

January 15, 2013

TO: Members of the MAG Regional Council Executive Committee

FROM: Mayor Marie Lopez Rogers, City of Avondale, Chair

SUBJECT: MEETING NOTIFICATION AND TRANSMITTAL OF TENTATIVE AGENDA FOR  
THE MAG REGIONAL COUNCIL EXECUTIVE COMMITTEE

Tuesday, January 22, 2013- 12:00 noon  
MAG Office, Suite 200 - Ironwood Room  
302 North 1<sup>st</sup> Avenue, Phoenix

A meeting of the MAG Regional Council Executive Committee has been scheduled for the time and place noted above. Members of the Committee may attend the meeting either in person or by telephone conference.

Please park in the garage under the building. Bring your ticket to the meeting, parking will be validated. For those using transit, the Regional Public Transportation Authority will provide transit tickets for your trip. For those using bicycles, please lock your bicycle in the bike rack in the garage.

Pursuant to Title II of the Americans with Disabilities Act (ADA), MAG does not discriminate on the basis of disability in 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 Denise McClafferty at the MAG office. Requests should be made as early as possible to allow time to arrange the accommodation.

If you have any questions regarding the Executive Committee agenda items, please contact me at 623-333-1613. For MAG staff, please contact Dennis Smith, MAG Executive Director, at (602) 254-6300.

MAG EXECUTIVE COMMITTEE  
TENTATIVE AGENDA  
JANUARY 22, 2013

COMMITTEE ACTION REQUESTED

1. Call to Order

The meeting of the Executive Committee will be called to order.

2. Call to the Audience

An opportunity will be provided to members of the public to address the Executive 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 Executive 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.

2. Information and discussion.

ITEMS PROPOSED FOR CONSENT\*  
BY THE EXECUTIVE COMMITTEE

\*3A. Approval of the November 19, 2012 Executive Committee Meeting minutes

3A. Approval of the November 19, 2012 Executive Committee meeting minutes.

\*3C. Amendment to the FY 2013 MAG Unified Planning Work Program and Annual Budget to Add Two FTE Positions

3C. Approval to amend the FY 2013 MAG Unified Planning Work Program and Annual Budget to add two FTE positions.

The FY 2013 MAG Unified Planning Work Program and Annual Budget (UPWP) was approved on May 23, 2012. Since that time, MAG Information Services Division has taken on a number of new projects. These include providing mapping and analysis support for Human Services projects, developing customized interactive mapping tools, maintaining the Greater Phoenix Rising website, providing employment database analysis and ongoing GIS support to member agencies. MAG currently has a GIS Associate position in the FY 2013 UPWP. It will

be a more efficient use of resources to change this GIS Associate position to a full-time position. In addition, as a result of the current work with the Economic Development Committee and Mexico, MAG is requesting to convert the temporary full-time position of International Economic Development Analyst to a permanent full-time position. This position could also act as an extension of the member agencies staff in working with Mexico. The Executive Committee is requested to amend the FY 2013 budget to add two FTE positions.

\*3D. MAG Standard Specifications and Details Committee Vice Chair Appointment

On July 22, 2009, the MAG Regional Council approved the MAG Committee Operating Policies and Procedures. Officer appointments for technical and other policy committees, with exception of the MAG Regional Council, Transportation Policy Committee, and Management Committee, will be made by the MAG Executive Committee and are eligible for two-year terms.

In December 2012, the Chair of the Standard Specifications and Details Committee stepped down and the current vice chair, Thomas Wilhite from the City of Tempe, ascended to chair. According to the MAG Committee Operating Policies and Procedures, the MAG Regional Council Executive Committee appoints a new vice chair. MAG staff sent a notice to the Management Committee, the Standard Specifications and Details Committee and the Intergovernmental Representatives to solicit letters of interest for the vice chair position. One letter of interest was received for the vice chair position. Please refer to the enclosed material.

\*3E. FHWA - Ex-Officio Non-Voting Members on Committees

For several years, staff from the Federal Highway Administration (FHWA) have served on MAG

3D. Approval of Jim Badowich, City of Avondale, to serve as the vice chair for the Standard Specifications and Details Committee.

\*3E. Approval to change the status of the FHWA staff on MAG committees from voting to non-voting and to approve the other committee appointments requested by the FHWA.

committees. Recently, MAG received a request from FHWA to change the status of their representatives from voting to non-voting status and to have members of their staff appointed to additional MAG committees. Due to some of the previous committee structures determined by MAG, the changes are being brought to the Executive Committee for consideration. Staff is in support of the FHWA request. Please refer to the enclosed material.

ITEMS PROPOSED TO BE HEARD  
BY THE EXECUTIVE COMMITTEE

4. Discussion of the Development of the FY 2014 MAG Unified Planning Work Program and Annual Budget

Each year, the Unified Planning Work Program and Annual Budget is developed in conjunction with member agency and public input. The Work Program is reviewed each year by the federal agencies in the spring and approved by the Regional Council in May. This overview of MAG's draft Dues and Assessments and the proposed budget production timeline provides an opportunity for early input into the development of the Work Program and Budget. Please refer to the enclosed material.

5. Metropolitan Planning Area Boundary Adjustment

At the November Executive Committee meeting, the possible MAG Planning Area (MPA) boundary adjustments were reviewed. The MAG MPA boundary needs to be adjusted due to new urbanized areas defined by the 2010 Census. The options for adjusting the boundary include incorporating parts of the area expected to be urbanized in the next 20 years, which includes parts of Pinal County. On December 18, 2012 the City of Maricopa passed a resolution to join MAG. The City of Casa Grande is moving forward to form a Metropolitan Planning Organization. The boundary of the new MPO in

4. Information and input on the development of the fiscal year (FY) 2014 MAG Unified Planning Work Program and Annual Budget.

5. Information, discussion and input regarding the adjustment of the MAG Metropolitan Planning Area boundary.

Pinal County is under consideration. On January 9, 2013, the Pinal County Board of Supervisors approved a resolution to join the new MPO in Pinal County. The MAG General Counsel has been reviewing the MAG By-Laws to determine what changes would be needed. A subcommittee of the Executive Committee is being formed to review what governance changes would need to be implemented on issues that relate only to Maricopa County, such as the Proposition 400 funding. An update on recent discussions regarding the MPA boundary will be provided to the Executive Committee.

6. Update on the MAG 2012 Five Percent Plan for PM-10 and Exceptional Events Issues

At the last meeting, the Regional Council Executive Committee requested that staff contact the Arizona Department of Environmental Quality (ADEQ) to inquire about the schedule for completing the exceptional event documentation in time for the Environmental Protection Agency (EPA) to approve the MAG 2012 Five Percent Plan for PM-10. By February 14, 2013, EPA must approve the Five Percent Plan in order to avoid the imposition of a federal implementation plan. According to ADEQ, ten packages of exceptional events became available for public review on December 3, 2012 and comments were received from the Arizona Center for Law in the Public Interest. The remaining seven packages were completed and available on January 14, 2013 for a thirty day public comment period. A response to comments will be prepared and submitted to EPA with the exceptional events documentation. Also, on August 31, 2012, MAG submitted extensive comments on the Draft EPA Exceptional Events Guidance that became available in July 2012. Comments were also submitted by the Western States Air Resources Council, ADEQ, Maricopa County, Associated General Contractors, Congressman Flake, and others.

6. Information and discussion.

While some improvements have been made, the revised guidance includes additional requirements and the documentation remains resource intensive. Please refer to the enclosed material.

7. Status Update on the June 30, 2012 Single Audit and Management Letter Comments, MAG's Comprehensive Annual Financial Report and OMB Circular A-133 Reports (i.e., "Single Audit") for the Fiscal Year Ended June 30, 2012

The accounting firm of CliftonLarsonAllen, has completed the audit of MAG's Comprehensive Annual Financial Report (CAFR) and Single Audit for the fiscal year ended June 30, 2012. An unqualified audit opinion was issued on November 12, 2012 on the financial statements of governmental activities, the aggregate discretely presented component units, each major fund and the aggregate remaining fund information. The independent auditors' report on compliance with the requirements applicable to major federal award programs, expressed an unqualified opinion on the Single Audit. The Single Audit report indicated there were no reportable conditions in MAG's internal control over financial reporting considered to be material weaknesses, no instances of noncompliance considered to be material and no questioned costs. The Single Audit report had no new or repeat findings. The CAFR financial statements and related footnotes were prepared in accordance with the Government Finance Officers Association's (GFOA) standards for the Certificate of Achievement for Excellence in Financial Reporting awards program. Management intends to submit the June 30, 2012 CAFR to the GFOA awards program for review. If awarded the certificate for the June 30, 2012 CAFR, this would be the agency's 15th consecutive award. This item is on the January 16, 2013 Management Committee agenda for recommendation to accept. Please refer to the enclosed material

7. Recommend acceptance of the audit opinion issued on the MAG Comprehensive Annual Financial Report and Single Audit Report for the year ended June 30, 2012.

