

November 25, 2014

TO: Members of the MAG Air Quality Technical Advisory Committee

FROM: William Mattingly, Peoria, Chair

SUBJECT: MEETING NOTIFICATION AND TRANSMITTAL OF TENTATIVE AGENDA

Thursday, December 4, 2014 - 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 Mattingly 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 October 23, 2014 Meeting Minutes

4. Update on the Arizona Center for Law in the Public Interest Lawsuit on the MAG 2012 Five Percent Plan for PM-10

On October 16, 2014, the Arizona Center for Law in the Public Interest filed a brief in the Center's lawsuit to challenge the Environmental Protection Agency's approval of the MAG 2012 Five Percent Plan for PM-10. The brief addresses exceptional events; Agricultural Best Management Practices Program; best available control measures and most stringent measures; and contingency measures. On September 24, 2014, the MAG Regional Council approved MAG's Washington legal counsel to file a motion for MAG to intervene on behalf of the respondent in the lawsuit. On October 23, 2014, the Washington legal counsel filed the MAG motion to intervene. MAG had been

2. For information.

3. Review and approve the October 23, 2014 meeting minutes.

4. For information and discussion.

coordinating closely with Maricopa County on a potential joint motion to intervene. Since Maricopa County is a member of MAG, Maricopa County staff has indicated that the MAG motion already represents the interests of the MAG members on this matter. Maricopa County may seek authorization to file an Amicus Curiae brief in the event that such a brief is necessary and/or appropriate.

On October 29, 2014, the Arizona Center for Law in the Public Interest filed in opposition to the MAG motion to intervene since it was filed late and they contend that the State and EPA can more than adequately represent any interest that MAG may have in this proceeding. On November 7, 2014, MAG's legal counsel filed a reply brief that emphasized how MAG has unique and substantial interests in the outcome of the litigation, the intervention would not prejudice the Petitioner's interests, and the court has discretion to grant its motion to intervene out of time. Previously, on September 24, 2014, the U.S. Ninth Circuit Court of Appeals had granted the State's motion to intervene. Please refer to the enclosed material.

5. Update on the Winter Holiday No Burn Campaign

The Arizona Department of Environmental Quality and Maricopa County Air Quality Department are conducting a Winter Holiday No Burn Campaign designed to reduce concentrations of PM-2.5 during the winter holiday season. Historically, the Valley has exceeded the EPA's 24-hour PM-2.5 standard over weekends and on holidays during the time period between late November and early January. The principal cause has been wood smoke from fires that are lit at gatherings or in celebration of the season. An update will be provided.

5. For information and discussion.

6. Update on the EPA Review of the National Ambient Air Quality Standards for Ozone

The Environmental Protection Agency has been reviewing the federal eight-hour ozone standards. It is anticipated that EPA may propose new ozone standards by December 1, 2014. The primary ozone standard of 0.075 parts per million established by EPA in 2008 is under review. Previously, EPA staff had concluded that it is appropriate to consider a revised primary standard level within the range of 70 to 60 parts per billion (0.070 to 0.060 parts per million). An update will be provided.

7. Draft MAG 2013 Inventory of Unpaved Roads

The Draft MAG 2013 Inventory of Unpaved Roads has been completed. On an annual basis, MAG tracks the progress made to pave dirt roads in the Maricopa County PM-10 Nonattainment Area. Significant progress has been made since 2009. The results will be presented.

8. Tentative Meeting Schedule for January-December 2015

The Tentative Meeting Schedule for the MAG Air Quality Technical Advisory Committee for January-December 2015 has been prepared. Please refer to the enclosed material.

9. Call for Future Agenda Items

The next meeting of the Committee has been tentatively scheduled for **Thursday, January 22, 2015 at 1:30 p.m.** The Chair 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.

9. For information and discussion.

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

Thursday, October 23, 2014  
MAG Office  
Phoenix, Arizona

MEMBERS ATTENDING

- William Mattingly, Peoria, Chairman
- Drew Bryck, Avondale
- Susan Avans for John Minear, Buckeye
- # Jim Weiss, Chandler
- \* Jamie McCullough, El Mirage
- Jessica Koberna, Gilbert
- Megan Sheldon, Glendale
- \* Cato Esquivel, Goodyear
- # Kazi Haque, Maricopa
- # Greg Edwards for Scott Bouchie, Mesa
- Joe Giudice for Philip McNeely, Phoenix
- Sam Brown for Tim Conner, Scottsdale
- Antonio DeLaCruz, Surprise
- Oddvar Tveit, Tempe
- \* Youngtown
- Ramona Simpson, Queen Creek
- # Walter Bouchard, American Lung Association of Arizona
- Kristin Watt, Salt River Project
- \* Rebecca Hudson, Southwest Gas Corporation
- \* Ann Carlton, Arizona Public Service Company
- # Gina Grey, Western States Petroleum Association
- Amanda Luecker for Robert Forrest, Valley Metro/RPTA
- \* Dave Berry, Arizona Motor Transport Association
- Jeannette Fish, Maricopa County Farm Bureau
- \* Steve Trussell, Arizona Rock Products Association
- Ashley Ferguson for Claudia Whitehead, Greater Phoenix Chamber of Commerce
- # Amanda McGennis, Associated General Contractors
- \* Spencer Kamps, Homebuilders Association of Central Arizona
- \* Mannie Carpenter, Valley Forward
- # Kai Umeda, University of Arizona Cooperative Extension
- Joonwon Joo for Beverly Chenausky, Arizona Department of Transportation
- \* Arizona Department of Environmental Quality
- \* Environmental Protection Agency
- Corky Martinkovic, Maricopa County Air Quality Department
- Scott DiBiase, Pinal County
- \* Michelle Wilson, Arizona Department of Weights and Measures
- \* Ed Stillings, Federal Highway Administration
- Judi Nelson, Arizona State University
- Stan Belone, 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
- Matt Poppen, Maricopa Association of Governments
- Julie Hoffman, Maricopa Association of Governments
- Kara Johnson, Maricopa Association of Governments
- Feng Liu, Maricopa Association of Governments
- Taejoo Shin, Maricopa Association of Governments
- Adam Xia, Maricopa Association of Governments
- Cathy Arthur, Maricopa Association of Governments
- Randy Sedlacek, Maricopa Association of Governments
- Patrick Shaw, Maricopa Association of Governments
- Dean Giles, Maricopa Association of Governments
- Bob Huhn, Maricopa County Air Quality Department
- Joe Gibbs, City of Phoenix
- Diane Arnst, Arizona Department of Environmental Quality

1. Call to Order

A meeting of the Maricopa Association of Governments (MAG) Air Quality Technical Advisory Committee (AQTAC) was conducted on October 23, 2014. William Mattingly, City of Peoria, Chair, called the meeting to order at approximately 1:30 p.m. Greg Edwards, City of Mesa; Jim Weiss, City of Chandler; Gina Grey, Western States Petroleum Association; Amanda McGennis, Associated General Contractors; Walter Bouchard, American Lung Association of Arizona; Kazi Haque, City of Maricopa; and Kai Umeda, University of Arizona Cooperative Extension, attended the meeting via telephone conference call.

Chair Mattingly indicated that copies of the handouts for the meeting are available. He noted for members attending through audio conference, the presentations for the meeting will be posted on the MAG website under Resources for the Committee agenda, whenever possible. If it is not possible to post them before the meeting, they will be posted after the meeting.

2. Call to the Audience

Chair Mattingly 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 that fall under the jurisdiction of MAG and nonaction agenda items. Chair Mattingly noted that no public comment cards had been received.

3. Approval of the September 23, 2014 Meeting Minutes

The Committee reviewed the minutes from the September 23, 2014 meeting. Ramona Simpson, Town of Queen Creek, moved and Jessica Koberna, Town of Gilbert, seconded and the motion to approve the September 23, 2014 meeting minutes, carried unanimously.

4. Evaluation of Proposed PM-10 Certified Street Sweeper Projects for FY 2015 CMAQ Funding

Dean Giles, Maricopa Association of Governments, presented the evaluation of proposed PM-10 Certified Street Sweeper Projects for Fiscal Year (FY) 2015 Congestion Mitigation and Air Quality Improvement (CMAQ) funding. The deadline for submitting project applications was September 30, 2014. Seventeen projects requesting approximately \$3.79 million in federal funds were evaluated. The FY 2015 Unified Planning Work Program and Annual Budget and FY 2014-2018 MAG Transportation Improvement Program contain \$1.4 million in FY 2015 CMAQ funding to encourage the purchase and utilization of PM-10 certified street sweepers. A minimum local cash match of 5.7 percent is required.

Mr. Giles stated that under the programming process, the MAG Street Committee is required to review the street sweeper applications. The MAG Street Committee met on October 14, 2014. Mr. Giles noted that comments made by the MAG Street Committee are provided in the agenda materials. MAG staff applied the CMAQ methodologies using the data supplied in the project applications to calculate the PM-10 emission reductions shown in the table as kilograms per day and cost-effectiveness as CMAQ dollar cost per annual metric ton of PM-10 reduced. Mr. Giles noted that the projects are displayed with the PM-10 emissions reductions in descending order of cost-effectiveness. He indicated that seven projects could be funded with the CMAQ funds currently available; the projects that are fully

funded include: two projects for the City of Phoenix; one project for the City of Peoria; one project for the City of Goodyear; and two projects for the City of Surprise. A portion of the funds are available for the Surprise number three project. The list of prioritized street sweeper projects are retained should additional funding be obtained through closeout or other regional funding. The MAG AQTAC is requested to recommend a prioritized list of proposed PM-10 Certified Street Sweeper Projects for FY 2015 CMAQ funding to be reviewed at the January 7, 2015 meeting of the MAG Management Committee. If recommended by the MAG Management Committee, the MAG Regional Council would consider the list of projects at their January 28, 2015 meeting.

Ms. Simpson inquired why the City of Phoenix projects have significantly higher daily emission reductions. Mr. Giles replied that the Phoenix street sweeper projects are replacing PM-10 certified street sweepers that were down significantly more time than other project street sweepers. In addition, he added that the Phoenix street sweepers will be sweeping in the Salt River area where silt loadings are higher than other areas resulting in higher emission reductions.

The Committee reviewed the prioritized list of proposed PM-10 Certified Street Sweeper Projects for FY 2015 CMAQ funding. Antonio DeLaCruz, City of Surprise, moved and Amanda McGennis, Associated General Contractors, seconded, and the motion to recommend the prioritized list of Proposed PM-10 Certified Street Sweeper Projects for FY 2015 CMAQ funding to the MAG Management Committee carried unanimously.

5. Update on the Arizona Center for Law in the Public Interest Lawsuit on the MAG 2012 Five Percent Plan for PM-10

Lindy Bauer, Maricopa Association of Governments, provided an update on the Arizona Center for Law in the Public Interest (ACLPI) lawsuit on the MAG 2012 Five Percent Plan for PM-10. On September 24, 2014, the MAG Regional Council approved MAG's Washington legal counsel to file a motion for MAG to intervene on behalf of the respondent in the lawsuit filed by ACLPI to challenge the Environmental Protection Agency (EPA) approval of the MAG 2012 Five Percent Plan for PM-10. MAG began coordinating closely with Maricopa County who had expressed interest in filing either a potential joint motion with MAG or an individual motion. The MAG Washington legal counsel worked with the Maricopa County Attorney's Office. After discussion, MAG was notified by its legal counsel today, October 23, 2014, that Maricopa County has decided to not file a joint motion to intervene. Since Maricopa County is a member of MAG, the MAG motion already represents the interests of the MAG members. Maricopa County may seek authorization to file an amicus brief in the event that it is necessary and/or appropriate. MAG will also file an individual brief. Ms. Bauer indicated that MAG's legal counsel anticipates filing the motion to intervene today, October 23, 2014. She stated that she will report back on if the court will allow MAG to intervene.

Ms. Bauer stated that on October 16, 2014, MAG received the ACLPI lawsuit brief which has been included in the agenda materials. She indicated that the brief raises issues on the following: exceptional events; Agricultural Best Management Practices Program; best available control measures and most stringent measures; and contingency measures. MAG's Washington legal counsel is reviewing the ACLPI brief that also mentions Pinal and Pima Counties. Ms. Bauer mentioned that EPA has now been given until December 17, 2014 to file the respondent's answering brief.

Chair Mattingly thanked Ms. Bauer for the update.

## 6. Update on the Winter Holiday No Burn Campaign and Speciation Analysis

Bob Huhn, Maricopa County Air Quality Department, provided an update on the No Burn Campaign and speciation analysis. He indicated that last year Maricopa County presented the No Burn Campaign to the Committee, which is a joint campaign between the Arizona Department of Environmental Quality (ADEQ) and Maricopa County Air Quality Department. The No Burn Campaign was initiated in 2013 to avoid nonattainment status for the 24-hour PM-2.5 standard. Mr. Huhn displayed a chart of the Maricopa County PM-2.5 annual average trends for years 2005 through 2013. He noted that a three year average is used to determine if the PM-2.5 standard has been met. Mr. Huhn stated that PM-2.5 levels were high in years 2011 and 2012. He commented that the concentrations came down in 2013, which is when the increased education of the No Burn Campaign was initiated. Mr. Huhn reported that 74 partners, some of which included cities, towns, governments, and the private sector, were involved in the successful 2013 No Burn Campaign. He discussed that ADEQ performed a post-campaign survey in which 64 percent of individuals who heard that it was a no burn day did not burn wood because of the message. Mr. Huhn commented that they were pleased with those results, however there is still room to improve. He stated that the campaign this year will be more aggressive in that it will start earlier in the year and aim to reach more people.

Mr. Huhn discussed fireworks with regard to PM-2.5 concentrations. He displayed a graph of the Glendale five minute PM-2.5 concentrations for New Years Eve 2013 and New Years Day 2014. The highest concentrations at the Glendale monitor were between 10:00 p.m. on New Years Eve and 2:00 a.m. New Years Day. The West Phoenix monitor reported the highest concentrations on New Years Eve. Mr. Huhn clarified that commercial firework displays were not creating the high spike in PM-2.5 concentrations. Consumer fireworks that are low to the ground attributed greatly to the high concentrations in PM-2.5. He indicated that consumer fireworks will be a focus of the 2014 campaign.

Corky Martinkovic, Maricopa County Air Quality Department, reported that special monitors were utilized last year to provide speciation analysis. The chemical signature for fireworks was analyzed for its impact on PM-2.5 concentrations. Ms. Martinkovic indicated that the speciation monitors will be utilized again this year for another speciation analysis with additional dates and times. The speciation will be active one in three days beginning November 19, 2014 through January 9, 2015. Additional sample dates of November 26<sup>th</sup> and 27<sup>th</sup> as well as December 24<sup>th</sup> and 31<sup>st</sup> have been included. Ms. Martinkovic indicated that Maricopa County staff further analyzed the speciation study from last year to determine even more sources for a more robust speciation analysis. She added that Maricopa County is looking to publish the speciation findings.

Mr. Huhn stated that ADEQ sponsored a nationwide video contest for the No Burn Campaign in which many schools in the region participated. He reported that approximately 15 videos were submitted. The first place video submission and a submission that received an honorable mention were played for the Committee. The 5<sup>th</sup> grader who submitted the first place video was surprised at a school assembly where her submission was recognized as receiving first place. Mr. Huhn added that No Burn Man, a character in the campaign, also participated in the assembly. The video will be placed on websites and used in the No Burn Campaign.

