

September 8, 2010

TO: Members of the Transportation Policy Committee

FROM: Mayor Scott Smith, Mesa, Chair

SUBJECT: NOTIFICATION OF MEETING AND TRANSMITTAL OF TENTATIVE AGENDA

Meeting - 4:00 p.m.

Wednesday, September 15, 2010

MAG Office, Suite 200 - Saguaro Room

302 N. First Avenue, Phoenix

A meeting of the Transportation Policy Committee is scheduled for the time and place noted above. Members of the Committee may attend the meeting either in person, by videoconference, or by telephone conference call. As determined at the first meeting of the Committee, proxies are not allowed. Members who are not able to attend the meeting are encouraged to submit their comments in writing, so that their view is always a part of the process.

For those attending in person, please park in the garage under the building. Bring your ticket to the meeting, parking will be validated. For those using transit, the 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.

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

Refreshments and a light snack will be provided. If you have any questions, please contact Eric Anderson, MAG Transportation Director, or Dennis Smith, MAG Executive Director, at (602) 254-6300.

c: MAG Regional Council  
MAG Management Committee

**TRANSPORTATION POLICY COMMITTEE  
TENTATIVE AGENDA  
September 15, 2010**

	<u>COMMITTEE ACTION REQUESTED</u>
1. <u>Call to Order</u>	
2. <u>Pledge of Allegiance</u>	
3. <u>Call to the Audience</u>  An opportunity will be provided to members of the public to address the Transportation Policy 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. Citizens 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 Transportation Policy Committee requests an exception to this limit. Please note that those wishing to comment on agenda items posted for action will be provided the opportunity at the time the item is heard.	3. Information.
4. <u>Approval of Consent Agenda</u>  Prior to action on the consent agenda, members of the audience will be provided an opportunity to comment on consent items that are being presented for action. Following the comment period, Committee members may request that an item be removed from the consent agenda. Consent items are marked with an asterisk (*).	4. Recommend approval of the Consent Agenda.

**ITEMS PROPOSED FOR CONSENT\***

*4A. <u>Approval of the July 21, 2010, Meeting Minutes</u>	4A. Review and approval of the July 21, 2010, meeting minutes.
*4B. <u>Amendment of the MAG Regional Transportation Plan 2010 Update</u>  On July 28, 2010, the MAG Regional Council approved the Fiscal Year (FY) 2011-2015 Transportation Improvement Program (TIP) and the MAG Regional Transportation Plan (RTP) 2010 Update. In late July, due to reductions in revenues,	4B. Recommend approval of an amendment to the MAG Regional Transportation Plan 2010 Update to incorporate public transit service level adjustments resulting from reductions in revenues, including repeal of the Local Transportation Assistance Fund, that were reflected in public transit service schedules published in July 2010, contingent upon a finding of conformity of the FY 2011-2015 MAG

including repeal of the Local Transportation Assistance Fund (LTAF), transit service level adjustments were finalized by transit service providers and reflected in transit schedules published in July 2010. These changes impacted the transit service levels in the RTP 2010 Update and the corresponding transportation network modeling assumptions. An air quality conformity regional emissions analysis reflecting the new modeling assumptions has been conducted and indicates that the TIP and RTP will not contribute to violations of federal air quality standards. The MAG Transportation Review Committee recommended approval on August 31, 2010. On September 8, 2010, the Management Committee recommended approval. Please refer to the enclosed material.

Transportation Improvement Program and the MAG Regional Transportation Plan 2010 Update with applicable air quality plans.

**ITEMS PROPOSED TO BE HEARD**

5. Use of Public Private Partnerships in the MAG Region

At the July 2010 meeting, an overview presentation on why Public Private Partnerships PPP's are being explored, how PPP's have been used in other states and regions, and examples of the type of projects in Arizona that may be candidates for PPP consideration was provided. Additional information about the types of PPP projects that might be applicable to the MAG region will be provided. One type of project might involve adding a managed lane network to the system. Managed lanes are freeway lanes that use road pricing to manage the amount of traffic in the lane in order to maintain certain speed levels. MAG conducted a similar study in 2002 that showed that such a concept could work in a number of corridors. Given the age of the previous study and that the characteristics of the system have changed, a study to examine the feasibility of implementing a managed lane network for the MAG region would be useful. Such a study would determine the overall feasibility of such a system including such elements as operating characteristics, corridor priorities for implementation, pricing strategies, enforcement and other operational issues, and revenue potential. In addition, a survey and focus groups to gauge the

5. Information, discussion and possible action to recommend that MAG conduct a Managed Lane Feasibility Study and public opinion survey on attitudes toward P3s, tollroads, and managed lanes.

public's attitudes about P3s, tollroads, and managed lanes would be useful.

6. Proposal to Advance the Construction for a Portion of the Williams Gateway Freeway

Mesa has requested consideration of a proposal to advance the construction for the segment of the Williams Gateway Freeway from the Santan Freeway to Ellsworth Road. Funding for the construction of this segment is programmed in Fiscal Year (FY) 2016 and Mesa is proposing to advance construction to FY 2012. A request to accelerate the design, right of way and construction of this segment was originally approved by MAG in January 2009. The legislature subsequently swept the funds that had been designated for the interest expense for the accelerated project. In May 2009, MAG approved a request by Mesa to accelerate only the design and right of way and that the funding that has been programmed for the advanced acquisition of right of way in the corridor be used to cover the interest expense associated with the financing necessary to accelerate the design and right of way activity. The Arizona Department of Transportation (ADOT) is currently acquiring the right of way and is starting the final design for the segment. To advance construction, Mesa is proposing to issue Highway Project Advancement Notes (HPANs), which are secured by the city's excise tax, to fund the accelerated construction. Since Mesa would issue the debt, there is no impact on the freeway program's financing capacity. The program currently estimates construction costs at \$158.3 million. Recent ADOT estimates place construction costs at \$119 million due in large part to the competitive bidding environment. Advancing construction of this project to January 2012 could potentially save the Program a substantial amount of money. The financial analysis for the proposed acceleration includes issuing \$130 million of HPANs to support the construction of the project. The net interest expense on the debt to advance construction is estimated to be \$21.2 million. The interest expense would be funded in part using the \$10 million set aside by the State Legislature to fund the acceleration of the SR-802. In addition, interest expense would be reduced by any savings from the

6. Recommend approval of the Mesa request to advance the construction of an interim connection of the Williams Gateway Freeway between the Santan Freeway and Ellsworth Road by approximately four years, to be incorporated into the MAG FY 2011 to FY 2015 Transportation Improvement Program for FY 2012 and the Regional Transportation Plan 2010 Update for an air quality conformity analysis, and authorize the MAG Executive Director to enter into an agreement with ADOT and Mesa.

original \$8 million that was allocated for interest expense from the advancement of design and right of way acquisition for the SR-802 due to lower than anticipated interest costs. This is estimated to be approximately \$2.0 million. The net interest expense after the \$10 million state set aside and any savings from the original interest expense fund allocation, would be divided equally between the Freeway Program and Mesa, as stated in the MAG Highway Acceleration Policy adopted in February 2008. Mesa and the Freeway Program would be responsible for about \$4.6 million each of interest expense based on the financial analysis. The Program share of the interest cost represents an additional cost to the Program, however, this added cost would be offset by the accelerated construction for the project as long as the rate of inflation exceeds one half of the interest rate on the financing. The financial analysis assumes an interest rate of 4.25 percent on the notes. ADOT currently uses a three percent inflation rate for construction, so there would be a net cost savings to the program as a result of the proposed acceleration. Mesa understands and agrees that if the schedule for the project is delayed due to higher program costs and/or lower program revenues, the reimbursement to Mesa would be delayed as other projects are also delayed. On September 8, 2010, the Management Committee recommended approval. Please refer to the enclosed material.

7. State of Transit in the Region

Through the MAG Committee process starting at the Transit Committee, MAG programs transit projects to be funded with federal funds while working cooperatively with MAG member agencies, the designated grant recipient (City of Phoenix), and the transit operators in the region: the City of Glendale, the City of Peoria, the City of Phoenix, the Regional Public Transportation Authority (RPTA), the City of Scottsdale, the City of Surprise, the City of Tempe, and Valley Metro Rail (METRO). Fiscal Year (FY) 2010 was a transition year for transit programming. In the past, the effort was led by RPTA, using prioritized guidelines as explained in the attachment. Last year, the responsibility shifted to MAG. FY 2011 will

7. Information and discussion.

continue to be a transition year for transit programming. MAG needs to develop regional transit programming guidelines/priorities/evaluation criteria for federal funds and a process on how to integrate Transportation Life Cycle Program (TLCP) material changes to the Regional Transportation Plan (RTP) through the MAG Committee process. An overview of the State of Transit in the Region will be presented to aid member agency leaders in providing input to staff and the MAG Transit Committee in developing the regional transit programming guidelines/priorities/evaluation criteria for federal funds. Please refer to the enclosed material.

8. 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. MAG has been providing assistance with the supplemental information and more will be forthcoming. 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. 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

8. Information and discussion.

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 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 3, 2010, the EPA Regional Administrator signed a Federal Register notice that proposed partial approval and partial disapproval of the Five Percent Plan for PM-10 for the Maricopa County nonattainment area. The notice is expected to be published within two weeks. Please refer to the enclosed material.

9. Request for Future Agenda Items

Topics or issues of interest that the Transportation Policy Committee would like to have considered for discussion at a future meeting will be requested.

10. Comments from the Committee

An opportunity will be provided for Transportation Policy Committee members to present a brief summary of current events. The Transportation Policy Committee is not allowed to propose, discuss, deliberate or take action at the meeting on any matter in the summary, unless the specific matter is properly noticed for legal action.

Adjournment

9. Information and discussion.

10. Information.

MINUTES OF THE  
MARICOPA ASSOCIATION OF GOVERNMENTS  
TRANSPORTATION POLICY COMMITTEE MEETING

July 21, 2010  
MAG Office, Saguaro Room  
Phoenix, Arizona

MEMBERS ATTENDING

- |   |   |
|---|---|
| Mayor Scott Smith, Mesa, Chair            | Phil Matthews, Salt River Pima-Maricopa     |
| Councilwoman Peggy Neely, Phoenix,        | Indian Community                            |
| Vice Chair                                | Mayor Jackie Meck, Buckeye                  |
| # Mayor Bob Barrett, Peoria               | * Vice Mayor Les Presmyk, Gilbert           |
| * Stephen Beard, HDR Engineering, Inc.    | * Mayor Marie Lopez Rogers, Avondale        |
| Dave Berry, Swift Transportation          | * David Scholl                              |
| * Jed Billings, FNF Construction          | # Mayor Elaine Scruggs, Glendale            |
| Mayor James Cavanaugh, Goodyear           | Karrin Kunasek Taylor, DMB Properties       |
| Councilmember Jack Sellers, Chandler      | Mayor Lyn Truitt, Surprise                  |
| Councilmember Shana Ellis, Tempe          | * Supervisor Max W. Wilson, Maricopa County |
| Councilmember Dick Esser, Cave Creek      | * Victor Flores, State Transportation Board |
| * Mark Killian, The Killian Company/Sunny | * F. Rockne Arnett, Citizens Transportation |
| Mesa, Inc.                                | Oversight Committee                         |
| # Mayor Jim Lane, Scottsdale              |   |
- \* Not present  
# Participated by telephone conference call  
+ Participated by videoconference call

1. Call to Order

The meeting of the Transportation Policy Committee (TPC) was called to order by Chair Scott Smith at 4:00 p.m.

