high winds, the unusual levels of dust entrainment from nonanthropogenic and anthropogenic sources, and the resulting exceedences at the Imperial County monitors) were not reasonably controllable or preventable.
- In the EPA Events Letter, EPA takes the position that the requirement for an exceptional event to be "not reasonably controllable or preventable" inherently implies "a requirement that the state demonstrate that anthropogenic sources contributing to the exceedance caused by the event were reasonably controlled." This interpretation of the EER appears to be inconsistent with the language of 40 CFR §50.1(j), which defines an "exceptional event" as one caused by a natural event or non-recurring human activity and which is itself "not reasonably controllable or preventable." Under the legal

definition, it is *irrelevant* what controls are in place on the day of an otherwise qualifying event if it can be shown that such controls would not have reduced emissions enough to prevent an exceedance *anyway*.

- We also disagree with EPA's position that the EER justifies the use of Best Available Control Measures (BACM) as the "appropriate... level of control in evaluating whether reasonable controls are in place" in determining whether an event may qualify as exceptional under the EER. This interpretation is unsupported by the language of the EER and inconsistent with the intent of the EER. The purpose of the EER is to protect states from suffering the consequences of reclassification to a more serious designation as a result of "exceptional" events for which the normal planning and regulatory process established by the CAA is not appropriate. EPA's analysis of exceptional events should not depend on elements of the normal planning process, including the area's particular attainment status. In other words, the standards for determining an exceptional event in a serious nonattainment area should be no different than determining one in a moderate area or in an attainment area.
- We also object to EPA's incomplete and misleading characterization of fugitive dust controls in Imperial County. In the EPA Events letter, EPA implies that dust controls are not adequate because of concerns about fallowed lands and OHV-related contributions. On the contrary:
 - Farm lands produce significantly less emissions, taken as a whole or on a per-acre basis, compared to remote desert lands in the County due in part to ICAPCD's adoption of Rule 806, which requires a host of conservation management practices to prevent, reduce and mitigate PM emissions from agricultural sources.¹ Rule 806 was adopted in November 2005, years before the 2009 PM₁₀ SIP² was developed and adopted. That rule was modeled on the San Joaquin Valley Air Pollution Control District's Rule 4550, which was approved by EPA on May 26, 2004.³ EPA makes no mention of Rule 806 when discussing the County's agricultural controls.
 - Imperial County has been paving unpaved roads at great expense and despite hard economic times and record unemployment in the County; it began meeting its rule commitment starting in 2006.
 - Despite the fact that EPA has worked with ARB and ICAPCD for over a decade, including on the development of rules and BACM Technical Analysis beginning in 2004 and analysis of the exceptional events beginning in 2008, EPA never raised concerns about OHV-related contributions until *after* the Exceptional Events documents were submitted by ARB in May 2009 and after the draft PM₁₀ SIP was released in July 2009.⁴ The draft PM₁₀ SIP was revised to address those concerns. In any event, there is no basis for EPA's conclusion that OHV controls

¹ See Table 3.1 and Figure III.B.4 of the 2009 Imperial County PM₁₀ SIP.

² Imperial County 2009 PM₁₀ SIP, Final Draft, August 2009

³ 69 FR 30035, May 26, 2004

⁴ In addition, EPA did not raise these concerns while working with ARB and ICAPCD for over a year and a half on the Exceptional Events documentation or while working with ARB and ICAPCD for over two years on the development of the PM₁₀ SIP, or during the 30-day public comment period on the Exceptional Events documents (during which there were NO public comments submitted), or before the draft PM₁₀ SIP was released.

somehow would have prevented any of the exceedances attributable to the exceptional event days.

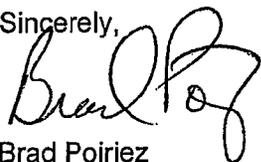
- EPA has misinterpreted technical information submitted by ARB and ICAPCD, which appears to have led to EPA's erroneous conclusions related to causality. ARB and ICAPCD carefully documented PM transport to show how such transport affected the September 2006 Westmorland and Calexico exceedances (see Sections 2.1.1 and 2.1.2 of Attachment A). As discussed further in the attachment, EPA's interpretation of the September 2006 exceedances is incorrect, and was not based on a sound technical understanding of the events associated with those exceedances.
- EPA's decision making regarding the level of evidence/documentation necessary to establish causality is not correct and is not consistent with the EER.
 - First, EPA's letter appears to set an impossible and legally unsupported standard for the evidence required to support the causality requirement of an exceptional event determination (i.e., to show a clear causal relationship between the exceedances and a qualifying event). EPA demands ever more detail about the exact sources of dust and wind transport as part of the exceptional events showing, yet has not clearly specified what level of detail (if any) would be sufficient to convince EPA that the exceptional events beyond the District's reasonable control were responsible for the measured exceedances.
 - Also, rather than considering the cumulative weight of the evidence showing that unpreventable exceptional events caused the exceedances at issue, EPA has chosen to evaluate each piece of supporting data separately and conclude that each separate piece *alone* does not support a causal relationship for the event. EPA has not considered the implications of this novel and troubling position regarding causality on SIP determinations and other regulatory processes.
 - For reasons that are detailed in Attachment A, we believe that the level of data, analyses, and documentation that would be required to meet EPA's apparent proof thresholds (i.e., to satisfy the causality and "but-for" requirements of the EER) here would exceed even the requirements for SIP planning itself. That is clearly inconsistent with the intent of the EER. The EER requires the weight of evidence to be taken as a whole, and rejecting flagged data is tantamount to a determination that "the exceedances were caused by recurring anthropogenic sources" (see 72 FR 13574). EPA cannot reject ARB's documentation of the exceptional events without producing such proof sufficient to overcome the great weight of the evidence to the contrary.

Based on the weight of available evidence and the established EER requirements and guidance, the events described in the ARB submittal clearly were exceptional events that themselves were not reasonably controllable or preventable, and which directly led to the measured exceedances. EPA has not demonstrated (and cannot demonstrate) that these exceedances were caused by anthropogenic sources and thus somehow appropriate for consideration in normal SIP planning.

Thus, we strongly urge EPA to reconsider its decision and concur with ARB's request to flag these exceedances as exceptional events, consistent with the intent and language of the EER. Failure to reverse this decision will not only result in a decision unsupported by the law or the

data, but also would create troubling precedent for both future exceptional event documentations and related SIP planning in the southwestern United States. Both results would be unacceptable, and could subject EPA to a challenge or other action.

Sincerely,



Brad Poiriez
Air Pollution Control Officer, ICAPCD

cc: ICAPCD Board of Directors
Gina McCarthy, Assistant Administrator for Air And Radiation, EPA Headquarters
Deborah Jordan, Air Division Director, EPA Region IX
James Goldstene, Executive Officer, ARB

**Attachment A: Detailed Initial Analysis of EPA's December 22, 2009 Letter
Concerning the Imperial County Exceptional Events Requests**

1. Not Reasonably Controllable or Preventable

1.1. General Interpretation of the Requirement for High-Wind Events

One of the key requirements of the Exceptional Events Rule (EER) that repeatedly surfaces in EPA's December 22, 2009 Review of the Imperial County Exceptional Event Requests is the criterion set forth in 40 CFR § 50.1(j) that an "exceptional event" is an event that "is not reasonably controllable or preventable." In that Response Document, EPA takes the position that this criterion inherently implies "a requirement that the state demonstrate that anthropogenic sources contributing to the exceedance caused by the event were reasonably controlled."

This requirement is simply inconsistent with the language of 40 CFR § 50.1(j). Under the plain regulatory language, it is irrelevant whether "reasonable and appropriate" controls are in place on the day of an otherwise qualifying event when it can be shown that such controls would not reduce emissions and impact at the monitor sufficiently to prevent the exceedance anyway. In such circumstances, an event would clearly not be reasonably controllable or preventable.

It is inconsistent with the intent of the CAA for EPA to refuse to concur in the flagging of an exceedance as caused by an exceptional event solely due to EPA's dissatisfaction with the stringency of certain controls when such controls could not have prevented the exceedance. The consequence of such an action would be to require a state to pursue control measures that are beyond the area's practicable abilities - a result the EER is specifically designed to avoid. Indeed, other specific exemption provisions are in place to prevent such difficulties (see "State Implementation Plans for Serious PM₁₀ Nonattainment Areas,"⁵ Section V: "Waivers for Certain PM₁₀ Nonattainment Areas). As stated in that document (p. 42008), "if emissions from anthropogenic sources are reduced to the point that it is no longer technologically or economically feasible to reduce those emissions further, and the area still cannot attain the NAAQS, the EPA may consider waiving the serious area attainment date and appropriate serious area requirements."

There are three types of sources identified in the Final Rule promulgating the EER (FR Vol. 72, No 55, March 22, 2007) for the specific case of High Wind Events: non-anthropogenic sources, anthropogenic sources within the state, or anthropogenic sources outside the state. (In Imperial County, anthropogenic sources of significance in High Wind events may include international lands in Mexico.) Importantly, the language of the rule suggests that the requirement that the sources be "reasonably well-controlled" only applies to anthropogenic sources within the state.⁶

⁵ FR, Vol. 59, No. 157, August 16, 1994, p. 41998.

⁶ "The EPA's final rule concerning high wind events states that ambient particulate matter concentrations due to dust being raised by unusually high winds will be treated as due to uncontrollable natural events where (1) the dust originated from nonanthropogenic sources, or (2) the dust originated from anthropogenic sources within the State, that are determined to have been reasonably well-controlled at the time that the event occurred, or from anthropogenic sources outside the State."

