



Bill Number: H.B. 2208

Pierce S Floor Amendment

Reference to: House engrossed bill

Amendment drafted by: Leg Council

FLOOR AMENDMENT EXPLANATION

H.B. 2208 exempts rules adopted by the Agricultural Best Management Practices Committee from rulemaking requirements for the purpose of revising regulations on dust control measures in the PM-10 nonattainment area of Maricopa County.

The Pierce Floor Amendment authorizes the Arizona Department of Environmental Quality (ADEQ) to issue a general permit that outlines best management practices (BMPs) designed to control dust on days that are forecasted to be high risk for dust generation in Maricopa County. The amendment exempts those entities that currently have a county or ADEQ dust control permit from the requirement of a general permit, but requires implementation of the dust control measures in the permit before and during days forecasted by ADEQ to be a high risk for dust generation. Enforcement of dust control measures for those that are currently permitted by the county would remain the county's purview.

Other entities that generate dust would not immediately be required to obtain a general permit, but instead would be responsible for implementing the BMPs on high risk days. These entities would only be required to obtain the general permit if found to have failed to implement BMPs.

The amendment also requires ADEQ to disseminate five-day forecasts to identify low, moderate and high risk days for dust generation, and contains legislative findings and intent language.

Specifically, the Pierce Floor Amendment contains the following provisions:

Dust Action General Permit

1. For the PM-10 nonattainment area in Maricopa County only, requires the ADEQ Director (Director) to issue a five-year dust action general permit for regulated activities that specifies BMPs to reduce dust on or before a day that is forecasted to be high risk for dust generation (e.g. high wind events).
2. Exempts entities that have a dust control permit issued by Maricopa County or ADEQ from the requirement of obtaining a general permit. Those entities, however, must implement the control measures listed in the county's permit related to wind as soon as practicable before and during a high-risk day.
3. Allows the Director to require a general permit for other dust generating operations but only if the Director finds that the generating entity has not implemented applicable BMPs on high-risk days.

Amendment explanation prepared by Tony DeMarco

4/11/2011

4. Prescribes content criteria of the general permit, including the criteria for which Director will determine whether someone has failed to comply with BMPs.
5. Clarifies that either the Director or the county control officer will enforce failures to implement dust control measures, depending on who issues the permit. Similarly, specifies that a regulated entity cannot be penalized by both the Director and control officer for the same violation.
6. Excludes the following from the definition of *regulated activities* for purposes of a general permit:
 - a) normal farm practices, including those currently regulated by an agricultural BMP general permit;
 - b) emergency activities conducted by a utility or governmental agency to preserve public safety; and
 - c) initial landscaping activities that do not require the use of mechanized equipment; and
 - d) rooftop operations on a pitched roof.
7. Allows the Director or a county control officer to consider voluntary BMPs that are implemented on moderate risk days as a mitigating factor in any action taken against an entity for failing to implement required dust control measures.
8. Allows the Director to reexamine, evaluate and modify the general permit through the public comment and hearing process. Modifications of the general permit must be submitted to the EPA as a revision to the Statewide Implementation Plan, or SIP.
9. Clarifies that BMPs adopted under the general permit do not affect any applicable requirement currently in the SIP.
10. Defines the following terms: applicable implementation plan, best management practices, control officer, disturbed surface area, dust-generating operation, fugitive dust, and regulated activity.

Five-Day Forecasts

11. Requires ADEQ to develop and disseminated five-day dust forecasts for the PM-10 nonattainment area of Maricopa County. The forecast must be issued by noon each day, posted on the department's website and distributed electronically.
12. Requires ADEQ to consider specified meteorological conditions and existing and historical air pollution concentrations in the county when developing the forecasts.

Legislative Findings and Intent

13. Contains legislative findings. Among the findings, the amendment states that there is need to further reduce or prevent PM-10 emissions in Maricopa County, especially during high wind days. Provides information on air quality monitors located in the county.
14. Contains a legislative intent clause that specifies the amendment to H.B. 2208 aims to reduce or prevent PM-10 emissions from dust-generating sources by requiring the application of existing dust control measures and establishing BMPs for those entities that do not currently have a dust control plan (i.e. unpermitted by the county). The intent language also provides for the Director's delegation of general permit authority to the county.