2. Pledge of Allegiance

The Pledge of Allegiance was recited. Chair Smith noted that Mayor Bob Barrett, Mayor Jim Lane, and Mayor Elaine Scruggs were participating in the meeting by telephone. He welcomed Mayor Bob Barrett and Phil Matthews to their first TPC meeting.

Chair Smith noted that on July 14, 2010, the Management Committee recommended approval of agenda items #4C, #4D, and #4E that were on the TPC Consent Agenda. He stated that the

following items were at each place: For agenda item #4B, an updated American Recovery and Reinvestment Act (ARRA) Status Report, and for agenda item #4C, a revised summary transmittal and table that were updated to reflect the recommendation of the Management Committee and the addition of new ARRA project change requests.

3. Call to the Audience

Chair Smith stated that an opportunity is provided to the public to address the Transportation Policy Committee on items that are not on the agenda that are within the jurisdiction of MAG, or non action agenda items that are on the agenda for discussion or information only. Citizens will be requested not to exceed a three minute time period for their comments. An opportunity is provided to comment on agenda items posted for action at the time the item is heard.

Chair Smith noted that no public comment cards had been turned in.

4. Approval of Consent Agenda

Chair Smith stated that agenda items #4A, #4B, #4C, #4D, and #4E were on the consent agenda. He stated that public comment is provided for consent items, and noted that no public comment cards had been received. Chair Smith asked members if they would like to remove any of the consent agenda items or have a presentation. No requests were noted. Vice Chair Neely moved to recommend approval of consent agenda items #4A, #4B, #4C, #4D, and #4E. Mr. Berry seconded, and the motion carried unanimously.

4A. Approval of the April 21, 2010, Meeting Minutes

The Transportation Policy Committee, by consent, approved the April 21, 2010, meeting minutes.

4B. American Recovery and Reinvestment Act (ARRA) Status Report

A Status Report on the American Recovery and Reinvestment Act (ARRA) funds dedicated to transportation projects in the MAG region details the status of project development. The report covers highway, local, transit, and enhancement projects programmed with ARRA funds and the status of project development milestones per project.

4C. Project Changes – Amendment and Administrative Modification to the FY 2008-2012 MAG Transportation Improvement Program

The Transportation Policy Committee, by consent, recommended approval of amendments and administrative modifications to the fiscal year (FY) 2008-2012 MAG Transportation Improvement Program, and as appropriate, to the Regional Transportation Plan 2007 Update. The FY 2008-2012 MAG Transportation Improvement Program (TIP) and Regional Transportation Plan 2007 Update were approved by the MAG Regional Council on July 25, 2007. Since that time, there has been a request from Phoenix to add a new transit project. This transit project received federal

discretionary funds and needs to be programmed in the TIP. On July 1, 2010, the Transportation Review Committee (TRC) recommended approval of the transit project for amendments and administrative modifications to the FY 2008-2012 MAG Transportation Improvement Program, as appropriate, to the Regional Transportation Plan 2007 Update. In addition, the Arizona Department of Transportation has recently requested a new embankment project on SR-87. On July 14, 2010, the MAG Management Committee recommended approval of the transit project and a new embankment project on SR-87 for amendments and administrative modifications to the FY 2008-2012 MAG Transportation Improvement Program, as appropriate, to the Regional Transportation Plan 2007 Update. Since the mailout of the TPC agenda, there have been requests made by Chandler, El Mirage, Litchfield Park and Tempe to modify nine project funding types and costs, which are all related to ARRA project savings.

4D. L101 High Occupancy Vehicle Lane Budget Increase

The Transportation Policy Committee, by consent, recommended approval that the L101 HOV project budget be increased by \$9.0 million, that the project include the proposed realignment of the freeway in the vicinity of Maryland Avenue, that the FY 2008-2012 MAG Transportation Improvement Program be modified, and that the Maryland Avenue Overpass Ramps be included as an illustrative project in the Regional Transportation Plan 2010 Update. The L101 High Occupancy Vehicle (HOV) Design - Build project budget is \$138.5 million. This project will complete the HOV lane construction from Tatum Boulevard to I-10 in the West Valley. ADOT has recommended that the proposed project budget be increased by \$9.0 million to include the realignment of the freeway in the vicinity of the Maryland Overpass as part of the design - build project in order to accommodate planned direct access ramps in the future. The initial plan for the Maryland Overpass included direct connection ramps to provide access to a nearby park-and-ride lot and the Westgate/University of Phoenix stadium complex. After reviewing the program cash flow, MAG staff recommends the project budget be increased by \$9.0 million to \$147.5 million. A modification to the FY 2008-2012 MAG Transportation Improvement Program will be needed. In addition, the City of Glendale has requested that the Maryland Overpass Ramps be included in the Draft Regional Transportation Plan (RTP) 2010 Update as an illustrative project. The Draft RTP 2010 Update is scheduled for approval by the MAG Regional Council on July 28, 2010. On July 1, 2010, the Transportation Review Committee voted to recommend approval. On July 14, 2010, the Management Committee recommended approval.

4E. Draft Fiscal Year 2011 Arterial Life Cycle Program

The Transportation Policy Committee, by consent, recommended approval of the Draft fiscal year (FY) 2011 Arterial Life Cycle Program contingent on a finding of conformity of the FY 2011-2015 MAG Transportation Improvement Program and Regional Transportation Plan 2010 Update with applicable air quality plans. The Regional Transportation Plan (RTP) identified 94 arterial street projects to receive funding from the regional sales tax extension and from MAG Federal Funds. The Arterial Life Cycle Program (ALCP) provides information for each project spanning a 20-year life cycle. Information contained in the ALCP includes project location, regional funding, fiscal year for work, type of work, status of project and the Lead Agency. As part of the ALCP process,

Lead Agencies update project information annually, at a minimum. MAG staff has programmed the Draft FY 2011 ALCP based on the information provided by Lead Agencies and from projected revenue streams of the Regional Area Road Fund (RARF), MAG Surface Transportation Program (STP-MAG) funds, and Congestion Mitigation and Air Quality (CMAQ) funds. An electronic copy of the Draft FY 2011 ALCP also is available for download from the MAG website. On July 1, 2010, the Transportation Review Committee voted to recommend approval. On July 14, 2010, the Management Committee recommended approval.

5A. FY 2010 MAG Final Phase Public Input Opportunity

Jason Stephens, MAG Public Involvement Planner, reported on MAG's public involvement process conducted on transportation plans and programs for the Final Phase public input opportunity. He noted that all of the information presented today is included in the Final Phase report. Mr. Stephens stated that MAG participated in a variety of special events and small group presentations, and also gathered comments from MAG committee meetings and e-mail, telephone and website correspondence. He stated that the process also included a transportation public hearing on June 21, 2010, hosted by MAG with representatives from Arizona Department of Transportation, Citizen's Transportation Oversight Committee, Valley Metro, METRO and the City of Phoenix Public Transit Department in attendance. Mr. Stephens stated that a majority of the comments received from the public focused on transit and expressed concerns for cuts in service, the loss of Local Transportation Assistance Funding, the need for Dial-a Ride service, and cuts to routes on the Super Grid. He advised that all of the questions are answered on the spot or within 48 hours. Chair Smith thanked Mr. Stephens for his report. No public comment cards were received. No questions for Mr. Stephens were noted.

Councilmember Esser moved to recommend acceptance of the Draft FY 2010 MAG Final Phase Public Input Opportunity Report. Mayor Truitt seconded, and the motion passed unanimously.

5B. Approval of the Draft MAG Regional Transportation Plan 2010 Update

Roger Herzog, MAG Senior Project Manager, stated that the Draft MAG Regional Transportation Plan (RTP) 2010 Update is a comprehensive, performance based, multimodal and coordinated plan, identifying transportation improvements in the region over the next 20 years. Mr. Herzog noted that the Draft RTP 2010 Update includes a number of elements, including transportation modes of freeways, highways, arterial streets, public transit, freight, and bicycles, and the elements of travel demand management, safety, regional development, and transportation revenues.

Mr. Herzog stated that the major modal programs in the RTP total approximately \$59 billion. That total broken down includes about \$24 billion for arterial streets, about \$18 billion for freeways and highways, and about \$17 billion for transit. He said that about half of the RTP is funded by local/other funds and half of the RTP is funded by regional funds, which include federal transit and highway funds, ADOT funds, and the half cent sales tax for transportation.

Mr. Herzog stated that the RTP 2010 Update includes a 20-year planning period, which is a federal requirement, through FY 2031. He indicated that one of the major issues addressed since the 2007 Update was the historic decline of revenue that resulted in a 25 percent decrease in the long range revenue forecast. Mr. Herzog stated that reduced revenues presented a major challenge to balance the modal program, which was addressed through the MAG committee process for more than one year and resulted in balanced programs included in the RTP 2010 Update.

Mr. Herzog stated that an important element is the public input process, which began about one year ago, and culminated in the public hearing in June. He said that these public hearings were held in addition to the public input opportunities provided at MAG committee meetings.

Mr. Herzog stated that the Draft 2010 Update was approved by the Regional Council for air quality conformity analysis on April 28, 2010. A technical air quality conformity analysis was performed on the RTP and concluded that the Plan and the FY 2011-2015 MAG Transportation Improvement Plan meet all air quality conformity requirements. Mr. Herzog noted that on June 24, 2010, the MAG Air Quality Technical Advisory Committee recommended acceptance of the Draft Air Quality Conformity Analysis. Mr. Herzog stated that the final step is the approval process of the Draft RTP 2010 Update through the MAG committee process. He noted that the MAG Transportation Review Committee recommended approval of the RTP 2010 Update on July 1, 2010, and the MAG Management Committee recommended approval on July 14, 2010. Chair Smith thanked Mr. Herzog for his presentation. No public comment cards were received. No questions from the Committee were noted.

Councilmember Sellers moved to recommend approval of the Draft MAG Regional Transportation Plan (RTP) 2010 Update, contingent on a finding of conformity of the FY 2011-2015 MAG Transportation Improvement Program and RTP 2010 Update with applicable air quality plans. Vice Chair Neely seconded, and the motion passed unanimously.

5C. Approval of the Draft FY 2011-2015 MAG Transportation Improvement Program

Eileen Yazzie, MAG Transportation Program Manager, reported on the Draft FY 2011-2015 MAG Transportation Improvement Program (TIP). She said that the TIP provides a five-year window of the 20-year Regional Transportation Plan and provides specific project details, costs, and schedules. She said that this is done to comply with federal regulations for the fiscal constraint of the short range plan and planning and environmental guidance.