Mr. Huhn discussed the Palo Verde Emergency Education Center. He stated that this facility is going to allow governmental agencies to take advantage of the facility's auditorium and video staff at no cost.

Mr. Huhn indicated that an open house will be held at the Palo Verde facility for those agencies who do not have access to video equipment and staffing, but are interested in producing a show or educational media for the No Burn Campaign. Palo Verde is donating the facility, staffing, and video editing for organizations that would like to produce educational media. Mr. Huhn mentioned that this will be a very beneficial tool for spreading the campaign message that they did not have last year.

Mr. Huhn announced that there will be more grocery stores participating in the campaign this year. Last year, Bashas', AJ's Fine Foods, and Food City participated in the campaign. This year even more stores are included: Fry's, Safeway, Albertsons, Ranch Market, and Walmart. The participating grocery stores will have signage on no burn days by the wood, checkouts, entrances, and exits. In addition, audio spots will be played in the stores. The stores may also allow the campaign to advertise in the weekly newspaper advertisements which reach 1.5 million people each week. Mr. Huhn indicated that the campaign is appreciative of the grocery store participants effort which will greatly expand the number of people reached.

Mr. Huhn reported that the restaurant association will also be participating in the campaign this year. ADEQ has created a fun activity sheet for children to be passed out at participating family restaurants. Participating restaurants have also agreed to not burn fireplaces when it is a no burn day and help get the message out.

Mr. Huhn stated that ADEQ and Maricopa County are also working with Univision and La Voz. He discussed a Maricopa County Air Quality Department settlement for public outreach in specific geographic areas. Mr. Huhn indicated that south Phoenix and west Phoenix will be targeted because these areas have the highest PM-2.5 concentrations during the holidays. This is partly due to wind flow patterns and that the area has more wood burning fireplaces due to older homes. La Voz is setting up messages such as, health messages, no burn day education, and the importance of no burn days are currently being discussed within the Spanish outreach program. Univision has discussed participating in events and doing television public service announcements. Mr. Huhn discussed that these partnerships are a strong component in reaching a target audience and will be expanded this year.

Mr. Huhn discussed ideas that were utilized in the 2013 campaign that can be used this year. The following methods were discussed: Channel 11 public service announcements; space on billboards and messaging boards; social media; inserts for water bills; internal and external newsletters; messaging to employees; and fireworks messaging. Mr. Huhn stated that last year, billboard space was purchased for the campaign at a significant discount in which the billboard company gave two for one and three for one discounts. The campaign had about 20 billboards in 2013. Mr. Huhn asked that organizations utilize the campaign tools and materials, such as artwork, videos, and fact sheets, on their webpages and social media sites. He added that the Phoenix Sky Harbor Airport will be including campaign information in both an internal and external newsletter. Mr. Huhn indicated that the fireworks message is a key component of the 2014 campaign. He stated that ADEQ and Maricopa County are talking with the Phoenix Fire Department about getting the word out on fireworks, no burn days, and the health impacts to the public.

Mr. Huhn asked if the Committee had any ideas for the campaign. He thanked many organizations for their support in the 2013 No Burn Campaign and hope that many will participate in the 2014 campaign.

Ms. McGennis stated that the Associated General Contractors will commit to a billboard and that she would also speak to Friends of Transit and some contractors. Mr. Huhn added that logos of sponsors are included on the billboard as a way of thanks. Ms. McGennis asked if shortening commercial firework programs would help. Mr. Huhn responded that commercial fireworks do not contribute significantly to the high PM-2.5 concentrations; it is the consumer fireworks closer to the ground that contribute significantly to the PM-2.5 concentrations. He indicated that they would rather residents visit commercial fireworks instead of lighting consumer fireworks closer to the ground and that are near air quality monitors. Ms. Martinkovic stated that Phoenix Fire Department has agreed to talk about the No Burn Campaign as part of their firework safety message. She added that Maricopa County employees have also volunteered to ride along with enforcement officers on holidays such as Christmas Eve, Christmas Day, New Years Eve, and New Years Day to ensure safety when responding to firework calls.

Ms. Koberna inquired about firework legislation. Ms. Martinkovic replied that the topic is being discussed, however they are unsure if legislation is an option at this point. She noted that the subject is difficult, but they do hope the discussion will shed light on the subject and the consequences. Mr. Huhn indicated that the focus can be placed on urging residents to attend commercial firework displays. Ms. Koberna asked about a timeframe to receive campaign education materials. Mr. Huhn responded that the materials will be ready soon.

Chair Mattingly asked if Maricopa County will be contacting the cities and towns Public Information Offices. Mr. Huhn replied that he will be contacting them and the Public Information Offices can contact him for information as well.

#### 7. Update on the Ozone Monitoring Data

Julie Hoffman, Maricopa Association of Governments, provided an update on the ozone monitoring data. She stated that at the September Committee meeting, a list of ozone exceedances that had occurred in 2014 had been provided. Since that meeting, two additional ozone exceedances occurred on September 25, 2014 at the North Phoenix and Pinnacle Peak monitors. An updated list of the ozone exceedances for the 2014 ozone season, as well as, a table of the three year average of the fourth high values have been provided in the agenda materials. Ms. Hoffman noted that the three year average of the annual fourth high values did not change from what was reported in September. The region continues to have four violating monitors in 2014: North Phoenix; Supersite; Pinnacle Peak; and West Phoenix. This is down from the 10 violating monitors in 2013. This was an update on the ozone monitoring data for 2014 now that the ozone season is over.

#### 8. MAG Air Quality Technical Advisory Committee Vice Chair Vacancy - Letters of Interest

Ms. Bauer discussed the MAG Air Quality Technical Advisory Committee Vice Chair vacancy. On August 21, 2013, the MAG Regional Council approved MAG Committee Operating Policies and Procedures. In the event of a vacancy of the Chair position, the Vice Chair ascends to the Chair for the unexpired term of the previous Chair. MAG has a Vice Chair vacancy on the Air Quality Technical Advisory Committee. MAG is requesting that member agencies interested in the vacant Vice Chair position submit a letter of interest by October 27, 2014 to the MAG Regional Council Chair, Mayor Michael LeVault. Ms. Bauer indicated that a memorandum has been sent to the Committee, this is a reminder.

9. Call for Future Agenda Items

Chair Mattingly requested suggestions for future agenda items. He indicated that the next meeting of the Committee has been scheduled for Thursday, December 4, 2014 at 1:30 p.m. With no further comments, the meeting was adjourned at approximately 2:10 p.m.

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**THE UNITED STATES COURT OF APPEALS  
 FOR THE NINTH CIRCUIT**

SANDRA L. BAHR and DAVID )  
 MATUSOW, )  
 )  
 Petitioners, )

v. )

Case No. 14-72327

GINA McCARTHY, Administrator, )  
 United States Environmental Protection )  
 Agency; )  
 JARED BLUMENFIELD, Regional )  
 Administrator, EPA Region IX; and )  
 UNITED STATES )  
 ENVIRONMENTAL PROTECTION )  
 AGENCY, )

**MOTION FOR LEAVE TO  
 INTERVENE OUT OF TIME**

Respondents, )

STATE OF ARIZONA, )

Respondent-Intervenor. )

Pursuant to Rules 15(d), 26(b) and 27 of the Federal Rules of Appellate Procedure and Circuit Rule 27-1, the Maricopa Association of Governments (“Proposed Respondent-Intervenor”) hereby requests leave of the Court to intervene out of time as a Respondent in the above-captioned action.

Pursuant to Circuit Rule 27(h)(2), the undersigned counsel has conferred with counsel for each of the parties concerning this motion. Petitioner’s counsel advises that their clients oppose this motion. The Department of Justice advises that the Respondent U.S. Environmental Protection Agency takes no position on this motion, and counsel for Respondent-Intervenor State of Arizona advises that the State consents to the proposed intervention.

In support of this motion, Proposed Respondent-Intervenor states as follows;

1. The Court may, under Federal Rule of Appellate Procedure 26(b), accept an intervention out of time for “good cause.” Good cause exists in this case to allow the Proposed Respondent-Intervenor to move to intervene out of time and move to intervene on behalf of Respondent. As explained in more detail below, Respondent-Intervenor has unique interests that cannot be adequately represented by any other party.

2. In this case, Petitioners Sandra L. Bahr and David Matusow (No. 14-72327, filed July 29, 2014), petitioned for judicial review of EPA’s final rule

entitled “Approval and Promulgation of Implementation Plans—Maricopa County PM-10 Nonattainment Area; Five Percent Plan for Attainment of the 24-Hour PM-10 Standard,” 79 Fed. Reg. 33,107 (June 10, 2014) (the “Final Rule”). By order dated September 24, 2014, this Court granted the State of Arizona’s motion to intervene on behalf of Respondents.

3. In the Final Rule, EPA approved a State implementation plan (“SIP”) revision for coarse particulate matter (“PM-10”), specifically the Maricopa Association of Governments 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area (“MAG Five Percent Plan”) and the 2012 Five Percent Plan for the Pinal County Township 1 North, Range 8 East Nonattainment Area. PM-10 is a “criteria air pollutant” subject to regulation under the Clean Air Act (42 U.S.C. § 7401 et seq.). Under the Clean Air Act, EPA promulgated a federal standard (known as a national ambient air quality standard (“NAAQS”)) for PM-10 in 1987. States with areas that did not meet this NAAQS were subsequently required to first designate “nonattainment areas” for PM-10 and then submit SIPs to EPA that detailed, among other requirements, what measures would be taken to reduce air pollution contributing to exceedences of the PM-10 NAAQS. SIPs also required detailed modeling of how different measures would ultimately achieve the PM-10 NAAQS and when attainment of the standard would occur.

4. In its motion to intervene in this case, the State of Arizona detailed the long history of the PM-10 SIP for the Maricopa County PM-10 Nonattainment Area. *See generally* State of Arizona’s Motion for Leave to Intervene On Behalf of Respondent, Docket No. 7, at 2-5 (Aug. 28, 2014). In summary, since the Maricopa County PM-10 Nonattainment Area failed to attain the PM-10 NAAQS by the date originally specified in the Clean Air Act and by an extended date approved by EPA, a revised SIP providing for annual reductions of five percent of PM-10 and PM-10 precursors was required to be submitted. After withdrawing a plan submitted to EPA in 2007, Arizona submitted a SIP revision to EPA on May 24, 2012 that included the MAG 2012 Five Percent Plan. This revision was approved by EPA in the Final Rule.

5. SIPs are composed of many different elements and demonstrations concerning air quality and air quality planning. The revised SIP at issue in this litigation contains both State statutes and county rules and ordinances designed to address PM-10 emissions, including measures to address “fugitive dust” from various sources, control both outdoor and indoor fireplaces, and various commercial operations. The revised SIP also contains contingency measures requiring additional local control of PM-10 that must be undertaken if the nonattainment area fails to make reasonable further progress. *See* 42 U.S.C. § 7502(c)(9), 79 Fed. Reg. at 7,123-24. (A Table referencing Maricopa County Air

Quality Department Rules and the Maricopa County Ordinance contained in the MAG 2012 Five Percent Plan is appended as Attachment 1 to this motion).

6. Since the control measures contained in the MAG 2012 Five Percent Plan involve regulations and ordinances, an additional process was required at the state, county and local level to approve and put such measures in place. In some cases, additional legislative authority was required.

7. Proposed Respondent-Intervenor Maricopa Association of Governments (“MAG”)<sup>1</sup> was actively involved in the development of the revised SIP that is the subject of the challenged Final Rule. In particular, MAG filed comments in support of the proposed rule to approve the revised SIP (79 Fed. Reg. 7,118 (Feb. 6, 2014)). In their comments, MAG expressed overall support for the proposed rule and cited their collaborative efforts with EPA to develop an acceptable final plan.

8. Because the Final Rule addressed the concerns of MAG and served to approve the revised SIP, MAG did not petition this Court for review. If this Court were to vacate the Final Rule or to remand parts of the rule to EPA, however,

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<sup>1</sup> MAG is the regional air quality planning agency and metropolitan planning organization for transportation for all jurisdictions in Maricopa County, including the Phoenix urbanized area and the contiguous urbanized area in Pinal County, including the Town of Florence and City of Maricopa, Arizona. MAG was designated by the Governor of Arizona in 1978 and recertified by the Arizona Legislature in 1992 as the Regional Air Quality Planning Agency to develop air quality plans.

MAG would incur additional delay in having an approved PM-10 SIP in place and, as a result, suffer substantial economic harm.

9. Indeed, it is likely that if the revised SIP were vacated or remanded, MAG would need to develop new PM-10 control measures and quantify their effect on emissions, draft a detailed plan to replace all or part of the approved plan, undertake several highly technical demonstrations of the effect of control measures on air quality, and ultimately submit the revised plan to EPA for approval. The required effort would result in hundreds of hours of additional work by MAG employees and substantial costs to MAG.

10. It is also likely that the new approved measures would impose additional burdens on citizens and businesses located in the Maricopa County PM-10 Nonattainment Area. Current measures include requirements related to unpaved roads and shoulders, leaf blowers, vacant lots, off-road vehicle use and residential woodburning. *See* MAG 2012 Five Percent Plan for PM-10 For the Maricopa County Nonattainment Area, Executive Summary, May 2012 [Attachment 2]; Letter of Submittal, 2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area, Enclosure 1 (Appendices omitted), May 25, 2012 [Attachment 3].

11. As noted by the State of Arizona in its motion to intervene, significant resources would also be consumed to coordinate between various governmental

bodies involved in the development of a plan and to ensure public involvement, including public hearings. *See* State of Arizona's Motion for Leave to Intervene On Behalf of Respondent, Docket No. 7, at 4.

12. In addition, if the Final Rule were vacated or remanded, economic development in Maricopa County and the communities represented by MAG could be adversely affected due to lingering uncertainty with regard to the area's air quality status during the period of time necessary to develop and receive EPA approval of the new SIP measures. The revised SIP was submitted to EPA on May 25, 2012, yet EPA review and final approval of the plan was not concluded until June 10, 2014. 79 Fed. Reg. 33,107 cited *supra*.

13. Although MAG collaborated with EPA in the development of the revised SIP, MAG has interests in this litigation distinct from EPA. Under the Clean Air Act, 42 U.S.C. § 7410(k)(3), EPA is the agency that approves nonattainment SIPs. MAG and the State of Arizona, by contrast, are entities responsible for developing and implementing measures contained within the SIP. Thus, EPA and MAG serve fundamentally different roles: MAG must develop local control measures that can be enforced to reduce PM-10 emissions; EPA oversees this process and stands in the position to approve or disapprove the use or efficacy of various measures.

14. While MAG also collaborated with the State of Arizona in the revised SIP at issue in this case, the presence of the State as Intervenor also does not ensure that the unique interests of the County of Maricopa and other municipalities within the nonattainment area will be represented. As referenced above, measures contained within the revised SIP include a combination of state statutes and local rules and ordinances. MAG thus has a unique and direct interest in the statutes, rules and ordinances that were developed for specific application to the Maricopa County PM-10 Nonattainment Area. As also noted above, MAG has been designated as the agency responsible to develop air quality plans and thus would be required to draft any new plan.