8. MAG Domestic Violence Council Vice Chair Appointment

On July 22, 2009, the MAG Regional Council approved the MAG Committee Operating Policies and Procedures. Officer appointments for technical and other policy committees, with exception of the MAG Regional Council, Transportation Policy Committee, and Management Committee, will be made by the MAG Executive Committee and are eligible for two-year terms.

On December 31, 2012, the position of vice chair of the Domestic Violence Council became vacant. Police Chief Jerald Monahan from the City of Apache Junction stepped down after one-year of the vice chair's two-year term. According to the MAG Committee Operating Policies and Procedures, the MAG Regional Council Executive Committee will appoint a new vice chair to complete the remainder of the two-year term. MAG staff sent a notice to the Management Committee, the Domestic Violence Council, and the Intergovernmental Representatives to solicit letters of interest for the vice chair position. Copies of the letters received and a table identifying individuals requesting consideration for the vice chair position have been included. Please refer to the enclosed material.

9. Legislative Update

An update will be provided on legislative issues of interest. HB 2005 and HB 2006 have been introduced in this legislative session. HB 2005 would require public entities to comply with provisions of the open meeting law and public records act. MAG has been in substantial compliance with these provisions. Archiving provisions may need to be met. HB 2006 would change the eligibility of public entities such as MAG to be members of the Arizona State Retirement System. New members of MAG would no longer

8. Approval of a new vice chair for the Domestic Violence Council to complete the remainder of the previous vice chair's two-year term.

9. Information, discussion, and possible action.

be eligible to be members of the ASRS. Please refer to the enclosed information.

10. Request for Future Agenda Items

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

11. Comments from the Committee

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

Adjournment

10. Information and discussion.

11. Information.

MINUTES OF THE  
MARICOPA ASSOCIATION OF GOVERNMENTS  
MAG REGIONAL COUNCIL EXECUTIVE COMMITTEE  
November 19, 2012  
MAG Offices, Ironwood Room  
302 N. 1<sup>st</sup> Avenue, Phoenix, Arizona

MEMBERS ATTENDING

Mayor Marie Lopez Rogers, Avondale, Chair	Mayor W. J. “Jim” Lane, Scottsdale
Mayor Scott Smith, Mesa, Vice Chair	Mayor Thomas L. Schoaf, Litchfield Park
#Mayor Michael LeVault, Youngtown, Treasurer	Mayor Greg Stanton, Phoenix
Mayor Gail Barney, Queen Creek	

\* Not present

# Participated by video or telephone conference call

1. Call to Order

The Executive Committee meeting was called to order by Chair Lopez Rogers at 12:06 p.m.

Chair Lopez Rogers stated that public comment cards were available for those members of the public who wish to comment. Transit tickets were available from Valley Metro for those using transit to come to the meeting. Parking validation was available from MAG staff for those who parked in the parking garage.

2. Call to the Audience

Chair Lopez Rogers stated that according to the MAG public comment process, members of the audience who wish to speak are requested to fill out the public comment cards. She stated that there is a three-minute time limit. Public comment is provided at the beginning of the meeting for items that are not on the agenda that are within the jurisdiction of MAG, or non-action agenda items that are on the agenda for discussion or information only. Chair Lopez Rogers noted that no public comment cards had been received.

3. Approval of Executive Committee Consent Agenda

Chair Lopez Rogers noted that prior to action on the consent agenda, members of the audience are provided an opportunity to comment on consent items that are being presented for action. Following the comment period, committee members may request that an item be removed from the consent agenda.

Chair Lopez Rogers requested a motion to approve the consent agenda. Mayor Barney moved to

approve items #3A through #3D. Mayor Stanton seconded the motion and the motion carried unanimously.

3A. Approval of the October 15, 2012 Executive Committee Meeting Minutes

The Regional Council Executive Committee, by consent, approved the October 15, 2012 Executive Committee meeting minutes.

3B. Consultant Selection for the MAG Bicycle Count Project to Support Performance Measurement and MAG Travel Demand Modeling

The Regional Council Executive Committee, by consent, approved Chen Ryan Associates to conduct the MAG Bicycle Count Project for an amount not to exceed \$96,000. New federal performance measurement requirements and MAG transportation modeling requires that accurate information be collected to support these efforts. A project to collect the necessary bicycle information was included in the FY 2013 MAG Unified Planning Work Program and Annual Budget. The project will gather data which will be incorporated into the MAG performance measures, MAG safety and MAG modeling programs. Tracking bicycle counts across the region in a geographically comprehensive manner will allow for an assessment of a range of additional non-motorized performance measures. This project will lay the foundation for a comprehensive active transportation monitoring program linked to key facets of long-range land use and transportation planning. The purpose of the bicycle count data serves in estimating regional bicycle demands and air quality benefits. In addition, the information will assist local jurisdictions in their efforts to improve the bicycle infrastructure in the region. A Request for Proposals was issued on August 21, 2012. MAG received proposals from four firms on September 20, 2012. The following firms applied: Alta Engineering, Inc., Lee Engineering, Inc., Pacific Traffic & Transit Data Services, Inc., and Chen Ryan Associates. A multi-jurisdictional proposal evaluation team met on October 9, 2012, to review and analyze the proposals and recommended to MAG the selection of Chen Ryan Associates to conduct the MAG Bicycle Count Project for an amount not to exceed \$96,000.

3C. Contract Amendment for the MAG Freight Transportation Framework Study

The Regional Council Executive Committee, by consent, approved amending the Parsons Brinckerhoff contract by \$50,000 to be used in the Freight Transportation Framework Study. In May 2012, the Regional Council approved the FY 2013 MAG Unified Planning Work Program (UPWP) and Annual Budget, which included the MAG Freight Transportation Framework Study. The goal of the study was to identify freight related economic development opportunities in the Sun Corridor. The current MAG Freight Transportation Framework Study and scope of work are in the final stages of completion. The MAG Economic Development Committee has requested an economic development retreat for the Sun Corridor on March 6, 2013, to seek alignment of the ideas in the study with the Sun Corridor representatives. It has been requested that the MAG and Parsons Brinckerhoff freight team present the freight study recommendations with supporting materials at this retreat. The additional work for this retreat exceeds the current scope of work and

budget, therefore, an amendment to the current freight study contract in the amount of \$50,000 is requested to complete this work..

3D. Amendment to the FY 2013 MAG Unified Planning Work Program and Annual Budget to Accept Funding for the Age-Friendly Cities Initiative to Support Aging Services Planning

The Regional Council Executive Committee, by consent, approved the budget amendment to the FY 2013 MAG Unified Planning Work Program and Annual Budget to include grant funding and cash match in the amount of \$171,600 from the Grantmakers in Aging and Pfizer Foundation, Tempe Community Council, Area Agency on Aging, Duet, Benevilla, and Sun Health for the Age-Friendly Cities Initiative to support aging services planning. The FY 2013 MAG Unified Planning Work Program and Annual Budget (UPWP) was approved on May 23, 2012. On October 10, 2012, Grantmakers in Aging and the Pfizer Foundation announced a \$150,000 grant award to Regional Community Partners to participate in the Age-Friendly Cities Initiative. The region's proposal included cash match commitments from the following project partners: Tempe Community Council \$5,000; Area Agency on Aging \$1,000; Duet \$300; Benevilla \$300; and Sun Health \$15,000. All contributions will support the implementation of the Age-Friendly Cities Initiative in this region. The project will include technical assistance to three village pilot projects, an aging-in-place conference, a website for older adults, and an outreach video. This region was selected as one of five in the country to participate in the initiative. This item is to accept this grant and approve an amendment to the MAG 2013 Unified Planning Work Program and Annual Budget (UPWP) increasing the budget for RCP by \$171,600.

4. EPA Response to MAG Comments on the Draft EPA Exceptional Events Guidance Documents

Lindy Bauer, MAG Environmental Director, stated on October 25, 2012, MAG received a positive letter from the Environmental Protection Agency (EPA) acknowledging the comments that MAG had made on their revised draft exceptional event guidance documents. She noted that in the letter EPA approved the package of exceptional events that covered the five days in July 2011, which is the first high wind package they have ever approved. In the letter, EPA indicated that this package would be used as a model.

Ms. Bauer stated MAG does not want the EPA to use this package as a model because it is very resource intensive, taking over six months to prepare in partnership with Arizona Department of Environmental Quality (ADEQ). She noted MAG is currently working with the ADEQ on the documentation for the remaining 26 exceptional event days that occurred in 2011 and 2012. MAG has proposed a five page form to the EPA that could be filled out and reviewed quickly, however, the EPA did not acknowledge that they would pursue this option. Ms. Bauer added that the ADEQ has allocated \$500,000 for consultant resources to help prepare the remaining exceptional event documentation, working along with MAG to try to expedite things. She noted EPA Region IX recognizes informally that this process still needs further streamlining. Ms. Bauer stated in order for EPA to approve the MAG Five Percent Plan for PM-10, documentation still needs to be completed, reviewed, and concurred with EPA by February 14, 2013.