Objection: We fail to see the rationale for EPA's interpretation that the existence of "reasonable and appropriate" controls is a necessary condition to establish that the event *itself* was not reasonably controllable or preventable. The regulatory requirement that "an event was not reasonably controllable or preventable" for an otherwise qualifying event is met unless BOTH (i) reasonable controls for contributing anthropogenic sources within the state were not in place, AND (ii) these controls would have prevented the exceedence, had they been in place.

1.2. Meaning of "Reasonable and Appropriate Controls"

In its EPA Events Letter, EPA takes the position that "because implementation of BACM is required in serious PM₁₀ nonattainment areas such as Imperial County under Section 189(b) of the CAA, it is appropriate to consider that level of control in evaluating whether reasonable controls are in place for purposes of the Exceptional Events Rule". (p. 9)

EPA has provided no justification for this assertion. Not only would this create a new standard for exceptional events showings found nowhere in the language of the EER, it would be fundamentally inconsistent with the intent of the EER, which entails only "reasonable" control of anthropogenic sources and not the "best available" controls. The purpose of the EER is to protect states from suffering the consequences of reclassification to a more serious designation as a result of "exceptional" events not preventable by reasonable control measures and for which the normal CAA planning and regulatory process is not appropriate. By definition, exceptional events fall outside the normal planning process, and their analysis should not depend on elements of the normal planning process, including attainment or non-attainment designation status.

Objection: We fail to see the basis of EPA's contention that it is appropriate, in the context of reviewing a State's exceptional events documentation, for EPA to use different standards of judgment for different areas (based for example on attainment designation status) in determining whether an event was reasonably controllable or preventable.

If the same standard of analysis is used for all areas independent of their designation status, as we believe is appropriate, then the language of "reasonable and appropriate controls" suggests that RACM, rather than BACM, would be a more appropriate standard when assessing whether controls on anthropogenic sources are sufficiently reasonable and appropriate to show that the exceptional events was beyond reasonably prevention or control.

1.3. Determination of Which Anthropogenic Sources Require "Reasonable and Appropriate Controls"

In the EPA Events Letter (p. 8), EPA states that "ideally, exceptional event requests would identify all non-*de minimis* anthropogenic sources that contributed to an exceedance and would then describe how each is reasonably controlled." EPA then goes on to note that ARB's

documentation for the 2006 Westmorland and for the 2007 events fails to specify which anthropogenic sources need reasonable controls.

Again, EPA's proposed interpretation would stand the EER on its head. Rather than focusing on the ability or inability to reasonably control or prevent the exceptional event *itself*, EPA would ignore the event and instead have the District justify the "reasonableness" of virtually all (i.e., non-*de minimis*) its anthropogenic controls, *whether they would have prevented the exceedance or not*. Even if this was the test, which it is not, EPA has not specified a criterion defining what level(s) make an anthropogenic source *de minimis*, or explained how the EER even justifies the use of such a test. In any event, as noted above, any criterion for evaluating the reasonableness of local control measures should be independent of an area's attainment or non-attainment status and be technically implementable.

Objection: In the absence of criteria clearly defining the type of sources to be reasonably controlled during exceptional events, ad hoc decision-making by EPA regarding which sources require "reasonable and appropriate" controls during any given event is arbitrary. EPA has not justified the basis for such criteria, proposed such criteria, or specified what technical analyses will be required for implementing the criteria (including analysis of the feasibility of technically implementing the criteria).

1.3.1. Controls for Open Areas

April 12 and June 5, 2007 Events. For both the 2007 events, for which elevated PM concentrations were associated with high winds coming from the west, the open areas that may have contributed to the exceedances are the Plaster City, Superstition Mountains, Arroyo Salado, and Ocotillo Wells recreational areas, as well as areas around the Salton City. In the EPA Events Letter (p. 8), EPA claims that the ARB documentation (i) did not specifically address these emissions, and (ii) did not "provide any meaningful analysis of BACM or any other level of control for OHVs."

September 2, 2006 Event. Given the direction of surface winds on this day, the only open areas that may have contributed to an exceedance (at the Westmorland station) are the Imperial County Sand Dunes. In the EPA Events Letter, EPA objects that the ARB documentation did not specifically address the contribution of these emissions (p. 8).

Open areas where natural soil is disturbed by anthropogenic OHV activity were analyzed in Appendix III of the 2009 PM₁₀ SIP.⁷ Figure III.B.6 shows the location of OHV areas on a map of windblown PM₁₀ emissions calculated using the windblown dust model developed by ENVIRON and ERG. For open areas that may have contributed to windblown dust on the high-wind days considered here, it is not clear whether OHV sources should be considered *de minimis* sources (and therefore whether they are even subject to the requirement of reasonable controls), what level of control EPA expects for illegal OHV usage (if the District is even in a position to control such use), and why current California and Imperial County regulations do not constitute reasonable controls in the face of otherwise unavoidable exceptional events.

⁷ Imperial County 2009 PM₁₀ SIP, Final Draft, August 2009.

Moreover, as discussed in Appendix III of the SIP document, anthropogenic disturbance of the sand dunes does not actually increase the emissivity of these soils in wind events, since they are fully disturbed in the natural state. As quantified in Appendix III of the 2009 PM₁₀ SIP (see Tables III.B.2 and III.B.3), the incremental wind-blown emissions within the Sand Dunes Open Area that could possibly be due to anthropogenic disturbance is only a very small fraction (0.9 tpd, approximately 10%) of the total windblown emissions from the Imperial County sand dunes area. Note that this information was included at EPA's request after the District had worked with EPA staff for over a year before the event documentation was finalized, and after the public comment period for the exceptional events documents was over.

Objection: The substance and timing of EPA's stated concerns over open areas and OHV influence suggest that EPA has arbitrarily ignored data already developed for EPA, at EPA's request, through District staff's diligent work with CARB and EPA staff on these exceptional events and on the SIP Imperial County PM₁₀ inventory since August 2008. Furthermore, EPA is not justified in misusing EE documentations as a way to require arbitrary and increasingly expanding levels of analysis of source impacts and controls when the data already establishes that the exceptional events and exceedances still would have occurred even if controls were improved.

Direct Entrainment of Dust in Open Areas. In the EPA Events Letter, EPA cites direct entrainment of dust in open areas (p. 7, 8). Given the high winds of April 12 and June 5, 2007, and the thunderstorm activity of September 2, 2006, OHV activity on these days is expected to have been negligible, and so direct entrainment of dust from OHV activity on these days is also expected to have been negligible.

1.3.2. Controls for Agricultural Lands

Despite statements to the contrary in EPA's Events Letter, ICAPCD has adopted and enforces stringent controls on agricultural sources well beyond the reasonableness level required in the EER. ICAPCD and ARB have discussed controls on agricultural lands with EPA for many years. ICAPCD and ARB worked with EPA during the development of the 2005 Regulation VIII BACM Analysis,⁸ which was adopted by the ICAPCD in November 2005. Rule 806 was closely modeled on the San Joaquin Valley Air Pollution Control District's Rule 4550 that EPA had approved in May 2004 (69 FR 30035). At the adoption hearing, EPA testified that all of the Regulation VIII rules, including Rule 806, Conservation Management Practices, were BACM. Moreover, review of the emission inventory (2009 PM₁₀ SIP Appendix III) shows that agricultural lands are significantly less emissive than most of the non-populated areas in Imperial County that are not essentially bare rock (c.f., Figure III.B.6 of the 2009 PM₁₀ SIP).

In the EPA Events Letter discussion of controls for agricultural lands, EPA only mentions the following program, not Regulation VIII (including Rule 806) requirements that were in force on the event days. Fallowed land issues were included in the 2005 Regulation VIII BACM Analysis. It is not clear why EPA does not discuss Rule 806 at all. In any event, the failure to address Rule 806 alone makes EPA's conclusions regarding agricultural areas suspect.

⁸ Technical Memorandum: Regulation VIII BACM Analysis. October 2005. Prepared for ICAPCD by ENVIRON.

2. Clear Causal Relationship

2.1. Technical Objections

2.1.1. September 2, 2006 Calexico Exceedences

Comparison to Days with Similar Meteorological Conditions. The ARB documentation includes an analysis of historical data for days that have meteorological conditions in Calexico/Mexicali similar to those observed on September 2, 2006. This analysis (see discussion of Table 5 in the ARB document) reveals that:

- i. The impacts of local pollution emissions on such days are lower than average due to enhanced dispersion;
- ii. The impacts of Mexicali emissions at Calexico stations on such days are significant; but that
- iii. About half of the measured PM concentrations at Calexico stations on September 2, 2006 cannot be attributed to the expected impact of the local EI (including Calico and Mexicali) given the local meteorology for that day.

ARB argues that these results support the explanation that the Calexico exceedences were due to long-range transport of dust generated by high winds S, SE, or SSE of Mexicali, as opposed to unusual level of local emissions in Calexico and Mexicali (see Appendix A1).

In the EPA Events Letter, EPA concedes that September 2, 2006 was in some way atypical, but claims that the analysis "does not provide direct support for the required causal relationship. Indeed, if the conditions on September 2, 2006 were sufficient to cause an exceptional event as ARB claims, it is unclear why exceedences were not also recorded on the days with similar wind conditions." (p. 14).

The historical days used in this analysis (Table 5 of the September 2, 2006 documentation) are those that have similar wind conditions in Calexico. The selection for inclusion in the analysis does not consider other factors, including other meteorological factors which may be the cause for the differences in PM₁₀ concentrations recorded on September 2, 2006, August 19, 2003, August 18, 2002, and PM₁₀ concentrations recorded on the remainder of the days in Table 5. Our conclusion is that exceedences were not recorded on the other days in Table 5 **precisely because** September 2, 2006, August 19, 2003, and August 18, 2002 had very dissimilar wind conditions (away from Calexico), strongly indicating that high levels of dust leading to the exceedences must have come from remote sources in non-populated, non-monitored areas (most likely desert areas to the east along the Mexican border).