15. Importantly, local governments remain primarily responsible for the implementation and enforcement of PM-10 control measures. They are the “front lines” of the intergovernmental effort to improve air quality. The County of Maricopa, a MAG member agency, operates an air quality monitoring network and compiles air quality data required to be reported to EPA. Consequently, MAG and its member agencies are in the best position to address issues concerning the effect of the approved PM-10 SIP revision on their citizenry.

16. Granting this motion for leave to file a motion for leave to intervene out of time and motion for leave to intervene will not prejudice the Petitioners. Petitioners’ filed their opening brief on October 17, 2014 (see Docket No. 11), and

they will have the ability to file an optional reply brief up to 15 days after the filing of the State of Arizona's Intervenor brief, which is currently due on December 1, 2014. To avoid any changes to the Court's briefing schedule for this case, Proposed Respondent-Intervenor would be prepared to file its brief concurrent with the State of Arizona's Intervenor brief.

WHEREFORE, Proposed Respondent-Intervenor respectfully requests that it be granted leave to file its motion to intervene out of time.

Respectfully submitted this 23rd date of October, 2014,

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### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 23, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: October 23, 2014

/s/ Chet Thompson

Maricopa County Air Quality Department Rules	Description	Effective Dates
310	Fugitive Dust from Dust-Generating Operations Adopted 1/27/10 and submitted to EPA 4/12/10 [Notice of Final Rulemaking 75 FR 78167; 12/15/10]	EPA approved effective 1/14/11
310.01	Fugitive Dust From Non-Traditional Sources of Fugitive Dust Adopted 1/27/10 and submitted to EPA 4/12/10 [Notice of Final Rulemaking 75 FR 78167; 12/15/10]	EPA approved effective 1/14/11
314	Open Outdoor Fires and Indoor Fireplaces at Commercial and Institutional Establishments Adopted 3/12/08 and submitted to EPA 7/10/08 [Notice of Final Rulemaking 74 FR 57612; 11/9/09]	EPA approved effective 1/8/10
316	Nonmetallic Mineral Processing Adopted 3/12/08 and submitted to EPA 7/10/08 [Notice of Final Rulemaking 74 FR 58553; 11/13/09]	EPA approved effective 1/8/10
Appendix C	Fugitive Dust Test Methods Adopted 3/26/08 and submitted to EPA 7/10/08 [Notice of Final Rulemaking 75 FR 78167; 12/15/10]	EPA approved effective 1/14/11
Maricopa County Ordinance	Description	Effective Dates
P-26	Residential Woodburning Restriction Adopted 3/26/08 and submitted to EPA 7/10/08; [Notice of Final Rulemaking 74 FR 57612; 11/9/09]	EPA approved effective 1/8/10
Appendices	Description	Effective Dates
Appendix C, Exhibit 1	Arizona Revised Statutes Listed in Table 4-1	
Appendix C, Exhibit 2	Maricopa County Resolution to Evaluate Measures in the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area	11/16/11
Appendix C, Exhibit 3	Arizona Department of Environmental Quality Dust Action General Permit	12/30/11
Appendix C, Exhibit 4	Arizona Department of Environmental Quality Commitment to Revise the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area if Necessary for the Emerging and Voluntary Measure	

# **MAG 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE MARICOPA COUNTY NONATTAINMENT AREA**

**MAY 2012**



# **MAG 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE MARICOPA COUNTY NONATTAINMENT AREA**

**Prepared by:**



**May 2012**

**Technical Assistance Provided By:**

**Arizona Department of Environmental Quality  
Arizona Department of Transportation  
Maricopa County Air Quality Department  
U.S. Environmental Protection Agency**

**MAG 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE  
MARICOPA COUNTY NONATTAINMENT AREA**

**TABLE OF CONTENTS**

<u>CHAPTER</u>		<u>PAGE</u>
	<b>EXECUTIVE SUMMARY .....</b>	<b>ES-1</b>
<b>ONE</b>	<b>INTRODUCTION .....</b>	<b>1-1</b>
	HISTORICAL BACKGROUND .....	1-2
	OUTLINE OF THE MAG 2012 FIVE PERCENT PLAN FOR PM-10 .....	1-4
<b>TWO</b>	<b>DESCRIPTION OF THE NONATTAINMENT AREA .....</b>	<b>2-1</b>
	NONATTAINMENT AREA BOUNDARIES .....	2-1
	GEOGRAPHY AND CLIMATIC CONDITIONS .....	2-3
<b>THREE</b>	<b>ASSESSMENT OF AIR QUALITY CONDITIONS .....</b>	<b>3-1</b>
	FORMATION OF PM-10 PARTICULATE POLLUTION .....	3-1
	PM-10 EMISSIONS INVENTORY .....	3-2
	AIR QUALITY MONITORING DATA AND TREND ANALYSIS .....	3-4
<b>FOUR</b>	<b>THE ADOPTED PLAN .....</b>	<b>4-1</b>
	MARICOPA COUNTY RESOLUTION TO EVALUATE MEASURES IN THE MAG 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE MARICOPA COUNTY NONATTAINMENT AREA .....	4-4
	ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY DUST ACTION GENERAL PERMIT .....	4-5

**TABLE OF CONTENTS (Continued)**

<u>CHAPTER</u>	<u>PAGE</u>
	ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY COMMITMENT TO REVISE THE MAG 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE MARICOPA COUNTY NONATTAINMENT AREA IF NECESSARY FOR THE EMERGING AND VOLUNTARY MEASURE ..... 4-6
	CONTINGENCY REQUIREMENT ..... 4-7
	ASSURANCES THAT THE STATE HAS THE AUTHORITY TO IMPLEMENT THE MEASURES IN THE PLAN ..... 4-7
	TRACKING IMPLEMENTATION ..... 4-8
<b>FIVE</b>	<b>DEMONSTRATION OF ANNUAL FIVE PERCENT REDUCTIONS IN PM-10 EMISSIONS ..... 5-1</b>
	MEASURES QUANTIFIED TO MEET THE FIVE PERCENT REDUCTION REQUIREMENT ..... 5-1
	DEMONSTRATION FOR THE FIVE PERCENT REDUCTION REQUIREMENT ..... 5-4
<b>SIX</b>	<b>ATTAINMENT DEMONSTRATION ..... 6-1</b>
	SALT RIVER AREA MODELING ..... 6-1
	PM-10 NONATTAINMENT AREA MODELING ..... 6-15
	REASONABLE FURTHER PROGRESS ..... 6-34
	CONTINGENCY REQUIREMENTS ..... 6-35
	ONROAD MOBILE SOURCE EMISSIONS BUDGET FOR CONFORMITY ..... 6-42
	EXPEDITIOUS ATTAINMENT ..... 6-43
	ATTAINMENT DATE ..... 6-44
	REQUEST FOR EXTENSION OF THE ATTAINMENT DATE FROM JUNE 6, 2012 TO DECEMBER 31, 2012 ..... 6-45

**MAG 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE MARICOPA COUNTY NONATTAINMENT AREA**

**LIST OF TABLES**

<u>TABLE</u>	<u>PAGE</u>
Table ES-1 2007-2012 Base Case PM-10 Emissions in the PM-10 Nonattainment Area . . . . .	ES-6
Table ES-2 Arizona Statutes, Maricopa County Rules, Maricopa County Ordinance, and Appendices to be Approved into the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area . . . . .	ES-8
Table ES-3 2008-2012 PM-10 Emissions with Increased Rule Effectiveness . . . . .	ES-11
Table ES-4 PM-10 Emission Reductions and Five Percent Reduction Requirements . . . . .	ES-13
Table ES-5 Miles of Roads/Alleys/Shoulders in PM-10 Reduction Projects . . . . .	ES-13
Table ES-6 2008-2012 PM-10 Reductions to Meet Contingency Requirements . . . . .	ES-14
Table ES-7 2008-2012 PM-10 Emissions with Five Percent Plan Measures and Contingency Projects . . . . .	ES-15
Table 3-1 Annual Emissions for the PM-10 Nonattainment Area from all Source Categories Included in the 2008 Periodic Emissions Inventory for PM-10 (English Tons/Year) . . . . .	3-3
Table 3-2 PM-10 Monitoring Stations . . . . .	3-6
Table 3-3 Exceedances of the 24-Hour PM-10 Standard, 2005 to 2007 . . . . .	3-10
Table 3-4 Exceedances of the 24-Hour PM-10 Standard, 2008 to 2010 . . . . .	3-11

**LIST OF TABLES (Continued)**

<u>TABLE</u>	<u>PAGE</u>
Table 4-1 Arizona Statutes, Maricopa County Rules, Maricopa County Ordinance, and Appendices to be Approved into the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area . . . . .	4-2
Table 5-1 Impact of Increased Rule Effectiveness on 2008-2012 PM-10 Emissions . . . . .	5-3
Table 5-2 2007-2012 Base Case PM-10 Emissions in the PM-10 Nonattainment Area . . . . .	5-5
Table 5-3 2008-2012 PM-10 Emissions with Increased Rule Effectiveness . . . . .	5-7
Table 5-4 PM-10 Emission Reductions and Five Percent Reduction Requirements . . . . .	5-8
Table 6-1 Maricopa County and PM-10 Nonattainment Area 24-Hour Average PM-10 Standard Exceedance Dates, Measured Concentrations and Associated Meteorological Conditions in 2007 . . . . .	6-3
Table 6-2 Base Case 2007 and Controlled 2012 High Wind PM-10 Emissions Inventories for May 4, 2007 Design Day at the West 43 <sup>rd</sup> Avenue Monitor . . . . .	6-11
Table 6-3 Annual Base Case 2007 and Controlled 2012 Low Wind PM-10 Emissions Inventories for the Salt River Area Low Wind Domain . . . . .	6-13
Table 6-4 2012 Attainment Demonstration High Wind Design Day (May 4, 2007) at the West 43 <sup>rd</sup> Avenue Monitor . . . . .	6-14
Table 6-5 24-Hour Average PM-10 Concentrations on the High Wind Design Day (June 6, 2007) . . . . .	6-16
Table 6-6 Base Case 2007 and Controlled 2012 High Wind PM-10 Emissions Inventories for June 6, 2007 Design Day at the Central Phoenix Monitor . . . . .	6-19

**LIST OF TABLES (Continued)**

<u>TABLE</u>	<u>PAGE</u>
Table 6-7	Base Case 2007 and Controlled 2012 High Wind PM-10 Emissions Inventories for June 6, 2007 Design Day at the Durango Complex Monitor ..... 6-20
Table 6-8	Base Case 2007 and Controlled 2012 High Wind PM-10 Emissions Inventories for June 6, 2007 Design Day at the Greenwood Monitor ..... 6-21
Table 6-9	Base Case 2007 and Controlled 2012 High Wind PM-10 Emissions Inventories for June 6, 2007 Design Day at the Higley Monitor ..... 6-22
Table 6-10	Base Case 2007 and Controlled 2012 High Wind PM-10 Emissions Inventories for June 6, 2007 Design Day at the West Phoenix Monitor ..... 6-23
Table 6-11	Base Case 2007 and Controlled 2012 High Wind PM-10 Emissions Inventories for June 6, 2007 Design Day at the West 43 <sup>rd</sup> Avenue Monitor ..... 6-24
Table 6-12	Annual Base Case 2007 and Controlled 2012 Low Wind PM-10 Emissions Inventories for the Central City Low Wind Domain ..... 6-25
Table 6-13	Annual Base Case 2007 and Controlled 2012 Low Wind PM-10 Emissions Inventories for the Higley Low Wind Domain ..... 6-26
Table 6-14	2012 Attainment Demonstration High Wind Design Day (June 6, 2007) at the Central Phoenix Monitor ..... 6-27
Table 6-15	2012 Attainment Demonstration High Wind Design Day (June 6, 2007) at the Durango Complex Monitor ..... 6-28
Table 6-16	2012 Attainment Demonstration High Wind Design Day (June 6, 2007) at the Greenwood Monitor ..... 6-29
Table 6-17	2012 Attainment Demonstration High Wind Design Day (June 6, 2007) at the Higley Monitor ..... 6-30
Table 6-18	2012 Attainment Demonstration High Wind Design Day (June 6, 2007) at the State Super Site Monitor ..... 6-31

**LIST OF TABLES (Continued)**

<u>TABLE</u>	<u>PAGE</u>
Table 6-19	2012 Attainment Demonstration High Wind Design Day (June 6, 2007) at the West Phoenix Monitor . . . . . 6-32
Table 6-20	2012 Attainment Demonstration High Wind Design Day (June 6, 2007) at the West 43 <sup>rd</sup> Avenue Monitor . . . . . 6-33
Table 6-21	Miles of Roads/Alleys/Shoulders in PM-10 Reduction Projects . . . . . 6-38
Table 6-22	2008-2012 PM-10 Reductions to Meet Contingency Requirements . . . . . 6-39
Table 6-23	2008-2012 PM-10 Emissions with Five Percent Plan Measures and Contingency Projects . . . . . 6-40

**MAG 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE MARICOPA COUNTY NONATTAINMENT AREA**

**LIST OF FIGURES**

<u>FIGURE</u>	<u>PAGE</u>
Figure ES-1	Number of 24-Hour PM-10 Exceedance Days ..... ES-3
Figure ES-2	Exceedances of the 24-Hour PM-10 Standard at Monitors in Maricopa County ..... ES-4
Figure ES-3	2008 PM-10 Emissions Inventory ..... ES-5
Figure ES-4	2012 PM-10 Emissions Inventory with Five Percent Plan Measures and Contingency Projects ..... ES-16
Figure 2-1	PM-10 Nonattainment Area and Municipal Planning Areas ..... 2-2
Figure 3-1	2008 PM-10 Emissions Inventory ..... 3-5
Figure 3-2	PM-10 Nonattainment Area and PM-10 Monitoring Sites ..... 3-7
Figure 3-3	Number of 24-Hour PM-10 Exceedance Days ..... 3-9
Figure 6-1	Summary of the Monitoring Conditions at West 43 <sup>rd</sup> Avenue on the High Wind Design Day (May 4, 2007) ..... 6-5
Figure 6-2	Summary of the Monitoring Conditions at West 43 <sup>rd</sup> Avenue on the High Wind Design Day (June 6, 2007) ..... 6-6
Figure 6-3	Summary of the Monitoring Conditions at Higley on the High Wind Design Day (June 6, 2007) ..... 6-7
Figure 6-4	Salt River Area Low Wind Domains and May 4, 2007 Hourly High Wind Back Trajectories and Associated Domains as Originating from West 43 <sup>rd</sup> Avenue Monitor ..... 6-8
Figure 6-5	PM-10 Nonattainment Area Low Wind Domains and June 6, 2007 Hourly High Wind Back Trajectories and Associated Domains ..... 6-17

**LIST OF FIGURES** (Continued)

<u>FIGURE</u>		<u>PAGE</u>
Figure 6-6	Demonstration of Reasonable Further Progress . . . . .	6-36
Figure 6-7	2012 PM-10 Emissions Inventory with Five Percent Plan Measures and Contingency Projects . . . . .	6-41

## **MAG 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE MARICOPA COUNTY NONATTAINMENT AREA**

### **APPENDICES**

#### **APPENDIX A**

Exhibit 1: 2008 PM-10 Periodic Emissions Inventory for the Maricopa County, Arizona, Nonattainment Area. Maricopa County Air Quality Department. Revised June 2011.