Chair Lopez Rogers thanked Ms. Bauer and asked if there were any questions or comments from the committee members.

Mayor Lane asked if it was possible to have the remaining 26 exceptional event documentation completed by the February deadline. Ms. Bauer stated the ADEQ had identified a time line that went well into the summer of 2013 and they have expedited it through April. She added time is of the essence and ADEQ is expediting the schedule further from the inside by assisting ADEQ with preparing the documentation. Mayor Lane asked what the consequences are if the deadline is not met. Ms. Bauer stated the consequences are EPA would need to do a Federal Implementation Plan if they do not approve our plan by February 14, 2013.

Mayor Schoaf asked if the EPA can extend the deadline. Ms. Bauer stated EPA recognizes this is a dilemma and it is unknown if they could extend the deadline. She added MAG's goal is to get this documentation in by the deadline. Mayor Schoaf stated a plan should be put in place so staff can know if they are on schedule in completing the documentation. Dennis Smith stated ADEQ and staff could complete a timetable so they know they are on schedule. Mayor Schoaf stated that would be acceptable.

Chair Lopez Rogers asked if there were other regions that have this same dilemma. Ms. Bauer stated the Western States Air Resources Council was very concerned over EPA's revised draft guidance, as well. Mayor Lopez Rogers requested staff provide the committee any feedback on discussions from other states. Mayor Stanton stated it sounds like this is going to take a legislative change to get the ultimate fix.

Ms. Bauer stated the letter indicates that EPA will consider all comments and they will decide whether or not to issue final guidance and/or pursue some amendments to their exceptional events rule. Mayor Smith stated at what point is an exceptional event, not an exceptional event? He added desert communities in Las Vegas have these same issues, as well as the central valley in California. He added these are explainable events, not exceptional events, but EPA is not changing the guidelines. Ms. Bauer stated the objective is to get a change in the rule so that it makes sense and that the exceptional event documentation is not so resource intensive.

Mayor Schoaf asked if EPA has the ability to classify categories, such as a normal day, exceptional event day and a natural event day, such as a high wind day, where it is expected that we will not meet the standards, but it is not classified as an exceptional event. Ms. Bauer stated under the Clean Air Act, exceptional events include natural events and that is where high wind dust storms fall.

Chair Lopez Rogers asked if there were any additional comments from the committee members. There were none.

5. Metropolitan Planning Area Boundary Adjustment

Dennis Smith, Executive Director of MAG, provided a recap on the possible MAG Planning

Area (MPA) boundary adjustment due to the new urbanized areas defined by the 2010 Census and also identified what the urbanized areas will look like in 2030. He stated staff has had several meetings with groups in Pinal County, Town of Florence, and the City of Maricopa. He added when staff met with the City Manager of Casa Grande it was indicated that they are planning on forming their own Metropolitan Planning Organization (MPO).

Eric Anderson, MAG Transportation Director, stated he had a conversation with the City Manager and Mayor of the City of Maricopa and will be presenting to their city council on December 4<sup>th</sup>, 2012 where he will get feedback on their level of interest in joining MAG. He added MAG has a good relationship with the Gila River Indian Community but discussions still need to take place to see where they stand. Mr. Anderson added Apache Junction, Gold Canyon Ranch, and from a transportation planning perspective, Superstition Vistas would also be appropriate to include in the planning area and added further discussion is needed with the City of Florence and Pinal County regarding the area in San Tan Valley.

Chair Lopez Rogers asked if there were any questions or comments from the committee members.

Dennis Smith stated the City of Casa Grande indicated they were hoping to make their decision by the end of December 2012, and at the next committee meeting MAG would have more information. Mayor Barney suggested a representative from MAG speak with the City of Apache Junction to answer questions they have regarding the MPO boundaries. Mayor Schoaf asked how the City of Casa Grande is reacting to this concept of MAG coming into the area. Dennis Smith stated according to federal law a Memorandum of Understanding would be required with Pinal County to define each MPO's roles and responsibilities so everyone is clear on who is doing what.

Mayor Smith asked in order for Casa Grande to continue to receive the flow of federal funds their only available options are to either join MAG or form a separate MPO? Mr. Anderson stated that was correct. Mr. Smith added staff has heard very clearly that Casa Grande is intending to form their own MPO. Chair Lopez Rogers asked if there will be a formal action or resolution from the City of Maricopa or from Pinal County.

Mr. Anderson stated if formal action is taken and they do desire to join MAG they would send a letter requesting their interest to join our MPO. Mayor Lopez Rogers stated at some point there will be discussions of governance since new members will be added and stated a sub-committee will have to be formed. Mr. Smith added a sub-committee would need to make sure that the relationships are understood well with the elected officials in the City of Maricopa and Pinal County and what it means to join MAG. Mr. Smith added MAG legal counsel would have to work on the by-laws change. Fredda Bisman, MAG Legal Counsel, added there is a waiting period on by-laws changes after they have been presented.

Mayor Schoaf asked if there is any negative impact to Casa Grande if they form an MPO and within their MPO they do not include the City of Maricopa. Mr. Smith stated there would be

very little funding difference. Chair Lopez Rogers asked if this would add more time and effort from MAG staff. Mr. Smith stated MAG currently provides the population projections and transportation models on that area for the benefit of MAG. Chair Lopez Rogers asked if there were any additional comments or questions.

6. Appointments of the MAG Economic Development Committee Transportation Industry Positions

Denise McClafferty stated on September 28, 2012, a memorandum was sent to the MAG Regional Council soliciting letters of interest for the two vacant transportation industry positions on the Economic Development Committee. She added the composition includes eleven business member positions that have two-year terms with possible reappointment by recommendation of the Executive Committee and approval of the MAG Regional Council. The business member positions, not including the two transportation positions, were recommend for approval by the MAG Executive Committee on September 17, 2012.

Ms. McClafferty stated to date, one letter of interest has been received and asked the committee for their guidance on filling these two positions. Mayor Schoaf moved to recommend postponing this decision for one month so there is more time to generate interest. Mayor LeVault seconded the motion and the motion carried unanimously.

7. Process of Annual Performance Review of the MAG Executive Director

Dennis Smith stated on December 15, 2003, the Executive Committee approved an evaluation survey for the MAG Executive Director's performance review and if the committee agrees with this approach, staff will send the questionnaire and the Goals and Results Review out to the committee members and then come back with the results in January.

Chair Lopez Rogers asked if there were any comments or questions.

Mayor Schoaf asked if this survey goes out to other organizations, contractors, and businesses. Mr. Smith stated that currently the survey goes to MAG Regional Council and Executive Committee members. Mayor Schoaf stated he believes it would be beneficial if staff sent out a similar questionnaire to some of the representatives that MAG works with to get some input from the community, and gave examples such as Arizona Commerce Authority and Arizona Department of Environmental Quality.

Mayor Smith added he thinks it is a good idea to receive input to see how the Executive Director's interactions are with other organizations, but the internal survey is used for a slightly different purpose and we have to make sure the surveys are separate. Mayor Schoaf stated his interest is to see how other organizations view MAG, not Mr. Smith as an individual. Mayor Smith stated it needs to be recognized that the questionnaires should have two different objectives. Mr. Smith asked the committee if staff should continue with the existing evaluation to send to MAG Regional Council and the Executive committee and also have staff prepare a new, separate survey for outside organizations, along with a list of organizations and bring this

to the next committee meeting for review. Chair Lopez Rogers stated that is correct.

8. Request for Future Agenda Items

Chair Lopez Rogers asked if there were any requests for future agendas items. There were none.

9. Comments from the Committee

Chair Lopez Rogers asked if there were any comments for the committee members. Samantha Santaella Wolfe, MAG International Economic Development Analyst, provided an update on the Nogales Supplier Expo that took place on November 15, 2012 in Nogales, Sonora, Mexico. She stated more than 120 companies participated, which included 25 companies from Arizona, and added staff has received great feedback about the event. Ms. Santeaella Wolfe stated she had the opportunity to meet and personally invite the Mexican Consulate and President of the Maquiladora Association to our event on December 4<sup>th</sup>, 2012 at the Sheraton Phoenix Downtown. Chair Schoaf added the purpose of this event is to introduce small businesses and organizations from both sides of the border in hopes of forming business relationships.

Mayor Smith made an observations that at the next meeting it will become official that Chair Lopez Rogers will be the President of the National League of Cities and congratulated her.