Ms. Yazzie stated that MAG is operating under the current federal legislation, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, known as SAFETEA-LU. She noted that this transportation act expired this past year, and Congress has since approved Continuing Resolutions while working on a new transportation act. Ms. Yazzie advised that MAG will have the opportunity to adjust the TIP if Congress passes new legislation. She said the Transportation Improvement Program is required to report on all federally funded projects and regionally significant projects, and that enough information is provided to run an air quality analysis. Ms. Yazzie stated that the federal regulations also mandate that the TIP covers

a minimum four-year time period, and is reported every four years. She noted that the MAG FY 2011-2015 TIP covers five years.

Ms. Yazzie stated that data for the TIP comes from current MAG transportation programs, the MAG Work Program, member agencies, and federal, state, and local agencies and programs through the Transportation Programming Guidebook and the TIP Data Entry System. Ms. Yazzie stated that input is provided by members of the public, MAG technical advisory committees, and MAG staff.

Ms. Yazzie then spoke of the great undertaking by the MAG technical committees to rebalance the freeway program and program the federal funds. She noted that the FY 2011-2015 MAG TIP includes more than 1,200 projects, the majority of which are street and transit projects.

Ms. Yazzie reviewed the funding for the FY 2011-2015 MAG TIP, which totals more than \$7 billion. She stated that highway projects include street, bicycle, pedestrian, safety, freeway, Intelligent Transportation System (ITS), and bridge projects in the region, and about two-thirds of their funding comes from regional and local revenue sources. Ms. Yazzie then addressed transit projects by stating that 5307, 5309, and CMAQ are types of federal transit funds that account for 45 percent of the \$1.3 billion in transit funding in the FY 2011-2015 MAG TIP. She advised that this does not include transit operations. Ms. Yazzie stated that about \$360 million of the \$412 million of committed local transit funds are associated with the City of Phoenix airport Sky Train project, and the remaining \$64 million is for transit capital projects.

Ms. Yazzie reviewed the approval schedule. She said that during July 2010, the Management Committee, Transportation Policy Committee, and Regional Council review and take action on the Draft FY 2011-2015 MAG TIP, the Draft Regional Transportation Plan 2010 Update, and Draft air quality conformity analysis, followed by action by the Governor's designee, the Federal Highway Administration and the Federal Transit Administration.

Chair Smith thanked Ms. Yazzie for her presentation. He noted that no public comment cards were received. Chair Smith asked the TPC if they had questions.

Vice Chair Neely noted that the TIP has to comply with air quality requirements and she asked if approval of the TIP would be halted at the federal level due to the region's air quality issues. Dennis Smith, MAG Executive Director, replied that staff has confidence in the air quality conformity analyses for the TIP and Plan, however, their concern is for the EPA's intention to disapprove the MAG Five Percent Plan for PM-10. He explained that the disapproval means that no amendments to the first four years of the TIP would be allowed if the TIP goes into a conformity freeze.

Chair Smith asked the timeline that a conformity freeze could occur. Mr. Smith replied that the timeline for EPA's final ruling is in January 2011 and MAG hopes to request an extension that would allow time for the EPA to consider MAG's information on exceptional events. He noted that staff heard that the EPA took action on some sand and gravel operations and there could be

approvability issues due to lack of enforcement. Mr. Smith added that this would make exceptional events moot. He stated that approvals of the TIP and Plan are anticipated before a conformity freeze would occur.

Ms. Yazzie added that action on the 2010 conformity analysis for the TIP and Plan by the Federal Highway Administration and the Federal Transit Administration are scheduled for August/September timeframe, after the Regional Council takes action, which is scheduled for July 28, 2010. She said that once the Regional Council takes action on the conformity analysis, TIP and Plan, they would move forward. Ms. Yazzie stated that all of the state's approved TIPs are then rolled into the State Transportation Improvement Program.

Chair Smith asked for clarification that the action by the Federal Highway Administration and Federal Transit Administration are separate actions from the EPA action. Ms. Yazzie replied that was correct. She said that the Programming Guidebook is currently under development and it will refocus on efforts through the work of the member agencies and MAG staff to ensure the TIP is as accurate as possible.

Vice Chair Neely asked the status of the fifth year of the approved TIP if there is a conformity freeze, which she understood would keep MAG from changing the first four years of the TIP. Mr. Smith replied that staff is seeking guidance from the Federal Highway Administration's air quality specialist about changes to the TIP. He said that transit and safety projects probably would not be restricted, but capacity building and amending the TIP probably would not be allowed.

Chair Smith asked for clarification if the scenario with EPA does not happen in January this discussion would not apply. Mr. Smith replied that was positive thinking.

Ms. Yazzie stated that federal regulations define TIP amendments and administrative modifications. In a conformity freeze, the regulations focus on amendments, but do not mention modifications. She said that it looked like there might be some leverage with administrative modifications.

Chair Smith provided background on the EPA action by saying that the EPA is challenging MAG's compliance under air quality issues. If the EPA is successful, unless there are challenges or extensions, the EPA will take action in January 2011 and the MAG programs will be punished with a conformity freeze.

With no further discussion, Vice Chair Neely moved to recommend approval of the Draft FY 2011-2015 MAG Transportation Improvement Program (TIP), contingent on a finding of conformity of the TIP and Regional Transportation Plan 2010 Update with applicable air quality plans and that the programming of transit preventive maintenance be reviewed for potential amendments/modifications no later than December 2010. Councilmember Esser seconded, and the motion passed unanimously.

6. Use of Public Private Partnerships in the MAG Region

Eric Anderson, MAG Transportation Director, introduced John McGee, Executive Director for Planning and Programming at the Arizona Department of Transportation (ADOT) and Mary Peters, former Secretary of the U.S. Department of Transportation, former Director of ADOT and currently a consultant to ADOT for its public private partnership (P3) program. Mr. Anderson stated that Mr. McGee would provide an overview of the P3 policies and procedures of the program at ADOT, Ms. Peters would provide an overview of P3s from the national perspective, potential federal reauthorization legislation, and P3 projects in the nation, and Mr. Anderson would provide next steps and recommendations. Mr. Anderson stated that this is an introductory session and a P3 item would be on future agendas for the next few months. He stated that P3s are complex and fast moving and contain a number of policy laden elements on how to handle P3s in the region in which the TPC would need to make recommendations to the Regional Council.

Mr. Anderson stated that Proposition 400 sales tax collections have declined monthly since September/October 2007 and are tracking close to the level of 2004 collections. He added that four to five years of sales tax growth have been lost. Mr. Anderson stated that the sales tax, which expires in 2025, is projected to collect approximately \$300 million in revenue this year. He reported that the growth of sales tax collections has recently been at zero, which is good news, because it had been negative. Mr. Anderson stated at the beginning of the sales tax in 2005, ADOT projections showed that revenue generated over the life of the sales tax was \$14.4 billion, and that projection last year has been revised to \$11.4 billion, a reduction of \$3 billion. Mr. Anderson remarked that he expected that when ADOT revises the projections in the next two to three months, another \$500 million will be peeled off over the life of the tax.

Mr. Anderson reported on the extensive effort to rebalance the freeway program, including moving \$6.3 billion of projects into a fifth year of the RTP. He added that similar reductions were made to rail and bus programs. Mr. Anderson said that rail projects were delayed and there are significant funding issues on both the capital and maintenance side, new bus rapid transit service in the RTP was delayed to the 2026-2030 timeframe. He stated that there is a lot of need in the region and he felt the sales tax will rebound. Mr. Anderson stated that the economy usually recovers in one or two years, but this is a more protracted situation. He pointed one additional factor: experts have expressed that the houses bought in the last couple of years by investors could end up back on the market. Mr. Anderson expressed his feeling that there would be future growth and there would be additional need on freeways, transit and local streets.

Mr. Anderson stated that P3s are another tool to get projects moving that might have stalled otherwise. He said that a lot can be learned from the past experiences of others and MAG's challenge is to choose what will work for this region and the policy framework. Mr. Anderson stated that a solid policy foundation is needed to know what the policy makers and elected officials want to accomplish.

Mr. Anderson displayed a slide of five bulleted items and said that the first three bullets, knowledge, understanding and experience, would be discussed tonight and the fourth and fifth

bullets, policy and identification of potential projects, were for later discussion. The five bullets: 1) Develop common knowledge base of P3s. 2) Understanding of the Arizona law and the ADOT P3 program. 3) Experience of other regions in using P3s to build and manage transportation. 4) Development of a policy statement on principles for the use of P3s in the MAG region. 5) Identification of P3 opportunities in the MAG region.

Mr. McGee then continued the presentation by saying that ADOT P3 staff Gail Lewis addressed the TPC a few months ago on P3s and they have gone around the state familiarizing people with the new P3 law. He stated that House Bill (HB) 2396, which was passed in 2009, establishes a statute to guide the process of P3s for transportation projects. Mr. McGee stated that enhanced, upgraded or new facilities, including roads, rail, transit and rest areas, are eligible for P3s. He explained that the Legislature included the enhanced, upgraded and new facilities provision to ensure that tolls would not be collected on an existing facility.

Mr. McGee explained that the law is very flexible and allows for many types of partnerships: design, build, maintenance, financing, and operations. He said that the bill also authorizes ADOT to use a number of revenue sources for repayment, such as revenue bonds, Grant Anticipation Notes, tolls and fees. Mr. McGee stated that the law allows for ADOT to solicit projects and for the private sector to submit unsolicited projects. He commented that ADOT feels allowing unsolicited projects is important because it encourages the private sector to come forward with innovative ideas, however, care needs to be exercised because unsolicited projects can end up running a program. Mr. McGee stated that the P3 law also gives ADOT significant authority to enter into negotiations and develop agreements.

Mr. McGee stated that after HB 2396 passed, the ADOT staff developed guiding principles based on national best practices, and they determined that a transparent process for the evaluation and implementation of P3 projects was necessary to be successful. Mr. McGee stated that ADOT's goal is to integrate P3 projects into statewide transportation plans and use P3 projects to better leverage the State's limited resources. He commented that in the past, long-term financial viability of P3s has not always happened.

Chair Smith asked how projects without long-term financial viability have been able to receive funding from an investor or during the underwriting process. Mr. McGee replied that in the early days traffic and revenue forecasting were not well defined and were overly optimistic. He said they have developed over time, but ADOT wants to ensure that does not happen with P3 projects in Arizona. Mr. McGee added that they are looking for financial equity to be put into projects.

Mr. Berry stated that when he heard the term financially viable, he thought of users, not banks. Mr. McGee stated that they not only want to look at deals that are in the interest of the taxpayers, but also will have the financial projections that show they will be successful.

Mr. Berry asked if that means the rate of return for financial institutions would be guaranteed, because viability is in the eye of the beholder. Mr. Berry suggested adding to the statement to include users of the facility and the taxpayers of the state, because otherwise it looks like we are

looking out for the banks. He added that there are examples where the taxpayers felt their interests were not protected.

Mr. McGee stated that another of ADOT's goals is to create P3 projects that will enhance mobility and improve safety.

Mr. McGee stated that the ADOT P3 office has made a lot of progress in the last ten months since HB 2396 became law. He said that two Program Managers have been hired; HDR (including Ms. Peters) and Jacobs are the policy and program advisors; Nossaman, preeminent in the P3 arena, is the legal advisor; and PFM is the financial advisor. Mr. McGee noted that a technical and engineering consultant and a traffic and revenue consultant are still to be hired. Mr. McGee stated that the P3 office has had consultations with COGs, MPOs, local governments, developers, etc., around the state to raise awareness of the law. He indicated the office will assist in public policy discussions, which really are beginning at this evening's TPC meeting. Mr. McGee stated that the P3 office is exploring P3s in many areas.