PIERCE S FLOOR AMENDMENT
SENATE AMENDMENTS TO H.B. 2208
(Reference to House engrossed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 49-424, Arizona Revised Statutes, is amended to
3 read:

4 49-424. Duties of department

5 The department shall:

6 1. Determine whether the meteorology of the state is such that
7 airsheds can be reasonably identified and air pollution, therefore, can be
8 controlled by establishing air pollution control districts within well
9 defined geographical areas.

10 2. Make continuing determinations of the quantity and nature of
11 emissions of air contaminants, topography, wind and temperature conditions,
12 possible chemical reactions in the atmosphere, the character of development
13 of the various areas of the state, the economic effect of remedial measures
14 on the various areas of the state, the availability, use, ~~and~~ and economic
15 feasibility of air-cleaning devices, the effect on human health and danger to
16 property from air contaminants, the effect on industrial operations of
17 remedial measures, ~~and~~ and other matters necessary to arrive at a better
18 understanding of air pollution and its control. In a county with a
19 population in excess of one million two hundred thousand persons according to
20 the most recent United States decennial census, the department shall locate a
21 monitoring system in at least two remote geographic sites.

22 3. ~~By July 1, 1997,~~ Establish substantive policy statements for
23 identifying air quality exceptional events that take into consideration this
24 state's unique geological, geographical and climatological conditions and any
25 other unusual circumstances. These substantive policy statements shall be
26 developed with the planning agency certified pursuant to section 49-406,
27 subsection A and the county air pollution control department or district.

1 4. Determine the standards for the quality of the ambient air and the
2 limits of air contaminants necessary to protect the public health, and to
3 secure the comfortable enjoyment of life and property by the citizens of the
4 state or in any defined geographical area of the state where the
5 concentration of air pollution sources, the health of the population, or the
6 nature of the economy or nature of land and its uses so require, and develop
7 and transmit to the county boards of supervisors minimum state standards for
8 air pollution control.

9 5. Conduct investigations, inspections and tests to carry out the
10 duties of this section under the procedures established by this article.

11 6. Hold hearings relating to any aspect of or matter within the duties
12 of this section, and in connection therewith, compel the attendance of
13 witnesses and the production of records under the procedures established by
14 section 49-432.

15 7. Prepare and develop a comprehensive plan or plans for the abatement
16 and control of air pollution in this state.

17 8. Encourage voluntary cooperation by advising and consulting with
18 persons or affected groups or other states to achieve the purposes of this
19 chapter, including voluntary testing of actual or suspected sources of air
20 pollution.

21 9. Encourage political subdivisions of the state to handle air
22 pollution problems within their respective jurisdictions, and provide as it
23 deems necessary technical and consultative assistance therefor.

24 10. Compile and publish from time to time reports, data, ~~and~~ and
25 statistics with respect to those matters studied and investigated by the
26 department.

27 11. DEVELOP AND DISSEMINATE AIR QUALITY DUST FORECASTS FOR THE MARICOPA
28 COUNTY PM-10 NONATTAINMENT AREA. EACH FORECAST SHALL IDENTIFY A LOW,
29 MODERATE OR HIGH RISK OF DUST GENERATION FOR THE NEXT FIVE CONSECUTIVE DAYS
30 AND SHALL BE ISSUED BY NOON ON EACH DAY THE FORECAST IS GENERATED. AT A
31 MINIMUM, THE FORECASTS SHALL BE POSTED ON THE DEPARTMENT'S WEBSITE AND

1 DISTRIBUTED ELECTRONICALLY. WHEN DEVELOPING THESE FORECASTS, THE DEPARTMENT
2 SHALL CONSIDER ALL OF THE FOLLOWING:

3 (a) PROJECTED METEOROLOGICAL CONDITIONS FOR THE MARICOPA COUNTY AREA,
4 INCLUDING ALL OF THE FOLLOWING:

5 (i) WIND SPEED AND DIRECTION.

6 (ii) STAGNATION.

7 (iii) RECENT PRECIPITATION.

8 (iv) POTENTIAL FOR PRECIPITATION.

9 (b) EXISTING CONCENTRATIONS OF AIR POLLUTION AT THE TIME OF THE
10 FORECAST.

