

February 17, 2011

TO: Members of the MAG Air Quality Technical Advisory Committee

FROM: Doug Kukino, Glendale, Chair

SUBJECT: MEETING NOTIFICATION AND TRANSMITTAL OF TENTATIVE AGENDA

Thursday, February 24, 2011 - 1:30 p.m.  
MAG Office, Suite 200 - Saguaro Room  
302 North 1<sup>st</sup> Avenue, Phoenix

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

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

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

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

## TENTATIVE AGENDA

### COMMITTEE ACTION REQUESTED

1. Call to Order

2. Call to the Audience

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

3. Approval of the January 27, 2011 Meeting Minutes

4. Withdrawal of the MAG Five Percent Plan for PM-10

On January 25, 2011, the Arizona Department of Environmental Quality withdrew the MAG 2007 Five Percent Plan for PM-10 from any further action or consideration by the Environmental Protection Agency (EPA). The plan was facing a partial disapproval action by January 28, 2011 based on a timetable in a consent decree with the Arizona Center for Law in the Public Interest. The withdrawal will enable the use of the new EPA paved road dust equation to improve the plan. On January 31, 2011, a notice of Finding of Failure to Submit a Plan was signed by EPA, which triggered the eighteen month sanctions clock for tighter controls on industry and the twenty-four month clock for the loss of the federal

2. For information.

3. Review and approve the January 27, 2011 meeting minutes.

4. For information and discussion.

highway funds and the imposition of a federal plan. The notice was published in the Federal Register on February 14, 2011 and became effective on that date. The submittal of a new plan and a completeness determination by EPA will stop the sanctions clocks. A plan approval action by EPA will stop the imposition of a federal plan. Regarding conformity, EPA also withdrew the adequacy finding for the motor vehicle emissions budget in the Five Percent Plan. The region then reverts to the previous approved motor vehicle emissions budget in the Revised MAG Serious Area Plan for PM-10. No new projects that require a conformity determination can be added to the Transportation Improvement Program and Regional Transportation Plan until conformity is demonstrated with the previous approved motor vehicle emissions budget. The new paved road dust equation will be useful in meeting the conformity requirements. Please refer to the enclosed material.

5. Status Report on Revisions to the 2008 Emissions Inventory

Now that the Five Percent Plan has been withdrawn, work has begun on the preparation of a revised 2008 Emissions Inventory to address the approvability issues identified by the Environmental Protection Agency. The revised inventory will include the new EPA paved road dust emission equation. Windblown dust is also being evaluated.

At the last meeting, the Committee had requested an example of an existing control measure with increasing benefits. EPA had indicated that existing control measures with increasing benefits beyond 2010 could be used for the new Five Percent Plan for PM-10. An example will be provided along with the status report on the revisions to the 2008 Emissions Inventory.

5. For information and discussion.

6. PM-10 Monitoring Data

An update will be provided on PM-10 monitoring data for the Maricopa nonattainment area. There were no violations at the monitors in 2010. Please refer to the enclosed material.

7. Tentative MAG Air Quality Project Schedule

A Tentative MAG Air Quality Project Schedule for January 2011 through December 31, 2012 has been prepared that describes the major regional air quality planning activities. Please refer to the enclosed material.

8. Call for Future Agenda Items

The next meeting of the Committee has been tentatively scheduled for **Thursday, March 24, 2011** at 1:30 p.m. The Chairman will invite the Committee members to suggest future agenda items.