Consideration of Other Causes. On p. 14 of the EPA Events Letter, EPA expresses concern about emissions from OHV or fallow agricultural fields: "In addition, once surface crusts have been disturbed, emissions can result from OHVs or fallow agricultural fields without there being direct anthropogenic activities. As noted in Section 4.2.2, OHV activity indirectly increases PM10 emissions by disturbing vegetation on surface crusts, leaving the surface less stable and more vulnerable to emissions during subsequent winds. Similarly, a fallow agricultural field can also be left in a condition that is vulnerable to wind erosion. Noting the absence of increased anthropogenic activity on the day of the exceedance does not address previous anthropogenic activities that could have left surfaces more vulnerable to emissions during subsequent winds."

This argument would appear to be irrelevant in the analysis of the September 2, 2006 Calexico exceedences, given that there are no OHV lands or domestic agricultural lands S, SE, or SSE of the Calexico monitors that could have contributed to the measured impact at these monitors on that day.

Objection: Based on the apparent misunderstanding of the comparison with non-exceedence days and the fact that 1) ARB did not make any implications about activity levels on the exceedance day and 2) that other causes raised by EPA did not need to be considered because they are not relevant to the exceedences in Calexico during this event, EPA's decision-making concerning the September 2, 2006 Calexico exceedences does not appear to be based on sound technical understanding of the events associated with these exceedences.

2.1.2. September 2, 2006 Westmorland Exceedence

Transport. High winds were observed NE and NW of Westmorland in the late afternoon, including a 27 mph hourly measurement at 5 pm at the Palo Verde station (~ 57 miles ENE of Westmorland), and a 23 mph hourly measurement at 6 pm at the Oasis station (~ 45 miles NW of Westmorland).

EPA concedes (EPA Events Letter, p. 16) that these winds "may be consistent with short-lived high wind with a direction different from the underlying flow, such as might be caused by thunderstorm outflow [and that] the directions can be interpreted as consistent with the theory that dust was transported to Westmorland." EPA then offers three objections as "conflicting evidence on the transport of emissions from north of the County to the Westmorland monitor, which undermines the case for a clear causal relationship" (p. 18):

- i. *"The increased wind at Oasis toward Westmorland is simultaneous with the Westmorland concentration spike, rather than an hour or two before as one would expect based on the distance between the two locations. Further, in order for dust generated at Oasis to reach Westmorland one must assume the wind followed a straight line path over the 50 mile distance for two hours, despite the observed variability in speed and direction."* (EPA Events Letter, p.16, see also first bullet of p. 18)

First, EPA's premise is incorrect; the increased wind at Oasis occurred at 6 pm, one hour ahead, rather than at the same time as the 7 pm PM₁₀ peak at Westmorland. Second, the wind speed measurement of 23 mph corresponds to an hourly average. Wind gusts (such as those generated by a thunderstorm cell collapse) responsible for this high hourly average would have been of much higher speed, consistent with ~45 miles travel over the space of one hour, as suggested in the ARB documentation.

- ii. *"Palo Verde experienced increased wind speed before Oasis, which is inconsistent with the path of the storm from west to east."* (EPA Events-Letter, p.16-17)

First, the increased wind at Palo Verde actually occurred two hours ahead of the 7 pm PM₁₀ peak at Westmorland, and its direction (WNV) and speed (27 mph hourly average, with expected wind gusts of much higher speeds) are both consistent with transport toward Westmorland in the two-hour recorded time difference.

Second, this interpretation of recorded data is in no way weakened by incomplete certainty about the location of thunderstorm cells during the late afternoon. Recorded wind speeds are due to thunderstorm outburst, and the use of those recorded speeds helps to establish a cause-and-effect relationship between the *measured* wind speeds and direction, and the *measured* PM₁₀ concentrations at Westmorland. It does not appear that EPA is disputing that the recorded wind speeds are consistent with thunderstorm outbursts, nor does EPA appear to argue that the wind speed or direction are somehow inconsistent with transport of dust from Palo Verde to Westmorland. We fail to see how the lack of understanding about the precise location of the storm in time (a very difficult, if not impossible fact to ascertain, particularly in remote, non-populated/monitored areas) is relevant to a cause-and-effect analysis based on undisputed evidence of measured wind speeds, wind directions, PM concentration values and satellite evidence of thunderstorm activity suggesting that the high winds were caused by thunderstorms.

- iii. *"There is additional evidence which contradicts ARB's claim that dust was transported to Westmorland from the northeast or northwest. First, the wind direction at Westmorland itself was consistently from the southeast or east-southeast. HYSPLIT back-trajectories ending at Westmorland near the 7 pm high concentration hour are also inconsistent with transport from northern stations during the two hours in which high speed winds occurred."*

Short-lived high winds may have a direction different from the underlying flow. Thus, transport of dust by high winds from Oasis or Palo Verde to impact Westmorland at 7 pm is not inconsistent with a 7 pm hourly-average wind direction at Westmorland from the SE. Along the same lines, HYSPLIT back-trajectories are expected to capture the underlying flow pattern, not short-lived variations in flow superimposed on the underlying flow pattern. Thus, this evidence does not contradict ARB's claim.

Objection: Based on EPA's apparent misunderstandings regarding PM transport affecting the September 2006 Westmorland exceedence, we object that EPA's decision-making concerning the September 2, 2006 Westmorland apparently is not based on sound technical understanding of the events associated with that exceedence.

2.2. Discussion of Data availability and Feasibility of Technical Analysis

The EPA Events Letter expresses doubt about the extent of investigations of other possible sources of PM emissions, and cites insufficient source apportionment and satellite imagery as primary reasons in EPA's position that clear, causal relationships were not established in the 2006 and 2007 documentations (Table 1).

Table 1. Key issues in EPA's analysis of causality

Subject	Comment and Reference (2009 EPA Events Letter)	Event
Source apportionment	"The submittal contains little assessment of the relative contributions of anthropogenic and non-anthropogenic emissions in the potential source areas, which could provide evidence of a causal relationship" p. 16	2006 Westmorland
	"The relative contributions of possible source areas in the northwest, northeast, east, and southeast are little examined. The weight of evidence does not demonstrate a clear causal relationship as required by the EER" p. 18	2006 Westmorland
	Referring to the various sources that may have contributed to the 2007 exceedences, EPA states that <u>"there should be fuller source attribution, both for deciding which sources need reasonable measures.... and also for establishing the required clear causal relationship."</u> (p. 20; this same concept is restated in Section 5.3.6 on p. 25, and in Section 9.3 on p. 29-30).	2007 events
Satellite imagery	"ARB presents satellite imagery to show that the times of elevated PM10 concentration at Indio/Palm Springs and Yuma correspond to the passage of the thunderstorm activity in each area... The 5 pm satellite image does provide evidence of thunderstorm activity north of Imperial County. However, it does not provide clear evidence of a causal relationship because the images are not taken frequently enough to compare them with the timing of the concentration spike." p. 17-18	2006 Westmorland
Consideration of other causes	"ARB notes an absence of unusual activity that would lead to increased anthropogenic emissions on this day. This is supported by ICAPCD's investigation of the period, and the lack of unusual entries in source inspection logs. This evidence is consistent with ARB's conclusion that the cause of the exceedance was not local; however, the extent of ICAPCD's investigation is unclear and this evidence does not directly support the causal relationship." p. 18	2006 Westmorland
	Comments to the same effects are made on p. 24 and 25	2007 events

To conduct the "fuller" source attribution reported in Table 1, EPA suggests (see last paragraph of p. 20, and first paragraph of p. 21) the need for a day-specific inventory and a method to account for the effect of distance from source to monitor on impact. Even if these steps were theoretically feasible, EPA fails to provide specific guidance describing the kind of technical methods that they would endorse for such an analysis. For example, although EPA proposes that a re-run of the existing ENVIRON/ERG Windblown Dust Model with episode-specific winds would improve the analysis, EPA is also quick to identify several deficiencies in this model (which is so far the best available). This leads us to the following objection.

Objection: Although EPA suggests that higher levels of documentation for source attribution, thunderstorm activity, or investigation of other potential causes would be preferred, EPA does not suggest reasonable, technically implementable analyses to achieve these higher levels of documentation. We would question what technical analyses EPA suggests should be conducted. We would also question whether these analyses and the required level of data are achievable or realistic now or in the future for similar events in Imperial County and in other areas (particularly those surrounded by remote, non-populated, non-monitored source areas), and whether these analyses exceed the requirements for SIP planning itself. EPA has not (and, we believe, cannot) propose reasonable, technically achievable investigations and analyses superior to those produced by the District and ARB that would address EPA's stated concerns. Thus, we find that both EPA's conclusions on causality and EPA's position on the level of analysis required to demonstrate causality are incorrect and inconsistent with the purpose of the EER.

2.3. Discussion of Implications of EPA's Position About Causality Requirements

EPA takes the position that there are not sufficient data to show a clear causal relationship between the exceedences and a qualifying exceptional event. EPA argues that the exact sources of the dust impacting the stations, that the high winds leading to entrainment from the sources, and that the transport of the dust from these sources to the impacted monitors have not been clearly elucidated.