Adjournment

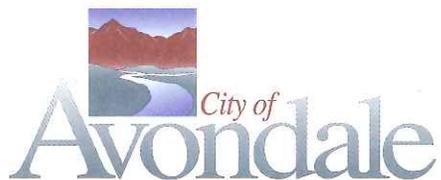
Mayor Lane moved to adjourn the Executive Committee meeting. Mayor Schoaf seconded the motion and the motion carried unanimously. There being no further business, the Executive Committee adjourned at 12:55 p.m.

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Chair

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Secretary



December 19, 2012

Maricopa Association of Governments  
Gordon Tyus, MAG Staff Support  
302 North 1<sup>st</sup> Avenue, Suite 300  
Phoenix, AZ 85003

Dear Mr. Tyus:

I nominate Mr. Jim Badowich to the position of Vice Chairperson on the MAG Specifications and Details Technical Committee for the upcoming 2013 year. I understand that the Specifications and Details Technical Committee members unanimously recommended their support for Jim to this Vice Chair position. Please forward this nomination to the MAG Executive Committee for their approval.

If you should have any questions please feel free to contact me at 623-333-1015. Thank you.

Respectfully,

A handwritten signature in blue ink that reads "Charles P. McClendon".

Charles P. McClendon  
City Manager

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**Administration**

11465 W. Civic Center Drive • Avondale, AZ 85323-6804  
Phone: (623) 333-1000 • Fax: (623) 333-0100 • TDD: (623) 333-0010  
[www.avondale.org](http://www.avondale.org)



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

ARIZONA DIVISION

**Agenda Item #3E**  
4000 North Central Avenue  
Suite 1500  
Phoenix, Arizona 85012-3500  
(602) 379-3646  
Fax: (602) 382-8998  
<http://www.fhwa.dot.gov/azdiv/index.htm>

December 4, 2012

In Reply Refer To:  
727.2  
HDA-AZ

Mr. Dennis Smith, Executive Director  
Maricopa Association of Governments  
302 North 1<sup>st</sup> Avenue, Suite 300  
Phoenix, Arizona 85007-3213

Dear Mr. Smith:

This letter is intended to review and update Federal Highway Administration (FHWA) Arizona Division staff participation on various Maricopa Association of Governments (MAG) committees, and to clarify the role of my staff while serving on these committees. We request the following staff be included in the membership of the following committees:

- Ed Stillings, Senior Transportation Planner, will continue serving on the Transportation Review and the Air Quality Committees.
- Jennifer Brown, ITS and Congestion Management Engineer, will continue to serve on the ITS Committee.
- Kelly LaRosa, Safety Engineer, will continue serving on the Transportation Safety Committee and begin serving on the Bicycle/Pedestrian Committee.
- Tom Deitering, Area Engineer for Phoenix and the East Valley, will begin serving on the Streets Committee.

While the above FHWA staff will participate by offering guidance, technical assistance and Federal-aid eligibility determination, I do not see my staff as having a role in deciding projects or programs to be advanced. Therefore, I would ask that FHWA participants be considered Ex-Officio, non-voting members of these committees.

Thank you for your cooperation, and please do not hesitate to contact me if you have any questions or would like further discussion.

Sincerely,

Karla S. Petty  
Division Administrator

cc: Jennifer Toth (MD 102A); Scott Omer (MD 300B); Terry Kennedy (MAG)  
ecc: KPetty, TDeitering, JBrown, EStillings, KLaRosa, TDeitering

# MARICOPA ASSOCIATION OF GOVERNMENTS

## INFORMATION SUMMARY... for your review

**DATE:**

January 15, 2013

**SUBJECT:**

Discussion of the Development of the FY 2014 MAG Unified Planning Work Program and Annual Budget

**SUMMARY:**

Each year, the MAG Unified Planning Work Program and Annual Budget is developed in conjunction with member agency and public input. The Work Program is reviewed each year by the federal agencies in the spring and approved by the Regional Council in May.

Due to the uncertainty of economic conditions, a fifty-percent reduction to the dues and assessment total was approved beginning with the FY 2010 budget. Dues and Assessments continued to be maintained at the fifty percent level each year through FY 2013. During the time MAG Dues and Assessments have been reduced, these additional costs have been covered using MAG reserve funds.

On May 24, 2006, the MAG Regional Council approved applying the CPI-U average for the last calendar year to the draft MAG Dues and Assessments. In order to go forward adjusting for inflation increases, we are recommending for FY 2014 that Dues and Assessments be increased to 75 percent and that the CPI-U average for the calendar years 2010 through 2012 be applied. The average CPI-U from calendar year 2009 through calendar year 2012, prior to the release of the December 2012 CPI-U, is 2.228 percent. The CPI-U for December 2012 will be announced on January 18, 2013. The CPI-U average will then be adjusted for the December 2012 number and final draft Dues and Assessments will be presented. We anticipate very little change to the CPI-U as the result of incorporating the December 2012 number.

At the January 10 and February 14, 2005, MAG Regional Council Executive Committee meetings, the committee discussed that a minimum dues and assessments amount be set to cover some administrative costs of MAG committee meetings. The minimum amount of \$350 for MAG Dues and Assessments was recommended in the February 14, 2005, meeting to cover administrative costs associated with MAG membership. This minimum amount was adopted beginning with the FY 2006 MAG Unified Planning Work Program and Annual Budget. The MAG draft Dues and Assessments for FY 2014 are presented in Attachment A.

This overview of MAG's draft Dues and Assessments for FY 2014 (Attachment A) provides an opportunity for early input into the development of the FY 2014 Work Program and Budget. The draft Dues and Assessments documents are footnoted for your information.

- ◆ The population numbers used in the draft Dues and Assessments calculation are updated using the most recently approved population estimates for 2012 as indicated on the draft Dues and Assessments for FY 2014 in Attachment A.

- ◆ The information in the footnotes to the draft Dues and Assessments, (b), (c), (d), (e), (f), (g) and (h) remains the same from prior years and describes the calculations for the 9-1-1 Planning Assessment, the Homeless Prevention Assessment and the county portion of the population calculation, respectively.
- ◆ MAG staff is proposing that draft Dues and Assessments be increased from 50 percent to 75 percent for FY 2014 with an increase for the average CPI-U change from calendar year 2009 through 2012. Changes for individual members are due to population shifts and the application of minimum dues and assessments. The application of a minimum dues and assessments amount of \$350 affects four members and is discussed in footnote (d). The draft Dues and Assessments increase each fiscal year prior to FY 2010 has been calculated using the average CPI-U from the prior calendar year as approved by the MAG Regional Council on May 24, 2006.
- ◆ The Homeless Prevention Assessment is only charged to those cities that are CDBG recipients with populations over 50,000 and to Maricopa County.

A draft budget timeline is included for your review as Attachment B. The Webinar presentation of the draft budget is tentatively scheduled for Thursday, February 21, 2013, at 1:30 p.m. in the MAG Palo Verde Room. An invitation to the MAG fiscal year (FY) 2014 Budget Webinar will be included in the February Management Committee material.

**PUBLIC INPUT:**

No public comments have been received.

**PROS & CONS:**

PROS: MAG is providing the draft budget timeline and information on draft estimates for Fiscal Year 2014 Dues and Assessments.

CONS: None.

**TECHNICAL & POLICY IMPLICATIONS:**

TECHNICAL: None.

POLICY: None.

**ACTION NEEDED:**

Information and input on the development of the fiscal year (FY) 2014 MAG Unified Planning Work Program and Annual Budget.

**PRIOR COMMITTEE ACTIONS:**

This item is on the January 16, 2013 MAG Management Committee for information.