Ms. Peters continued the presentation with an overview of P3s nationally. She said that the United States has lagged internationally on P3 infrastructure projects. Ms. Peters stated that until recently, sufficient public money was available for funding projects, but the country is now in a transitional phase. She stated that the Highway Trust Fund has been in danger of insolvency since 2008 and Congress has injected \$34.5 billion to keep it solvent. Ms. Peters stated that gas taxes are not keeping pace any longer – being impacted now and in the future by more fuel efficient cars.

Ms. Peters commented that P3s can be part of the solution in the right circumstances and can bring capital to the table to meet needs. She explained that leveraging public dollars with private sector dollars can get the taxpayers a better deal, and gave as an example that \$200 billion in private capital could be leveraged to \$475 billion assuming a 60/40 debt equity basis. Ms. Peters said that she felt the ratio of debt equity would be more important now than in the early days of P3 projects in the nation and investors having more money on the table will be desired. The advantage to the P3s, in addition to bringing in capital, is life cycle asset management to not only build a project, but also maintain and operate it over time.

Ms. Peters stated that two examples of Phase One in the evolution of P3s were the Chicago Skyline and Indiana Toll Road that were existing toll facilities that received an upfront payment of cash and were operated by the private sector to recoup their investment. She remarked that this option would not be done here because Arizona does not have any existing toll facilities, and also she was not sure that is the best way to use the P3 tool.

Ms. Peters stated that Phase Two in the evolution of P3s is what she called the one-off projects, which are either unsolicited proposals or a project to meet a need without looking at the system in totality. She indicated that she thought the program put together by ADOT can meet needs, are best for a P3 application and are Phase Three of the evolution of P3s in the country. Ms. Peters noted that to date, more than 80 successful projects in the nation have been completed through P3s since

1985. She said that current projects include adding HOT lanes to the I-495 Capitol Beltway, the Port of Miami tunnel, and the I-635 in Texas.

Ms. Peters stated that in her experience, she felt that Arizona has the combination of the best laws among the 28 states with P3 laws, and is well thought through and negotiated. She stated that this law, coupled with good, transparent processes and policies, gives Arizona a tremendous opportunity to move forward with a good outcome. Ms. Peters stated that private capital is available, but if there is a convoluted process, the investors will not come. She remarked that the goal is a P3 process that protects the citizens and also applies to the right projects at the right time.

Ms. Peters stated that even though the federal transportation program is operating under a series of continuing resolutions, there are a number of current federal programs that allow projects to be moved forward, including the Value Pricing Program, the Express Lane Demonstration, the Interstate System Reconstruction & Rehabilitation Pilot and Construction Toll Pilot Program, STEP-15, Congestion Reduction/Corridors of the Future, TIFIA, Private Activity Bonds, and Build America Bonds. Ms. Peters stated that the STEP-15 program, developed while she was Secretary of Transportation, is a program for innovative projects, and could be coupled with the P3 law in Arizona. She remarked that she felt the TIFIA program was the best tool currently available: a patient lender, low market interest rates, payment over a long period of time, and the ability to rebalance the debt later. Ms. Peters stated that Private Activity Bonds and Build America Bonds are both very good programs also. She stated that taking private funds and leveraging them with public funds can build projects today at today's costs, instead of at future, higher costs.

Ms. Peters then addressed federal legislation and said that the reauthorization bill has stalled and the country is operating under continuing resolutions. She remarked that she thought there would be a series of extensions. Ms. Peters stated that reauthorization is a convoluted process and a lot of interests are being balanced. She mentioned that the Highway Trust Fund has required infusions of general funds to remain solvent, and she thought this might continue, possibly to 2013, and that the funding would be at 2009 levels for the next year or so. Ms. Peters indicated that a reauthorization bill might not be passed until after the 2012 presidential election.

Ms. Peters reported that there is no support in Congress for increasing the fuel tax, which has not increased since 1993. She said that the bill proposed by Chairman Oberstar contains an increase, but Secretary LaHood has said that an increase is off the table. Ms. Peters stated that Chairman Oberstar's bill, which contains some increased spending, limitations on public/private partnerships, and additional federal processes and air quality conformity processes, is not likely to go anywhere. She advised that upcoming elections could change the chairmanship and the ranking member said that if he becomes chair, it will be start over on the bill. Ms. Peters stated that P3s are not the panacea, but they can be an important tool to help deliver important transportation projects and attract private capital.

Mr. McGee presented an overview of ADOT's approach. He stated that ADOT wants its P3 programs to be an enabler for good projects, not a cheerleader for bad projects. Mr. McGee stated that it is easy to become invested in an idea and it is sometimes difficult to stop a project. He stated

that best practices have shown that successful projects must be acceptable to the public, which he felt begins with the public officials. Mr. McGee stated that P3s are a long-term funding and traffic management strategy, not a one-time tool. He indicated that he felt the MAG region has a unique opportunity to determine how P3 projects should fit into the overall mix of funding and traffic management strategies for the region over the long-term. Mr. McGee stated that over the years, MAG has demonstrated a good record to look at transportation needs in the long term, develop good plans, strategies, and funding options, and get buy-in from the public. He said that Proposition 300 and Proposition 400 attest to that success and he commended MAG. Mr. McGee stated that there is only one chance to do this right, and a lot of ways to do things wrong, so failure could result in P3 capital moving away from Arizona.

Vice Chair Neely asked the approval process for a project, for example, would ADOT, the federal government, or the state Legislature have a role. Mr. McGee replied that the way HB 2396 is written, P3s would not go back to the Legislature, which they do in many states. He remarked for that reason, any P3s done by ADOT would have to be done right, or the Legislature will change the law and require any P3s be brought through them. Mr. McGee stated that this requirement is a high hurdle in those states that have this provision. He stated that it is not a federal requirement, but there is a provision in the House version of the reauthorization bill to establish a privatization office that would review any P3 in any state or region. Mr. McGee expressed that from a policy standpoint he felt this is a bad idea and ADOT does not support it.

Vice Chair Neely stated that she was hearing ADOT was not looking at this from a toll situation, but as leveraging funds from our current tax base to be able to pay a private partner. Mr. McGee replied that the Arizona P3 program is extremely flexible. He said that not all P3 projects have to have a toll associated, it could be a financing mechanism, such as an availability payment. Mr. McGee added that this is why it is important to have these discussions of P3s, so ADOT knows how the region feels about alternatives – what it supports and what it does not support. He said that the P3 office does not want to pursue a P3 project with a potential investor that is not supported by the public and elected officials.

Vice Chair Neely asked what happens to non-viable projects. Mr. McGee replied that the solutions have been varied. In some cases, the project devolved to the state, which then operated the facility. He said that some facilities declared bankruptcy, and although they kept on operating and collecting fees, the investors did not get all of the money back. Mr. McGee stated that liability and operations would change in some manner. He said that the important point is that failure becomes a reflection on how the program was managed. Mr. McGee stated that some people will say a failure would not matter because we would still have the facility, however, after a couple of failures, the capital investors will not come here and will invest elsewhere.

Mr. Anderson stated that there are two different P3 projects. The first is not visible to the public and is a way to deliver a project. The second is through tolls, managed lanes or HOT lanes. Mr. Anderson said that the San Diego Association of Governments is running managed lanes on I-15 where the toll rates change every few minutes according to demand. Mr. Anderson stated that the first steps in the P3 process by the TPC is having a common knowledge base of P3s, the

understanding of the Arizona P3 law and program, and learning the experience of other regions in using P3s. Mr. Anderson stated that understanding of these three points is needed before proceeding to the development of a policy statement on the principles of P3 use in the MAG region and identification of P3 opportunities in the MAG region. He added that MAG staff is not making assumptions about which P3 options to pursue – that is the TPC’s decision.

Mr. Anderson stated that briefings on P3s to the TPC will include the types of P3 projects, alternative project delivery methods, program areas (management system cameras, message boards, etc.) that might be better operated by the private sector, and congestion pricing and tolling (such as dynamic pricing, static pricing, HOV policy, and truck-only policy). Mr. Anderson stated that much can be learned from the experience of others, and the TPC will hear P3 examples from other areas, such as a number of P3s in Texas. Mr. Anderson stated that there are projects that were not successful, such as the privately financed South Bay Expressway in San Diego that went bankrupt. He explained that the traffic and revenue projections used for its financing assumed growth that never occurred. Mr. Anderson stated that the FHWA is willing to organize a workshop on congestion pricing and offered to bring in experts and elected officials who have past experience on P3s.

Mr. Anderson stated that important elements of a P3 Policy Statement include congestion management vs. revenue generation (balancing the rate of the toll with relieving congestion), governance (how it is operated, coordinating operations with the California system due to the continuation of drivers back and forth, contract out for back office operations of toll roads). Mr. Anderson stated that some of the proceeds from the San Diego dynamic pricing are being used toward financing transit infrastructure in the I-15 corridor. He said that there is a lot of work to be accomplished over the next few months.

Chair Smith asked members if they had questions.

Ms. Taylor asked if privatization of transit could be an option. Mr. Anderson replied that the bus system in this region is contracted out. He stated that there may be P3 opportunities with the Punta Colonet port to complete missing rail links, and for concepts on I-10. Mr. Anderson stated that perhaps a managed lane concept to leverage those investments could provide bus transit or light rail on I-10.

Ms. Taylor stated that she was interested in hearing Ms. Peters’ and Mr. McGee’s perspectives on the current status and predictions for the long term on equity and credit markets. Ms. Peters stated that there was a lot of capital in the market at the time the Indiana Toll Road and Chicago Skyline projects were built. She said that there were lessons learned from the housing market where the intent was to flip debt quickly and those who came in early did not have a lot of skin in the game. Ms. Peters stated that going forward, investments will see a lot more equity and less debt. She added that capital investors are out there and will invest where they feel is the best opportunity. Ms. Peters stated that there are not a lot of places to get a good return on an investment and infrastructure investments yield ten, twelve, fifteen percent on an investment. She said that in

2007/2008, there was as much as \$500 billion available to invest in the United States and she estimated that number was now \$250 billion to \$400 billion.

Mayor Cavanaugh stated that public funds have been committed and approved in the RTP 20-year program. He asked if there was anything to limit P3s for those already approved projects. Mr. Anderson replied that he was not aware of any restrictions, and he felt it was a policy decision. He stated that the TPC could recommend and the Regional Council could concur to keep the Proposition 400 projects publicly funded, but the implication of that is you would have to wait until the funding becomes available. Mr. Anderson stated that the public expectation is that they voted for Proposition 400, they did not vote for tolls. He added that it is extremely important to ensure that the public support is there for P3 projects.

Mr. Berry stated that he was not an elected official, but he would not want to toll a Proposition 400 road. He indicated that he felt it would have to be an extraordinary project for the public to accept a change in funding from what they voted.