6. For information and discussion.

7. For information and discussion.

8. For information and discussion.

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

Thursday, January 27, 2011  
MAG Office  
Phoenix, Arizona

MEMBERS ATTENDING

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

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

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

OTHERS PRESENT

Lindy Bauer, Maricopa Association of Governments  
Dean Giles, Maricopa Association of Governments  
Patrisia Magallon, Maricopa Association of  
Governments  
Julie Hoffman, Maricopa Association of Governments  
Taejoo Shin, Maricopa Association of Governments  
Matt Poppen, Maricopa Association of Governments  
Adam Xia, Maricopa Association of Governments  
Frank Schinzel, Maricopa County Air Quality  
Mitch Wagner, Maricopa County Department of  
Transportation

Michelle Wilson, City of Glendale  
Russell Van Leuven, Arizona Department of  
Agriculture  
Scott DiBiase, Pinal County  
Marta Gerber, Michael Baker. FR  
Will Barnow, Maricopa County  
Joonwon Joo, Arizona Department of  
Transportation

1. Call to Order

A meeting of the MAG Air Quality Technical Advisory Committee was conducted on January 27, 2011. Doug Kukino, City of Glendale, Chair, called the meeting to order at approximately 1:31 p.m. Antonio DeLaCruz, City of Surprise; Jim Weiss, City of Chandler; Mark Hannah, Town of Youngtown; Gina Grey, Western States Petroleum Association; Diane Arnst, Arizona Department of Environmental Quality; and Mannie Carpenter, Valley Forward, attended the meeting via telephone conference call.

2. Call to the Audience

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

3. Approval of the November 30, 2010 Meeting Minutes

The Committee reviewed the minutes from the November 30, 2010 meeting. Brian O'Donnell, Southwest Gas Corporation, moved and Joe Gibbs, City of Phoenix, seconded and the motion to approve the November 30, 2010 meeting minutes carried with Dawn Coomer, Valley Metro/RPTA, abstaining.

4. Update on PM-10 Certified Street Sweeper Projects for FY 2011 CMAQ Funding

Dean Giles, MAG, provided an update on the PM-10 Certified Street Sweeper Projects for Fiscal Year 2011 Congestion Mitigation and Air Quality Improvement (CMAQ) funding. He stated that the Committee recommended a prioritized list at its November 30, 2010 meeting and the MAG Management Committee concurred with the recommendation on January 12, 2011. Mr. Giles noted that on January 26, 2011, the MAG Regional Council approved the prioritized list that had been recommended by this Committee. Mr. Giles commented that once the funds are available, MAG will be notifying each of the jurisdictions with projects on the prioritized list by sending a letter authorizing them to proceed.

5. MAG Air Quality Video

Ms. Bauer introduced the MAG air quality video "Dust Off Your Air Quality IQ." She stated that the video was prepared by the MAG Communications Division and focuses on exceptional events. In addition, a one page sheet has been provided at each place that capsulizes the issue on exceptional events. The video was played for the Committee.

Mark Hajduk, Arizona Public Service Company, inquired about the location of the video. Ms. Bauer responded that the video is on YouTube and has been sent to several air quality stakeholders including the MAG member agencies. In addition, the video can be found on the MAG website on the communications page. Ms. Bauer noted that the video was also provided to the municipal cable channels.

6. Update on the EPA Proposed Partial Approval and Disapproval of the MAG 2007 Five Percent Plan for PM-10

Lindy Bauer, MAG, provided an update on the Environmental Protection Agency (EPA) proposed partial approval and disapproval of the MAG 2007 Five Percent Plan for PM-10. Ms. Bauer stated that on September 9, 2010, EPA proposed a partial approval and disapproval of the plan based on the timetable in the consent decree with the Arizona Center for Law in the Public Interest. She added that if EPA finalized the partial disapproval by January 28, 2011, a conformity freeze on the MAG Transportation Improvement Program and Regional Transportation Plan would occur and only projects in the first four years could proceed. Ms. Bauer indicated that this would also trigger the sanctions clocks under the Clean Air Act. She noted that if the problem is not corrected within 18 months, tighter controls on business and industry would be imposed. Ms. Bauer mentioned that if the problem is still not corrected within 24 months, the loss of the federal highway funds and a federal implementation plan would be imposed. She added that conformity would also lapse.