2.3.1. Special Case of Class III Exceptional Events

The undeniable weight of the evidence establishes that the PM concentrations recorded on September 2, 2006 are not the result of PM emissions from recurring anthropogenic sources within the Imperial Valley:

- A statistical analysis shows that the exceedences in Imperial County cannot be attributed to unusual local impact from non-windblown dust sources, since high values were measured at every Imperial County station⁹
- In addition, the exceedences cannot be attributed to high windblown dust emissions from unpaved roads, agricultural lands, and other anthropogenic sources within the entire ICAPCD planning area (see also our discussion of OHV land emissions in Section 1.3.1), since there were no high winds over the entire Imperial Valley
- Comparison of PM data for September 2, 2006 and for days with similar wind speeds and wind direction within Imperial County shows that September 2, 2006 is similar to other days for which PM₁₀ concentrations in the valley were dominated by impacts due to long-range transport of dust (from outside the populated parts of the Imperial Valley)
- Indeed, there was thunderstorm activity in the region, and surrounding areas experiences exceedences consistent with Type III exceptional events (thunderstorm events)

⁹ PM concentrations on September 2, 2006 at the Niland, Westmorland, Brawley, El Centro, Calexico Ethel, and Calexico Grant stations are in the 97th, 98th, 97th, 99th, 98th, and 99th percentiles, respectively, of all 2001-2007 measurements at their respective stations. The chances of observing such same-day concentrations if they are caused by a set of independent factors is less than 1 in 10¹⁰. Unusual local impacts from unusual local events would be such a set of independent factors.

Therefore, consideration of these exceptional event air quality monitoring data in the normal planning and regulatory processes is absolutely inappropriate. As stated in the Introduction of EPA's response document, the proper review and handling of such PM data is the very purpose of the EER.

It would be a matter of great concern for both ICAPCD and ARB if, for events associated with thunderstorm activity in the southwestern United States and Northwestern Mexico, satisfying EPA's demands to establish "clear-causal relationship" and "no exceedence but-for" (including source apportionment and transport) required a level of information (including satellite data and wind data in all desert areas that are possible source contributors) that is unattainable for many areas and technical analyses that may not be feasible. Such a narrow application of the EER will preclude states from excluding from regulatory consideration exceptional PM data that are completely inappropriate for inclusion in the normal planning process.

**Appendix A1:
Possible Explanations for September 2, 2006 Calexico Exceedences**

There are only three possible explanations for the Calexico exceedences recorded on September 2, 2006:

- i. The exceedences were due to highly unusual, non-windblown local PM emitted south of the monitoring stations but north of the border. Given the very narrow (one mile) strip of land between the stations and the border, such unusual emissions (e.g. highly unusual disturbance of soil at the Calexico airport, or at the border) would have had to have been extraordinarily large to account for the exceptionally high measurements. *We note that no such activity was reported; and that such local emissions would furthermore not explain the regionally high PM concentrations observed on September 2, 2006.*
- ii. The exceedences were due to highly unusual, non-windblown PM emitted south of the border in Mexicali. *We note that no unusual activities were recorded, that such local emissions would not explain the low PM concentrations in Mexicali, and would not explain the regionally high PM concentrations observed on September 2, 2006.*
- iii. The exceedences were due to long-range transport of dust generated by high winds S, SE, or SSE of Mexicali. *This is the only explanation for the regionally high PM concentrations observed on September 2, 2006, and is consistent with historical patterns (i.e., the only other 2 days in Table 5 of the ARB documentation that also have high PM concentrations at Calexico were such days).*

Although EPA points out that explanation (iii) above does not account very well for the difference between the PM₁₀ concentrations measured at Calexico and at Mexicali stations (p. 12 of the 2009 EPA Events Letter), we maintain that it is by far the most plausible of all possible explanations, and that it is therefore an appropriate conclusion for a weight-of-evidence analysis.



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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



Benjamin H. Grumbles
Director

August 27, 2010

Mr. Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: Supplemental Information Regarding 2008 Exceptional Events

Dear ^{Jared} Regional Administrator Blumenfeld:

This letter continues my correspondence of August 2, 2010, which transmitted a revised draft report addressing issues EPA had identified in the Arizona Department of Environmental Quality's (ADEQ's) documentation of PM₁₀ exceedances that occurred on June 4, 2008. Enclosed are revised draft reports for the exceedances that were measured on March 14, 2008, April 30, 2008, and May 21, 2008. Although ADEQ maintains that the November 17, 2009 reports for all four of these 2008 events were complete at the time that they were submitted, EPA's May 21, 2010, letter indicates the need for additional consultation about the four dates in question.

In addition to these three revised draft reports, I am attaching a newly-updated, revised draft June 4, 2008 report that has been modified to reflect improvements and corrections that were identified in the course of preparing the reports for the other three dates. A summary of the differences between the two revised draft versions of the June 4, 2008, report is attached (see Attachment 1).

Finally, I am transmitting a document regarding the contribution of anthropogenic activities to monitored violations of the PM₁₀ air quality standard and a detailed breakdown of inspections that occurred on and around the four exceptional event dates in question. This information supplements the information in my June 30, 2010 letter.

Starting on August 30, 2010, and as required by 40 CFR § 50.14(c)(3)(i), ADEQ will be providing notice of the opportunity for public comment and review of all four revised draft reports. These documents will be available for download from the ADEQ website at: <http://www.azdeq.gov/environ/air/plan/index.html>. Upon completion of the public process, it is ADEQ's intent to formally submit these demonstrations, and any public comments received, to EPA Region 9.

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Regional Administrator Blumenfeld
August 27, 2010
Page 2 of 2

Through the submission of these revised draft reports, I once again request that EPA Region 9 revisit its May 21, 2010 decision not to concur with ADEQ's exceptional event documentation. Based upon the information in these documents, there is ample evidence to support the continuation of the consultation process envisioned at the time of the drafting of EPA's Exceptional Events Rule.

I remain hopeful that ADEQ's efforts to rekindle the consultation process will result in a thorough review of the materials and further discussion with ADEQ. If your staff has questions or would like to discuss this further, please have them contact Eric Massey, Air Quality Division Director, who can be reached at (602) 771-2308.

Sincerely,



Benjamin H Grumbles
Director

Enclosures (5)

1. Summary of Changes Made
2. Contribution of Anthropogenic Activities Paper and Detailed Exceptional Event Inspection Information
3. August 16, 2010 Assessment of Qualification for Treatment Under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Event in the Phoenix Area on March 14, 2008
4. August 16, 2010 Assessment of Qualification for Treatment Under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Event in the Phoenix Area on April 30, 2008
5. August 16, 2010 Assessment of Qualification for Treatment Under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Event in the Phoenix Area on May 21, 2008
6. August 16, 2010 Assessment of Qualification for Treatment Under the Federal Exceptional Events Rule: High Particulate (PM10) Concentration Event in the Phoenix Area on June 4, 2008

cc: Deborah Jordan (w/o enclosures)
Colleen McKaughan (w/o enclosures)
Dennis Smith, MAG (w/o enclosures)
Bill Wiley, MCAQD (w/o enclosures)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

AUG 24 2010

OFFICE OF THE
REGIONAL ADMINISTRATOR

Benjamin Grumbles, Director
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

Dear Mr. Grumbles:

Thank you for your most recent communications regarding exceptional events dated June 30th, July 2nd, and August 2nd, and your August 2nd comments on the schedule in the proposed consent decree in Bahr v. Jackson, No. CV 09-2511-PHX-MHM (D. Ariz.). Regarding the consent decree, EPA and the Department of Justice will review all comments and make a decision based on what is in the public's best interest.

Based upon the proposed consent decree schedule, we will be proposing action on the Phoenix 5% PM-10 Plan on September 3rd. As you know, the Plan relies on the exclusion of exceedances that we have determined do not meet the requirements of our Exceptional Events Rule to support the attainment demonstration. Therefore, we will be addressing the exclusion of these exceedances again in that action. We will respond to any comments we receive during the public comment period on this aspect of our proposed action on the 5% Plan when we take final action.

We appreciate all the hard work that your staff has been devoting to these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Blumenfeld".

Jared Blumenfeld
Regional Administrator

cc: Dennis Smith, MAG
Joy Rich, Maricopa County

Congress of the United States

Washington, DC 20515

August 30, 2010

The Honorable Lisa Jackson
Administrator
U. S. Environmental Protection Agency
Mailcode: 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: PM-10 Nonattainment Area Plan for Maricopa County, Arizona

Dear Administrator Jackson:

We are writing to express our serious concerns with two recent decisions concerning Maricopa County's air quality plans that have been taken by the Environmental Protection Agency's (EPA's) Region IX Office.

Although Arizona state and local officials have attempted to work with EPA for many years on efforts to attain National Ambient Air Quality Standards (NAAQS) for coarse particulate matter (PM-10), we are concerned that EPA is presently pursuing a course of action that could result in a disruptive effect on Arizona's economy without ensuring a meaningful improvement in air quality. Instead of pursuing the present course of action, we ask that you review each matter and ensure that your agency employs a fair, collaborative and constructive process in resolving any outstanding issues. We believe this is the best course to help our state achieve the requirements of the Clean Air Act (CAA) while not imposing punitive and counterproductive measures.

First, we are concerned with EPA's pending actions concerning a proposed consent decree with respect to the Maricopa Association of Governments (MAG) Five Percent Plan for PM-10. This plan has been a success. It contains 53 new control measures for PM-10 emissions that are the best available control measures and as stringent as any in the country. Most importantly, except for certain natural conditions and events that temporarily caused elevated levels of PM-10, the PM-10 NAAQS has been met in the Maricopa County area. Clean data and compliant air quality has been achieved throughout 2010.

In a July 2, 2010 Federal Register Notice, EPA gave interested parties only 30 days to comment on whether the Agency should propose action on the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area by September 3. Local and state agencies have, of course, weighed in on this matter, but EPA's overall timeframe in addressing this litigation is unacceptably short given the exceedingly technical nature of the information that is involved and the very large local and state interests that are at stake. After revealing this plan of action only this past July, EPA indicates in the Federal Register notice that it intends to propose action on the Five Percent Plan by September 3, 2010, and take final action by January 28, 2011.