Mayor Cavanaugh expressed that he did not necessarily agree with Mr. Berry, because some of the projects are 20 years down the road. He stated that there are some projects, such as the 801 or 303 south of the Gila, might only be implemented with a P3, and he did not want to reject that option at this point.

Chair Smith stated that with the financial crisis, the world has changed since Proposition 400 was passed. He said that in addition, the public perception of transportation in general has changed since light rail opened and he felt they were more open to different ideas. Chair Smith stated that some of this change in perception is a product of the financial crisis, but some is due to the good that has been done and he did not want to foreclose ideas that the public could find acceptable.

Mr. Smith stated how great ADOT has been to keep MAG involved in this. He said that ADOT and MAG have been partners since 1985 and other states only approach the MPO when it is time to put a P3 project in a TIP. Mr. Smith commented on financial viability by saying that the modeling numbers are very important. He said that some of the P3 deals that fell apart were due to pumped up modeling numbers. Mr. Smith stated that MAG has the model for the entire region extending into Pinal County. He said that political support is important. Mr. Smith stated that when MAG was going to do a demonstration project to put tolls on HOV lanes in the early 1990s, editorials were published in the Tucson newspaper opposing the project. He remarked on packaging the deal to show there is a benefit, such as getting a project you might not get otherwise or building a project 20 years sooner. Mr. Smith also noted the San Diego option to get some funding for transit.

Vice Chair Neely stated that P3s were an interesting idea to looking at the future. She said that she was more interested in looking at the option for getting funding for transit than in looking at the toll option. Vice Chair Neely stated that P3s could also provide an opportunity for advancing projects and she would like to consider applying the guidelines MAG currently has in place for project advancements. Vice Chair Neely stated that P3s could be beneficial and there is time to

methodically consider the policies that need to be in place. She added that she was excited about the possibilities and perhaps P3s could fund a couple of experimental projects that would not financially burden future generations. Vice Chair Neely stated that she was not prepared to say let us do tolls, but now is the perfect time to reinvest and look at P3s. She said that commuter rail has been discussed in the West Valley and Pinal County has needs. Vice Chair Neely expressed her thanks for the presentation.

Mr. Anderson stated that P3s could provide the opportunity not only for implementing delayed projects sooner, but also funding projects that have only partial funding, for example, I-10 has \$600 million to \$700 million programmed, but the total cost is estimated at \$1.5 billion. Mr. Anderson stated that the RTP includes the buildout of Loop 101 and Loop 202. However, if the projected growth to six million or seven million people by 2030 or 2040 occurs, there is no room to expand and options to manage traffic on the current system will be needed. Mr. Anderson stated that some of these options will be explained at future TPC meetings.

Chair Smith thanked Secretary Peters and Mr. McGee for attending the meeting.

7. Loss of the Local Transportation Assistance Fund (LTAF)

Mr. Anderson reported that during the 2010 legislative session, the Local Transportation Assistance Fund (LTAF) was removed from state law with the funding diverted to the state's general fund to help balance the state budget. Mr. Anderson stated that statewide, the LTAF represented about \$32.2 million of mostly transit funding, and some small communities use the funds for roads. He stated that in the MAG region, this represents a loss of about \$22 million in transit funding. Mr. Anderson stated that a Resolution will be considered at the League of Arizona Cities and Towns Conference. He added that the Arizona Transit Association is also working on replacement funding sources to LTAF funding.

Mr. Anderson stated that he put together a list of the criteria he thought might be important to consider for replacement funding: Generate \$35 million to \$100 million per year, provide a permanent, stable and secure source of transit funding for transit, defining the state's role in transit funding, finding short term funding now and try to find a permanent solution later, no impact on state shared revenue, and provide a nexus to transportation.

Mr. Anderson stated that possible alternatives include the Lottery, Proposition 100 that expires in 2013, a property tax, broadening the sales tax base, and sin taxes.

Mr. Anderson stated that the requested action was possible action to recommend that MAG support efforts to pursue alternative state funding sources for transit services.

Chair Smith asked members if they had questions.

Mr. Berry asked if a surcharge at the fare box was considered. Mr. Anderson replied that it was discussed as an alternative, however, the amount represents such a small portion of revenue, that tripling or quadrupling the fares would be required.

Chair Smith asked for clarification on the requested action. Mr. Anderson replied that action would go no farther than exploring alternative funding sources. He said that two or three options could come out of current staff work and these would be brought back to the TPC and Regional Council.

Chair Smith asked if the idea was to look for funding sources or for the State to restore LTAF funding. Chair Smith stated that Arizona is now one of five states not supporting state funding of transit. He asked if this was an effort to return support for local transit at the State level. Mr. Anderson replied that he thought that was the objective, and what this action does is take it to the next level.

Mr. Berry asked the reason for limiting action to transit, because the state has taken hundreds of millions of dollars from the roadway program. He suggested expanding the action to include all of transportation because there are needs that go beyond transit. Mr. Berry stated that there is a feeling by some at the Legislature that cities get a lot of vehicle license tax money and they should just use that for transit, even though the cities already have important uses for their portions of the vehicle license tax. He said that he was unsure what taking action would accomplish and there was the potential for kicking a hornet's nest.

Chair Smith stated that there was a dedicated funding source for LTAF, and his biggest concern is the Legislature eliminated it, not just swept it. He said that by this action, the Legislature said it did not want to be in the transit funding business at the state level and is willing to pass it along to the cities. Chair Smith stated that this is a policy issue, and the requested action is not as much policy as it is procedure. He commented that the question is whether MAG should be pursuing reversal of the elimination of LTAF at the state. Mr. Anderson commented that maybe what MAG wants is the Legislature to reevaluate its decision.

Councilman Sellers moved to support the League of Arizona Cities and Towns resolution and including support for alternative funding sources. Councilman Esser seconded.

Chair Smith called for discussion of the motion.

Vice Chair Neely stated that she was not willing to support the motion until she knew the intent of the transit operators. She indicated that making this a legislative action could be considered later. Bryan Jungwirth, Valley Metro Deputy Director, announced that the Valley Metro Board was scheduled to take this up in September.

Vice Chair Neely stated that action by MAG is premature until the transit organizations take action. She added that she felt the discussion should be led by the transit organizations.

Mr. Smith stated that the Legislature quit being involved in highway funding in 1991/1992 because there has been no increase in the gas tax since then. He stated that the region has a freeway system because MAG did something in 1985. Mr. Smith expressed his agreement with Mr. Berry that this is about all of transportation, because all of transportation have lost money. He said that perhaps MAG could get enabling legislation to allow a vote of the people. Mr. Smith stated that the polls

show that people support transit. He also said that a long-term solution from the Legislature might not happen.

Mr. Berry made a friendly motion to table this item until October 2010. Vice Chair Neely seconded.

Chair Smith commented to Councilmember Sellers that people may not disagree with supporting a resolution, but action might be premature until some issues are sorted out.

Mr. Smith noted that delaying action until October would preclude MAG weighing-in at the League Conference.

Mr. Berry stated that if the motion passed, discussion could take up in October, when there would be the advantage of knowing the stakeholders' deliberations.

With no further discussion, the vote on the motion passed unanimously.

8. Request for Future Agenda Items

Topics or issues of interest that the Transportation Policy Committee would like to have considered for discussion at a future meeting will be requested.

No requests from the Committee were noted.

9. Comments from the Committee

Topics or issues of interest that the Transportation Policy Committee would like to have considered for discussion at a future meeting will be requested.

No comments from the Committee were noted.

Adjournment

It was moved by Ms. Taylor and seconded by Mayor Meck to adjourn the meeting at 5:50 p.m.

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Chair

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Secretary

# **MARICOPA ASSOCIATION OF GOVERNMENTS**

## **INFORMATION SUMMARY... for your review**

**DATE:**

September 8, 2010

**SUBJECT:**

Amendment of the MAG Regional Transportation Plan 2010 Update

**SUMMARY:**

On July 28, 2010, the MAG Regional Council approved the Fiscal Year (FY) 2011-2015 MAG Transportation Improvement Program (TIP) and the MAG Regional Transportation Plan (RTP) 2010 Update. In order to adhere to TIP and RTP update schedules, an air quality conformity analysis had been conducted on the TIP and RTP in May 2010, which indicated that all conformity requirements had been met. In addition, a public hearing on the Draft TIP, RTP and Air Quality Conformity Analysis was held on June 21, 2010. Also, during this period, the Regional Public Transportation Authority (RPTA) and several cities were in the process of conducting public meetings on potential transit service adjustments due to reductions in revenues, including repeal of the Local Transportation Assistance Fund (LTAF). Since this process was still ongoing in late June and early July, any resulting changes to transit service levels were not reflected in the conformity analysis conducted for the TIP and RTP. In late July, the transit service level adjustments were finalized and reflected in transit schedules published in July 2010. These changes impacted the transit service levels in the RTP and the corresponding transportation network modeling assumptions. An air quality conformity regional emissions analysis reflecting the new modeling assumptions has been conducted and indicates that the TIP and RTP will not contribute to violations of federal air quality standards. The MAG Transportation Review Committee recommended approval of an amendment to the RTP 2010 Update on August 31, 2010.

**PUBLIC INPUT:**

A public hearing on the Draft FY 2011-2015 MAG Transportation Improvement Program (TIP), the Draft MAG Regional Transportation Plan (RTP) 2010 Update, and the Draft Air Quality Conformity Analysis was conducted on June 21, 2010. At this hearing comment was received that the RTP and Conformity Analysis did not account for the reduction of funding caused by the State Legislature's stripping of the Local Transportation Assistance Fund (LTAF II), resulting in inaccurate forecasts of the region's vehicle miles of travel, congestion and emissions.

**PROS & CONS:**

**PROS:** Amendment of the MAG Regional Transportation Plan (RTP) 2010 Update would make it consistent with recent changes to public transit schedules.

**CONS:** None.

**TECHNICAL & POLICY IMPLICATIONS:**

**TECHNICAL:** MAG transportation modeling networks corresponding to the MAG Regional Transportation Plan (RTP) 2010 Update will be updated to reflect the most recent public transit schedules.

**POLICY:** Amending the MAG Regional Transportation Plan (RTP) 2010 Update will provide an up-to-date foundation for future decision-making on the Plan.

**ACTION NEEDED:**

Recommend approval of an amendment to the MAG Regional Transportation Plan 2010 Update to incorporate public transit service level adjustments resulting from reductions in revenues, including repeal of the Local Transportation Assistance Fund, that were reflected in public transit service schedules published in July 2010, contingent upon a finding of conformity of the FY 2011-2015 MAG Transportation Improvement Program and the MAG Regional Transportation Plan 2010 Update with applicable air quality plans.

**PRIOR COMMITTEE ACTIONS:**

Management Committee: On September 8, 2010, the Management Committee recommended approval of an amendment to the MAG Regional Transportation Plan 2010 Update to incorporate public transit service level adjustments resulting from reductions in revenues, including repeal of the Local Transportation Assistance Fund, that were reflected in public transit service schedules published in July 2010, contingent upon a finding of conformity of the FY 2011-2015 MAG Transportation Improvement Program and the MAG Regional Transportation Plan 2010 Update with applicable air quality plans.