Ms. Bauer stated that on January 25, 2011, the Arizona Department of Environmental Quality (ADEQ), in coordination with MAG and Maricopa County, sent a letter to EPA to withdraw the Five Percent Plan for PM-10 rather than have EPA disapprove the plan. She mentioned that withdrawing the plan is believed to be a better option than the disapproval. Ms. Bauer indicated that after the withdrawal, EPA will make a finding of failure to submit the plan which will trigger the two sanctions that were just discussed. She commented that in order to stop the sanctions clock in a withdrawal, a plan would have to be submitted and EPA would need to find that the plan was complete. In order to stop the imposition of a federal implementation plan, EPA would have to approve the plan within 24 months from the finding of failure to submit.

Ms. Bauer discussed what would have been the impact of a disapproval action. She stated that in order to stop the sanctions with a disapproval clock, three things would have to happen. First, the plan would need to be submitted. Second, EPA would need to find the plan complete. Third, EPA would need to take approval action, which could take a while. Ms. Bauer commented that there are two actions in order to turn off the sanctions clock in a withdrawal: the plan would need to be submitted and EPA would have to find it complete. She noted that with a withdrawal, EPA would have a longer time to take their approval action, which would relieve them from having to impose a federal implementation plan.

Ms. Bauer stated that EPA has developed a new AP-42 factor for paved road dust. She added that these factors are used when Maricopa County is preparing the emission inventories, which is the starting point for the air quality plans. Ms. Bauer indicated that this factor is also used to demonstrate conformity. She noted that the new AP-42 factor is more accurate than the prior factor. Ms. Bauer commented that MAG will be using the new factor when preparing the new plan and it will also be useful in the conformity process.

Ms. Bauer stated that MAG is going to begin the process now to prepare a new plan that is approvable to EPA. She provided an overview of MAG's role in air quality. Ms. Bauer indicated that MAG serves as the designated Regional Air Quality Planning Agency under Section 174 of the Clean Air Act. She stated that MAG was designated by the Governor in 1978 and recertified by the Legislature in 1992. Ms. Bauer mentioned that the process at MAG includes this Air Quality Technical Advisory Committee, which is very important. The committee includes a wide variety of representatives from both the private sector and public sector. She noted that this Committee was among the first at MAG

to include the private sector. The private sector has to comply with measures and regulations; therefore, their view points and perspectives are absolutely critical in building these plans. Ms. Bauer commented that MAG values the private sector's input in addition to the public sector.

Ms. Bauer stated that as always, MAG intends to run a very transparent process. She mentioned that MAG will be sharing all of the data and modeling with this Committee. She added that if the Committee would like additional briefings on some of the technical information, MAG can hold workshops or separate briefings after the Committee meetings. Ms. Bauer indicated that MAG would like the Committee to feel comfortable with the data that goes into building these plans. In addition, MAG complies with the open meeting law and all the Committee members have a vote. Ms. Bauer noted the importance of gathering input and comments from the Committee members. She mentioned that MAG appreciates the input which has been invaluable.

Ms. Bauer stated that MAG will be closely tracking the exceptional events issue while developing the new plan. She noted the importance of not losing sight of the issue since we believe the region was clean at the monitors in 2008. Ms. Bauer added that MAG, ADEQ and Maricopa County believe that EPA should have approved the Five Percent Plan for PM-10. She mentioned that there have been no violations at the monitors for PM-10 in 2010. Ms. Bauer indicated that the Exceptional Events Rule, which EPA admits is flawed, needs to be addressed since the region will always have problems with high winds and dry silty soils in the desert. She added that MAG intends to keep encouraging EPA to fix the flawed Exceptional Events Rule. Ms. Bauer noted that MAG is looking forward to working with all of the Committee members in developing the new plan.

Ms. Bauer pointed out that PM-10 is a localized pollutant. She added that the control measures in the Five Percent Plan for PM-10 are mostly from local governments: the cities, towns, and Maricopa County. Ms. Bauer indicated that it is critical that the planning process be guided through MAG and the Air Quality Technical Advisory Committee since the plan relies on local government measures and there could be a significant impact on the conformity process and transportation plans. She noted the economic downturn. It will be important to use good science and judgement when addressing this pollutant problem.