**CONTACT PERSON:**

Rebecca Kimbrough, MAG Fiscal Services Manager, (602) 452-5051

**Maricopa Association of Governments  
Fiscal Year 2014**

**Draft Dues And Assessments**

Jurisdiction	FY 2012 Budget (a) Population Totals	MAG Member Dues	Solid Waste Planning Assessment	Water Quality Planning Assessment	9-1-1 (b) Planning Assessment	Human Services Planning Assessment	Homeless (c) Prevention Assessment	Total (d) FY 2014 Estimated Dues & Assessments	Total FY 2013 Dues & Assessments	Dues/Assess Change 2014-2013 Over (Under)	2014-2013 % Chg
Apache Junction (f)	36,928	\$1,448	\$72	\$848	\$1,659	\$522		\$4,549	\$2,937	\$1,612	54.89%
Avondale	76,870	\$3,014	\$150	\$1,765	\$3,453	\$1,086	\$982	\$10,450	\$6,892	\$3,558	51.63%
Buckeye	54,102	\$2,122	\$106	\$1,242	\$2,430	\$764		\$6,664	\$4,169	\$2,495	59.85%
Carefree (d)	3,388	\$350	\$7	\$78	\$152	\$48		\$635	\$350	\$285	81.43%
Cave Creek (d)	5,110	\$350	\$10	\$117	\$230	\$72		\$779	\$411	\$368	89.54%
Chandler	241,214	\$9,459	\$472	\$5,538	\$10,834	\$3,408	\$3,082	\$32,793	\$21,345	\$11,448	53.63%
El Mirage	32,067	\$1,257	\$63	\$736	\$1,440	\$453		\$3,949	\$2,605	\$1,344	51.59%
Fort McDowell Yavapai Nation (d) (h)	976	\$350	\$2	\$22	\$44	\$14		\$432	\$350	\$82	23.43%
Fountain Hills	22,695	\$890	\$44	\$521	\$1,019	\$321		\$2,795	\$1,843	\$952	51.65%
Gila Bend (d)	1,932	\$350	\$4	\$44	\$87	\$27		\$512	\$350	\$162	46.29%
Gila River Indian Community (d) (h)	3,010	\$350	\$6	\$69	\$135	\$43		\$603	\$350	\$253	72.29%
Gilbert	219,666	\$8,614	\$430	\$5,043	\$9,867	\$3,104	\$2,807	\$29,865	\$18,844	\$11,021	58.49%
Glendale	229,008	\$8,980	\$448	\$5,258	\$10,286	\$3,236	\$2,926	\$31,134	\$20,495	\$10,639	51.91%
Goodyear	69,018	\$2,707	\$135	\$1,585	\$3,100	\$975		\$8,502	\$5,348	\$3,154	58.98%
Guadalupe (d)	5,943	\$350	\$12	\$136	\$267	\$84		\$849	\$452	\$397	87.83%
Litchfield Park (d)	5,621	\$350	\$11	\$129	\$252	\$79		\$821	\$448	\$373	83.26%
Maricopa County (e)	276,634	\$10,848	\$541	\$6,351	\$12,425	\$3,909	\$3,535	\$37,609	\$24,785	\$12,824	51.74%
Mesa	444,856	\$17,445	\$870	\$10,213	\$19,980	\$6,285	\$5,684	\$60,477	\$39,693	\$20,784	52.36%
Paradise Valley	13,106	\$514	\$26	\$301	\$589	\$185		\$1,615	\$1,050	\$565	53.81%
Peoria (g)	157,660	\$6,183	\$308	\$3,620	\$7,081	\$2,228	\$2,014	\$21,434	\$13,928	\$7,506	53.89%
Phoenix	1,464,727	\$57,440	\$2,863	\$33,629	\$70,811	\$20,695	\$18,717	\$133,344	\$87,494	\$45,850	52.40%
Queen Creek (f)	27,708	\$1,086	\$54	\$636	\$1,245	\$391		\$3,412	\$2,161	\$1,251	57.89%
Salt River Pima-Maricopa (d) (h)	6,437	\$350	\$13	\$148	\$289	\$91		\$891	\$516	\$375	72.67%
Scottsdale	219,713	\$8,616	\$430	\$5,044	\$9,869	\$3,104	\$2,807	\$29,870	\$19,653	\$10,217	51.99%
Surprise	119,530	\$4,687	\$234	\$2,744	\$5,369	\$1,689	\$1,527	\$16,250	\$10,624	\$5,626	52.96%
Tempe	164,659	\$6,457	\$322	\$3,780	\$7,396	\$2,327	\$2,104	\$22,386	\$14,620	\$7,766	53.12%
Tolleson (d)	6,579	\$350	\$13	\$151	\$296	\$93		\$903	\$536	\$367	68.47%
Wickenburg (d) (g)	6,476	\$350	\$13	\$149	\$291	\$92		\$895	\$522	\$373	71.46%
Youngtown (d)	6,188	\$350	\$12	\$142	\$278	\$87		\$869	\$505	\$364	72.08%
<b>TOTALS</b>	<b>3,921,821</b>	<b>\$155,617</b>	<b>\$7,671</b>	<b>\$90,039</b>	<b>\$110,363</b>	<b>\$55,412</b>	<b>\$46,185</b>	<b>\$465,287</b>	<b>\$303,276</b>	<b>\$162,011</b>	

<b>FY 2013 Total Costs Based on Population</b>		\$101,432	\$5,000	\$58,688	\$71,935	\$36,118	\$30,103
		\$54,185	\$2,671	\$31,351	\$38,428	\$19,294	\$16,082
		53.42%	53.42%	53.42%	53.42%	53.42%	53.42%
<b>Per Capita Cost</b>		\$0.04011	\$0.00198	\$0.02321	\$0.02844	\$0.01428	\$0.01190

Each year, the MAG annual Dues and Assessments are apportioned according to per capita populations and the CPI-U from the prior calendar year is applied to the Dues and Assessments. From FY 2010 through FY 2013, Dues and Assessments were reduced by 50% from the FY 2009 amount and this overall lower amount was held constant due to economic conditions. The FY 2014 estimated Dues and Assessments are increased to 75% of the FY 2009 amount and the CPI-U average from calendar year 2009 to the present of 2.28% has been applied. The average CPI-U will be adjusted pending receipt of the December 2012 CPI-U which is anticipated mid-January 2013. Changes in population and application of the 3-year average CPI-U account for the individual member differences between the FY 2013 and FY 2014 Dues and Assessments totals .

- (a) MAG July 1, 2012 Approved Population. These population updates are needed by the State Economic Estimates Commission by December 15th of each year and are the final estimates.
- (b) The 9-1-1 assessment is apportioned according to per capita populations excluding the City of Phoenix.
- (c) The Homeless Prevention assessment is only charged to cities who are CDBG recipients and have populations over 50,000 and to Maricopa County.
- (d) Total Dues and Assessments minimum at \$350 per member results in an overall increase for these members and a slight adjustment for the other members.
- (e) The Maricopa County portion of the dues and assessments includes the balance of the county, excluding Gila River Indian Community, the Fort McDowell Yavapai Nation, and the Salt River Pima-Maricopa Indian Community (except when calculating the Homeless Prevention assessment).
- (f) Maricopa and Pinal County portions.
- (g) Maricopa and Yavapai County portions.
- (h) Maricopa County portion only.

Maricopa Association of Governments  
 Fiscal Year 2014  
 DRAFT January 8, 2013  
 Work Program and Annual Budget Proposed Timeline

- 01/10/13 Thursday Intergovernmental Meeting
- 01/16/13 Wednesday Management Committee Meeting-dues/assessments; timeline
- 01/22/13 Tuesday Regional Council Executive Committee Meeting-dues/assessments; timeline
- 01/30/13 Wednesday Regional Council-dues/assessments; timeline
- 02/07/13 Thursday Intergovernmental Meeting
- 02/13/13 Wednesday Management Committee Meeting- present new projects; presentation of summary budget documents
- 02/19/13 Monday Regional Council Executive Committee Meeting- present new projects; presentation of summary budget documents
- 02/21/13 Thursday Budget Workshop-webinar 1:00 p.m. Palo Verde Room, 2nd Floor, MAG Building
- 02/27/13 Wednesday Regional Council Meeting- present new projects; presentation of summary budget documents
- 03/07/13 Thursday Intergovernmental Meeting
- 03/13/13 Wednesday Management Committee Meeting- information and review of draft budget documents
- 03/18/13 Monday Regional Council Executive Committee Meeting- information and review of draft budget documents
- 03/27/13 Wednesday Regional Council Meeting- information and review of draft budget documents
- 04/04/13 Thursday Intergovernmental Meeting
- 04/10/13 Wednesday Management Committee Meeting- information and review of draft budget documents
- 04/15/13 Monday Regional Council Executive Committee Meeting- information and review of draft budget documents
- 04/24/13 Wednesday Regional Council Meeting- information and review of draft budget documents
- April Changes in draft budget projects and/or any changes in budgeted staff will be brought to the Executive Committee, Management Committee and Regional Council in their April meetings if needed (TBD)
- April IPG meeting with FHWA, FTA, ADOT and others (TBD)
- 05/02/13 Thursday Intergovernmental Meeting
- 05/08/13 Wednesday Management Committee meeting - present draft Budget for recommendation of approval
- 05/13/13 Monday Regional Council Executive Committee meeting - present draft Budget for recommendation of approval
- 05/22/13 Wednesday Regional Council meeting - present draft Budget for approval

## EXCEPTIONAL EVENTS ISSUES

- By February 14, 2013, the Environmental Protection Agency (EPA) must approve the MAG 2012 Five Percent Plan for PM-10 in order to avoid the imposition of a federal implementation plan. The documentation for the remaining 26 exceptional event days that occurred in 2011 and 2012 needs to be completed and concurred with by EPA in time for EPA to approve the Five Percent Plan. The required documentation is extensive and represents a tremendous workload. On September 6, 2012, EPA approved the exceptional event package for five exceptional event days in July 2011. The package was more than 200 pages in length and took six months to assemble.
- The Arizona Department of Environmental Quality has been preparing the required documentation with consultant assistance at an estimated cost of \$500,000, and technical assistance from Maricopa County and the Maricopa Association of Governments (MAG). EPA Region IX staff have also assisted in further streamlining the documentation. On December 3, 2012, ten packages of exceptional events became available for public review and comments were received from the Arizona Center for Law in the Public Interest. The remaining seven packages were completed and available on January 14, 2013 for a thirty day public comment period. A response to comments will be prepared by ADEQ and submitted to EPA with the exceptional events documentation.
- While EPA has made some improvements to their most recent draft exceptional events guidance, the documentation required is extensive. It is evident that additional streamlining still needs to be done. Background information is provided below.