MEMBERS ATTENDING

- |  |  |
|--|--|
| Carl Swenson, Peoria, Chair  | Bill Hernandez, Guadalupe                                    |
| Charlie Meyer, Tempe, Vice Chair                                       | Darryl Crossman, Litchfield Park                             |
| # Matt Busby for George Hoffman,<br>Apache Junction                    | Scott Butler for Christopher Brady, Mesa                     |
| Charlie McClendon, Avondale  | David Andrews for Jim Bacon,<br>Paradise Valley              |
| Stephen Cleveland, Buckeye   | Karen Peters for David Cavazos, Phoenix                      |
| * Gary Neiss, Carefree   | John Kross, Queen Creek                                      |
| * Usama Abujbarah, Cave Creek  | * Bryan Meyers, Salt River Pima-Maricopa<br>Indian Community |
| Patrice Kraus for Rich Dlugas, Chandler                                | David Richert, Scottsdale                                    |
| Pat Dennis for B.J. Cornwall, El Mirage                                | Michael Celaya for Mark Coronado, Surprise                   |
| Alfonso Rodriguez for Phil Dorchester,<br>Fort McDowell Yavapai Nation | Reyes Medrano, Tolleson                                      |
| Rick Davis, Fountain Hills   | Gary Edwards, Wickenburg                                     |
| Rick Buss, Gila Bend   | Lloyce Robinson, Youngtown                                   |
| * David White, Gila River Indian Community                             | Robert Samour for John Halikowski, ADOT                      |
| Collin DeWitt, Gilbert   | Kenny Harris for David Smith, Maricopa Co.                   |
| Brent Stoddard for Ed Beasley, Glendale                                | David Boggs, Valley Metro/RPTA                               |
| Mark Gaillard for John Fischbach, Goodyear                             |  |

- \* Those members neither present nor represented by proxy.
- # Participated by telephone conference call.      + Participated by videoconference call.

Transportation Review Committee: On August 31, 2010, the MAG Transportation Review Committee recommended approval of an amendment to the MAG Regional Transportation Plan 2010 Update to incorporate public transit service level adjustments resulting from reductions in revenues, including repeal of the Local Transportation Assistance Fund, that were reflected in public transit service schedules published in July 2010, contingent upon a finding of conformity of the FY 2011-2015 MAG Transportation Improvement Program and the MAG Regional Transportation Plan 2010 Update with applicable air quality plans.

MEMBERS ATTENDING

- |                                      |                                      |
|--------------------------------------|--------------------------------------|
| Peoria: David Moody                  | Chandler: RJ Zeder for Patrice Kraus |
| ADOT: Steve Hull for Floyd Roehrlich | El Mirage: Lance Calvert             |
| * Avondale: David Fitzhugh           | Fountain Hills: Randy Harrel         |
| # Buckeye: Scott Lowe                | * Gila Bend: Eric Fitzer             |

Gila River: Sreedevi Samudrala for Doug Torres  
\* Gilbert: Tami Ryall  
Glendale: Terry Johnson  
Goodyear: Cato Esquivel  
# Guadalupe: Gino Turrubiartes  
Litchfield Park: Paul Ward for Woody Scoutten  
Maricopa County: John Hauskins  
Mesa: Scott Butler  
Paradise Valley: Bill Mead

Phoenix: Rick Naimark  
Queen Creek: Tom Conduit  
RPTA: Bob Antilla for Bryan Jungwirth  
Scottsdale: Dave Meinhart  
\* Surprise: Bob Beckley  
# Tempe: Chris Salomone  
Valley Metro Rail: John Farry  
\* Wickenburg: Rick Austin  
Youngtown: Grant Anderson for Lloyce Robinson

EX-OFFICIO MEMBERS ATTENDING

Street Committee: Dan Cook, City of Chandler  
\* ITS Committee: Nicolaas Swart, Maricopa County

Bicycle/Pedestrian Committee: Peggy Rubach, RPTA  
\* Transportation Safety Committee: Julian Dresang, City of Tempe

\* Members neither present nor represented by proxy.  
# Attended by Audioconference

+ Attended by Videoconference

**CONTACT PERSON:**

Roger Herzog, MAG, 602-254-6300.

# MARICOPA ASSOCIATION OF GOVERNMENTS

## INFORMATION SUMMARY... for your review

**DATE:**

September 8, 2010

**SUBJECT:**

Proposal to Advance the Construction for a Portion of the Williams Gateway Freeway

**SUMMARY:**

Mesa has requested consideration of a proposal to advance the construction for the segment of the Williams Gateway Freeway from the Santan Freeway to Ellsworth Road. Funding for the construction of this segment is programmed in Fiscal Year (FY) 2016 and Mesa is proposing to advance construction to FY 2012.

A request to accelerate the design, right of way and construction of this segment was originally approved by MAG in January 2009. The legislature subsequently swept the funds that had been designated for the interest expense for the accelerated project. In May 2009, MAG approved a request by Mesa to accelerate only the design and right of way and that the funding that has been programmed for the advanced acquisition of right of way in the corridor be used to cover the interest expense associated with the financing necessary to accelerate the design and right of way activity. The Arizona Department of Transportation (ADOT) is currently acquiring the right of way and is starting the final design for the segment.

To advance construction, Mesa is proposing to issue Highway Project Advancement Notes (HPANs), which are secured by the city's excise tax, to fund the accelerated construction. Since Mesa would issue the debt, there is no impact on the freeway program's financing capacity. The program currently estimates construction costs at \$158.3 million. Recent ADOT estimates place construction costs at \$119 million due in large part to the competitive bidding environment. Advancing construction of this project to January 2012 could potentially save the Program a substantial amount of money. The financial analysis for the proposed acceleration includes issuing \$130 million of HPANs to support the construction of the project.

The net interest expense on the debt to advance construction is estimated to be \$21.2 million. The interest expense would be funded in part using the \$10 million set aside by the State Legislature to fund the acceleration of the SR-802. In addition, interest expense would be reduced by any savings from the original \$8 million that was allocated for interest expense from the advancement of design and right of way acquisition for the SR-802 due to lower than anticipated interest costs. This is estimated to be approximately \$2.0 million. The net interest expense after the \$10 million state set aside and any savings from the original interest expense fund allocation, would be divided equally between the Freeway Program and Mesa as stated in the MAG Highway Acceleration Policy adopted in February 2008. Mesa and the Freeway Program would be responsible for about \$4.6 million each of interest expense based on the financial analysis.

The Program share of the interest cost represents an additional cost to the Program, however, this added cost would be offset by the accelerated construction for the project as long as the rate of inflation exceeds one half of the interest rate on the financing. The financial analysis assumes an interest rate of 4.25 percent on the notes. ADOT currently uses a three percent inflation rate for

construction, so there would be a net cost savings to the program as a result of the proposed acceleration.

Mesa understands and agrees that if the schedule for the project is delayed due to higher program costs and/or lower program revenues, the reimbursement to Mesa would be delayed as other projects are also delayed.

**PUBLIC INPUT:**

None.

**PROS & CONS:**

PROS: Accelerating the Williams Gateway Freeway construction for the connection to Ellsworth Road should result in significant cost savings to the program given the current bidding environment and will result in a more direct connection between the Santan Freeway and Ellsworth and will improve the access to the east side of Phoenix Mesa Gateway Airport.

CONS: The proposed acceleration does increase the interest expense to the Program although the increase is likely to be offset by the reduced costs related to avoiding future increases in inflation and property values.

**TECHNICAL & POLICY IMPLICATIONS:**

TECHNICAL: The acquisition of right of way is underway and the final design activities are beginning.

POLICY: The proposed acceleration project meets the MAG Highway Acceleration Policy that was adopted on February 27, 2008.

**ACTION NEEDED:**

Recommend approval of the Mesa request to advance the construction of an interim connection of the Williams Gateway Freeway between the Santan Freeway and Ellsworth Road by approximately four years, to be incorporated into the MAG FY 2011 to FY 2015 Transportation Improvement Program for FY 2012 and the Regional Transportation Plan 2010 Update for an air quality conformity analysis, and authorize the MAG Executive Director to enter into an agreement with ADOT and Mesa.

**PRIOR COMMITTEE ACTIONS:**

On September 8, 2010, the Management Committee recommended approval of the Mesa request to advance the construction of an interim connection of the Williams Gateway Freeway between the Santan Freeway and Ellsworth Road by approximately four years, to be incorporated into the MAG FY 2011 to FY 2015 Transportation Improvement Program for FY 2012 and the Regional Transportation Plan 2010 Update for an air quality conformity analysis, and authorize the MAG Executive Director to enter into an agreement with ADOT and Mesa.

MEMBERS ATTENDING

Carl Swenson, Peoria, Chair  
Charlie Meyer, Tempe, Vice Chair  
# Matt Busby for George Hoffman,  
Apache Junction  
Charlie McClendon, Avondale  
Stephen Cleveland, Buckeye  
\* Gary Neiss, Carefree  
\* Usama Abujbarah, Cave Creek

Patrice Kraus for Rich Dlugas, Chandler  
Pat Dennis for B.J. Cornwall, El Mirage  
Alfonso Rodriguez for Phil Dorchester,  
Fort McDowell Yavapai Nation  
Rick Davis, Fountain Hills  
Rick Buss, Gila Bend  
\* David White, Gila River Indian Community  
Collin DeWitt, Gilbert

Brent Stoddard for Ed Beasley, Glendale  
Mark Gaillard for John Fischbach, Goodyear  
Bill Hernandez, Guadalupe  
Darryl Crossman, Litchfield Park  
Scott Butler for Christopher Brady, Mesa  
David Andrews for Jim Bacon,  
Paradise Valley  
Karen Peters for David Cavazos, Phoenix  
John Kross, Queen Creek

\* Bryan Meyers, Salt River Pima-Maricopa  
Indian Community  
David Richert, Scottsdale  
Michael Celaya for Mark Coronado, Surprise  
Reyes Medrano, Tolleson  
Gary Edwards, Wickenburg  
Lloyce Robinson, Youngtown  
Robert Samour for John Halikowski, ADOT  
Kenny Harris for David Smith, Maricopa Co.  
David Boggs, Valley Metro/RPTA

\* Those members neither present nor represented by proxy.

# Participated by telephone conference call.      + Participated by videoconference call.

**CONTACT PERSON:**

Eric Anderson, (602) 254-6300.

# MARICOPA ASSOCIATION OF GOVERNMENTS

## INFORMATION SUMMARY... for your review

**DATE:**

September 8, 2010

**SUBJECT:**

State of Transit in the Region

**SUMMARY:**

MAG is the agency responsible for programming federal funds on transit projects while working cooperatively with MAG member agencies, the designated grant recipient (City of Phoenix), and the transit operators in the region. Fiscal Year (FY) 2010 was a transition year for transit programming. In the past, the programming effort was led by the Regional Public Transportation Authority (RPTA), using prioritized guidelines as explained in the attachment. Last year, the responsibility shifted to MAG. Additionally, both the MAG Regional Council and the RPTA Board approved prioritization guidelines for the programming of unspent ARRA transit funds. FY 2011 will continue to be a transition year for transit programming.