Ms. Bauer stated that MAG received answers to questions that were posed to EPA. She noted that the information was included in the agenda packet that was provided to the Committee members. Ms. Bauer added that MAG asked EPA what the starting point would be for the five percent reductions. She indicated that EPA reiterated that the starting point would be from the point in which the plan is submitted. For example, if the plan is submitted in 2011 or 2012, those would be the first years that five percent reductions would be needed. Ms. Bauer commented that MAG had also discussed the modeling for the plan with EPA. She noted that there are two types of modeling in the plan. Ms. Bauer indicated that one type of modeling is for the attainment demonstration. She added that for the Five Percent Plan for PM-10, MAG had to model attainment at six monitors using an AERMOD model. Ms. Bauer mentioned that EPA has indicated that regarding the design day, MAG may use the old modeling that was done for the attainment demonstration and just update it. EPA pointed out that June 6, 2012 would be the attainment date. She noted that an extension can be requested of up to five years, which would be June 6, 2017.

Ms. Bauer stated that MAG also inquired about applying the impact of the measures. EPA indicated that if the control measures are getting increasing emission reductions after 2010, then they can be applied. She noted that EPA provided a few examples. Ms. Bauer added that EPA also mentioned

that the plan can focus on high winds. EPA applauded MAG and ADEQ for the success in eliminating PM-10 exceedances during stagnant conditions. Ms. Bauer commented that MAG will be getting additional information from EPA. She noted that EPA will be meeting with MAG, ADEQ and Maricopa County on February 3, 2011. Ms. Bauer indicated that MAG will be reporting back to the Committee and be developing a timeline.

Ms. Bauer stated that to date MAG has reported to the Committee that the vacant land documentation was submitted to EPA in November 2010. In addition, MAG has been working with the new AP-42 equation and has submitted information to Maricopa County for use in the emissions inventory. She indicated that Maricopa County is working on the rule effectiveness issue and will soon have information to share with the Committee. She stated that MAG looks forward to working with everyone and the door is open here at MAG. Ms. Bauer added that MAG is thankful for the diversity on this Committee since it is extremely helpful to MAG in preparing these plans.

Mr. O'Donnell inquired if there were five percent reductions for 2009 and 2010. Ms. Bauer responded that is correct. Mr. O'Donnell asked how much credit will be given for 2009 in 2011. Ms. Bauer responded that EPA has indicated that if the measures have increasing benefits over time, MAG could apply those benefits towards the five percent reductions for those years. She added that once the Maricopa County's 2008 PM-10 Periodic Emissions Inventory is complete, MAG will be taking that inventory and then project the emissions beyond 2010. Mr. O'Donnell inquired about getting credit for 2009 and 2010. Ms. Bauer responded that those numbers may be in the base. She added that some of the measures without increasing benefits will remain in the base.

Mr. Gibbs inquired what the best estimate would be for length of time the region would be in a conformity freeze. Ms. Bauer added that EPA has just posted the new AP-42 equation on their website and it now needs to be published in the Federal Register. Mr. Gibbs referred to the deadline for EPA approval of the plan. He inquired if the 24 months for approval counted from the date the plan was withdrawn or after EPA receives the new plan. Ms. Bauer responded that once the finding of failure to submit is published, that date will drive everything else. She mentioned that MAG will key off the date in the finding of failure to submit and will then block out the timelines. She indicated that we want to avoid the sanctions. In order to turn off the 18 month and 24 month sanction clocks, the plan needs to be submitted to EPA and found complete. Ms. Bauer mentioned that under the Clean Air Act, EPA would still have an obligation to prepare a federal implementation plan until EPA takes approval action on the plan.

Mr. Gibbs inquired if it is possible to put a timeline on the MAG website of approximate dates. He commented on the conformity freeze and the conformity determination to the Serious Area Plan motor vehicle emissions budget. Mr. Gibbs asked how long the budget would be good. Ms. Bauer responded that MAG will provide a timeline at the next Committee meeting. She noted that EPA has remained relatively quiet during this whole process; however, EPA will now be more open and discuss their expectations. Ms. Bauer mentioned that MAG will also present the timeline for the next steps on conformity at the next meeting as well.