## Background Information

- On July 6, 2012, the Environmental Protection Agency published a notice of availability and public comment period for the Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events and associated attachments. The documents clarified key provisions and responded to questions and issues that have arisen since EPA promulgated the Exceptional Events Rule, and updated the prior May 2011 guidance.
- On August 31, 2012, the Maricopa Association of Governments submitted extensive comments on the Draft Guidance. While some improvements have been made, the revised guidance includes additional requirements and the documentation remains resource intensive. An overriding concern has been to develop a more streamlined and predictable approval process for exceptional events that relies on the work performed by state and local air quality agencies.
- The resource-intensive nature of the Draft Guidance has created an untenable situation for state and local air agencies that must submit exceptional event documentation either to avoid designation as nonattainment or avoid continual nonattainment designation. Especially for areas that experience frequent, recurring exceptional events, the current process is unsustainable.
- There is a need for EPA to streamline the documentation required to demonstrate exceptional

events by states and the EPA process and timeline for approving exceptional events. Streamlining is critical to ensure that areas do not face continual, reoccurring nonattainment due to exceptional events beyond their control.

- The attention of the Draft Guidance needs to shift back towards ways in which the exceptional events process can efficiently grant relief to state and local air agencies that require exclusion of exceptional event data in order to attain or maintain the National Ambient Air Quality Standards.
- In the comments, MAG developed an example form which could be completed by state and local air agencies for high wind dust exceptional events to significantly streamline the exceptional event demonstrations. This form creates a straightforward description of the exceptional event, an explanation of how each element of the exceptional event rule is met, and provides for the attachment of additional information. The form allows the air agency to readily provide to EPA the level of information needed to support the demonstration on a case-by-case basis. EPA could then quickly evaluate the form, and the additional information attached, and either concur or request more information when warranted. When an air agency and EPA agree that a high wind dust exceptional event has occurred, the form greatly reduces the resources expended by both parties.
- Comments on the Draft Exceptional Events Guidance were also submitted by the Western States Air Resources Council (WESTAR), Arizona Department of Environmental Quality, Maricopa County, Associated General Contractors, Congressman Flake, and others. The workload issue and the need for additional streamlining were included in several of these comments.
- On October 19, 2012, EPA sent a letter to MAG regarding the MAG comments on the Draft EPA Exceptional Events Guidance Documents. In the letter, EPA indicated that after consideration of all the comments submitted, EPA will determine whether to issue final guidance and/or make a decision on whether to proceed with amendments to the EPA Exceptional Events Rule.
- MAG has also been working with the Washington special legal counsel and Congressional delegation staff in the event that the comments are unsuccessful in streamlining the exceptional events process and the required documentation. If legislation becomes necessary, MAG has been exploring possible legal remedies that would allow states and tribes to make exceptional events determinations. In addition, MAG had provided a redline of Congressman Flake's legislation, The Commonsense Legislative Exceptional Events Reform Act of 2012 (CLEER Act) to suggest some improvements to streamline the excessive documentation. The suggestions also included an option for EPA to allow for states to make determinations on exceptional events.
- During the December 6, 2012 Arizona Highway Users luncheon, there was some discussion regarding the exceptional events issues and the CLEER Act legislation. Interest was expressed by Representative Tobin, Senator Biggs, and the Arizona Farm Bureau in the MAG comments on the Draft EPA Exceptional Events Guidance and in the redline of the CLEER Act legislation. These items were then transmitted to them.

MAG, January 15, 2013

.....  
(Original Signature of Member)

112TH CONGRESS

~~2550N~~

# H. R. \_

To amend the Clean Air Act with respect to exceptional event demonstrations,  
and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. FLAKE introduced the following bill; which was referred to the Committee  
on \_\_\_\_\_

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# A BILL

To amend the Clean Air Act with respect to exceptional  
event demonstrations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commonsense Legisla-  
5 tive Exceptional Events Reforms Act of 2012”.

6 **SEC. 2. AMENDMENTS TO THE EXCEPTIONAL EVENT PROVI-**

7 **SION OF THE CLEAN AIR ACT.**

8 (a) EXCEPTIONAL EVENT DEMONSTRATION.—Sec-  
9 tion 319(b)(3)(B)(iv) of the Clean Air Act (42 U.S.C.



1 7619(b)(3)(B)(iv)) is amended by striking “to petition the  
2 Administrator to” and inserting “to submit a petition (in  
3 this section referred to as an ‘exceptional event dem-  
4 onstration’) to the Administrator to”.

5 (b) CRITERIA.—Section 319(b)(3) of the Clean Air  
6 Act (42 U.S.C. 7619(b)(3)) is amended by adding at the  
7 end the following:

8“(C) CRITERIA FOR DETERMINATION OF

9 EXCEPTIONAL EVENT DEMONSTRATION.—The

10 criteria for evidence, analyses, and documenta-  
11 tion applicable to approval or disapproval of an  
12 exceptional event demonstration under the regu-  
13 lations under this section shall be stated with  
14 specificity in order to assist States in obtaining prompt review of

exceptional events and to minimize the discretion of

15 the Administrator in approving or disapproving

16 such demonstration. The Administrator shall

17 develop such criteria in conjunction with input

18 from the States. Such criteria shall streamline the criteria and documentation  
19 required for exceptional events, reflect the

20 varying level of technical expertise and re-

21 sources available in State and local agencies,

22 ~~and~~ the varying availability of meteorological

and other monitoring data in rural areas, and the varying

meteorological and climatic conditions in different states,  
including states with arid areas. Such criteria~~and~~

23 \_\_\_\_\_ may vary with  
respect to different regions. In

24                developing such criteria, the Administrator shall

25                also consider use of an expedited or streamlined

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April 18, 2012 (5:01 p.m.)

1 approval process and conditions under which  
2 exceptional event demonstrations may be suit-  
3 able for such a process.”.

“(D) Additional Authority.—Notwithstanding any other  
provision of this Act, the Administrator may deem a State  
petition to be approved based solely on the State’s  
determination that an exceptional event has occurred and that  
the requirements of this section are satisfied, including all  
requirements contained in paragraphs (A) and (B).”

4 (c) TIMING OF APPROVAL OR DISAPPROVAL OF EX-  
5 CEPTIONAL EVENT DEMONSTRATION.—Section 319(b)(3)  
6 of the Clean Air Act (42 U.S.C. 7619(b)(3)) is further  
7 amended by adding at the end the following:

8 “(D) TIMING OF DETERMINATION OF EX-  
9 CEPTIONAL EVENT DEMONSTRATION.—

10 “(i) DEADLINE FOR DETERMINA-  
11 TION.—Not later than 90 days after sub-  
12 mission of an exceptional event demonstra-  
13 tion, the Administrator shall approve, dis-  
14 approve, or request additional information  
15 from a State regarding such exceptional  
16 event demonstration. If the Administrator  
17 does not take any action with respect to an  
18 exceptional event demonstration within  
19 such 90-day period, such demonstration  
20 shall be considered approved.

21 “(ii) DEADLINE IF ADDITIONAL IN-  
22 FORMATION REQUESTED.—If the Adminis-

23                                   trator requests additional information from  
24                                                           a State regarding an exceptional event  
25                                                           demonstration under clause (i), not later

1 than 90 days after the submission of such  
2 additional information, the Administrator  
3 shall approve or disapprove such dem-  
4 onstration. If the Administrator does not  
5 approve or disapprove such a demonstra-  
6 tion for which additional information is  
7 submitted within such 90-day period, such  
8 demonstration shall be considered ap-  
9 proved.”.