11 (c) HISTORIC AIR POLLUTION CONCENTRATIONS THAT HAVE BEEN OBSERVED
12 DURING METEOROLOGICAL CONDITIONS SIMILAR TO THOSE THAT ARE PREDICTED TO OCCUR
13 IN THE FORECAST.

14 Sec. 2. Title 49, chapter 3, article 2, Arizona Revised Statutes, is
15 amended by adding section 49-457.05, to read:

16 49-457.05. Dust action general permit; best management
17 practices; applicability; definitions

18 A. THIS SECTION APPLIES IN A COUNTY WITH A POPULATION OF TWO MILLION
19 OR MORE PERSONS OR ANY PORTION OF A COUNTY WITHIN AN AREA DESIGNATED BY THE
20 ENVIRONMENTAL PROTECTION AGENCY AS A SERIOUS PM-10 NONATTAINMENT AREA OR A
21 MAINTENANCE AREA THAT WAS DESIGNATED AS A SERIOUS PM-10 NONATTAINMENT AREA.

22 B. THE DIRECTOR SHALL ISSUE A DUST ACTION GENERAL PERMIT FOR REGULATED
23 ACTIVITIES, WHICH SHALL SPECIFY THE BEST MANAGEMENT PRACTICES NECESSARY TO
24 REDUCE OR TO PREVENT PM-10 PARTICULATE EMISSIONS AS SOON AS PRACTICABLE
25 BEFORE AND DURING A DAY THAT IS FORECAST TO BE AT HIGH RISK OF DUST
26 GENERATION UNDER A FORECAST ISSUED BY THE DEPARTMENT PURSUANT TO SECTION
27 49-424.

28 C. A PERSON THAT HAS A PERMIT ISSUED BY THE DIRECTOR OR A CONTROL
29 OFFICER FOR THE CONTROL OF FUGITIVE DUST FROM DUST-GENERATING OPERATIONS IS
30 NOT REQUIRED TO OBTAIN A DUST ACTION GENERAL PERMIT UNDER SUBSECTION D OF
31 THIS SECTION, EXCEPT THAT THE PERSON SHALL IMPLEMENT THE CONTROL MEASURES
32 REQUIRED IN THE PERMIT ISSUED BY THE DIRECTOR OR CONTROL OFFICER, INCLUDING

1 THOSE MEASURES RELATED TO WIND, TO REDUCE OR TO PREVENT PM-10 PARTICULATE
2 EMISSIONS AS SOON AS PRACTICABLE BEFORE AND DURING A DAY THAT IS FORECAST TO
3 BE AT HIGH RISK OF DUST GENERATION UNDER A FORECAST ISSUED BY THE DEPARTMENT
4 PURSUANT TO SECTION 49-424. FAILURE TO IMPLEMENT A CONTROL MEASURE UNDER
5 THIS SUBSECTION SHALL ONLY BE ENFORCED BY THE DIRECTOR OR CONTROL OFFICER
6 THAT ISSUED THE PERMIT. THE DIRECTOR OR CONTROL OFFICER SHALL NOT RECOVER
7 PENALTIES FOR VIOLATIONS OF BOTH THIS SUBSECTION AND THE PERMIT BASED ON THE
8 SAME ACT OR OMISSION.

9 D. A DUST ACTION GENERAL PERMIT MAY BE REQUIRED FOR ANY PERSON THAT
10 OWNS OR CONDUCTS A DUST-GENERATING OPERATION THAT IS FOUND BY THE DIRECTOR TO
11 HAVE FAILED TO CHOOSE AND IMPLEMENT AN APPLICABLE BEST MANAGEMENT PRACTICE
12 LISTED IN THE DUST ACTION GENERAL PERMIT AS SOON AS PRACTICABLE BEFORE AND
13 DURING A DAY THAT IS FORECAST TO BE AT HIGH RISK OF DUST GENERATION.

14 E. THE DUST ACTION GENERAL PERMIT SHALL:

15 1. CONFORM TO THE REQUIREMENTS OF SECTION 49-426, SUBSECTION H,
16 PARAGRAPHS 2 THROUGH 6.