Based on our understanding of EPA's intent in this matter, it appears that the agency will propose disapproval of the Five Percent Plan. According to MAG, this disapproval could initially result in a "conformity freeze" under which new transportation projects would be halted in the Phoenix area, and it could ultimately result in the imposition of CAA sanctions, including additional offset requirements for new construction and withholding of federal highway funds, putting literally billions of dollars in infrastructure investment at risk. Even prior to the imposition of any sanctions, we would be concerned that these actions could serve to chill private sector investment in the Phoenix area at a time when our country is attempting to emerge from a recession. Even the lowest level loss of transportation funding that has been threatened could cost at least 60,000 jobs, according to MAG estimates.

Second, we are concerned with regard to EPA Region IX's abrupt decision on May 21, 2010, to deny the State of Arizona's request regarding certain PM-10 "exceptional events" demonstrations. As you know, the CAA allows certain air quality data to be excluded from the consideration of an area's attainment status if the data was influenced by natural or certain human-caused events that are effectively out of an area's ability to control. Despite a lengthy albeit incomplete process in which Arizona and MAG submitted a considerable amount of technical data and analysis to EPA, the state's request to exclude four days worth of data at a single monitor was rejected by Region IX. At a meeting to discuss this disapproval, Region IX Administrator Jared Blumenfeld called the regulations under which he made his decision "flawed."

In this regard, we would note that the exceptional events rule has been consistently criticized by a wide range of interests since its adoption, including criticism by the state air quality managers in 15 western states most immediately affected by the rule. These states, through the Western States Air Resources Council, have requested action by the EPA Office of Air and Radiation since September 2009 to streamline implementation of the exceptional events rule and to make other changes in administration of the rule. To date, however, we are not aware of any action by EPA to effectively respond to this request or to work with states and localities that are most affected by conditions such as windblown dust and other particulate matter subject to transport.

We therefore request that EPA respond to concerns of states and localities, within existing rules, regulations and ethical guidelines, in an effort to seek a reasonable solution to these issues. In order to allow this process to occur, we respectfully request that:

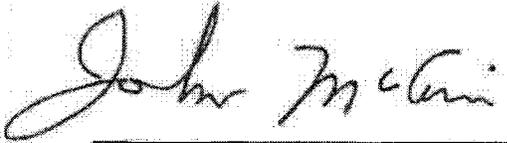
(1) EPA provide adequate time for an additional review of exceptional events requests by the State of Arizona. EPA should review and consider new data and information on these events and move to reconsider its May 21, 2010 determination with regard to the Maricopa County Nonattainment Area.

(2) EPA defer action with regard to its proposed consent decree so that there is adequate time for public comment and consideration. Under the accelerated timeframe that EPA revealed in its July 2, 2010 notice, EPA would propose and take final action on the consent decree in less than five months, allowing only 30 days for public comment. We seriously question whether such a truncated time period will allow sufficient opportunity for states, local areas, business and

private individuals who are not parties or intervenors to the litigation, but who may have a substantial stake in the outcome, to respond and assemble the necessary comments and information for EPA to review.

Thank you for your kind consideration and prompt attention to our concerns. Given the immediacy of this matter, we would ask that you respond in writing to this letter prior to the September 3, 2010 date of proposed action.

Sincerely,



Senator John McCain



Senator Jon Kyl



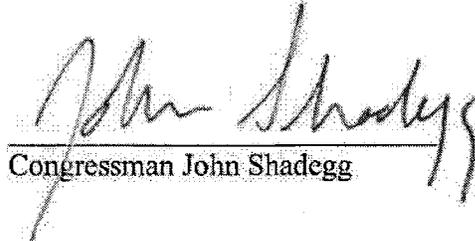
Congressman Harry Mitchell



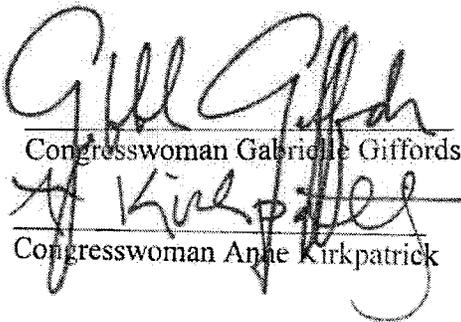
Congressman Jeff Flake



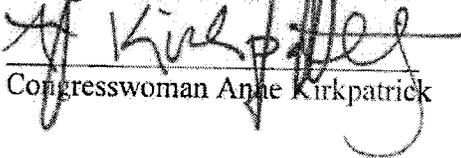
Congressman Ed Pastor



Congressman John Shadegg



Congresswoman Gabrielle Giffords



Congresswoman Anne Kirkpatrick



Congressman Trent Franks



September 1, 2010

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Mailcode: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: EPA Policy Regarding Implementation of the Exceptional Events Rule

Dear Administrator Jackson:

As the 40th Anniversary of the Clean Air Act ("CAA") approaches, we ask for the Environmental Protection Agency's ("EPA's") prompt attention to a matter that lies at the heart of the collaborative process envisioned for implementation of the CAA's many programs to improve local and regional air quality. In specific, we are writing to express our concern with the process that has been employed by EPA to implement the Exceptional Events Rule ("EER") in Arizona and to request the amendment of a draft consent decree that, if finalized, would require a proposed decision whether to approve the Maricopa Association of Governments ("MAG") Five Percent Plan for PM₁₀ on September 3, 2010. This proposed deadline does not afford sufficient time to review the additional information that the Arizona Department of Environmental Quality ("ADEQ") and MAG recently submitted in response to EPA's comments or for meaningful consultation with the State before a preliminary determination is rendered. Given the breadth of relevant information and the importance of the issue, ADEQ and MAG request an extension of at least six months before the agency makes a preliminary decision.

As detailed below, ADEQ and MAG are seeking additional consultation with EPA Region IX with regard to requests for the exclusion of certain PM₁₀ air quality data. The course that EPA has charted in implementing the EER appears to be at odds with CAA policies that have been implemented over the past four decades. Instead of the partnership envisioned in the CAA, it is our experience that implementation of the EER has been inconsistent, fragmented, and, at times, one-sided. We respectfully ask that the partnership between EPA, state, local and tribal authorities that Congress envisioned for the CAA be restored.

I. The Clean Air Act State/Federal Partnership

The CAA has long been recognized as a partnership between EPA and state, local, and tribal governments. This has been established both in law and in numerous policy statements.¹ Through the years and successive EPA administrations, state and local governments have worked hand-in-hand with EPA to implement the CAA's many provisions and achieved steady progress in reducing ambient concentrations of criteria pollutants. EPA's most recent air trends report is a testament to this progress. This report indicates that emissions of criteria pollutants have declined by 41 percent since 1990, despite significant increases in economic growth (64 percent), population, vehicle miles traveled, and electricity consumption during this same period.²

The CAA assigns states the primary responsibility of developing State Implementation Plans ("SIPs") to provide for the attainment and maintenance of National Ambient Air Quality Standards ("NAAQS"). Efforts to implement NAAQS through SIPs submitted to EPA for approval date back to the "modern" CAA, approved by Congress and signed into law in 1970.³ Throughout the ensuing years, while there have been numerous challenges in achieving clean air for all Americans, EPA has consistently defined its role as assisting states in implementing NAAQS and in working cooperatively to resolve implementation issues.

This policy has carried over with regard to the treatment of air quality data influenced by exceptional events.⁴ In the final EER, EPA indicated that states should initially "flag" data reflective of exceptional events and that "States should work with their local agencies for the identification and review of exceptional events and consider requests to flag data from those agencies."⁵ The EER describes a process for "case-by-case evaluation, without prescribed threshold criteria, to demonstrate that

¹ See e.g., 42 U.S.C. 7401(b)(3). The Administration's Fiscal Year 2011 budget for EPA notes that "[t]he Clean Air program is founded on several principles: using health and environmental risks to set priorities, streamlining programs through regulatory reforms, *continuing to partner with state, local and tribal governments* as well as industry and non-governmental organizations, promoting energy efficiency and clean energy supply and encouraging market-based approaches." FY2011 EPA Budget-In-Brief, February 2010, EPA-205-5-S-10-001, at 17. (Emphasis added).

² "Our Nation's Air Status and Trends Through 2008," Office of Air Quality Planning and Standards, EPA-454/R-09-002, February 2010 at 7.

³ Pub. L. 91-604.

⁴ 72 Fed. Reg. 13,560 (March 22, 2007).

⁵ Id. at 13,568.

an event affected air quality.”⁶ This evaluation is to be based on a “weight of evidence” approach and “does not require a precise estimate of the estimated air quality impact from the event.”⁷

EPA specifically noted in the EER that “[b]ecause of the variability in the nature of exceptional events and the resulting demonstration requirements, States should consult with the appropriate EPA Regional Office early in the process of preparing their demonstrations.”⁸ EPA further indicated that “[a]cceptable documentation will be determined *through consultation with the EPA regional offices.*”⁹ (Emphasis added). Moreover, in response to a comment that EPA must provide a reasonable explanation in denying any exceptional event request, EPA stated “[t]he EPA regional offices will work with the States, Tribes and local agencies to ensure that proper documentation is submitted to justify data exclusion.”¹⁰ Finally, when a commenter asked EPA to “establish a technically-based appellate process for States to follow when Regional offices do not concur with a data flag,” EPA responded that an appellate process was unnecessary, “because we anticipate that the States and Regional Offices will be working closely through the data and documentation submission process.”¹¹

This regulatory scheme recognizes the position of states, local, and tribal governments as both partners and “co-regulators” under the CAA. Since the enactment of the 1970 Clean Air Act, Congress has always considered state, local, and tribal governments to be in the best position to evaluate local air quality conditions and to design and implement SIPs necessary for the attainment of NAAQS. Determining what air quality data should – and should not – be utilized in assessing whether an area is in compliance with a NAAQS is a fundamental part of the intergovernmental relationship established by the CAA. It is the *shared* responsibility of EPA, states, local, and tribal governments to ensure that the NAAQS are met.