Larry Person, City of Scottsdale, inquired on the status of the measures in the plan that has been withdrawn. Ms. Bauer responded that the cities have adopted their resolutions and the Legislature passed the bill. She mentioned that the region is trying to attain the PM-10 standard in order to avoid having to go through this process again. Ms. Bauer stated that MAG, ADEQ and Maricopa County are envisioning that the measures will stay in place. She added that the public has also been calling

their local elected officials expressing concern since they read about EPA's proposed disapproval. Ms. Bauer commented that MAG's press release tries to assure the citizens that the measures will remain in place. She indicated that the region is going for attainment to avoid the burden of several additional measures. Ms. Bauer added that MAG will be asking EPA if the region is clean for three years by the time the plan is submitted, is it possible to be given a clean data finding and therefore not have to submit as large of a plan. She noted that the region would still have to show that we are relying on permanent measures that will give permanent emission reductions.

Ms. Bauer referred back to Mr. Gibb's question on how long the Serious Area Plan budget would be in effect. She stated that EPA has fully approved the entire Serious Area Plan. Therefore, that motor vehicle emissions budget is in an approved plan. Mr. Gibbs inquired if the budget is in effect until it is superceded. Ms. Bauer responded that the budget would be in effect until superceded with a new plan that has a new motor vehicle emissions budget and has been found to be adequate or approved by EPA. Mr. Gibbs asked for clarification that a disapproval does not negate the Serious Area Plan emissions budget but reverts back to it. Ms. Bauer responded that is correct.

Mr. O'Donnell commented on having five percent reductions for 2011, 2012, and 2013. He noted that the base is changing and inquired about the total amount of emission reductions the region will need.

Ms. Bauer responded that the reductions will be determined by the Maricopa County Emissions Inventory. She added that the five percent reductions may not necessarily be for 2011, 2012 and 2013. Ms. Bauer indicated that MAG and ADEQ submitted additional information on exceptional events for 2008 to EPA. She noted that ADEQ has not heard back from EPA; however, EPA has indicated that they will consider all of the new information. Ms. Bauer stated that ADEQ held a stakeholder meeting in April 2010 and indicated that the 2009 exceedances were all exceptional events. She added that the State has not yet submitted their documentation to EPA since they are waiting for EPA's feedback to make sure whatever documentation they submit is successful. Ms. Bauer indicated that there are no violations at the monitors for 2010.

7. Proposed Revised Eight-Hour Ozone Standard

Ms. Bauer stated that EPA has postponed the date of when the revised Eight-Hour Ozone Standard would be released. She noted that it is now looking like the new standard would be released by the end of July 2011.

8. Proposed Funding for an Air Quality Project for the MAG FY 2012 Work Program

Ms. Bauer stated that MAG is in the process of preparing the MAG Fiscal Year 2012 Unified Planning Work Program. She informed the Air Quality Technical Advisory Committee that \$280,000 is being requested in the Draft Work Program for the Air Quality Technical Assistance On Call Project. Ms. Bauer indicated that this funding would be used primarily for consultant assistance to address PM-10, air quality modeling, and additional areas needed for the new PM-10 plan. Other assistance may include addressing the eight-hour ozone standard, conformity, and additional activities.

9. Call for Future Agenda Items

Mr. Kukino noted that the Air Quality Technical Advisory Committee meeting schedule for 2011 has been included in the agenda packets. Mr. Kukino asked the Committee for suggestions on future agenda items.

Amanda McGennis, Associated General Contractors, inquired if a measure could be taken out of Rule 310 and the Committee walked through the process, getting to question two of EPA's responses. She asked if the Committee could be provided a scenario in order to better understand where the measure would stand.

Mr. Kukino announced that the next meeting of the Committee has been tentatively scheduled for Thursday, February 24, 2011 at 1:30 p.m. With no further comments, the meeting was adjourned at 2:14 p.m.

of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action to approve Virginia's revision to the definition of "Volatile organic compound" may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by

reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 1, 2011.