The MAG Transit Committee worked this past spring and summer in programming federal funds for transit projects in 2009 - 2015, which are reflected in the current FY 2011-2015 MAG Transportation Improvement Program (TIP). On July 28, 2010, the MAG Regional Council approved the draft FY 2011-2015 MAG TIP contingent on a finding of conformity . . . and that the programming of preventive maintenance be reviewed for potential amendments/administrative modifications no later than December 2010.

With the action approved by the Regional Council, coupled with the out-of-date and prioritization guidelines, MAG needs to develop regional transit prioritization guidelines/evaluation criteria for federal funds. At a minimum, these need to address preventive maintenance as the July Regional Council action noted.

An overview of the State of Transit in the Region will be presented to aid member agency leaders in providing input to MAG staff and the MAG Transit Committee in developing the regional transit prioritization guidelines for programming federal funds. The overview will focus on: the current prioritization guidelines, governance, the history of transit funding, how we compare as a region to our peer regions, and the recent highs and low of transit service.

**PUBLIC INPUT:**

None.

**PROS & CONS:**

**PROS:** This presentation is intended to provide information to regional leaders in responding to the July 28, 2010 Regional Council approval of the draft FY 2011-2015 MAG TIP contingent on a finding of conformity . . . and that the programming of preventive maintenance be reviewed for potential amendments/administrative modifications no later than December 2010.

**CONS:** None.

**TECHNICAL & POLICY IMPLICATIONS:**

TECHNICAL: Projects that are currently programmed with federal transit funds may be affected by the impacts of new prioritization guidelines for programming federal funds.

POLICY: Currently there is not an approved set of prioritization guidelines; yet, the transit component of the Regional Transportation Plan (RTP) outlines the prioritized projects in the region. These prioritization guidelines will need to be evaluated in the context of cause and effect to the Transit Life Cycle Program/the transit component of the RTP, and the FY 2011-2015 MAG Transportation Improvement Program (TIP).

**ACTION NEEDED:**

Information and discussion.

**PRIOR COMMITTEE ACTIONS:**

This item was on the September 8, 2010, Management Committee agenda for information and discussion.

This item was on the August 31, 2010, Transportation Review Committee agenda for information and discussion.

**CONTACT PERSON:**

Eileen O. Yazzie (602) 254-6300.

## **Transit Capital Project** **Prioritization Guidelines**

Prior to the RTP and in coordination with the development of the RTP, RPTA used the below prioritization guidelines to program projects.

### **1. Provide Services and Improvements Required by Law.**

- 1.1 Purchase dial-a-ride fleet for service expansion required by ADA
- 1.2 Upgrade facilities to comply with environmental laws.

### **2. Provide Replacement Equipment and Facilities for Existing Service.**

- 2.1 Purchase replacement revenue fleet or parts.
- 2.2 Provide essential service support.\*
- 2.3 Maintain existing operating and passenger facilities.
- 2.4 Purchase revenue fleet to replace contractor owned vehicles.
- 2.5 Capitalize cost of contracting for existing service.
- 2.6 Support service costs.\*

### **3. Expand Service.**

- 3.1 Purchase revenue fleet for regional service expansion.
- 3.2 Purchase revenue fleet for local service expansion.
- 3.3 Provide essential service support.\*
- 3.4 Construct regional park-and-rides.

### **4. Passenger Enhancements.**

- 4.1 Provide bus stop improvements.
- 4.2 Construct transit centers.

### **5. Other Desired Support Services.**

- 5.1 Capitalize cost of contracting for service expansion.
- 5.2 Other support purchases.

\* In 2002, VMOS, which was a staff run working group that lead to the development of the formal committee Valley Metro Operations and Capital Committee (VMOCC), froze the funding for preventative maintenance/associated capital maintenance at approximately \$5.6 million. The freeze includes a small increase year-over-year for inflation of 2%, which results in programming \$6,446,073 in 2009, and \$6,574,992 in 2010 for preventative maintenance/associated capital maintenance. Preventative maintenance/associated capital maintenance is represented in the priorities above as 2.2, 2.6, and 3.3.

The reasoning behind this decision was that the VMOCC did not want the transit operators to rely on federal funds for operations, and if the region would provide all funding for preventative maintenance/associated capital maintenance, there would most likely be a small amount remaining to be programmed for other lower priorities like 3.4 – Construct regional park and rides and 4.2 – Construct transit centers.

**Transit Capital Project**  
**Prioritization Guidelines**  
**Unspent or Redistributed ARRA Funds**  
**Approved by MAG Regional Council on December 9, 2009**

**1. Provide Services and Improvements Required by Law**

- 1.1. Upgrade facilities and fleet to comply with applicable laws

**2. Provide Equipment and Facilities for Existing Service**

- 2.0 Current ARRA projects that require additional funds without changes to scope
- 2.1. Operating assistance – bus and rail operations
- 2.2. ADA operating assistance
- 2.3. Preventive maintenance costs
- 2.4. Maintain existing operating facilities
- 2.5. Maintain existing passenger facilities
- 2.6. Construct regional park and rides to support existing services
- 2.7. Construct transit centers to support existing services

**3. Passenger Enhancements**

- 3.1. Provide bus stop improvements for existing bus stops (no NEPA issues)
- 3.2. Provide enhancements to existing passenger facilities

**4. Provide Equipment and Facilities for Expansion of Service**

- 4.1. Expand existing operating facilities
- 4.2. Construct new operating facilities
- 4.3. Construct regional park and rides for service expansion
- 4.4. Construct BRT capital improvements
- 4.5. Construct transit centers for service expansion

**5. Other Desired Support Services**

- 5.1. Purchase replacement fleet
- 5.2. Purchase fleet for service expansion
- 5.3. Other support costs and enhancements



## 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

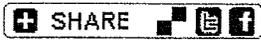
consequences of the sanctions.

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



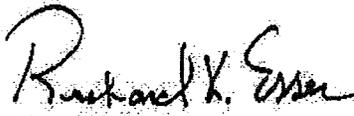
Robin Barker  
Councilmember, City of Apache Junction



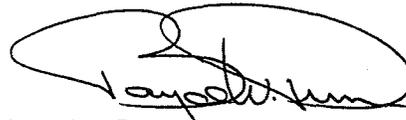
Jackie Meck  
Mayor, Town of Buckeye



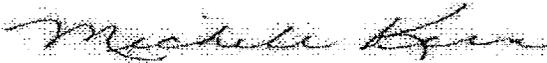
David Schwan  
Mayor, Town of Carefree



Richard K. Esser  
Councilmember, Town of Cave Creek



Boyd W. Dunn  
Mayor, City of Chandler



Michele Kern  
Mayor, City of El Mirage



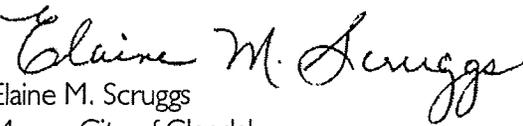
Jay Schlum  
Mayor, Town of Fountain Hills



Ron Henry  
Mayor, Town of Gila Bend



John Lewis  
Mayor, Town of Gilbert



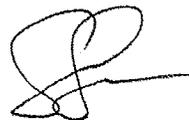
Elaine M. Scruggs  
Mayor, City of Glendale



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



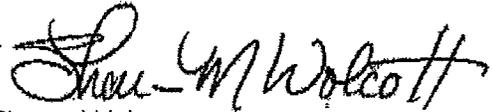
Peggy Neely  
Councilmember, City of Phoenix



Gail Barney  
Mayor, Town of Queen Creek



Jim Lane  
Mayor, City of Scottsdale



Sharon Wolcott  
Councilmember, City of Surprise



Adolfo Garpez  
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**  
10005 East Osborn Road / Scottsdale, Arizona 85256-9722 / Phone (480) 362-7465 / Fax (480) 278-7188

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

1110 West Washington Street • Phoenix, Arizona 85007  
(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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(928) 779-0313

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400 West Congress Street • Suite 433 • Tucson, AZ 85701  
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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**

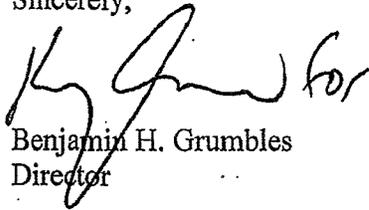
Throughout the process of demonstrating that the exceedances in 2008 were due to exceptional events, ADEQ has invited EPA Region IX's participation and direction. Between October 2009 and May of 2010, ADEQ and EPA staff attended numerous technical meetings regarding the 5% Plan, but EPA rarely provided 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

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • [www.azdeq.gov](http://www.azdeq.gov)



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 PM<sub>10</sub> 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 PM<sub>10</sub> NAAQS at the West 43<sup>rd</sup> 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.

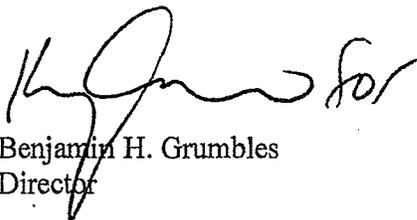
The reports ADEQ submitted to EPA on November 17, 2009, met all of the requirements of Section 319 of the Clean Air Act and the EER to qualify the exceedances measured on June 4, 2008, as being the result of exceptional events. The reports were released for public review and discussed at a public meeting 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)



# Maricopa County

Board of Supervisors

301 West Jefferson Street  
10th Floor  
Phoenix, AZ 85003-2143  
Phone: 602-506-3406  
www.maricopa.gov

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**

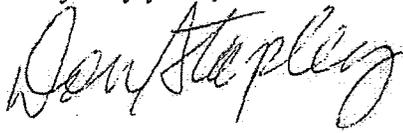
Dear Administrator Jackson:

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](http://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**

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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/m<sup>3</sup>. 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/m<sup>3</sup> 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.

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**ATTACHMENT 2**

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

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## 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**

**940 W. Main Street, Suite 208**

**El Centro, CA 92243**

**760.482.4290**

#### **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.<sup>1</sup> Rule 806 was adopted in November 2005, years before the 2009 PM<sub>10</sub> SIP<sup>2</sup> 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.<sup>3</sup> 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 PM<sub>10</sub> SIP was released in July 2009.<sup>4</sup> The draft PM<sub>10</sub> SIP was revised to address those concerns. In any event, there is no basis for EPA's conclusion that OHV controls

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<sup>1</sup> See Table 3.1 and Figure III.B.4 of the 2009 Imperial County PM<sub>10</sub> SIP.

<sup>2</sup> Imperial County 2009 PM<sub>10</sub> SIP, Final Draft, August 2009

<sup>3</sup> 69 FR 30035, May 26, 2004

<sup>4</sup> 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 PM<sub>10</sub> 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 PM<sub>10</sub> SIP was released.

somehow would have prevented any of the exceedences 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 exceedences (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 exceedences is incorrect, and was not based on a sound technical understanding of the events associated with those exceedences.
- 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 exceedences 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 exceedences.
  - Also, rather than considering the cumulative weight of the evidence showing that unpreventable exceptional events caused the exceedences 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 exceedences 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.