⁶ Id. at 13,569.

⁷ Id. at 13,570.

⁸ Id. at 13,573.

⁹ Id.

¹⁰ Id. at 13,574.

¹¹ Id.

II. Arizona's Exceptional Events Request Regarding Certain 2008 Air Quality Data

MAG and ADEQ have attempted to work with Region IX on the matter of achieving compliance with the PM₁₀ NAAQS. Beginning in 2007, many separate efforts were made to assess non-compliant PM₁₀ air quality data in the MAG region, as well as other areas in Arizona, and the reasons why exceedances of the applicable NAAQS occurred. With regard to monitoring data for 2008 that ADEQ submitted to Region IX for exceptional events treatment:

- (1) ADEQ made an initial submission on June 30, 2009 regarding all of the previously "flagged" twenty-seven 2008 exceptional events.
- (2) On November 17, 2009, ADEQ transmitted to EPA Region IX documentation for the 12 Maricopa County 2008 exceptional events. The documentation included "Unusual Winds White Paper" and "Control Measures White Paper."
- (3) ADEQ provided EPA Region IX with a supplemental response to the June 4, 2008 PM₁₀ exceedance on March 17, 2010. The response addressed issues raised by EPA in earlier communications.
- (4) On May 21, 2010, EPA Region IX indicated that it would not concur with ADEQ submittals for demonstration of exceptional events for four of the days in 2008 during which there had been PM₁₀ exceedances.
- (5) On June 30, 2010, ADEQ submitted a "section-by-section" response to the May 21, 2010 EPA Region IX exceptional events non-concurrence.
- (6) On July 2, 2010, ADEQ submitted separate MAG comments to EPA Region IX concerning the exceptional events non-concurrence.
- (7) On August 2, 2010, ADEQ submitted additional documentation to EPA Region IX concerning the June 4, 2008, PM₁₀ exceedance.
- (8) On August 27, 2010, ADEQ submitted additional documentation to EPA Region IX concerning the March 14, April 30, and May 21, 2008 PM₁₀ exceedances, as well as supplemental information pertaining to the June 4, 2008, exceedance.

These written submissions for exceptional events in 2008, as well as other information shared with EPA Region IX both before and after the agency's May 21,

2010 decision, do not appear to have been thoroughly considered.¹² Thus, it would be premature for EPA to make an initial determination on MAG's Five Percent Plan for PM₁₀ by September 3rd as currently proposed by EPA. It would seem more prudent for EPA to hold off making a preliminary decision until it has thoroughly evaluated this pertinent information and the agency and ADEQ have had an opportunity to continue the meaningful consultation on the data that was cut short on May 21, 2010.

In addition, there is a list of items and issues involving the exceptional wind events for 2008 which require additional consideration or a response, including:

- (1) An interpretation of "unusual winds."¹³
- (2) The reliance on EPA-created data that have not been vetted through the public review and comment process established in 40 CFR 50.14(c)(3)(i).
- (3) Recently submitted information regarding the regional high wind frontal system passage on June 4, 2008, which contributed to a total of 10 exceedances.¹⁴
- (4) All controllable sources of PM₁₀ in the Phoenix area are subject to an EPA-approved Serious Area SIP ("MAG, 2000"), including numerous Maricopa County rules and as other local dust control measures that the agency has found to be both Best Available Control Measures ("BACM") and meeting the Most Stringent Measures requirements of CAA Section 188(e).¹⁵

¹² In addition, EPA has not yet officially responded to previous submissions. ADEQ submitted 2007 EER Demonstrations to Region IX on September 16, 2008. ADEQ received an unofficial, unsigned response from EPA in May 2009 with regard to the information it submitted on these 2007 events. There was no resolution, clarification or finalization regarding the content of information submitted or what additional information was needed by EPA.

¹³ "Unusual Winds White Paper," ADEQ submission to Region IX, November 2009.

¹⁴ "Section-By-Section Response to Review of Exceptional Events Request", ADEQ, Air Quality Division, Air Assessment Section, June 30, 2010 at 7.

¹⁵ 67 Fed. Reg. 48,718 (July 25, 2002).

- (5) An explanation of the importance of “seasonal” data, how the data from the relevant time period (March through June) does not constitute a “season,” and how this requirement has been applied in other determinations.
- (6) The use of vector average wind speed data in EPA’s analyses understated the energy of winds cited in ADEQ’s exceptional events requests and mischaracterized wind direction.
- (7) EPA's conclusion that the concentrations at the West 43rd Avenue monitor “may have been caused by local upwind sources and were not regional in nature” has not been revisited in light of recently submitted information.
- (8) Neither the EER nor Section 319 of the CAA requires a direct correlation between conditions at that monitor and those at nearby monitors.
- (9) Supplemental information submissions demonstrate that local sources of air pollution were reasonably controlled.
- (10) Conclusions regarding the Maricopa County exceptional events information are not consistent with previous determinations under the EER for other areas of the country.

The above cited instances are not exhaustive but do reflect the breadth and importance of these issues. In addition, and most important for purposes of this letter, these issues are of the type and character that could have been identified and resolved through a more collaborative consultation process.

III. Requirement to Act

To date, EPA Region IX’s May 21, 2010 letter expressing non-concurrence with exceptional event documentation for four dates in 2008 is the only detailed correspondence that MAG or ADEQ has received regarding all of the exceptional event demonstrations that have been submitted. The only other correspondence related to these matters only acknowledged the submission of the supplemental information and the comments that ADEQ had submitted on the proposed Consent Decree in *Bahr v. Jackson*.¹⁶ In this August 24, 2010, letter from Region IX Administrator Jared Blumenfeld to ADEQ Director Benjamin H. Grumbles, it was

¹⁶ No. CV 09-251-PHX-MHM (D.Ariz).

indicated that ADEQ submissions regarding exceptional events for 2008 will be made in the context of action on the consent decree. The letter cites ADEQ written submissions on exceptional events data (cited above) and then provides:

Regarding the consent decree, EPA and the Department of Justice will review all comments and make a decision based on what is in the public's best interest. . . . As you know, the [Five Percent] Plan relies on the exclusion of exceedances that we have determined do not meet the requirements of our Exceptional Events Rule to support the attainment demonstration. Therefore, we will be addressing the exclusion of these exceedances again in that action. We will respond to any comments we receive during the public comment period on this aspect of our proposed action on the [Five Percent] Plan when we take final action.

We are disappointed that EPA has apparently chosen to press forward with the schedule in the consent decree and eschew the opportunity for additional consultation and collaboration regarding the 2008 exceptional events. In addition, addressing an issue as important as this one in the context of a citizen suit against the agency, instead of through consultation with the State, seem to lie in stark contrast to a process founded on the shared responsibility of EPA, state, local and tribal governments to implement the CAA.

IV. Request For Action

Based on the concerns expressed above, we respectfully request that action be taken to restore the opportunity for a federal/state/local dialogue on the implementation of the EER. Specifically, we request that the proposed consent decree referenced above be amended to allow an additional six months of time to review all of the data that is now before the agency before making a proposed decision on the MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area. With this time, EPA, ADEQ and MAG can continue consultation through a collaborative process that has been repeatedly and successfully used in many other areas of CAA implementation.

Sincerely,



Benjamin H. Grumbles
Director
Arizona Department of
Environmental Quality



Dennis Smith
Executive Director
Maricopa Association of Governments

The Honorable Lisa Jackson
September 1, 2010
Page 8

cc: Ms. Gina McCarthy
Assistant Administrator
Office of Air and Radiation

Mr. Jared Blumenfeld
Environmental Protection Agency — Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

September 2, 2010

OFFICE OF THE
REGIONAL ADMINISTRATOR

The Honorable Jon Kyl
United States Senate
730 Senate Hart Office Building
Washington, DC 20510-0304

Dear Senator Kyl:

Thank you for your letter of August 30, 2010 to U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson expressing concerns over EPA's position with respect to the Maricopa County, Arizona air quality plan and our exceptional events determination of May 21, 2010. Administrator Jackson has requested that I respond on her behalf since the actions we will be taking are the responsibility of my office.

We have reviewed the Maricopa Association of Governments "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area." The Plan is intended to meet the coarse particulate matter (PM-10) standards established under the Clean Air Act in Maricopa County as soon as possible. Airborne particulates are linked to significant health problems—ranging from aggravated asthma to premature death in people with heart and lung disease. Because air quality in the County does not meet the levels set by law, reducing PM-10 pollution is critical for the protection of public health.

EPA has worked extensively over the past several years with the Arizona Department of Environmental Quality (ADEQ), the Maricopa Association of Governments (MAG) and the Maricopa County Air Quality Department to develop a successful PM-10 Plan. As recognized in your letter, a number of the current elements will help reduce air pollution in the County. For example, tomorrow we will be proposing to approve measures in the Maricopa Plan that control emissions from vehicle use, leaf blowers, unpaved areas, burning and other sources of particulate matter.

However, serious flaws in the inventories of PM-10 sources submitted by the State have resulted in a Plan that does not satisfy the requirements of the Clean Air Act. Moreover, ADEQ has asserted that many of the days with poor air quality are due to events such as dust storms. EPA has determined that a legally significant number of these exceedances were not caused by "exceptional events," as stated in our letter of May 21, 2010 to the State.