#### **APPENDIX B**

Exhibit 1: Technical Document in Support of the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area. Maricopa Association of Governments.

Exhibit 2: Calculation of Benefits from PM-10 Certified Street Sweepers Purchased with CMAQ Funds in 2001-2009.

#### **APPENDIX C**

Exhibit 1: Arizona Revised Statutes Listed in Table 4-1.

Exhibit 2: Maricopa County Resolution to Evaluate Measures in the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area.

Exhibit 3: Arizona Department of Environmental Quality Dust Action General Permit.

Exhibit 4: Arizona Department of Environmental Quality Commitment to Revise the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area if Necessary for the Emerging and Voluntary Measure.

#### **APPENDIX D**

Exhibit 1: Agricultural Best Management Practices Program.

#### **APPENDIX E**

Exhibit 1: Public Hearing Process Documentation.

Exhibit 2: Certification of Adoption.

# **MAG 2012 FIVE PERCENT PLAN FOR PM-10 FOR THE MARICOPA COUNTY NONATTAINMENT AREA**

## **EXECUTIVE SUMMARY**



## **MAG 2012 FIVE PERCENT PLAN FOR PM-10 EXECUTIVE SUMMARY**

Within the Maricopa County nonattainment area, the National Ambient Air Quality Standard has not yet been attained for PM-10 particulate pollution. The area is classified as a Serious Area under the Clean Air Act. The Maricopa Association of Governments (MAG) was designated by the Governor of Arizona in 1978 and recertified by the Arizona Legislature in 1992 to serve as the Regional Air Quality Planning Agency to develop plans to address air pollution problems. The plans are prepared through a coordinated effort with the Arizona Department of Environmental Quality (ADEQ), Arizona Department of Transportation, and Maricopa County Air Quality Department (MCAQD).

To meet the requirements of Section 189(d) of the Clean Air Act, the MAG 2007 Five Percent Plan for PM-10 was submitted to the Environmental Protection Agency (EPA) by the federal deadline of December 31, 2007. Collectively, the Five Percent Plan included fifty-three control measures from the State, Maricopa County, and local governments. The plan demonstrated that the measures would reduce PM-10 emissions by at least five percent per year and demonstrated attainment of the PM-10 standard in 2010. The region needed three years of clean data at the monitors in 2008, 2009 and 2010 in order for the region to be in attainment of the PM-10 standard in 2010. There have been no violations of the standard during stagnant conditions since the plan was submitted in 2007.

On September 9, 2010, EPA had published a notice of proposed partial approval and disapproval of the plan in the Federal Register. There were two major reasons for the proposed disapproval: the EPA nonconcurrence with four high wind exceptional events at the West 43<sup>rd</sup> Avenue monitor in 2008 resulted in a violation, which negated the attainment demonstration, and that the 2005 baseline emissions inventory was inaccurate since it overestimated construction and other emissions.

On January 25, 2011, the Arizona Department of Environmental Quality voluntarily withdrew the MAG 2007 Five Percent Plan for PM-10 to address technical approvability issues and include new information, such as the new EPA equation for paved road dust emissions. While the plan was withdrawn, the measures continue to be implemented to reduce PM-10.

Consequently, the MAG 2012 Five Percent Plan for PM-10 has been prepared to meet the requirements in Section 189(d) of the Clean Air Act and improve air quality in the Maricopa County nonattainment area. The plan is required to reduce PM-10 emissions by at least five percent per year until the standard is attained as measured by the monitors. The Clean Air Act specifies that the plan must be based upon the most recent emissions inventory for the area and also include a modeling demonstration of attainment. The 2012 Five Percent Plan is designed to be a replacement for the 2007 plan that was withdrawn.

The formation of PM-10 particulate pollution is dependent upon several factors. Among

these factors are stagnant air masses, severe temperature inversions in the winter, high winds from thunderstorms and frontal systems, and fine, silty soils characteristic of desert locations. In the nonattainment area, high PM-10 concentrations generally occur in September through March, on days with stagnant or near-stagnant conditions. High PM-10 concentrations can also occur during thunderstorm outflows and frontal systems which create high winds that entrain soil particles from bare surfaces.

The trend in PM-10 levels for the Maricopa County nonattainment area is presented in Figure ES-1. The 24-hour PM-10 standard is 150 micrograms per cubic meter. In 2008, there were 11 exceedance days of the 24-hour standard. Most of these exceedances were exceptional events. However, EPA did not concur with four high wind exceptional event days at the West 43<sup>rd</sup> Avenue monitor in 2008, resulting in a violation of the PM-10 standard. All of the seven exceedance days in 2009 have been flagged as exceptional events and EPA concurrence is pending. In 2010, only one exceedance day of the PM-10 standard occurred, which did not constitute a violation of the standard. Figure ES-2 indicates the monitors where exceedances have occurred.

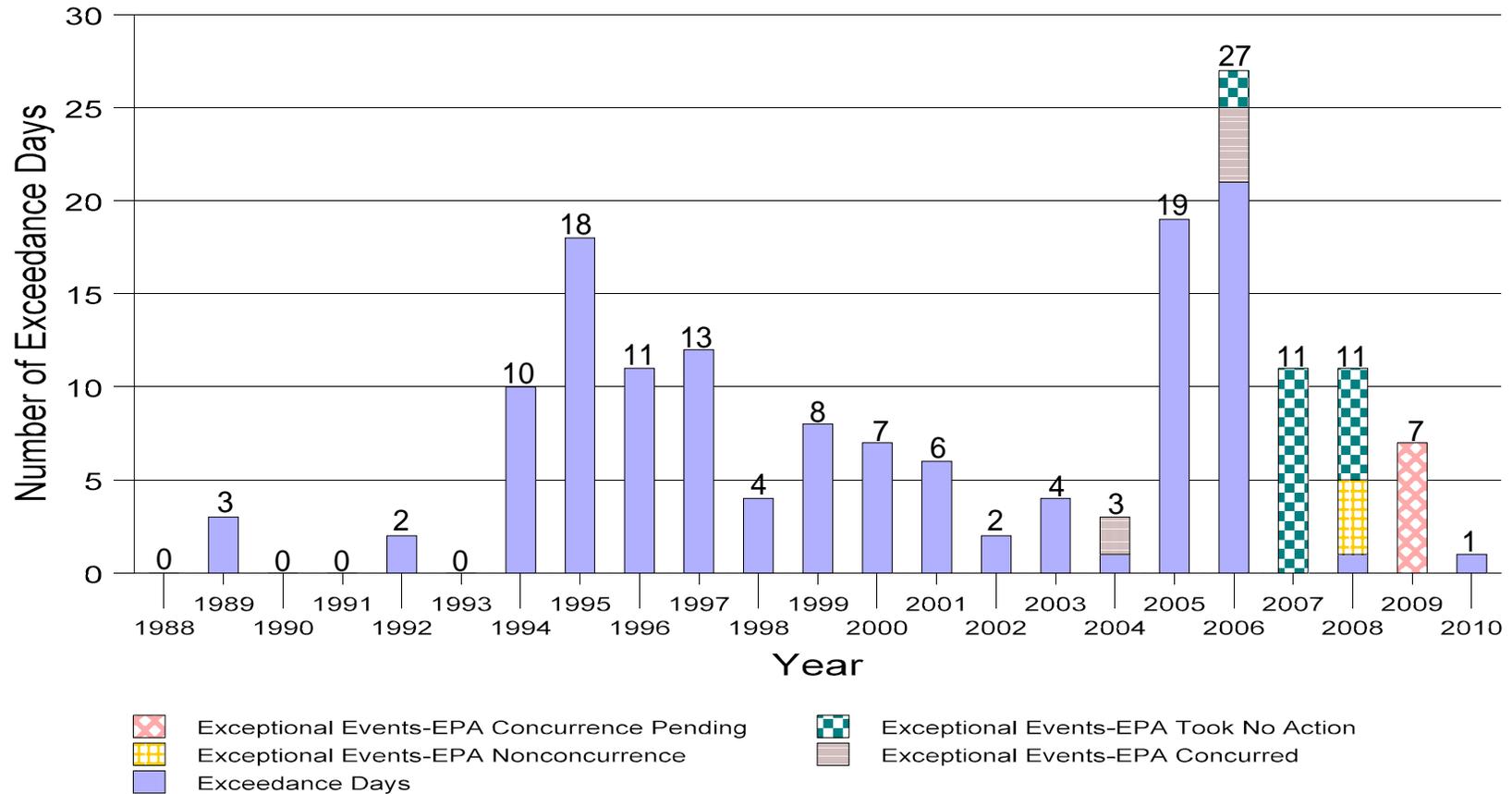
It is important to note that beginning in 2004, the Arizona Department of Environmental Quality began flagging exceptional events. These are uncontrollable natural events (e.g., high winds, wildfires) or human-caused events that are not expected to recur at a given location (e.g., fireworks). The data and a demonstration of the exceptional event are submitted to EPA for concurrence.

Based upon the Maricopa County Air Quality Department 2008 Periodic Emissions Inventory (PEI) for PM-10 for the Maricopa County Nonattainment Area, the primary sources of PM-10 are: Unpaved Road Fugitive Dust - 24 percent; Construction Activities (residential, commercial, road, and other earthmoving) - 17 percent; Paved Road Fugitive Dust - 14 percent; Windblown Dust - 10 percent; and Onroad Mobile Vehicle Exhaust, Tire Wear and Brake Wear - 7 percent. The remaining categories in the inventory individually contribute 6 percent or less to the total annual emissions. The sources are depicted in Figure ES-3.

The 2007 and 2009-2012 base case emissions were derived from the 2008 PEI emissions, using annual population and employment growth factors published in August 2011 by Marshall Vest of the Economic and Business Research Center at the University of Arizona. These projections are based on the 2010 U.S. Census and the latest economic forecasts for the Phoenix-Mesa metropolitan area. Since the economic outlook for Arizona remains extremely unstable, the actual population and employment levels in 2011 and 2012 may differ somewhat from the projections. However, the University of Arizona growth factors represent the most reliable data currently available.

The annual five percent reduction target was calculated by multiplying the total 2007 PM-10 emissions in Table ES-1 (59,218 tons) by five percent, which results in 2,961 tons. To meet the 189(d) requirement, the 2008 emissions must be at least 2,961 tons less than

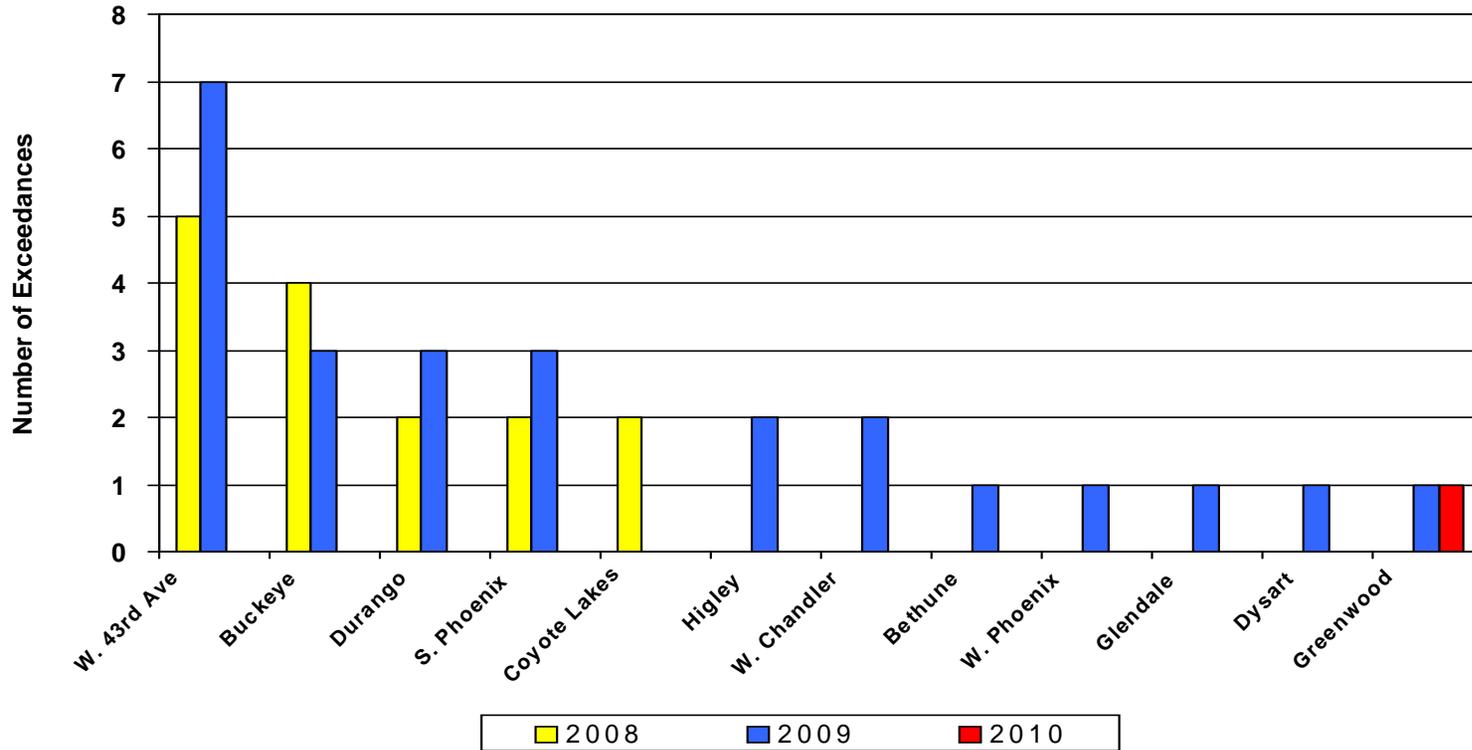
**Figure ES-1  
Number of 24-Hour PM-10 Exceedance Days**



Notes: -The Arizona Department of Environmental Quality began flagging exceptional events in 2004.  
 -The chart includes exceedance days at the Buckeye monitor, which is located outside the PM-10 nonattainment area.  
 -On July 19, 2007, the exceedance at the Buckeye monitor was not associated with the exceptional event that also occurred on that day.

Sources: 1988 - 1997 - Revised MAG 1999 Serious Area Particulate Plan for PM-10 for the Maricopa County Nonattainment Area, February 2000.  
 1998 - 2010 - EPA Air Quality System.