17 2. SPECIFY CATEGORIES AND LISTS OF BEST MANAGEMENT PRACTICES THAT MAY
18 VARY ACCORDING TO REGIONAL, SITE-SPECIFIC OR ACTIVITY-SPECIFIC CONDITIONS.

19 3. INCLUDE THE APPROPRIATE MONITORING, RECORD KEEPING AND REPORTING
20 REQUIREMENTS TO ENSURE THE ENFORCEABILITY OF THE PROVISIONS.

21 4. SPECIFY THE PROCESS BY WHICH THE DIRECTOR WILL DETERMINE THAT A
22 PERSON HAS FAILED TO CHOOSE AND IMPLEMENT AN APPLICABLE BEST MANAGEMENT
23 PRACTICE AND IS THEREFORE SUBJECT TO A PERMIT PRESCRIBED BY SUBSECTION D OF
24 THIS SECTION. THE PROCESS SHALL INCLUDE A MEANS OF PROVIDING NOTICE TO THE
25 PERSON OF THE PERSON'S FAILURE AND A MEANS BY WHICH THE PERSON MAY CHALLENGE
26 THE DETERMINATION.

27 5. EXPIRE AFTER A PERIOD OF FIVE YEARS, AND MAY BE RENEWED AS
28 PRESCRIBED BY THIS SECTION.

29 F. THE DIRECTOR MAY PERIODICALLY REEXAMINE, EVALUATE AND MODIFY THE
30 DUST ACTION GENERAL PERMIT AS PRESCRIBED IN SECTION 49-426, SUBSECTION H,
31 PARAGRAPHS 2 THROUGH 6. AFTER APPROVAL BY THE DIRECTOR, ANY MODIFICATIONS TO
32 THE DUST ACTION GENERAL PERMIT SHALL BE PROVIDED TO THE CONTROL OFFICER AND

1 SHALL BE SUBMITTED TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS A
2 REVISION TO THE APPLICABLE IMPLEMENTATION PLAN.

3 G. A BEST MANAGEMENT PRACTICE ADOPTED PURSUANT TO THIS SECTION DOES
4 NOT AFFECT ANY APPLICABLE REQUIREMENT IN AN APPLICABLE IMPLEMENTATION PLAN OR
5 ANY OTHER APPLICABLE REQUIREMENTS OF THE CLEAN AIR ACT, INCLUDING SECTION
6 110(1) OF THE ACT (42 UNITED STATES CODE SECTION 7410(1)).

7 H. VOLUNTARY BEST MANAGEMENT PRACTICES THAT ARE IMPLEMENTED DURING A
8 DAY THAT IS FORECAST BY THE DEPARTMENT PURSUANT TO SECTION 49-424 TO BE AT
9 MODERATE RISK FOR DUST GENERATION SHALL BE CONSIDERED BY THE DIRECTOR OR
10 CONTROL OFFICER AS A MITIGATING FACTOR IN ANY ACTION TAKEN AGAINST THAT
11 PERSON FOR FAILING TO IMPLEMENT A DUST CONTROL MEASURE FOR THAT DAY AS
12 REQUIRED BY THIS CHAPTER, A RULE OR ORDINANCE ADOPTED PURSUANT TO THIS
13 CHAPTER OR A PERMIT ISSUED PURSUANT TO THIS CHAPTER.

14 I. FOR THE PURPOSES OF THIS SECTION:

15 1. "APPLICABLE IMPLEMENTATION PLAN" MEANS THAT TERM AS DEFINED IN 42
16 UNITED STATES CODE SECTION 7602(q).

17 2. "BEST MANAGEMENT PRACTICES" MEANS TECHNIQUES THAT ARE VERIFIED BY
18 SCIENTIFIC RESEARCH AND THAT ON A CASE-BY-CASE BASIS ARE PRACTICAL,
19 ECONOMICALLY FEASIBLE AND EFFECTIVE IN REDUCING PM-10 PARTICULATE EMISSIONS
20 FROM A REGULATED ACTIVITY.

21 3. "CONTROL OFFICER" HAS THE SAME MEANING PRESCRIBED IN SECTION
22 49-471.