Consequently, EPA intends to move ahead tomorrow with a proposal to partially disapprove the Plan. We believe this decision is legally and scientifically grounded and protective of public health in Maricopa County, where residents have been breathing air falling short of the PM-10 standards for over two decades. The consent decree we negotiated in

As we discussed with you when we met in May, EPA has determined that a legally significant number of exceedances of the PM-10 standard were not caused by "exceptional events." However, we will review the additional documentation submitted by your agencies and respond in our final action.

Consequently, EPA intends to move ahead tomorrow with a proposal to partially disapprove the PM-10 Plan. We believe this decision is legally and scientifically grounded and protective of public health in Maricopa County, where residents have been breathing air that does not meet the PM-10 standard for over two decades. The consent decree we negotiated in litigation brought by the Arizona Center for Law in the Public Interest, in which we agreed to take proposed action no later than September 3, 2010 and final action no later than January 28, 2011, is consistent with our assessment of the PM-10 Plan. Therefore, the Department of Justice has filed a motion in federal district court today requesting entry of the decree. Tomorrow we will issue details of the shortcomings of the PM-10 Plan in a proposed rule to be published in the Federal Register, announcing a 30-day public comment period.

We expect the initial impact from a final disapproval of the PM-10 Plan, if taken, to be minimal. Transportation projects scheduled from 2011-2014 would not be affected, and should be able to continue as planned. Note that final action on the PM-10 Plan is not likely to occur before January 2011. If a final disapproval does occur, the time line for imposition of new facility permitting requirements (18 months later, if the PM-10 Plan's deficiencies are not corrected) and highway funding restrictions (24 months later) should be sufficient to allow the air quality agencies to fix the PM-10 Plan. Even if funding restrictions do occur, no transportation dollars are withheld or lost to the State. Rather, the money must be spent on a more limited set of projects until the issues are resolved.

As in the past, EPA will continue to provide policy guidance and technical expertise to you and your staff so that a new, replacement PM-10 Plan can be submitted as soon as possible. We are confident that working together we can find a way to protect air quality and avoid adverse economic impacts for the citizens of Arizona.

Thank you for the opportunity to respond to your concerns. If I can be of further assistance, please contact me at 415-947-8702, or have your staff contact Deborah Jordan, Air Division Director, at 415-947-8715.

Sincerely,



Jared Blumenfeld

cc: Joy Rich, Maricopa County
William Wiley, Maricopa County



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

September 2, 2010

**OFFICE OF THE
REGIONAL ADMINISTRATOR**

Benjamin H. Grumbles
Director
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

Dennis Smith
Executive Director
Maricopa Association of Governments
302 N. 1st Avenue
Phoenix, AZ 85003

Dear Director Grumbles and Executive Director Smith:

Thank you for your letter of September 1, 2010 to U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson expressing concerns over EPA's position with respect to the Maricopa County air quality plan and our exceptional events determination of May 21, 2010. Administrator Jackson has requested that I respond on her behalf since the actions we will be taking are the responsibility of my office.

We have reviewed the Maricopa Association of Governments' "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area." The Plan is intended to meet the coarse particulate matter (PM-10) standards established under the Clean Air Act in Maricopa County as soon as possible. Airborne particulates are linked to significant health problems ranging from aggravated asthma to premature death in people with heart and lung disease. Because air quality in the County does not meet the levels set by law, reducing PM-10 pollution is critical for the protection of public health.

EPA has worked extensively over the past several years with your agencies and the Maricopa County Air Quality Department to develop a successful PM-10 Plan. A number of the current elements in the plan will help reduce air pollution in the County. For example, tomorrow we will be proposing to approve measures in the Maricopa Plan that control emissions from vehicle use, leaf blowers, unpaved areas, burning and other sources of particulate matter.

However, serious flaws in the inventory of PM-10 sources submitted by the State have resulted in a plan that does not satisfy the requirements of the Clean Air Act. EPA will be proposing disapproval of the attainment demonstration and other key elements required by the Clean Air Act. While your letter emphasizes the exceptional events issue, there are other significant problems with the PM-10 Plan that need to be addressed.

As we discussed with you when we met in May, EPA has determined that a legally significant number of exceedances of the PM-10 standard were not caused by "exceptional events." However, we will review the additional documentation submitted by your agencies and respond in our final action.

Consequently, EPA intends to move ahead tomorrow with a proposal to partially disapprove the PM-10 Plan. We believe this decision is legally and scientifically grounded and protective of public health in Maricopa County, where residents have been breathing air that does not meet the PM-10 standard for over two decades. The consent decree we negotiated in litigation brought by the Arizona Center for Law in the Public Interest, in which we agreed to take proposed action no later than September 3, 2010 and final action no later than January 28, 2011, is consistent with our assessment of the PM-10 Plan. Therefore, the Department of Justice has filed a motion in federal district court today requesting entry of the decree. Tomorrow we will issue details of the shortcomings of the PM-10 Plan in a proposed rule to be published in the Federal Register, announcing a 30-day public comment period.

We expect the initial impact from a final disapproval of the PM-10 Plan, if taken, to be minimal. Transportation projects scheduled from 2011-2014 would not be affected, and should be able to continue as planned. Note that final action on the PM-10 Plan is not likely to occur before January 2011. If a final disapproval does occur, the time line for imposition of new facility permitting requirements (18 months later, if the PM-10 Plan's deficiencies are not corrected) and highway funding restrictions (24 months later) should be sufficient to allow the air quality agencies to fix the PM-10 Plan. Even if funding restrictions do occur, no transportation dollars are withheld or lost to the State. Rather, the money must be spent on a more limited set of projects until the issues are resolved.

As in the past, EPA will continue to provide policy guidance and technical expertise to you and your staff so that a new, replacement PM-10 Plan can be submitted as soon as possible. We are confident that working together we can find a way to protect air quality and avoid adverse economic impacts for the citizens of Arizona.

Thank you for the opportunity to respond to your concerns. If I can be of further assistance, please contact me at 415-947-8702, or have your staff contact Deborah Jordan, Air Division Director, at 415-947-8715.

Sincerely,



Jared Blumenfeld

cc: Joy Rich, Maricopa County
William Wiley, Maricopa County



Air Resources Board



Linda S. Adams
Secretary for
Environmental Protection

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Arnold Schwarzenegger
Governor

July 22, 2010

Ms. Gina McCarthy
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Ms. McCarthy:

We need your assistance to improve the procedure for addressing uncontrollable events such as high winds and wildfires in the federal air quality planning process. The intent of U.S. Environmental Protection Agency's (U.S. EPA) rule on exceptional events is to exclude "events for which normal planning and regulatory processes established by the Clean Air Act are not appropriate." Unfortunately, our recent request to exclude high wind events in Imperial County from PM10 planning requirements was denied. The planning implications of this action are detailed in Attachment 1.

In reviewing natural events, U.S. EPA staff is requiring extensive emissions evaluations and rule assessments, rather than focusing on whether the occurrence of an uncontrollable high wind or wildfire event was adequately documented. While the California Air Resources Board has worked with local air districts to provide extensive documentation of the timing and location of these events, U.S. EPA staff has expanded its technical review far beyond the event itself. Establishing that natural high wind and wildfire events occurred, and that they caused atypical elevated concentrations, can be accomplished with a straightforward technical assessment. We are suggesting specific improvements (Attachment 2) to rule implementation to ensure that our air quality planning efforts are appropriately focused to maximize the public health benefits of our programs.

Thank you for your commitment to clean air, and we look forward to working with you to develop a more workable approach to implementing the exceptional events rule.

Sincerely,



Mary D. Nichols
Chairman

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

ATTACHMENT 1

**Planning Implications of the Exceptional Event Process
in Imperial County**

U.S. EPA's December 22, 2009 disapproval of several natural windblown dust events in Imperial County has had serious impacts on the PM10 State Implementation Plan (SIP) process for the region. U.S. EPA's review of these events, and the related planning implications, are discussed below to highlight our concerns regarding implementation of the Exceptional Events Rule (Rule).

Imperial County is located in the far southeastern corner of California. Most of Imperial County consists of large expanses of open desert, primarily managed by the federal government, with average rainfall of less than 3 inches per year. Due to the arid, desert nature of the region, PM10 emissions are dominated by fugitive dust. Windblown dust from open desert lands comprises more than half of these emissions. The federal 24-hour PM10 standard is exceeded on average only two to three times a year. These infrequent occurrences are due to two distinct types of conditions – transport of emissions from Mexico, or naturally occurring high winds.

In 2007 two high wind events occurred impacting a number of sites in the county. ARB and the Imperial County Air Pollution Control District (District) developed comprehensive technical documentation that was submitted to U.S. EPA in 2008. This documentation demonstrated that winds gusting 30 to 40 miles per hour caused elevated PM10 concentrations throughout Southern California as well as Arizona, with PM10 concentrations in Imperial reaching 291 ug/m³. The winds that contributed to both of these events were at least three standard deviations above those seen in the previous three years. A clear causal connection was made between the timing of the increasing winds and a shift in direction to winds blowing over the Anza Borrego Desert and the elevated PM10 concentrations. The documentation also demonstrated that concentrations before and after the events were well below the federal standard. Documentation of these events was supplemented by news media reports and airport observations.

Preparation of the exceptional events documentation was a significant drain on limited resources. Over the past two years, documentation for the Imperial County high wind events involved substantial resources by Imperial County and ARB staff, as well as lengthy review time by U.S. EPA staff. Initial documentation was submitted by ARB in June 2008, and later supplemented with additional information requested by U.S. EPA in July 2009. All told, the documentation submitted on these events totaled over 200 pages, with extensive citations to BACM rule assessment and documentation on the development of a windblown dust emissions model for the region. Throughout the U.S. EPA's review, ARB and Imperial County staff also worked closely with U.S. EPA staff on additional emissions inventory clarifications to help further support the natural events request.