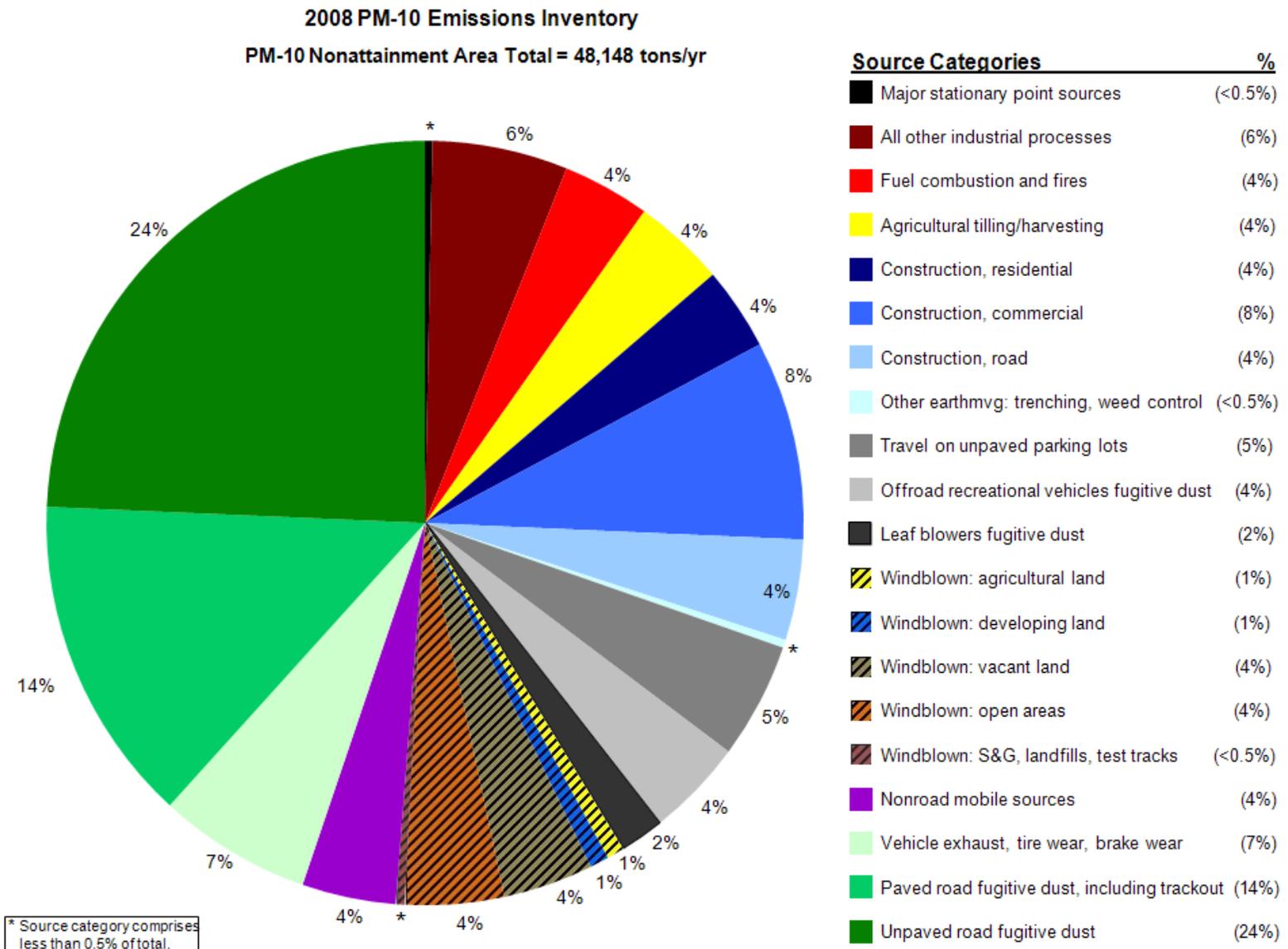
**Figure ES-2**  
**Exceedances of the 24-Hour PM-10 Standard at Monitors in Maricopa County**



Notes:

1. Exceedances are based on data from the EPA Air Quality System (AQS).
2. All exceedances in 2008 except for one at the Durango Complex monitor have been flagged as exceptional events. EPA did not concur with four exceptional events at the West 43<sup>rd</sup> Avenue monitor and has not taken action on the remaining events.
3. All exceedances in 2009 have been flagged as exceptional events. EPA concurrence is pending.
4. The one exceedance in 2010 was not flagged as an exceptional event.
5. The chart includes exceedances from the Buckeye monitor, which is outside the PM-10 nonattainment area.

Figure ES-3



ES - 5

**Table ES-1**  
**2007-2012 Base Case PM-10 Emissions in the PM-10 Nonattainment Area**

Source Category	2007	2008	2009	2010	2011	2012
	(tons/year)					
<b>POINT</b>	159	150	133	127	128	135
<b>AREA</b>						
Fuel combustion	1,276	1,301	1,307	1,311	1,316	1,328
Commercial cooking	974	993	998	1,001	1,005	1,014
Construction (includes windblown dust)	16,672	13,811	9,692	8,359	8,102	8,223
Tilling, harvesting and cotton ginning	936	893	893	893	893	893
Travel on unpaved farm roads	769	731	731	731	731	731
Livestock	261	261	261	261	261	261
Travel on unpaved parking lots	2,376	2,422	2,434	2,441	2,451	2,473
Offroad recreational vehicles	2,139	2,180	2,191	2,198	2,206	2,226
Leaf blowers	878	895	899	902	906	914
Windblown agriculture	448	448	448	448	448	448
Other windblown sources	5,430	5,430	5,430	5,430	5,430	5,430
Fires	497	497	497	497	497	497
Mining/quarrying (includes windblown dust)	752	721	661	641	643	667
Travel on industrial paved/unpaved roads	771	728	645	618	621	654
Other industrial sources	1,033	976	865	828	832	877
<b>NONROAD</b>						
Aircraft	194	184	152	142	143	146
Airport ground support equipment	29	27	23	21	20	20
Locomotives	34	34	34	34	34	34
Other nonroad equipment	1,710	1,683	1,661	1,641	1,595	1,513
<b>ONROAD</b>						
Exhaust	2,943	2,836	2,647	2,371	1,843	1,407
Tire wear	246	256	257	257	258	261
Brake wear	728	758	767	771	773	787
Paved roads	7,749	8,155	8,214	8,289	8,323	8,422
Unpaved roads and alleys	10,218	10,312	10,284	10,284	10,284	10,312
<b>Totals</b>	<b>59,218</b>	<b>56,681</b>	<b>52,123</b>	<b>50,497</b>	<b>49,743</b>	<b>49,673</b>

the 2007 base case emissions. Each year after 2008 imposes yet another 2,961 ton reduction requirement. Thus, the cumulative reduction requirements (relative to 2007 base case emissions) are at least 5,922 tons in 2009, 8,883 tons in 2010, 11,844 tons in 2011, and 14,805 tons in 2012.

The new MAG 2012 Five Percent Plan for PM-10 contains a wide variety of existing control measures and projects that have been implemented to reduce PM-10 and a new measure designed to reduce PM-10 during high risk conditions, including high winds. While the 2007 Five Percent Plan was withdrawn, a wide range of control measures in that plan continue to be implemented to reduce PM-10 and are being resubmitted. Table ES-2 includes the Arizona Statutes, Maricopa County Rules, a Maricopa County Ordinance, and Appendices for the resubmitted measures and a new high risk measure to be approved into the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area. The 2012 Five Percent Plan also includes contingency measures that were implemented early such as PM-10 certified street sweeping on freeways and arterials, as well as the projects completed in 2008-2011 that paved and stabilized unpaved roads, alleys and shoulders; reduced speed limits; and overlaid highways with rubberized asphalt.

As described in Table ES-2, the Arizona Statutes, Maricopa County Rules, and Maricopa County Ordinance include requirements to reduce PM-10 emissions from a broad range of sources. The requirements apply to unpaved roads and shoulders, leaf blowers, unpaved parking lots, vacant lots, sweeping streets with certified sweepers, off-road vehicle use, open and recreational burning, residential woodburning, covered vehicle loads, dust generating operations, nonmetallic mineral processing, and other unpermitted sources.

To meet the annual five percent reduction requirement in Section 189(d) of the Clean Air Act, the MAG 2012 Five Percent Plan takes credit for increases in rule effectiveness for Maricopa County Rules 310 (Fugitive Dust from Dust-Generating Operations), 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust) and 316 (Nonmetallic Mineral Processing). The increases in rule effectiveness are attributable to strengthened enforcement and increased compliance with these rules. EPA has approved Rules 310 and 310.01 in 2010 and Rule 316 in 2009, as part of the State Implementation Plan. Compliance with these rules has increased every year since 2007.

These Maricopa County rules also reduce emissions from a wide variety of sources and apply to the Maricopa County area. Maricopa County Rule 310 (Fugitive Dust from Dust-Generating Operations) regulates fugitive dust emissions from sources and activities such as: land clearing, earthmoving, weed abatement, excavating, construction, demolition, bulk material handling, storage and transporting operations, outdoor equipment, motorized machinery, staging areas, parking areas, material storage areas, haul roads, disturbed surface areas, initial landscapes and trackout onto paved surfaces from these sources.

Maricopa County Rule 310.01 (Fugitive Dust from Non-Traditional Sources of Fugitive Dust) regulates fugitive dust emissions from sources and activities such as: vehicle use in

**Table ES-2**  
**Arizona Statutes, Maricopa County Rules, Maricopa County Ordinance,**  
**and Appendices to be Approved into the MAG 2012 Five Percent Plan for PM-10**  
**for the Maricopa County Nonattainment Area**

Arizona Revised Statutes (A.R.S.)	Description	Effective Dates
A.R.S. § 9-500.04. Only A.3., A.5., A.6., A.7., A.8., A.9. and H.	Air quality control; definitions [city and town requirements in Area A regarding targeting unpaved roads and shoulders; leaf blower restrictions; restrictions related to parking, maneuvering, ingress and egress areas and vacant lots; requirement for certified street sweepers]	9/19/07
A.R.S. § 9-500.27.	Off-road vehicle ordinance; applicability; violation; classification	9/19/07
A.R.S. § 11-871. Only A., B. and D.4.	Emissions control; no burn; exemptions; penalty [no burn restriction for any HPA day, increased civil penalty]	9/19/07
A.R.S. § 11-877.	Air quality control measures [county leaf blower restrictions]	9/19/07
A.R.S. § 28-1098. Only A. and C.1.	Vehicle loads; restrictions; civil penalties [for safety or air pollution prevention purpose]	9/19/07
A.R.S. § 49-424. Only 11.	Duties of department [develop and disseminate air quality dust forecasts for the Maricopa County PM-10 nonattainment area]	7/20/11
A.R.S. § 49-457.01.	Leaf blower use restrictions and training; leaf blower equipment sellers; informational material; outreach; applicability	9/19/07
A.R.S. § 49-457.03.	Off-road vehicles; pollution advisory days; applicability; penalties	9/19/07
A.R.S. § 49-457.04.	Off-highway vehicle and all-terrain vehicle dealers; informational material; outreach; applicability	9/19/07
A.R.S. § 49-457.05. Only A., B., C., D. and I.	Dust action general permit; best management practices; applicability; definitions	7/20/11
A.R.S. § 49-474.01. Only A.4., A.5., A.6., A.7., A.8., A.11., B. and H.	Additional board duties in vehicle emissions control areas; definitions [county requirements for stabilization of targeted unpaved roads, alleys and shoulders; restrictions related to parking, maneuvering, ingress and egress areas and vacant lots; requirement for certified street sweepers]	9/19/07
A.R.S. § 49-474.05.	Dust control; training; site coordinators	9/19/07
A.R.S. § 49-474.06.	Dust control; subcontractor registration; fee	9/19/07
A.R.S. § 49-501. Only A.2., B.1., C., F. and G.	Unlawful open burning; exceptions; civil penalty; definitions [ban on outdoor fires from May 1 to September 30; deletion of recreational purpose exemption; no burn day restrictions; penalty provision]	9/19/07
A.R.S. § 49-541. Only 1.	Definitions [Area A]	8/9/01

**Table ES-2 Continued**

Maricopa County Air Quality Department Rules	Description	Effective Dates
310	Fugitive Dust from Dust-Generating Operations Adopted 1/27/10 and submitted to EPA 4/12/10 [Notice of Final Rulemaking 75 FR 78167; 12/15/10]	EPA approved effective 1/14/11
310.01	Fugitive Dust From Non-Traditional Sources of Fugitive Dust Adopted 1/27/10 and submitted to EPA 4/12/10 [Notice of Final Rulemaking 75 FR 78167; 12/15/10]	EPA approved effective 1/14/11
314	Open Outdoor Fires and Indoor Fireplaces at Commercial and Institutional Establishments Adopted 3/12/08 and submitted to EPA 7/10/08 [Notice of Final Rulemaking 74 FR 57612; 11/9/09]	EPA approved effective 1/8/10
316	Nonmetallic Mineral Processing Adopted 3/12/08 and submitted to EPA 7/10/08 [Notice of Final Rulemaking 74 FR 58553; 11/13/09]	EPA approved effective 1/8/10
Appendix C	Fugitive Dust Test Methods Adopted 3/26/08 and submitted to EPA 7/10/08 [Notice of Final Rulemaking 75 FR 78167; 12/15/10]	EPA approved effective 1/14/11
Maricopa County Ordinance	Description	Effective Dates
P-26	Residential Woodburning Restriction Adopted 3/26/08 and submitted to EPA 7/10/08; [Notice of Final Rulemaking 74 FR 57612; 11/9/09]	EPA approved effective 1/8/10
Appendices	Description	Effective Dates
Appendix C, Exhibit 1	Arizona Revised Statutes Listed in Table 4-1	
Appendix C, Exhibit 2	Maricopa County Resolution to Evaluate Measures in the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area	11/16/11
Appendix C, Exhibit 3	Arizona Department of Environmental Quality Dust Action General Permit	12/30/11
Appendix C, Exhibit 4	Arizona Department of Environmental Quality Commitment to Revise the MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area if Necessary for the Emerging and Voluntary Measure	

open areas and vacant lots, open areas, vacant lots, unpaved parking lots, unpaved roadways (including alleyways), easements, rights-of-way, access roads and trackout onto paved surfaces from these activities.

Maricopa County Rule 316 (Nonmetallic Mineral Processing) regulates fugitive dust and process dust emissions from sources and activities such as: mining, excavating, separating, combining, crushing and grinding any nonmetallic mineral, asphaltic concrete plants, raw material storage and distribution, concrete plants, bagging operations, open storage piles, material handling, haul roads, and trackout onto paved surfaces from these sources.

Emissions reduction credit is also taken for one new measure, the Dust Action General Permit, which was passed by the Arizona Legislature in April 2011. In accordance with A.R.S. § 49-457.05, this Dust Action General Permit identifies a series of Best Management Practices (BMPs) for specific dust generating operations. When ADEQ's Maricopa County Dust Control Forecast predicts that a day is at high risk for dust generation, those dust generating operations that are not already required to control dust through a permit issued by the Arizona Department of Environmental Quality or the Maricopa County Air Quality Department are expected to choose and implement at least one BMP to reduce or prevent PM-10 emissions. Implementation of a BMP is expected to occur as soon as practicable before and during the high risk event. Although the BMPs in the Dust Action General Permit only apply to those sources that do not already have a permit, even dust generating operations with an air quality permit are also expected to implement the dust controls in their permit at the same time.

According to state statute, BMPs identified in the Dust Action General Permit are expected to be employed absent the requirement to obtain an air quality permit. If the owner or operator of a dust-generating operation is found by ADEQ's Director to have failed to choose and implement an applicable BMP as soon as practicable before and during a day that is forecast to be at high risk of dust generation, then the owner or operator can be required to obtain an Authorization to Operate under the Dust Action General Permit.

This new measure is expected to raise rule effectiveness for Rule 310.01 by one percent during high wind hours and was fully implemented by January 1, 2012. Credit for this measure is allowed under the EPA guidance, *Incorporating Emerging and Voluntary Measures in a State Implementation Plan*. The measures used to demonstrate the annual five percent reductions are also necessary to model attainment of the PM-10 standard under high wind conditions at all monitors as expeditiously as practicable, which is 2012.