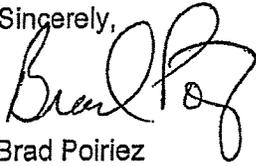
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Based on the weight of available evidence and the established EER requirements and guidance, the events described in the ARB submittal clearly were exceptional events that themselves were not reasonably controllable or preventable, and which directly led to the measured exceedences. EPA has not demonstrated (and cannot demonstrate) that these exceedences 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 exceedences 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 PM<sub>10</sub> Nonattainment Areas,"<sup>6</sup> Section V: "Waivers for Certain PM<sub>10</sub> 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.<sup>6</sup>

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<sup>6</sup> FR, Vol. 59, No. 157, August 16, 1994, p. 41998.

<sup>6</sup> "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 exceedance, 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 PM<sub>10</sub> 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 reasonable 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 exceedences 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 exceedence (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 PM<sub>10</sub> SIP.<sup>7</sup> Figure III.B.6 shows the location of OHV areas on a map of windblown PM<sub>10</sub> 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.

<sup>7</sup> Imperial County 2009 PM<sub>10</sub> 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 PM<sub>10</sub> 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 PM<sub>10</sub> 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,<sup>8</sup> 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 PM<sub>10</sub> 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 PM<sub>10</sub> 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.

<sup>8</sup> 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 PM<sub>10</sub> concentrations recorded on September 2, 2006, August 19, 2003, August 18, 2002, and PM<sub>10</sub> 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 PM<sub>10</sub> 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 PM<sub>10</sub> peak at Westmorland, and its direction (WNW) 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* PM<sub>10</sub> 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	<p>"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</p> <p>"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</p> <p>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).</p>	<p>2006 Westmorland</p> <p>2006 Westmorland</p> <p>2007 events</p>
Satellite imagery	<p>"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</p>	<p>2006 Westmorland</p>
Consideration of other causes	<p>"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</p> <p>Comments to the same effects are made on p. 24 and 25</p>	<p>2006 Westmorland</p> <p>2007 events</p>

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 station<sup>9</sup>
- 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 PM<sub>10</sub> 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)

<sup>9</sup> PM concentrations on September 2, 2006 at the Niland, Westmorland, Brawley, El Centro, Calexico Ethel, and Calexico Grant stations are in the 97<sup>th</sup>, 98<sup>th</sup>, 97<sup>th</sup>, 99<sup>th</sup>, 96<sup>th</sup>, and 99<sup>th</sup> 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 10<sup>10</sup>. 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 PM<sub>10</sub> 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.



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 30<sup>th</sup>, July 2<sup>nd</sup>, and August 2<sup>nd</sup>, and your August 2<sup>nd</sup> 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 3<sup>rd</sup>. 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



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 PM<sub>10</sub> 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 PM<sub>10</sub> 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.

Northern Regional Office  
1801 W. Route 66 • Suite 117 • Flagstaff, AZ 86001  
(928) 779-0313

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

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)

# 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:

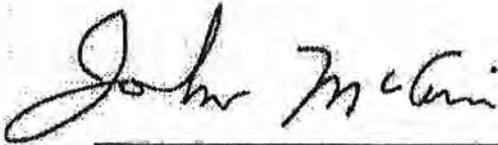
(1) EPA provide adequate time for an additional review of exceptional events requests by the State of Arizona. EPA should review and consider new data and information on these events and move to reconsider its May 21, 2010 determination with regard to the Maricopa County Nonattainment Area.

(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

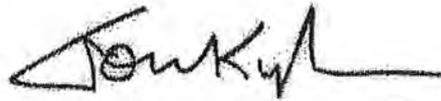
private individuals who are not parties or intervenors to the litigation, but who may have a substantial stake in the outcome, to respond and assemble the necessary comments and information for EPA to review.

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



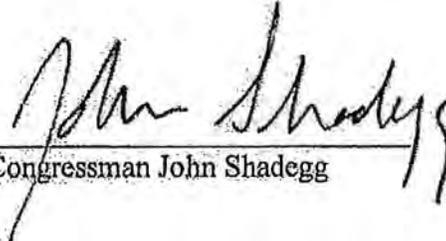
Congressman Harry Mitchell



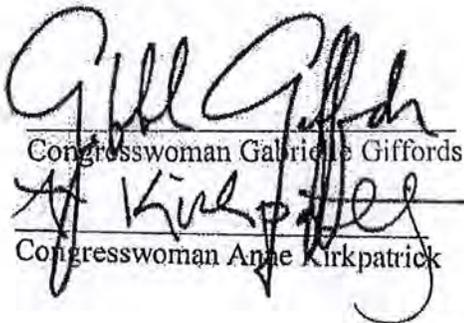
Congressman Jeff Flake



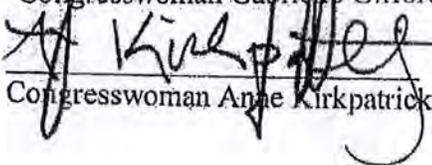
Congressman Ed Pastor



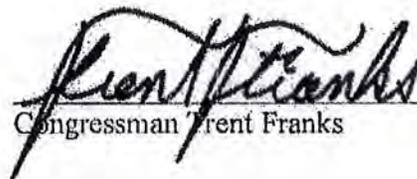
Congressman John Shadegg



Congresswoman Gabrielle Giffords



Congresswoman Anne Kirkpatrick



Congressman Trent Franks

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

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

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 [Insert date 30 days from the date of publication in the Federal Register].

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

1. Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
2. E-mail: [nudd.gregory@epa.gov](mailto: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 [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](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 [www.regulations.gov](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 [www.epa.gov/region09/air/actions](http://www.epa.gov/region09/air/actions).

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

## Table of Contents

- I. PM-10 Air Quality Planning in the Maricopa Area
- II. Overview of Applicable CAA Requirements
- III. Evaluation of the 189(d) Plan's Compliance with CAA Requirements
- IV. Summary of Proposed Actions
- 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.<sup>1</sup> 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.

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<sup>1</sup> 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."

## 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."

The general planning and control requirements for all nonattainment plans are found in CAA sections 110 and 172. EPA has issued a General Preamble<sup>2</sup> and Addendum to the General Preamble<sup>3</sup> 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

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<sup>2</sup> "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).

<sup>3</sup> "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).

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.

**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).<sup>4</sup> 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.<sup>5</sup> The 2005 Periodic Inventory indicates that the dominant sources of PM-10 emissions

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<sup>4</sup> 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.

<sup>5</sup> The 2005 Periodic Inventory in the 189(d) plan also includes data on PM-10 precursors. However, 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 Email 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.

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 rules<sup>6</sup> 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 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,

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<sup>6</sup> 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.

#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.<sup>7</sup> 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.<sup>8</sup> Table 1 below shows the impact of these two different rule effectiveness

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

<sup>8</sup> 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.

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.<sup>9</sup>

Table 1 - Impact of Rule 310 Effectiveness Methodology on Estimated Emissions from Construction Activity

<b>Estimation Method</b>	<b>Rule Effectiveness</b>	<b>Estimated 2005 Emissions for Construction Activity (tons per year)</b>
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.

<sup>9</sup> Email from Matthew Poppen, MCAQD, to Gregory Nudd, EPA, "Back-casting of RE rates," April 19, 2010 (Poppen Email).

There is a similar inaccuracy in the rule effectiveness calculations for MCAQD Rule 310.01<sup>10</sup> 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 2<sup>11</sup> - Measures to Improve Compliance with Rules 310 and 310.01 Compared to All Measures Supporting the Attainment, 5% and RFP Demonstrations

	<b>2008</b>	<b>2009</b>	<b>2010</b>
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

<sup>10</sup> 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.

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

% of reductions from such measures	76%	80%	82%
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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 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

<b>Source Category</b>	<b>Percentage of Pre-Control 2010 Emissions</b>	<b>Percentage of Estimated 2010 Emission Reductions</b>
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

<b>Category</b>	<b>Measure #s from 189(d) plan</b>	<b>Associated statutory provisions</b>
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 <sup>12</sup>

\* 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

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<sup>12</sup> 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 (AAC) 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.

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 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.<sup>13</sup> 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

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<sup>13</sup> Prior to its classification as serious, the Maricopa area, as a moderate PM-10 nonattainment area, was required to implement RACM pursuant to CAA section 189(a)(1)(C).

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 A<sup>14</sup> 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

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<sup>14</sup> 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.

tilling," "forage crop," "genetically modified," "genetically modified organism," "global position satellite system," "green chop," "high pollution advisory," "integrated pest management," "night tilling," "organic 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(1) 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 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.<sup>15</sup>

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

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<sup>15</sup> 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.

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.

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 43<sup>rd</sup> 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 43<sup>rd</sup> 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 43<sup>rd</sup> 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.<sup>16</sup>

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<sup>16</sup> "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).

Of the eleven 2008 exceedances, ten were flagged by the State as due to exceptional events under EPA's Exceptional Events Rule (EER)<sup>17</sup> 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.<sup>18</sup>

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 43<sup>rd</sup> Avenue monitor in south-central Phoenix that the

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<sup>17</sup> 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).

<sup>18</sup> AQS 2008-2010 Quick Look Report.

State claims to be due to exceptional events.<sup>19</sup> 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 the EER and therefore do not qualify as exceptional events for regulatory purposes. Letter from Jared Blumenfeld, EPA, to Benjamin H. Grumbles, ADEQ, re: PM<sub>10</sub> 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 43<sup>rd</sup> 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).

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<sup>19</sup> 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.

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-10<sup>20</sup> for 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

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

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).

#### **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 43<sup>rd</sup> 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.<sup>21</sup> Further, "[i]n general, EPA will expect all actions

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<sup>21</sup> 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

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 *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.

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probably be needed before a measure could be implemented effectively." General Preamble at 13512.

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

<b>Contingency Measures</b>		<b>PM-10 Reductions [tons/year]</b>		
<b>#</b>	<b>Measure Title</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
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
<b>Total for All Quantified Contingency Measures</b>		<b>5,222.5</b>	<b>7,212.6</b>	<b>9,158.9</b>
<b>Contingency Measure Reduction Target</b>		<b>4,869</b>	<b>4,869</b>	<b>4,869</b>

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.<sup>22</sup> 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).

<sup>22</sup> 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.

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

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<sup>23</sup> 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

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

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submittals. See footnote 1. This distinction is significant because here the ordinances are the ultimate regulatory vehicle.

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.<sup>24</sup> 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

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<sup>24</sup> 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.

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."<sup>25</sup> 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

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<sup>25</sup> 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.

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.

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))

<b>Year</b>	<b>MVEB</b>
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 Arizona<sup>26</sup> 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

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<sup>26</sup> Letter 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."

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, 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 Population

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 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.

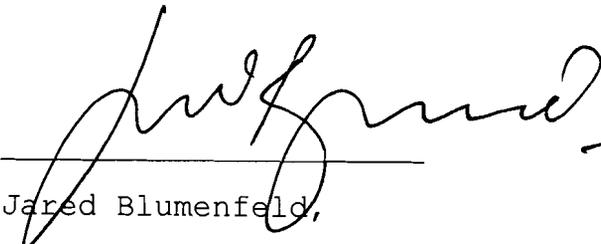
**List of Subjects in 40 CFR Part 52**

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

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

September 3, 2010

Dated:



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Jared Blumenfeld,  
Regional Administrator,  
Region IX.