As noted above, on December 22, 2009, U.S. EPA Region 9 issued a letter to ARB stating that they could not concur with the events (Laura Yoshii's letter to James Goldstene – Review of Exceptional Event Request (December 22, 2009)). In their review, U.S. EPA agreed that there were unusually high winds and that the evidence made a "compelling case of a causal relationship" between the wind-driven dust source and the PM10 exceedances (*id.* at p. 22) and that there was evidence that "the event was caused by wind-driven emissions stemming from a regional meteorological occurrence." (*id.* at p. 23.) U.S. EPA concluded that the evidence presented "demonstrates that the April 12, and June 5, 2007 PM10 exceedances were probably caused by wind-driven PM10 emissions from some sources west of the monitors." (*id.* at p. 25.) However, U.S. EPA subsequently concluded that the events could not be considered natural events under the Rule because the contribution of individual sources could not be quantified and linked to specific rules. U.S. EPA also raised concerns about the level of control for certain fugitive dust sources. (*id.* at p. 29.) This is a level of analysis that goes far beyond the simple requirements specified in the section 50.14(c)(3)(iii) of the Rule and what is needed for the necessary technical demonstration that a high wind event caused the exceedances.

The District has worked closely with the ARB and U.S. EPA to develop appropriate fugitive dust rules for the region. In 2004, Imperial County was reclassified as a serious PM10 nonattainment area, triggering a Clean Air Act requirement to implement BACM within four years. The District conducted a comprehensive BACM analysis and adopted a suite of fugitive dust controls in 2005 to implement these requirements. At the District's rule adoption hearing, U.S. EPA staff testified that the rules represented BACM and ARB subsequently submitted them U.S. EPA in 2006. While the District moved expeditiously to implement BACM, it was not required to be in place at the time of the 2007 natural events as four years had not passed since the reclassification for PM10.

In reviewing the high wind events, U.S. EPA Region 9 staff's initial written comments from July 2008 acknowledged that the Rule does not require implementation of BACM level controls for contributing anthropogenic sources. (Sean Hogan's letter to Karen Magliano – Evaluation of April 12, 2007 Exceptional Event Request for the Imperial County California PM-10 Nonattainment Area (July 30, 2008), at p. 2.) However, in their final review of these events in December 2009, U.S. EPA concluded "Because BACM is required in serious PM10 nonattainment areas such as Imperial County under CAA Section 189(b), it is appropriate to consider that level of control in evaluating whether reasonable controls are in place for purposes of the Exceptional Events Rule." (Laura Yoshii's letter to James Goldstene – Review of Exceptional Event Request (December 22, 2009), at p. 9.) The review then went on to discuss several deficiencies in what U.S. EPA considered a BACM level of control for the region. We note that the Rule does not specify a required level of control, indeed it only specifies that the event itself not be reasonably preventable or controllable

(40 C.F.R. § 50.1(j)). In addition, at the time the events occurred, U.S. EPA had not raised any complaints regarding the appropriateness of the District's rules.

As a result of the disapproval, Imperial County must now implement serious area planning requirements using a design value based on a natural event. For example, the attainment demonstration would need to show a nearly fifty percent reduction in emissions to reduce wind generated concentrations of almost 300 ug/m³ down to the level of the standard. This is clearly not feasible and is precisely what the Rule was intended to avoid. The disapproval also has implications for which sources must be included in the BACM assessment. While the District has committed to working with U.S. EPA on further control measure improvements, development of a serious area SIP will not be possible until future natural events can be approved. Therefore it is essential that U.S. EPA and ARB work together to implement a more workable and appropriate process for approving natural events.

ATTACHMENT 2

**Air Resources Board Recommendations to Improve
U.S. EPA's Exceptional Events Rule**

Focus U.S. EPA Technical Review on the "Event"

The Rule provides the following definition of an exceptional event: "Exceptional event means an event that affects air quality, is not reasonably preventable or controllable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event . . ." (40 C.F.R. § 50.1(j) (2007).) The Rule's preamble repeatedly describes an exceptional event as the **physical phenomena** that subsequently results in an air quality exceedance. For example, the Rule refers to *high winds*, rather than the dust entrained from the winds (72 Fed.Reg. 13565 (March 22, 2007).), as well as *wildfires*, not the smoke generated by these fires (72 Fed.Reg. 13566 (March 22, 2007).). In California and throughout the west, both high winds and wildfires can be common occurrences due to the west's unique geography, vegetation, and climate.

By their very nature, these physical phenomena are fundamentally not preventable or controllable. Thus we believe that evaluation of whether an event qualifies as exceptional under the Rule should initially focus upon whether the **event** in question is a natural phenomenon, rather than upon an analysis of the emissions caused by the natural phenomenon. Demonstrating that an event occurred resulting in elevated concentrations should not require detailed analysis of individual emissions source categories impacting each monitor, but rather a straightforward technical analysis of air quality and weather conditions to show that the elements justifying the exclusion of an event are met. The fact that the exceptional event analysis should be focused upon the nature of the event is shown by the language of 40 C.F.R. section 50.14(c)(3)(iii) which describes the demonstration necessary to exclude an event. Under section 50.14(c)(3)(iii) an exclusion of data must be supported by evidence that

- there is a clear causal relationship between the measurement under consideration and the **event** that is claimed to have affected air quality;
- the **event** is associated with a measured concentration in excess of normal historical fluctuations, including background; and
- there would have been no exceedance but for the **event**.

Link Rule Assessments to Controllable Emissions

Once this technical evaluation has been completed, a separate step should assess the existing control program. Because the natural events themselves are fundamentally not reasonably preventable or controllable, the rules assessment should focus on whether the control program is reasonable and appropriate for preventing exceedances under the typical range of weather conditions and emission events. It is neither reasonable nor cost-effective for a state to develop rules for events that occur only rarely under extreme circumstances.

We do agree that existing elements of the Rule requiring public notification and mitigation strategies are appropriate to help minimize public exposure during

these events. However, we wish to highlight the Rule's focus on a State's role in developing and enforcing such measures. The Rule's preamble makes clear that it is a State's responsibility to take "reasonable and adequate actions to protect public health." (72 Fed.Reg. 13576 (March 22, 2007).) A State is charged with deciding what actions are reasonable and adequate because "it is EPA's belief that States are in a better position to make decisions concerning what actions should be taken to protect the public when an exceptional event occurs." (*Id.* at p. 13575.)

Additionally, control measures satisfying the Rule's requirements are legally distinct from any RACM or BACM that may be required. As stated in the Rule's preamble, "the implementation of RACM or BACM is not required [under the Rule], but [instead] the State has the necessary flexibility to determine if, and what, controls should be implemented following an event, as well as the level of control that is required." (*Id.* at p. 13575.) Additional support for the distinction between RACM/BACM and "reasonable and adequate" control measures under the Rule is the fact that a State does not need to submit documentation of its mitigation actions to the U.S. EPA to allow for an exceptional event determination (*id.* at p. 13576.); this lack of required documentation stands in contrast to the documentation of control measures a State is required to provide to the U.S. EPA under a RACM or BACM requirement.

Streamline Documentation

Finally, we believe that in order for both states and U.S. EPA to effectively address preparation and review of exceptional events documentation in a timely manner, the documentation process needs to be streamlined. The determination should be based on the overall weight-of-evidence presented, given data availability and considering whether more detailed and time intensive analyses are truly needed. As such, the level of documentation should be commensurate with the complexity of the event. Widespread and severe events such as the historic wildfire outbreak that occurred during the summer of 2008 in California, or windstorms affecting multiple regions and/or states, should require much less documentation than more isolated or lesser magnitude events.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF MISSISSIPPI, <u>et al.</u> ,)	
)	
Petitioners,)	
)	No. 08-1200 and consolidated cases
v.)	(Ozone NAAQS Litigation)
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
)	

EPA's Status Report

Respondent United States Environmental Protection Agency ("EPA") files this status report in accordance with the Court's order.

Petitioners challenge in these consolidated cases a regulation promulgated by EPA under the Clean Air Act entitled the "National Ambient Air Quality Standards for Ozone" (hereinafter "Ozone NAAQS Rule"), 73 Fed. Reg. 16,436 (March 27, 2008). In accordance with the Court's Order, dated January 21, 2010, these cases are being held in abeyance pending completion of EPA's ongoing rulemaking on reconsideration of the Ozone NAAQS Rule. In its notice filed on September 16, 2009, EPA stated its schedule for the rulemaking was to sign the Notice of Proposed Rulemaking by December 21, 2009, and to sign the Final Action by August 31, 2010.

On January 19, 2010, EPA's proposed rule on reconsideration was published in the Federal Register. 75 Fed. Reg. 2938. That comment period concluded on March 22, 2010, and EPA is continuing to review the comments received and take the steps necessary to reach and issue a final decision. EPA expects that this process will take approximately two months longer than initially estimate. Thus, EPA's current schedule is to sign a final rule on the reconsideration of the 2008 Ozone standard on or about the end of October 2010.

Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

/S/ David Kaplan
DAVID J. KAPLAN
United States Department of Justice
Environmental Defense Section
P.O. Box 23986
Washington D.C. 20026-3986
Tel: (202) 514-0997
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Counsel for Respondent EPA

Dated: August 20, 2010

CERTIFICATE OF SERVICE

I certify that, on August 20, 2010, I filed the attached motion through the Court's electronic filing system and that I caused a copy of the foregoing filing to be served by U.S. Mail, postage pre-paid, to the following counsel:

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