Table ES-3 shows the impact of the increases in rule effectiveness on PM-10 emissions in 2008 through 2012. This table also quantifies the annual five percent reductions for 2008 through 2012. The total reduction in PM-10 emissions between 2007 and 2012 with the increases in rule effectiveness is 16,089 tons, which represents a 27.2 percent reduction in total 2007 base case emissions.

**Table ES-3  
2008-2012 PM-10 Emissions with Increased Rule Effectiveness**

Source Category	2008	2009	2010	2011	2012
	(tons/year)				
<b>POINT</b>	150	133	127	128	135
<b>AREA</b>					
Fuel combustion	1,301	1,307	1,311	1,316	1,328
Commercial cooking	993	998	1,001	1,005	1,014
Construction (includes windblown dust)	8,355	5,333	4,139	4,014	4,073
Tilling, harvesting and cotton ginning	893	893	893	893	893
Travel on unpaved farm roads	731	731	731	731	731
Livestock	261	261	261	261	261
Travel on unpaved parking lots	2,422	2,434	2,441	2,451	2,473
Offroad recreational vehicles	2,180	2,191	2,198	2,206	2,226
Leaf blowers	895	899	902	906	914
Windblown agriculture	448	448	448	448	448
Other windblown sources	3,938	3,788	3,788	3,788	3,639
Fires	497	497	497	497	497
Mining/quarrying (includes windblown dust)	476	401	355	356	369
Travel on industrial paved/unpaved roads	472	382	331	333	351
Other industrial sources	976	865	828	832	877
<b>NONROAD</b>					
Aircraft	184	152	142	143	146
Airport ground support equipment	27	23	21	20	20
Locomotives	34	34	34	34	34
Other nonroad equipment	1,683	1,661	1,641	1,595	1,513
<b>ONROAD</b>					
Exhaust	2,836	2,647	2,371	1,843	1,407
Tire wear	256	257	257	258	261
Brake wear	758	767	771	773	787
Paved roads	8,155	8,214	8,289	8,323	8,422
Unpaved roads and alleys	10,312	10,284	10,284	10,284	10,312
<b>Totals</b>	<b>49,231</b>	<b>45,600</b>	<b>44,062</b>	<b>43,438</b>	<b>43,130</b>
<b>5% Reduction Targets (tons/year)</b>	<b>2,961</b>	<b>5,922</b>	<b>8,883</b>	<b>11,844</b>	<b>14,805</b>
<b>Actual Plan Reductions (tons/year)</b>	<b>9,987</b>	<b>13,618</b>	<b>15,157</b>	<b>15,781</b>	<b>16,089</b>

Table ES-4 confirms that the annual five percent reduction requirements are met in 2008-2012 and there is a surplus margin of benefit in each year. The total surplus in 2012 is 1,284 tons. This surplus is needed to model attainment at all monitors in the PM-10 nonattainment area by December 31, 2012.

In accordance with the Clean Air Act, the MAG 2012 Five Percent Plan for PM-10 also includes contingency measures. The contingency measures are required to achieve emissions reductions beyond those measures relied upon to model attainment of the standard and demonstrate progress toward attainment (five percent reductions, reasonable further progress, and milestones). They are required to be undertaken without further action by the State or the EPA Administrator if the area fails to make reasonable further progress or meet the standard by the attainment date. EPA encourages early implementation of contingency measures to reduce emissions as expeditiously as practicable.

EPA guidance indicates that contingency measures should provide emissions reductions equivalent to one year of reasonable further progress. For the Five Percent Plan, one year of reasonable further progress is equivalent to a reduction in PM-10 emissions of 3,218 tons.

The contingency requirement is met in the MAG 2012 Five Percent Plan by quantifying projects that were completed in 2008-2011. A summary of the miles of roads, alleys and shoulders impacted by the paving and stabilization, speed limit reduction, and rubberized asphalt overlay projects that were quantified to meet the contingency requirement is presented in Table ES-5. These PM-10 reduction projects were implemented in the PM-10 nonattainment area by twenty-one cities and towns, Maricopa County, Pinal County, Arizona Department of Transportation and the Gila River Indian Community. All of the projects for which credit was taken were open to traffic by September 2011.

The emissions reductions for all measures quantified to meet the contingency requirement are summarized in Table ES-6. Table ES-6 includes the benefits of the PM-10 certified street sweeping on freeways and arterials, as well as the projects completed in 2008-2011 that paved and stabilized unpaved roads, alleys and shoulders; reduced speed limits; and overlaid highways with rubberized asphalt. The total PM-10 emissions reduction in 2012 is 3,439 tons, which exceeds the contingency target of 3,218 tons by 221 tons.

The total 2012 PM-10 emissions, with the air quality benefits from the wide variety of control measures and contingency projects applied, are 39,691 tons per year (see Table ES-7), which represents a reduction, relative to 2007 base case PM-10 emissions, of 19,527 tons or 33 percent. A pie chart of the 2012 nonattainment area PM-10 emissions with the five percent measures and contingency projects applied is shown in Figure ES-4.

For conformity analyses, the onroad mobile source emissions budget includes reentrained dust from travel on paved roads; vehicular exhaust, tire wear, and brake wear; travel on unpaved roads; and road construction. In 2012, the PM-10 emissions from these four source categories total 54.9 metric tons per day for the PM-10 nonattainment area. This represents the onroad mobile source emissions budget for conformity.

**Table ES-4**  
**PM-10 Emission Reductions and Five Percent Reduction Requirements**

Year	5% Reduction Requirement	Total PM-10 Emission Reductions due to Increases in Rule Effectiveness	Excess Benefit = Total PM-10 Emission Reductions minus 5% Reduction Requirement	
	(tons/year)	(tons/year)	(tons/year)	(%)
<b>2008</b>	2,961	9,987	7,026	237%
<b>2009</b>	5,922	13,618	7,696	130%
<b>2010</b>	8,883	15,157	6,274	71%
<b>2011</b>	11,844	15,781	3,937	33%
<b>2012</b>	14,805	16,089	1,284	9%

**Table ES-5**  
**Miles of Roads/Alleys/Shoulders in PM-10 Reduction Projects**

Miles Impacted by Project Type	2008	2009	2010	2011	Total 2008-2011
Miles of dirt roads paved	41	18	8	16	83
Miles of dirt roads stabilized	39	39	36	31	145
Miles of dirt alleys paved	66	4	0	63	134
Miles of dirt alleys stabilized	164	106	124	106	501
Total miles of roads/alleys paved & stabilized	310	168	168	216	862
Miles of dirt shoulders paved	70	107	49	6	233
Miles of curb and gutter paved	19	0	0	0	19
Miles of dirt shoulders stabilized	235	236	236	200	906
Total miles of shoulders paved & stabilized	324	343	285	207	1,158
Miles of roads/alleys with lower speed limits	7	11	3	0	20
Miles of highway overlaid w/rubberized asphalt	13	0	0	0	13

**Table ES-6  
2008-2012 PM-10 Reductions to Meet Contingency Requirements**

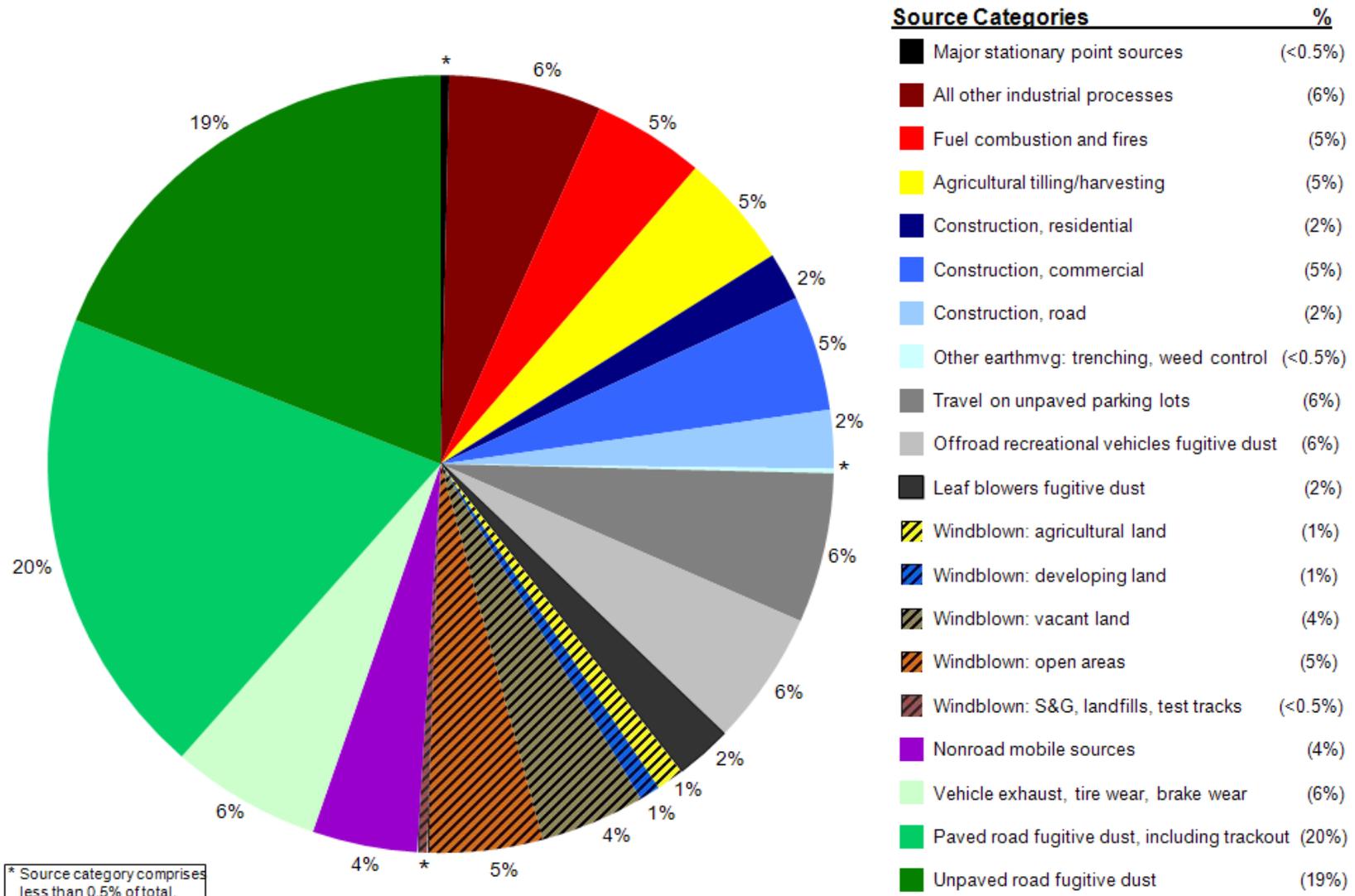
Completed Projects	Implementing Entities	2008	2009	2010	2011	2012
		(tons/year)				
<b>Sweep streets with PM-10 certified sweepers</b> Contracted sweeping of freeways, ramps and frontage roads - 100% compliant, effective 2/20/10 25 PM-10 certified sweepers purchased with CMAQ funds: 1/1/07-12/31/09	ADOT	0	0	294	342	344
	Cities, towns	59	116	153	154	155
	<b>Total for Street Sweeping</b>	<b>59</b>	<b>116</b>	<b>447</b>	<b>495</b>	<b>499</b>
<b>Pave or stabilize existing public dirt roads and alleys</b> Paving/stabilization projects completed in 2008-2011	Cities, towns, Maricopa and Pinal County, and Gila River Indian Community	461	1,352	2,124	2,662	2,625
	<b>Total for Road/Alley Paving/Stabilization</b>	<b>461</b>	<b>1,352</b>	<b>2,124</b>	<b>2,662</b>	<b>2,625</b>
<b>Lower speed limits on dirt roads and alleys</b> Speed limits lowered in 2008-2011	Cities, towns, Maricopa County	4	78	161	161	161
	<b>Total for Lower Speed Limits</b>	<b>4</b>	<b>78</b>	<b>161</b>	<b>161</b>	<b>161</b>
<b>Pave or stabilize unpaved shoulders</b> Paving/stabilization projects completed in 2008-2011	Cities, towns, Maricopa County	173	242	265	293	150
	<b>Total for Shoulder Paving/Stabilizing</b>	<b>173</b>	<b>242</b>	<b>265</b>	<b>293</b>	<b>150</b>
<b>Repave or overlay paved roads with rubberized asphalt</b> Rubberized asphalt overlays completed in 2008-2011	ADOT	0	3	3	3	3
	<b>Total for Overlays</b>	<b>0</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b>Total for Completed Projects</b>		<b>697</b>	<b>1,790</b>	<b>2,999</b>	<b>3,614</b>	<b>3,439</b>

**Table ES-7  
2008-2012 PM-10 Emissions with Five Percent Plan Measures  
and Contingency Projects**

<b>Source Category</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>POINT</b>	150	133	127	128	135
<b>AREA</b>					
Fuel combustion	1,301	1,307	1,311	1,316	1,328
Commercial cooking	993	998	1,001	1,005	1,014
Construction (includes windblown dust)	8,355	5,333	4,139	4,014	4,073
Tilling, harvesting and cotton ginning	893	893	893	893	893
Travel on unpaved farm roads	731	731	731	731	731
Livestock	261	261	261	261	261
Travel on unpaved parking lots	2,422	2,434	2,441	2,451	2,473
Offroad recreational vehicles	2,180	2,191	2,198	2,206	2,226
Leaf blowers	895	899	902	906	914
Windblown agriculture	448	448	448	448	448
Other windblown sources	3,938	3,788	3,788	3,788	3,639
Fires	497	497	497	497	497
Mining/quarrying (includes windblown dust)	476	401	355	356	369
Travel on industrial paved/unpaved roads	472	382	331	333	351
Other industrial sources	976	865	828	832	877
<b>NONROAD</b>					
Aircraft	184	152	142	143	146
Airport ground support equipment	27	23	21	20	20
Locomotives	34	34	34	34	34
Other nonroad equipment	1,683	1,661	1,641	1,595	1,513
<b>ONROAD</b>					
Exhaust	2,836	2,647	2,371	1,843	1,407
Tire wear	256	254	255	255	259
Brake wear	758	767	771	773	787
Paved roads	7,922	7,857	7,578	7,534	7,772
Unpaved roads and alleys	9,847	8,854	7,999	7,461	7,525
<b>Totals</b>	<b>48,534</b>	<b>43,810</b>	<b>41,062</b>	<b>39,823</b>	<b>39,691</b>
<b>Total PM-10 Emissions Reduction 2007-2012:</b>	<b>19,527 tons, 33.0%</b>				

Figure ES-4

2012 PM-10 Emissions Inventory with Five Percent Plan Measures and Contingency Projects  
 PM-10 Nonattainment Area Total = 39,691 tons/yr





Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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



Henry R. Darwin  
Director

May 25, 2012

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

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

Dear Mr. ~~Blumenfeld~~ <sup>Sarced</sup>:

Consistent with the provisions of Arizona Revised Statutes §§49-104, 49-404 and 49-406 and the Code of Federal Regulations Title 40 §§51.102 through 51.104, the Arizona Department of Environmental Quality (ADEQ) hereby adopts and submits to the U.S. Environmental Protection Agency (EPA) one hard copy and one compact disk of those portions of Arizona Revised Statutes listed in Table 1 below and of the four Appendices listed in Table 1 below for approval into the Arizona State Implementation Plan for the *2012 Five Percent Plan for PM-10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area* to meet the requirements of Section 189 (d) of the Clean Air Act. The electronic copy provided on compact disk is an exact duplicate of the hard copy version.