**W.C. Early,**  
*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority for citation for part 52 continues to read as follows:

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

**Subpart VV—Virginia**

■ 2. In § 52.2420, the table in paragraph (c) is amended by adding a seventh entry under 5–10–20 to read as follows:

**§ 52.2420 Identification of plan.**

*	*	*	*	*	*
(c)	*	*	*	*	*

**EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES**

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
<b>9 VAC 5 Chapter 10 ..... General Definitions [Part I]</b>				
* * * * *				
5–10–20 .....	Terms Defined .....	2/18/10	2/14/11 [Insert page number where the document begins].	Revised definition of "Volatile organic compound."
* * * * *				

\* \* \* \* \*  
[FR Doc. 2011–3096 Filed 2–11–11; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2011–0041; FRL–9264–1]

**Finding of Failure To Submit State Implementation Plan Revisions for Particulate Matter, PM–10, Maricopa County (Phoenix) PM–10 Nonattainment Area, AZ**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to find that Arizona failed to make a state implementation plan (SIP) submittal required under the Clean Air Act (CAA or Act) for the Maricopa County (Phoenix) nonattainment area (Maricopa area) for particulate matter of 10 microns or less (PM–10). The Maricopa area is a serious PM–10 nonattainment area which, having failed to attain the

PM–10 National Ambient Air Quality Standards (NAAQS) by its required statutory attainment deadline, is subject to section 189(d) of the CAA. For such areas, section 189(d) requires that states submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 NAAQS, 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.

Arizona submitted a section 189(d) plan for the Maricopa area on December 21, 2007, and EPA proposed action on this plan on September 9, 2010. On January 25, 2011, prior to final action on the plan by EPA, Arizona withdrew the submitted plan from the Agency's consideration. As a result of the withdrawal, EPA is today finding that Arizona failed to make the submittal required for the Maricopa area under section 189(d) of the Act.

This action triggers the 18-month clock for mandatory application of

sanctions and 2-year clock for a federal implementation plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

**DATES:** *Effective Date:* This action was effective as of February 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Gregory Nudd, U.S. Environmental Protection Agency, Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 947–4107; [nudd.gregory@epa.gov](mailto:nudd.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

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 NAAQS (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. 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 area PM-10 plan for the Maricopa area and 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" (189(d) plan). On December 21, 2007 the Arizona Department of Environmental Quality (ADEQ) submitted the 189(d) plan. 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.

EPA proposed to partially approve and partially disapprove the 189(d) plan on September 9, 2010 (75 FR 54806). On January 25, 2011, prior to any final EPA action, Arizona withdrew the 189(d) plan from the Agency's consideration.

## II. Final Action

### A. Finding of Failure To Submit Required SIP Revisions

If Arizona does not submit the required plan revisions within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submittal 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40

CFR 52.31.<sup>1</sup> The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal addressing the 189(d) PM-10 requirements for the Maricopa area. In addition, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve the submittal within 2 years of EPA's finding.

### B. Effective Date Under the Administrative Procedures Act

This final action is effective on February 14, 2011.

Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), an agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns SIP revisions that are already overdue and the State has been aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" by a complete SIP submittal addressing the 189(d) PM-10 requirements for the Maricopa area. These reasons support an effective date prior to 30 days after the date of publication.

### C. Notice-and-Comment Under the Administrative Procedures Act

This final agency action is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the

<sup>1</sup> In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: The offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

### III. 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 final rule will not have a significant impact on a substantial number of small entities because findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### D. Unfunded Mandates Reform Act

Under section 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 today's action does 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. The CAA provision discussed in this rule requires states to submit SIPs. This rule merely finds that Arizona has not met that requirement. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### E. Executive Order 13132, Federalism

*Federalism* (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 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 final 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.

#### 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 merely finds that Arizona has failed to make a submission that is required under the Clean Air Act.

#### H. 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.

#### I. 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.

The 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.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective February 14, 2011.