10 (d) BURDEN OF PROOF.—Section 319(b)(3) of the  
11 Clean Air Act (42 U.S.C. 7619(b)(3)) is further amended  
12 by adding at the end the following:

13 “(E) BURDEN OF PROOF.—The regula-  
14 tions promulgated under this section shall pro-  
15 vide that a determination by the Administrator  
16 with respect to approval or disapproval of an  
17 exceptional event demonstration be based on a  
18 preponderance of the evidence. In making any  
19 such determination, the Administrator shall ac-  
20 cord substantial deference to the findings of the  
21 State exceptional event demonstration, ~~and may~~  
22 ~~develop and use analyses and consider evidence~~  
23 ~~not provided by such exceptional event dem-~~  
24 ~~onstration.”.~~



1 (e) APPEALS.—Section 319(b)(3) of the Clean Air  
2 Act (42 U.S.C. 7619(b)(3)) is further amended by adding  
3 at the end the following:

4 “(F) APPEALS.—Approval or disapproval  
5 by the Administrator of an exceptional event  
6 demonstration shall be considered final action  
7 subject to judicial review under section  
8 307(b).”.

(f) OTHER AMENDMENTS.—Section 319(b) of the  
Clean Air Act (42 U.S.C. 7619(b)(3)) is further amended by:

(1) striking “location or a natural event” in section  
319(b)(1)(A)(iii) and inserting in lieu thereof “location, a  
natural event or a high wind event; and”

(2) inserting after “subsection,” in section  
319(b)(1)(B), “except a high wind event,”

(3) by adding at the end the following:

“(C) Definition.—

“In this subsection –

“(i) the term ‘natural event’  
means an event in which

human activity plays little or  
no direct causal role;”

“(2) the term ‘high wind event’

means an event where

particulate matter is raised or  
transported by high winds.”

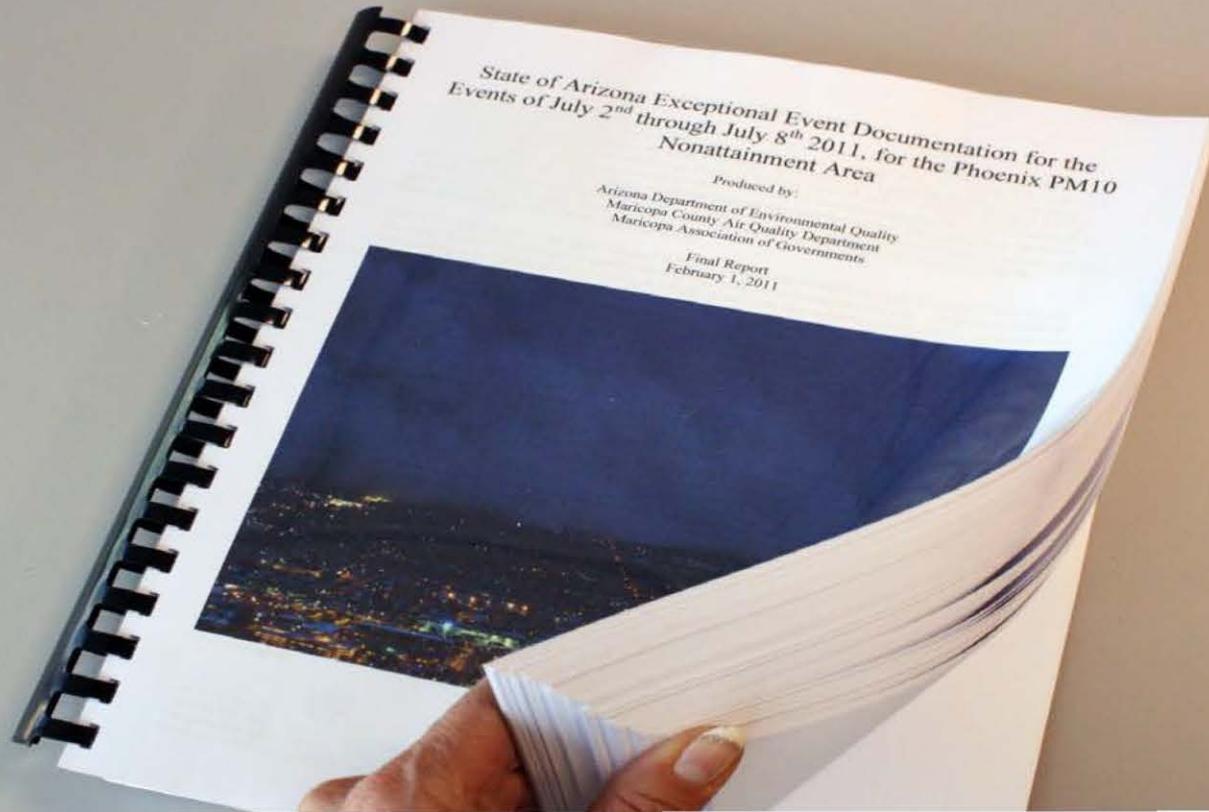
9 (g) REVISION OF REGULATIONS.—Not later than 180  
10 days after the date of enactment of this Act, the Adminis-

11 trator of the Environmental Protection Agency shall revise  
12 the regulations under section 319(b) of the Clean Air Act  
13 (42 U.S.C. 7619(b)) to carry out the amendments made  
14 by this Act.

# Haboobs Happen



# Six Months & More Than 200 Pages to Prove to EPA the Haboob was Not Man Made





302 North 1st Avenue, Suite 300 ▲ Phoenix, Arizona 85003  
 Phone (602) 254-6300 ▲ FAX (602) 254-6490  
 E-mail: mag@azmag.gov ▲ Web site: www.azmag.gov

August 31, 2012

Ms. Gina McCarthy  
 Assistant Administrator for Air and Radiation  
 U.S. Environmental Protection Agency  
 Room 5406 Ariel Rios North  
 1200 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20460

Re: Comments on Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events, Docket ID No. EPA-HQ-OAR-2011-0887, 77 Fed. Reg. 39,959 (July 6, 2012)

Dear Assistant Administrator McCarthy,

The Maricopa Association of Governments ("MAG") is pleased to submit the following comments regarding Exceptional Events Rule ("EER") guidance documents and associated attachments ("Draft Guidance") that have been published on the Environmental Protection Agency's ("EPA's") Web site pursuant to the above-referenced Notice of Availability ("NOA").

We appreciate your continued interest in this matter and the development of additional guidance material by EPA. Our comments on this guidance will serve to supplement comments that we originally submitted on the 2011 EPA draft EER guidance.<sup>1</sup> Since we believe that the NOA and the Response to Comments Document<sup>2</sup> provide only a very limited and partial response to many of the concerns raised in our original comments, we ask that you again consider these comments in the context of the current NOA. We have included these comments as Attachment A and ask that you consider and respond to them during your consideration of the Draft Guidance.

Otherwise, we appreciate the time and effort that you and EPA staff have devoted to this matter. We believe, however, that the follow-on Draft Guidance and related documents require substantial revision before EPA takes further action to finalize the guidance or implement the policies described therein. Our overriding concern has been to develop a more streamlined and predictable approval process for exceptional events that relies on the work performed by state and local air quality

<sup>1</sup> *Guidance on Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule*, United States Environmental Protection Agency, May 2, 2011.

<sup>2</sup> *Response to Significant First-Round Comments on the Draft Guidance on the Implementation of the Exceptional Events Rule*, U.S. Environmental Protection Agency, June 2012.

August 31, 2012

Page 2

agencies. After reviewing all the documents that constitute the Draft Guidance, we regrettably conclude that the guidance will not accomplish this result and, in some instances, will require additional work and documentation by state and local governments. Therefore, we recommend that you make further revisions to both the guidance documents and the Office of Air and Radiation's implementation of the EER.<sup>3</sup>

Altogether, we thank you for your efforts in this area and for your thorough consideration of our comments. We look forward to working with you, the Office of Air and Radiation, the Office of Air Quality Policy and Standards and EPA Regional offices as the Agency works to finalize its EER guidance and any associated policies or statements. We would be happy to provide additional information on any of the matters discussed below.

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

Sincerely,



Dennis Smith  
Executive Director

cc: Janet McCabe, EPA Office of Air and Radiation Principal Deputy Assistant Administrator  
Peter Tsirigotis, EPA Office of Air Quality and Planning Standards  
Phil Lorang, EPA Office of Air Quality and Planning Standards  
Colleen McKaughan, EPA Region IX  
Matt Lakin, EPA Region IX  
Meredith Kurpius, EPA Region IX  
Michael Flagg, EPA Region IX  
Henry Darwin, Arizona Department of Environmental Quality

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<sup>3</sup> EPA indicates that it intends to follow this Draft Guidance during the public comment period and the document finalization process. See *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*, United States Environmental Protection Agency, June 2012 at 10. We urge you to instead promptly review all the comments submitted and make substantial revisions to the Draft Guidance before implementing any new policies on a comprehensive basis. A possible exception to this view would be with regard to the pendency of any request that is needed for an immediate attainment or nonattainment determination, or other action with near-term regulatory consequences. In such a case, we would recommend implementation of the Draft Guidance with specific notation that EPA is not establishing precedent by its interpretation of Clean Air Act ("CAA") section 319 in such actions.