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

Table 1— Arizona Statutes and Appendices for Approval into the Arizona SIP For the <i>2012 Five Percent Plan for PM-10 for Pinal County Township 1 North, Range 8 East Nonattainment Area</i>		
Arizona Revised Statutes (ARS)	Description	Effective Dates
ARS § 9-500.04 Only A.3., A.5., A.6, A.7, A.8, A.9 and H.	Air Quality Control; Definitions [city and town requirements in Area A regarding targeting unpaved roads and shoulders; leaf blower restrictions,; restrictions related to parking, maneuvering, ingress and egress areas and vacant lots; requirements for certified street sweepers]	9/19/07
ARS § 9-500.27	Off-road vehicle ordinances; applicability; violation; classification	9/19/07

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Jared Blumenfeld

Page 2 of 3

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

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

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

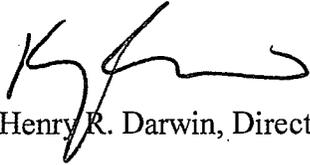
Jared Blumenfeld  
Page 3 of 3

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

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

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

Sincerely,



Henry R. Darwin, Director

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

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



*FINAL*  
*Arizona State Implementation Plan*

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

**Air Quality Division**  
**May 25, 2012**

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

Table of Contents

<u>Chapter</u>	<u>Title</u>
I.	Regulatory History
II.	Nonattainment Area
III.	Air Quality
IV.	Control Measures
V.	Five Percent Reasonable Further Progress Demonstration
VI.	Attainment Demonstration
Appendix A:	Certified copies of Arizona Revised Statutes in Chapter IV
Appendix B.	ADEQ Dust Action General Permit issued December 30, 2011
Appendix C:	ADEQ Commitment to Assess the Effectiveness of the Dust Action General Permit
Appendix D	2009 Negative Declaration for Commercial Agriculture

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## Chapter I. REGULATORY HISTORY

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

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

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

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

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

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

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

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

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

## Chapter II. NONATTAINMENT AREA

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

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

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### Chapter III. AIR QUALITY

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

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

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## Chapter IV. CONTROL MEASURES

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

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

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

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

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

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

Arizona Revised Statutes (ARS)	Description	Effective Dates
ARS § 9-500.04 Only A.3., A.5., A.6, A.7, A.8, A.9 and H.	Air Quality Control; Definitions [city and town requirements in Area A regarding targeting unpaved roads and shoulders; leaf blower restrictions; restrictions related to parking, maneuvering, ingress and egress areas and vacant lots; requirements for certified street sweepers]	9/19/07
ARS § 9-500.27	Off-road vehicle ordinances; applicability; violation; classification	9/19/07
ARS §11-871 Only A, B, and D.4.	Emissions control; no burn; exemptions; penalty [no burn restriction for any HPA day, increased civil penalty]	9/19/07
ARS §11-877	Air quality control measures [county leaf blower restrictions]	9/19/07
ARS §28-1098 Only A. and C.1.	Vehicle loads; restrictions; civil penalties [for safety or air pollution prevention purpose]	9/19/07
ARS § 49-424 Only 11.	Duties of department [develop and disseminate air quality dust forecasts for Maricopa County PM-10 Nonattainment Area]	7/20/11
ARS § 49-457.01	Leaf blower use restrictions and training; leaf blower equipment sellers; informational material; outreach; applicability	9/19/07

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

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

Chapter V. FIVE PERCENT ANNUAL EMISSIONS REDUCTIONS DEMONSTRATION

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

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

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

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## Chapter VI. ATTAINMENT DEMONSTRATION

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

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

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

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

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10 **IN THE UNITED STATES COURT OF APPEALS**  
11 **FOR THE NINTH CIRCUIT**

11

12 **SANDRA L. BAHR, and DAVID** )  
13 **MATUSOW,** )

14 Petitioners, )

15 v. ) Case No.:14-72327

16 **GINA McCARTHY, Administrator** )

17 United States Environmental Protection )

18 Agency; **JARED BLUMENFELD,** ) **PETITIONERS' OPPOSITION TO**

19 Regional Administrator, EPA Region ) **MOTION TO INTERVENE FILED**

20 IX; and **UNITED STATES** ) **BY MARICOPA ASSOCIATION OF**

21 **ENVIRONMENTAL PROTECTION** ) **GOVERNMENTS**

22 **AGENCY,** )  
23 Respondents. )  
24 )  
25 )

1 The Petitioners oppose the Motion to Intervene filed by the Maricopa  
2 Association of Governments (“MAG”) for the following reasons:

3 **I. THE MOTION IS UNTIMELY AND MAG HAS NOT DEMONSTRATED**  
4 **GOOD CAUSE TO EXTEND THE DEADLINE.**

5 Rule 15(d) of the Federal Rules of Appellate Procedure, which governs  
6 reviews of agency rulemaking, states that “[u]nless a statute provides another  
7 method [of intervention] . . . [t]he motion—or other notice of intervention  
8 authorized by statute—*must be filed within 30 days after the petition for review is*  
9 *filed.*” Fed. R. App. P. 15(d)(emphasis added). Accordingly, any motion to  
10 intervene in this case must have been filed within 30 days from the date the  
11 petition for review was filed (July 29, 2014), i.e. no later than August 28, 2014.  
12 MAG filed its motion on October 23, 2014 some 56 days late.

13 In its Motion to Intervene, MAG asks the Court to use its discretion under  
14 Rule 26(b) to grant it permission to file its Motion out of time. Fed. R. App. P.  
15 26(b). That Rule authorizes the Court to enlarge the time limits prescribed by the  
16 Federal Rules of Appellate Procedure “for good cause shown.” *Id.* As this Court  
17 has recognized, “good cause” requires more than a good faith mistake. *Mollura v.*  
18 *Miller*, 621 F. 2d 334, 335-36 (9th Cir. 1980)(“Should we infer good cause for  
19 noncompliance merely from a mistake in calendaring or from inattendance to  
20 office chores, we would seriously undermine the policy of the rules.”)

21 In its Motion, MAG offers no explanation for why it failed to file its Motion  
22 within the requisite 30 days. It is not as though MAG was unaware of the Petition  
23 for Review. As the Tentative Agenda for the MAG Air Quality Technical  
24 Advisory Committee meeting scheduled for Tuesday, September 23, 2014 reveals,  
25 EPA advised MAG of the Petition for Review on August 20, 2014. *See*

1 “MEETING NOTIFICATION AND TRANSMITTAL OF TENTATIVE AGENDA”  
2 dated September 16, 2014, Tentative Agenda Item 4 (attached as Exhibit 1). The  
3 Agenda not only referenced the Petition for Review, it even enclosed a copy of it  
4 in its mailing to the Committee members. The Agenda item also included the fact  
5 that the State had filed a Motion to Intervene (also included in the mailing). Thus,  
6 MAG clearly had notice of the Petition well in advance of the August 28, 2014  
7 deadline and yet, has offered no explanation for why it failed to act within the  
8 required 30 days.

9 In its Motion, MAG suggests that it can satisfy the “good cause”  
10 requirement simply by demonstrating that “Respondent-Intervenor has unique  
11 interests that cannot be adequately represented by any other party.” Motion at 2.  
12 That claim, however, goes to the issue of whether a timely motion to intervene  
13 should be granted, not whether there is “good cause” for allowing a motion to be  
14 filed out of time. While “the policies underlying intervention [in district court]  
15 may be applicable in appellate court,” *Automobile Workers v. Scofield*, 382 U.S.  
16 205, 216-17 n. 10 (1965), these policies only guide who can intervene in appellate  
17 court, not when they can intervene. Appellate courts consult Fed. R. Civ. P. 24 to  
18 assess whether the applicant has asserted a sufficient interest to intervene - not  
19 whether the motion itself is timely. *See, e.g., Sierra Club v. EPA*, 358 F.3d 516,  
20 517-18 (7th Cir. 2004)(timeliness not in dispute; consulting Fed. R. Civ. P. 24(a)  
21 only on question of whether applicants' interests were sufficient to entitle them to  
22 intervene, i.e. whether applicants had a “direct [legal] interest in the outcome” that  
23 was not “adequately represented by existing parties”)(citing Fed. R. Civ. P. 24(a));  
24 *Texas v. U.S. Dep't of Energy*, 754 F.2d 550, 552 (5th Cir. 1985)(consulting the

25

1 policies of Fed. R. Civ. P. 24 only after “assuming [the motion] to have been  
2 timely”).

3 Similarly, MAG’s arguments regarding prejudice to the other parties are  
4 irrelevant in this context. Unlike the district court rule regarding intervention,  
5 which does not set a specific time limit and thus is left to the district court’s  
6 discretion based on various factors, Rule 15 of the Federal Rules of Appellate  
7 Procedure sets a 30 day deadline for seeking intervention. *Compare* Fed. R. Civ.  
8 P. 24(a) and (b) *with* Fed. R. App. P. 15(b). Prejudice is one of the factors  
9 considered by a district court when determining whether a motion is timely. *See,*  
10 *e.g. League of United Latin American Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th  
11 Cir. 1997) (“In determining whether a motion for intervention is timely, we  
12 consider the following three factors: ‘(1) the stage of the proceeding at which an  
13 applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason  
14 for and length of the delay.’”)(quoting *County of Orange v. Air California*, 799  
15 F.2d 535, 537 (9th Cir. 1986)). Because Rule 15(d) expressly provides that a  
16 Motion to Intervene must be filed within 30 days of the Petition for Review, that  
17 Rule is the sole basis for determining whether a Motion to Intervene in the Court of  
18 Appeals is timely.

19 Because timeliness is a threshold issue and MAG’s motion is not only  
20 untimely, but does not demonstrate good cause why the 30 day deadline should be  
21 extended, this Court need not address the merits of the motion. *Id.* (“[I]f we find  
22 ‘that the motion to intervene was not timely, [we] need not reach any of the  
23 remaining elements of Rule 24.’”)(quoting *United States v. Washington*, 86 F.3d  
24 1499, 1503 (9th Cir. 1996)).

25

1 **II. THE APPLICANTS ARE NOT ENTITLED TO INTERVENE.**

2 Even if this Court exercises its discretion to allow the Motion out of time, it  
3 should nonetheless deny the request to intervene. Because Rule 15(d) provides no  
4 standard for resolving intervention questions, courts have looked to case law under  
5 Rule 24 of the Federal Rules of Civil Procedure when evaluating requests to  
6 intervene in actions seeking judicial review of administrative actions. *See Texas v.*  
7 *U.S. Dep't of Energy*, 754 F.2d at 551-52 (consulting Fed. R. Civ. P. 24(a) to assess  
8 character of applicants' interest because "Rule 15(d) provides no standard for  
9 resolving [such] questions"). Under that Rule, an applicant seeking to intervene as  
10 of right in a pending suit, absent a statute conferring an unconditional right to  
11 intervene, must demonstrate that: (1) its application was timely; (2) it has a  
12 "significant protectable interest" relating to the subject of the action; (3) the  
13 disposition of the action may result in practical impairment of the applicant's  
14 ability to protect that interest; and (4) the existing parties may not adequately  
15 represent the applicant's interest. Fed. R. of Civ. P. 24(a); *Greene v. U.S.*, 996 F.2d  
16 973, (9th Cir. 1993). While the test is interpreted broadly in favor of the proposed  
17 intervenor, *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391,  
18 1394 (9th Cir. 1992), the applicant has the burden of demonstrating that it meets  
19 the necessary elements.

20 Although the applicant's burden of showing inadequate representation is low  
21 such that it is sufficient to show that representation "may be" inadequate, *Trbovich*  
22 *v. United Mine Workers*, 404 U.S. 528, 538 n.10, 92 S.Ct. 630, 636 n. 10 (1972),  
23 there is a presumption that a *government* defendant will adequately represent a  
24 party's interests. *United States v. Carpenter*, 298 F.3d 1122, 1125 (9th Cir. 2002).  
25 Further, it falls to the applicant to overcome the burden that the state's

1 representation is inadequate. *Daggett v. Commission on Governmental Ethics and*  
2 *Election Practices*, 172 F.3d 104, 111 (1st Cir. 1999).

3 Here, MAG's interests are more than adequately represented by the State of  
4 Arizona, whose timely motion to intervene was unopposed by Petitioners, as well  
5 as EPA. Under Section 110 of the Clean Air Act, the State is responsible for the  
6 development of the State Implementation Plan ("SIP") and the 2012 Five Percent  
7 Plan that is at issue in this Petition for Review; however, Section 174 of the Act  
8 provides:

9 The implementation plan required by this part shall be  
10 prepared by an organization certified by the State, in  
11 consultation with elected officials of local  
12 governments.... Such organization shall include elected  
13 officials of local governments in the affected area, and  
14 representatives of the State air quality planning agency,  
15 the State transportation planning agency, the  
16 metropolitan planning organization designated to conduct  
17 the continuing, cooperative and comprehensive  
18 transportation planning process for the area under section  
19 134 of title 23, the organization responsible for the air  
20 quality maintenance planning process under regulations  
21 implementing this chapter, and any other organization  
22 with responsibilities for developing, submitting, or  
23 implementing the plan required by this part.

19 42 U.S.C. §7405(a). On February 7, 1978, the Governor of Arizona designated  
20 MAG as the lead planning organization for Maricopa County and in 1992, the  
21 Arizona Legislature recertified MAG as the regional planning agency in  
22 accordance with Section 174 of the 1990 Clean Air Act Amendments (A.R.S. § 49-  
23 406 A.)” 2012 Five Percent Plan, p. 1-1, found at Petitioners' Excerpts of Record  
24 at 267.

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 29, 2014, I electronically transmitted the Petitioners’ Opposition to Motion to Intervene filed by Maricopa Association of Governments to the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Appellate CM/ECF system.

s/Joy E. Herr-Cardillo  
Joy E. Herr-Cardillo

## Exhibit 1



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E-mail: [mag@azmag.gov](mailto:mag@azmag.gov) ▲ Web site: [www.azmag.gov](http://www.azmag.gov)

September 16, 2014

TO: Members of the MAG Air Quality Technical Advisory Committee

FROM: Philip McNeely, Phoenix, Chair

SUBJECT: MEETING NOTIFICATION AND TRANSMITTAL OF TENTATIVE AGENDA

Tuesday, September 23, 2014 - 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 McNeely 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 AGENDACOMMITTEE 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 June 26, 2014 Meeting Minutes

4. Arizona Center for Law in the Public Interest Petition for Review of the EPA Approval of the MAG 2012 Five Percent Plan for PM-10

On August 20, 2014, the Environmental Protection Agency (EPA) notified MAG that the Arizona Center for Law in the Public Interest filed a petition for review of the EPA approval of the MAG 2012 Five Percent Plan for PM-10 in the U.S. Ninth Circuit Court of Appeals. According to the mediation questionnaire, the Center for Law in the Public Interest indicated that the most significant issue is the reliance upon the EPA Exceptional Events Rule to demonstrate attainment of the standard. The Center for Law in the Public Interest contends that the EPA concurrence in excluding the exceptional event exceedances is an abuse of discretion. The Center's opening brief is due on October 17, 2014 and the respondents's

2. For information.

3. Review and approve the June 26, 2014 meeting minutes.

4. For information and discussion.

answering brief is due on November 17, 2014. On August 28, 2014, the Arizona Department of Environmental Quality filed a motion to intervene in the lawsuit on behalf of EPA. Please refer to the enclosed material.