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Dated: January 3, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011-3027 Filed 2-11-11; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 216 and 252**

**RIN 0750-AF51**

**Defense Federal Acquisition Regulation Supplement; Award-Fee Contracts (DFARS Case 2006-D021)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address award-fee contracts, including eliminating the use of provisional award-fee payments.

**DATES:** *Effective Date:* February 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060. Telephone 703-602-0302; facsimile 703-602-0350. Please cite DFARS Case 2006-D021.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published a proposed rule in the **Federal Register** (75 FR 22728) on April 30, 2010, to revise guidance for award-fee evaluations and payments, eliminate the use of provisional award-fee payments, and incorporate DoD policy guidance on the use of objective criteria. A new clause entitled Award Fee sets forth the use of award fees in DoD contracts.

**II. Discussion and Analysis**

*A. Analysis of Public Comments*

In response to the proposed rule, DoD received comments from three respondents. A discussion of the comments is provided below:

**1. Making 40 Percent of the Award-Fee Pool Available for the Final Evaluation**

*a. Comment:* The respondents considered the language aligning fee distributions with contract performance and cost schedules. One respondent

stated that holding 40 percent of the award fee until the final evaluation does not consider the completion of individual contract line items or undefinitized work.

*DoD Response:* The purpose of making 40 percent of the award-fee pool available under the final evaluation period is to set aside a sufficient amount to protect the taxpayer's interest in the event a contractor fails to meet contractual obligations. Assuming the contract is properly structured, there is nothing in the rule that prohibits contractors from being paid for completed contract line items or work performed under undefinitized contracts.

*b. Comment:* The respondents expressed concern that holding 40 percent award fee until the final evaluation does not reward contract performance, particularly if a contract is terminated before the final evaluation. One respondent was concerned that by making a specified percentage of the award fee available for the final evaluation period, in the event of a termination for convenience, the contractor may not have the ability to earn that final award-fee percentage.

*DoD response:* The rule does not change the current procedures for terminations for convenience. In the event of a termination for convenience prior to the final evaluation period, contractors will be eligible to earn award fee available up to the point of the termination.

*c. Comment:* One respondent was concerned that holding of 40 percent of the award fee until final evaluation will negatively affect cash flow. The respondents were also concerned that the proposed rule will increase financial risk to Government contractors and result in an imbalance in the risk/reward relationship. One respondent was concerned, therefore, that the rule will unfavorably impact DoD's supplier base by adversely impacting suppliers' ability to attract debt and equity investment.

*DoD Response:* Contractors will continue to be paid incurred costs on cost-type contracts, completed work under fixed-price contracts with progress payments, or milestones achieved under fixed-price contracts with performance-based payments. Accordingly, a contractor's cash flow should not be significantly impacted. Since contractors who consistently meet contractual performance requirements will maximize the amount of award fee earned, there is no imbalance in the risk/reward relationship. There should be little, if any, impact on a superior







	2011												2012											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>PM-10 PAVE UNPAVED ROAD PROJECTS EVALUATION</b>																								
Projects Due to MAG									▲													▲		
Air Quality Evaluation of Projects									▲													▲		
AQTAC Recommendation										▲													▲	
Transportation Review Committee Recommendation											▲													▲
Management Committee Recommendation												▲												▲
Regional Council Action												▲												▲
<b>PM-10 STREET SWEEPER PROJECTS EVALUATION</b>																								
Stakeholder Input									▲															▲
Projects Due to MAG										▲													▲	
Air Quality Evaluation of Projects											▲												▲	
AQTAC Recommendation												▲												▲
Management Committee Recommendation												▲												▲
Regional Council Action												▲												▲

Upcoming Planning Activities

- Carbon Monoxide Maintenance Plan Revision - Due April 8, 2013 (Clean Air Act, Section 175, requires a revision to the maintenance plan eight years following the redesignation to attainment (April 8, 2005). The maintenance year for the revision is required to be ten years after the expiration of the ten year period in the original maintenance plan (December 2015). The new maintenance year will be December 2025.)