23 4. "DISTURBED SURFACE AREA" MEANS A PORTION OF THE EARTH'S SURFACE OR
24 MATERIAL THAT IS PLACED ON THE EARTH'S SURFACE THAT HAS BEEN PHYSICALLY
25 MOVED, UNCOVERED, DESTABILIZED OR OTHERWISE MODIFIED FROM ITS UNDISTURBED
26 NATIVE CONDITION IF THE POTENTIAL FOR THE EMISSION OF FUGITIVE DUST IS
27 INCREASED BY THE MOVEMENT, DESTABILIZATION OR MODIFICATION.

28 5. "DUST-GENERATING OPERATION" MEANS DISTURBED SURFACE AREAS,
29 INCLUDING THOSE OF OPEN AREAS OR VACANT LOTS THAT ARE NOT DEFINED AS
30 AGRICULTURAL LAND AND ARE NOT USED FOR AGRICULTURAL PURPOSES ACCORDING TO
31 SECTIONS 42-12151 AND 42-12152, OR ANY OTHER AREA OR ACTIVITY CAPABLE OF
32 GENERATING FUGITIVE DUST, INCLUDING THE FOLLOWING:

1 (a) LAND CLEARING, MAINTENANCE AND LAND CLEAN-UP USING MECHANIZED
2 EQUIPMENT.

3 (b) EARTHMOVING.

4 (c) WEED ABATEMENT BY DISCING OR BLADING.

5 (d) EXCAVATING.

6 (e) CONSTRUCTION.

7 (f) DEMOLITION.

8 (g) BULK MATERIAL HANDLING, INCLUDING HAULING, TRANSPORTING, STACKING,
9 LOADING AND UNLOADING OPERATIONS.

10 (h) STORAGE OR TRANSPORTING OPERATIONS, INCLUDING STORAGE PILES.

11 (i) OPERATION OF OUTDOOR EQUIPMENT.

12 (j) OPERATION OF MOTORIZED MACHINERY.

13 (k) ESTABLISHING OR USING STAGING AREAS, PARKING AREAS, MATERIAL
14 STORAGE AREAS OR ACCESS ROUTES.

15 (l) ESTABLISHING OR USING UNPAVED HAUL OR ACCESS ROADS.

16 (m) INSTALLING INITIAL LANDSCAPES USING MECHANIZED EQUIPMENT.

17 6. "FUGITIVE DUST" MEANS PARTICULATE MATTER THAT COULD NOT REASONABLY
18 PASS THROUGH A STACK, CHIMNEY, VENT OR OTHER FUNCTIONALLY EQUIVALENT OPENING,
19 THAT CAN BE ENTRAINED IN THE AMBIENT AIR AND THAT IS CAUSED BY HUMAN OR
20 NATURAL ACTIVITIES, INCLUDING THE MOVEMENT OF SOIL, VEHICLES, EQUIPMENT,
21 BLASTING AND WIND. FUGITIVE DUST DOES NOT INCLUDE PARTICULATE MATTER EMITTED
22 DIRECTLY FROM THE EXHAUST OF MOTOR VEHICLES AND OTHER INTERNAL COMBUSTION
23 ENGINES, FROM PORTABLE BRAZING, SOLDERING OR WELDING EQUIPMENT OR FROM PILE
24 DRIVERS.

25 7. "REGULATED ACTIVITY" MEANS ALL DUST-GENERATING OPERATIONS EXCEPT
26 FOR THE FOLLOWING:

27 (a) NORMAL FARM CULTURAL PRACTICES AS PRESCRIBED IN SECTION 49-504,
28 PARAGRAPH 4 OR SECTION 49-457.

29 (b) EMERGENCY ACTIVITIES THAT MAY DISTURB THE SOIL AND THAT ARE
30 CONDUCTED BY ANY UTILITY OR GOVERNMENT AGENCY IN ORDER TO PREVENT PUBLIC
31 INJURY OR TO RESTORE CRITICAL UTILITIES TO A FUNCTIONAL STATUS.