5. EPA Approval of the MAG 2009 Eight-Hour Ozone Redesignation Request and Maintenance Plan

On August 20, 2014, the Environmental Protection Agency issued final approval of the MAG 2009 Eight-Hour Ozone Redesignation Request and Maintenance Plan. EPA has redesignated the Maricopa nonattainment area to attainment status for the 1997 eight-hour ozone standard of 0.08 parts per million. There have been no violations of the standard since 2004. The Maintenance Plan demonstrates that the eight-hour ozone standard will continue to met through 2025. Please refer to the enclosed material.

6. Update on the Ozone Monitoring Data

The Maricopa eight-hour ozone nonattainment area is classified as a Marginal Area for the 2008 ozone standard of 0.075 parts per million. The attainment date for Marginal Areas is December 31, 2015. An update will be provided on the ozone monitoring data.

7. Update on the EPA Review of the Eight-Hour Ozone Standard

In August 2014, the staff of the EPA Office of Air Quality Planning and Standards issued a Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards. The primary ozone standard currently under review is the 0.075 parts per million standard established by EPA in 2008. The Policy Assessment indicates that the staff concludes that it is appropriate in this review to consider a revised primary standard level within the range of 70 to 60 parts per billion (0.070 to 0.060 parts per million). It is anticipated that EPA may propose new

5. For information and discussion.

6. For information and discussion.

7. For information and discussion.

standards in December 2014. An update will be provided.

8. Call for Future Agenda Items

The next meeting of the Committee has been tentatively scheduled for Thursday, October 23, 2014 at 1:30 p.m. The Chair will invite the Committee members to suggest future agenda items.

8. For information and discussion.

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**THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

SANDRA L. BAHR and DAVID )  
MATUSOW, )

Petitioners, )

v. )

Case No. 14-72327

GINA McCARTHY, Administrator, )  
United States Environmental Protection )  
Agency; )

JARED BLUMENFIELD, Regional )  
Administrator, EPA Region IX; and )  
UNITED STATES )  
ENVIRONMENTAL PROTECTION )  
AGENCY, )

Respondents, )

STATE OF ARIZONA, )

Respondent-Intervenor. )

**REPLY BRIEF IN SUPPORT OF  
MOTION FOR LEAVE TO  
INTERVENE OUT OF TIME**

Maricopa Association of Governments (“MAG”) respectfully submits this reply in support of its Motion for Leave to Intervene Out of Time filed October 23, 2014 (“Motion”), in order to respond to Petitioners’ Opposition to the Motion filed October 29, 2014. Petitioners argue, *first*, that MAG’s Motion is untimely and that MAG has not demonstrated good cause to extend the 30-day deadline for intervention under Fed. R. App. P. 15(d). Petitioners argue, *second*, that MAG is not entitled to intervene because MAG’s interests are adequately represented by Respondent-Intervenor State of Arizona. As explained below, neither of these arguments warrants the denial of the Motion.

**I. Good Cause Exists for MAG to Intervene Out of Time.**

Petitioners assert that timeliness is a threshold issue and that MAG’s motion does not demonstrate good cause why the 30-day deadline should be extended. Pet. Opp’n at 3. Relying on *Mollura v. Miller* for the proposition that “‘good cause’ requires more than a good faith mistake,” *id.* at 1 (citing 621 F.2d 334, 335-36 (9th Cir. 1980)), Petitioners argue that MAG lacks good cause because EPA informed MAG of the Petition for Review on August 20, 2014, eight days before the deadline to file a motion to intervene. Ex. 1 to Pet. Opp’n. Thus, Petitioners argue that “MAG clearly had notice of the Petition well in advance of the August 28, 2014 deadline and yet, has offered no explanation for why it failed to act within the required 30 days.” Pet. Opp’n at 2.

As a threshold matter, *Mollura* is easily distinguishable. In that case, the appellees moved for leave to file a bill of costs out of time *following entry of a judgment and the affirmation of the judgment on appeal*. Here, by contrast, MAG seeks to intervene prior to the filing of any response brief or any oral argument or decision by this court.

Furthermore, MAG has not asserted that it missed the 30-day deadline for intervening under Rule 15(d) because it lacked knowledge of the Petition for Review. That MAG became aware of the Petition before the expiration of the 30-day period, however, is not an absolute bar to the Court's exercise of discretion to permit a clearly interested party to intervene in this case. MAG's Motion emphasized how MAG has unique and substantial interests in the outcome of the litigation, that its intervention would not prejudice the Petitioner's interests, and that the court has discretion to grant its motion to intervene out of time. Despite Petitioners' claim to the contrary, prejudice is relevant to this Court's determination of whether "good cause" exists to extend the 30-day deadline in Rule 15(d). "The exercise of that discretion is especially appropriate here, as there is no suggestion of prejudice." *See Hutchinson v. Pfeil*, 211 F.3d 515, 517 n.1 (10th Cir. 2000). Under Petitioners' view of Rules 15(d) and 26(b), the grounds presented in MAG's Motion could never constitute good cause to permit intervention out of time, and this court would lack discretion to permit such

intervention. But neither the Federal Rules of Appellate Procedure nor the case law cited by Petitioners so constrains this Court's discretion.

**II. MAG Meets the Minimal Showing of Inadequate Representation by the State of Arizona.**

Petitioners also assert that MAG's interests are adequately represented by the State of Arizona because the Clean Air Act provides that a State Implementation Plan ("SIP") be prepared by an organization certified by the State and that MAG collaborated with the State of Arizona on the SIP. Pet. Opp'n at 5-6. Although MAG acknowledged its collaboration with the State of Arizona in the Motion (at 8), it also provided several reasons why its interests in this litigation are unique: (1) the SIP revision at issue relies on local rules and ordinances (Attachment 1 to Motion); (2) significant MAG resources would need to be expended if the SIP revision were vacated or remanded; and (3) a MAG member agency operates the air quality monitoring network and compiles and reports air quality data to EPA. Petitioners' opposition does not address any of these distinct interests, but instead baldly asserts that the mere act of collaborating with the State of Arizona and the "joint nature" of MAG's work with the State of Arizona and other parties renders MAG's own interests adequately represented for purposes of intervention. See Pet. Opp'n at 5-6.

Petitioners take this strained view of MAG's interests even though their opening brief challenges all the distinct interests outlined above. First, Petitioners

argue that EPA should not allow the State of Arizona to rely on contingency measures. Pet. Opening Br. at 53. But such contingency measures include those measures specifically implemented by MAG member agencies. *Id.* at 54 (citing Table 6-22; ER 343; AR B.1.a at 6-39). Second, the collaborative effort to develop the MAG 2012 Five Percent Plan cited by Petitioners in their Opposition to the Motion (at 6) obviously involved the expenditure of MAG resources and thus, revisions thereto would require additional resources. Petitioners' opposition offers no evidence to dispute this. Third, Petitioners do not mention, much less contest, that a MAG member agency is responsible for operating the air quality monitoring network necessary for the compliance with the Clean Air Act and the development of required SIPs. It was this air monitoring network that provided much of the data for the exclusion of exceptional events that are the basis of the first argument in Petitioner's opening brief. Pet. Opening Br. at 28.

\* \* \*

As explained in MAG's Motion, no changes to the Court's briefing schedule would be necessary to accommodate MAG's intervention in this case. If the Court grants the Motion, MAG would file its brief concurrent with the State of Arizona, which does not object to MAG's motion to intervene. Under such circumstances, this Court should grant the Motion.

Respectfully submitted this 7th day of November, 2014,

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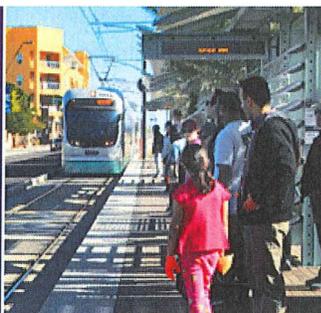
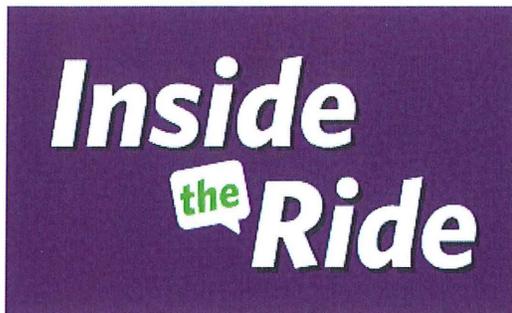
### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 7, 2014.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: November 7, 2014

/s/ Chet Thompson



An inside look at your total transit network.

# C'mon baby light my fire...unless it's an HPA day



NOV 20, 2014 | 0 COMMENTS | SUSAN TIERNEY,

Fire. It's been around since the Early Stone Age. Ancient civilizations used fire for light, heat, cooking, making tools and keeping predator animals away. Fire was a fundamental and critical element of survival.

Today, we are learning more about the consequences of that ancient necessity as we burn wood just for the sake of ambiance. While there's nothing more quixotic than a toasty, crackling fire in a fireplace, the side effects can wreak havoc on our lungs.

### Smoke gets in your eyes...and lungs

We light a fire to celebrate, host a party, set the mood and fall in love. Maybe it's best said by The Platters tune from their 1958 release of Smoke Gets In Your Eyes:

They, said someday you'll find  
 All who love are blind  
 When you're heart's on fire  
 You must realize  
 Smoke gets in your eyes

Just like falling in love, fire can pose a risk beyond the obvious. And where there's fire, there's smoke. Smoke is, unapologetically, bad news. From a scientific perspective, smoke is a mixture of gases and fine particles formed when wood and organic matter burn. It's the fine particles, or particulate matter, in the smoke that poses a threat to our lungs.



### Don't it make my brown eyes blue...and my blue skies brown

Weather, you're not so innocent, either. Stagnant, dry conditions combined with smoke from fireplaces, fire pits and even fireworks, colors our world—and our skies--from blue to brown. The dusky, blah-brown tinge to our skies is created by a couple

#### HELPFUL LINKS

For more information about what you can do to reduce particulates, visit [sharetheride.com](http://sharetheride.com) for trip planning, find a carpool or vanpool match. [ShareTheRide.com](http://ShareTheRide.com)

[www.cleanairmakemore.com/noburn](http://www.cleanairmakemore.com/noburn)  
[CleanAirMakeMore.com/No Burn](http://CleanAirMakeMore.com/No Burn)

Visit [EPA.Gov](http://EPA.Gov)  
[EPA.gov](http://EPA.gov)

#### RECENT POSTS

C'mon baby light my fire...unless it's an HPA day

Guardian Angel Campaign Urges Safety Around Transit

Discover the places where art and transit meet

Subscribe to Inside the Ride by entering your email address below.

\* Email

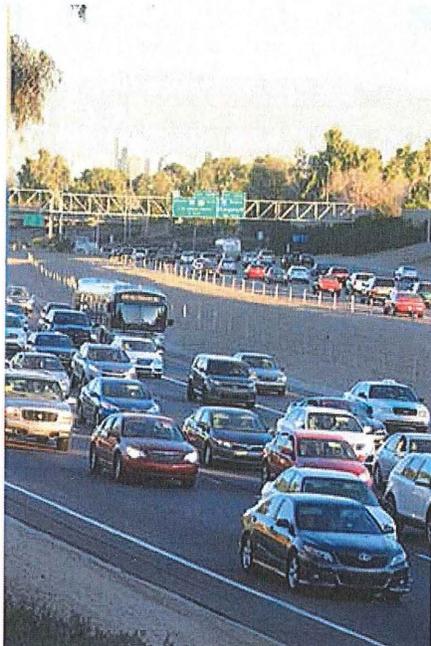
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Submit Clear

of things. One, in the winter, we experience the temperature inversion when warmer air in the upper atmosphere traps the colder air near the earth. Basically, nothing escapes, keeping the pollutants from smoke, emissions or dust at ground-level. The second thing is that the particulate matter or fine particles from dust and smoke hang out and have no place to go when they're not blowing in the wind.

Then, when we are expected to approach or exceed the federal health standard for particulates, the highway signs light up asking drivers to not burn because the next day there's an HPA. Some say they know when the air quality gets into threatening territory. Throat gets scratchy. Eyes burn. And then it gets worse. The tiny particulates, which are much finer (and not in a good way) than a strand of human hair, get lodged in our lungs...permanently. Those tiny particles get absorbed into our blood and can decrease lung function. Those tiny, tiny particles create conditions that are ripe for an asthma attack, maybe even a heart attack.

Scare tactics aside, there's something we can do about it and we're not just blowing smoke.



### **Money, money, money...everyone gets the color of green**

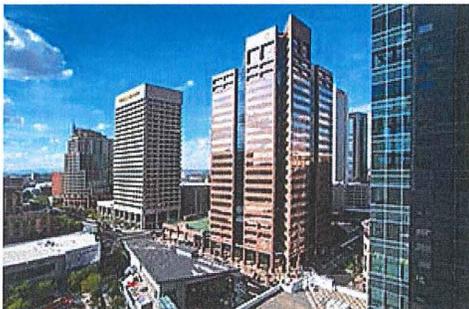
Fines, costly regulations and more measures to help thwart particulates will be thrust upon us should we fail to maintain EPA standards. While the health reasons are enough, financial penance adds to the metaphorical headache. So, what can you do to chase away those shades of particulate brown that takes negligible time, energy and money on your part?

- Don't burn wood. Set the mood by lighting a gas fireplace or a flameless candle.
- Avoid dusty roads and off-highway vehicle use. Head to one of our local indoor racetracks if you feel the need for speed.
- Skip the fireworks. After all, it's just a bunch of pointless noise that drive your dogs crazy.

### **Puttin' on the ritz...and the Super Bowl**

So there's another downside to brown skies that we haven't even touched on yet. It's that little thing called the Super Bowl. We are in a collective state of getting all dolled up, making plans, and basically puttin' on the ritz.

Downtown, uptown, east, west, north and south...we are getting our game faces on for the big day. Please don't let smoke from our ancient, manmade fires foul the air and soil our welcome mats.



TENTATIVE MEETING SCHEDULE FOR THE  
MAG AIR QUALITY TECHNICAL ADVISORY COMMITTEE

JANUARY - DECEMBER 2015

Saguaro Conference Room

Thursday, January 22, 2015 - 1:30 p.m.

Thursday, February 26, 2015 - 1:30 p.m.

Thursday, March 26, 2015 - 1:30 p.m.

Thursday, April 23, 2015 - 1:30 p.m.

Thursday, May 21, 2015 - 1:30 p.m.

Thursday, June 25, 2015 - 1:30 p.m.

Thursday, July 23, 2015 - 1:30 p.m.           **IF NECESSARY**

Thursday, August 27, 2015 - 1:30 p.m.

Thursday, September 24, 2015 - 1:30 p.m.

Thursday, October 22, 2015 - 1:30 p.m.

Thursday, December 3, 2015 - 1:30 p.m.

Note: This schedule is subject to change. Flexibility is needed to meet federal Clean Air Act mandates and changes in guidance from the Environmental Protection Agency.