1 (c) ESTABLISHMENT OF INITIAL LANDSCAPES WITHOUT THE USE OF MECHANIZED
2 EQUIPMENT, CONDUCTING LANDSCAPE MAINTENANCE WITHOUT THE USE OF MECHANIZED
3 EQUIPMENT AND PLAYING ON OR MAINTAINING A FIELD USED FOR NONMOTORIZED SPORTS,
4 EXCEPT THAT THESE ACTIVITIES SHALL NOT INCLUDE GRADING OR TRENCHING PERFORMED
5 TO ESTABLISH INITIAL LANDSCAPES OR TO REDESIGN EXISTING LANDSCAPES.

6 (d) ROOFTOP OPERATIONS FOR CUTTING, DRILLING, GRINDING OR CORING
7 ROOFING TILE IF THAT ACTIVITY IS OCCURRING ON A PITCHED ROOF."

8 Renumber to conform

9 Page 1, after line 13, insert:

10 "Sec. 4. Legislative findings; intent

11 A. The legislature finds the following:

12 1. Previous particulate matter ten microns in size and smaller (PM-10)
13 air quality plans for the Maricopa county area, including the Maricopa
14 association of governments 2007 five per cent plan for PM-10 for the Maricopa
15 county nonattainment area, relied heavily on reductions in particulate matter
16 emissions from improving the effectiveness of existing rules for construction
17 and other sources.

18 2. As a direct result of the air quality plans that have been
19 submitted between 1990 and 2009, the annual average concentration of PM-10
20 within the Phoenix area has declined approximately twenty-five per cent, even
21 while the population in the Phoenix area nearly doubled during that same time
22 period.

23 3. The air quality monitor near 43rd Avenue and Broadway Road, in
24 Phoenix, Arizona, is considered to be a location where the maximum
25 concentrations of PM-10 are expected to occur.

26 4. If a monitor records more than three exceedances of the national
27 air quality standard for PM-10 over the course of a three year period, and
28 none of those exceedances are excused under EPA's exceptional events rule,
29 the area represented by the monitor is considered to be in nonattainment for
30 the PM-10 standard.

31 5. In 2009, there were seven exceedances of the national air quality
32 standard for PM-10 at the monitor near 43rd Avenue and Broadway Road, in

1 Phoenix, Arizona. All seven of these events were related to meteorological
2 conditions. Meteorological conditions that may lead to a risk of dust
3 generation include wind speed and direction, stagnation, recent precipitation
4 and potential for precipitation.

5 6. In 2010, although there was one exceedance of the national air
6 quality standard for PM-10 at another monitor in Maricopa county, there were
7 zero exceedances of that standard at the monitor near 43rd Avenue and
8 Broadway Road, in Phoenix Arizona.

9 7. To date in 2011, there has been one exceedance of the national air
10 quality standard for PM-10 recorded by a separate monitor in Maricopa county,
11 but there have been zero exceedances of that standard at the monitor near
12 43rd Avenue and Broadway Road, in Phoenix, Arizona.

13 8. To satisfy EPA's requirement to achieve attainment with the
14 national air quality standard for PM-10 in the Maricopa county area, it is
15 necessary to further reduce or to prevent PM-10 particulate emissions,
16 especially during those days at high risk of dust generation.

17 B. The legislature declares that the intent of this act is as follows:

18 1. Require the reduction or prevention of PM-10 particulate emissions
19 from both permitted and unpermitted sources of PM-10 particulate emissions.

20 2. Require the department of environmental quality to predict days
21 that are at high risk of dust generation and provide that information to any
22 source that could potentially emit PM-10 particulate emissions.

23 3. Require the establishment of best management practices for those
24 sources that are not already subject to dust prevention requirements during
25 high wind events. When establishing the best management practices, those
26 control measures that apply to dust-generating operations in county
27 ordinances or permits issued by the control officer shall be considered.

28 4. Require application of the existing control measures required in
29 county permits and the applicable best management practices adopted pursuant
30 to this act to reduce or to prevent dust emissions as soon as practicable
31 before and during a day that the department of environmental quality predicts
32 to be at high risk of dust generation.

1 5. Require the department of environmental quality, the Maricopa
2 county air quality department and other governmental entities to develop and
3 implement a communications plan to educate unpermitted sources regarding
4 their new obligations.

5 6. Require the director of the department of environment quality to
6 delegate the authority under section 49-457.05, subsection D, Arizona Revised
7 Statutes, as added by this act, to the appropriate control officer."

8 Amend title to conform

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