MAG Comments on Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events, Docket No. EPA-HQ-OAR-2011-0887, 77 Fed. Reg. 39,959 (July 6, 2012)

I. EPA's New Draft Guidance Does Not Result in "Specific, Broadly Applicable, Streamlining Mechanisms"

MAG appreciates that EPA has emphasized the comments it received concerning mechanisms that would both streamline and reduce the resource burden required in producing and reviewing exceptional event demonstrations. EPA states that the Agency "recognizes the challenges that air agencies face in preparing exceptional event demonstration packages."<sup>1</sup> EPA also notes "the limited resources of air agencies that prepare and submit exceptional event demonstration packages and of the EPA regional offices that review these demonstration packages. One of the EPA's goals in developing exceptional event implementation guidance is to establish clear expectations to enable affected agencies to better manage resources as they prepare the documentation required under the EER."<sup>2</sup> MAG shares these goals and objectives and believes EPA must establish a more reasonable exceptional events process. Such a process in the end can accomplish the goals of the EER while conserving limited federal, state and local resources.

MAG also appreciates the clarification of certain issues as conveyed in the guidance. For example, MAG agrees with EPA's determination that exceptional events can occur at single monitors within a region during a high wind dust event and that a 25 mph wind speed threshold for when reasonable controls are overwhelmed during a high wind dust event is not appropriate for all regions. However, on balance, the Draft Guidance does little to reduce the overall burden required in producing and approving exceptional event documentation, and in some cases may actually increase the effort and documentation required. As examples of the latter, the Draft Guidance requires the setting of a local wind speed threshold for the evaluation of reasonable controls during a high wind dust event for regions where the default 25 mph wind speed threshold is not appropriate. Establishing this threshold will require a region to conduct specific, specialized wind tunnel testing and/or design complicated monitoring networks. This is a significant new burden that, even when completed, will still need a separate *additional* approval by EPA before a local threshold can be used in an exceptional event demonstration.

Additionally, while the goals of the Prospective Controls Analysis and High Wind Action Plan as presented in the Draft Guidance may be to provide state and local air agencies with added certainty regarding the status of their control programs, the resources required to produce these SIP-like documents as outlined in the Draft Guidance are extensive. Thus, such efforts are likely to be eschewed by air agencies that have already expended significant resources preparing "basic" exceptional event required documentation. Anticipated use of these analyses and plans is also weakened given that EPA provides only that approval would "typically be effective for a minimum of

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<sup>1</sup> *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*, United States Environmental Protection Agency, June 2012 at 4.

<sup>2</sup> *Id.*

three years”<sup>3</sup> with no assurances that such a plan could be used for a longer period of time. These examples, along with the other comments presented below, illustrate that the process of producing exceptional event demonstrations has not been streamlined, but rather additional time and resources are necessary to satisfy the Draft Guidance.

#### **A. The Process for Arizona’s “Model Demonstration” Needs Improvement**

There appears to be a fundamental disconnect between EPA and state and local air agencies over what “streamlined” exceptional event submittals look like. In the NOA, EPA stated that, “. . .the EPA’s Region 9 office worked with agencies in Arizona to incorporate approaches presented in the draft guidance documents into a consolidated exceptional events demonstration package that addresses numerous exceedances of the PM<sub>10</sub> standard. The EPA hopes that, once finalized, much of the information included in this streamlined exceptional events demonstration submittal could be transferable and serve as a model for future events for both Arizona and other areas experiencing high wind dust events.”<sup>4</sup> While MAG appreciates that EPA views the latest exceptional event documentation submitted by Arizona as a model demonstration on which EPA can concur, the documentation required for this demonstration was extensive and resource-intensive.

Five, clear-cut high wind dust event days were addressed in the Arizona demonstration. The documentation required for this “basic” demonstration demanded the coordination and resources of multiple state and local agencies and took over six months to complete. The demonstration package was submitted to EPA in March 2012 and, to date, has not been acted upon by EPA. While it was beneficial to combine multiple exceedance days into one documentation package, calling the Arizona submittal a “streamlined” submittal masks the enormous resources required by state and local agencies to produce such a submittal. Given that Arizona still needs to submit demonstrations for sixteen other high wind dust exceptional event days that occurred in 2011, along with a number of additional event days in 2012, the time and resources required to create similar model demonstration packages is overwhelming and would likely take years to complete and reach concurrence by EPA. EPA must therefore work with states and local governments to further refine and streamline this process.

#### **B. The Process for Weight of Evidence Determinations Should be Restructured**

The Draft Guidance stresses the tools or tests a state or local air agency can use to provide the necessary “weight of evidence” to fulfill the individual elements of the exceptional event rule.<sup>5</sup> While some of these tools and tests may or may not be useful depending on the individual exceptional event, the emphasis of the Draft Guidance on these tools and tests create an expectation that state and local air agencies must develop these specific tools and/or meet these specific tests in order for EPA to concur with an exceptional event. This focus as presented in the Draft Guidance detracts an air agency from providing the best event-specific evidence that supports an exceptional event

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<sup>3</sup> *Id.* at 9.

<sup>4</sup> 77 Fed. Reg. at 39,960.

<sup>5</sup> Wind speed thresholds, back trajectories, and micro-scale emission inventories are examples of the types of tools and tests suggested by EPA.

demonstration. Enormous resources have thus been diverted to the generation of data designed not to meet the exceptional event rule elements, but simply to satisfy the tools and tests in the guidance documents.

The resource-intensive nature of the Draft Guidance has created an untenable situation for state and local air agencies that must submit exceptional event documentation either to avoid designation as nonattainment or avoid continual nonattainment designation. Especially for areas that experience frequent, recurring exceptional events, the current process is unsustainable. The attention of the Draft Guidance needs to shift back towards ways in which the exceptional event process can efficiently grant relief to state and local air agencies that require exclusion of exceptional event data in order to attain or maintain attainment with National Ambient Air Quality Standards (“NAAQS”). Given this priority, MAG submits the following comments and implementation concepts which can provide tangible ways to significantly streamline exceptional event demonstrations:

1. In Attachment B, MAG has developed an example form which can be completed by state and local air agencies for high wind dust exceptional event demonstrations. This form creates a straightforward description of the exceptional event and an explanation of how each element of the exceptional event rule is met. The form allows the air agency to readily provide to EPA the level of information needed to support the demonstration on a case-by-case basis. EPA can then quickly evaluate the form, and the additional information attached, and either concur or request more information when warranted. When an air agency and EPA agree that a high wind dust exceptional event has occurred, the form greatly reduces the resources expended by both parties. The air agency does not waste time and effort satisfying unneeded tools and tests, and EPA can quickly concur given the appropriate level of information provided by the air agency. This allows the focus of resources on those cases where EPA may have questions as to whether uncontrolled anthropogenic sources were significantly involved in the exceedance.
2. In a November 2011 letter to the EPA’s Office of Air and Radiation Deputy Assistant Administrator Janet McCabe, MAG discussed a concept for streamlining the exceptional events process by enabling the states and tribes to make exceptional events determinations, after consultation with EPA. This letter is included as Attachment C. MAG’s goal is to establish a more reasonable exceptional events process for all those concerned: EPA, states, tribes, and local governments. Overall, this concept would maintain EPA in its defined role in the CAA implementation process, while returning the control of exceptional events determinations to states and tribes that are in the best position to evaluate local air quality conditions.
3. Many areas experience natural exceptional events that recur frequently with seasonal meteorological conditions. The MAG region is prone to high wind dust events especially during the summer monsoon season. For these areas, the provision in the exceptional event rule that requires that states submit exceptional event documentation “12 months prior to the date that a regulatory decision must be made by EPA”<sup>6</sup> is not possible to meet in some situations. As an example, it is highly likely in the MAG region that exceptional events will

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<sup>6</sup> 40 C.F.R. § 50.14(c)(3)(i).

recur within the twelve months leading up to an EPA regulatory decision (e.g., exceptional events that occur in the attainment year of an air quality plan). In these situations it would be efficient and beneficial for EPA and the final implementation guidance to provide flexibility to allow for the consideration and submission of exceptional events and associated demonstrations that may occur or recur just before, or within, twelve months of a regulatory decision.

4. EPA should abandon requirements to evaluate whether an event was not reasonably controllable or preventable on a case-by-case basis. The Draft Guidance indicates that “each demonstration package address the question of reasonable controls.”<sup>7</sup> As indicated in previously submitted comments,<sup>8</sup> measures within a State Implementation Plan (“SIP”) developed in accordance with CAA requirements must be “necessary to assure” that NAAQS are achieved. EPA’s determination that such SIP controls meet CAA requirements settles the matter with respect to whether sufficient controls are in place in the SIP and are being implemented by state and local authorities barring evidence to the contrary of non-enforcement. As previously pointed out, not only do SIP elements easily meet any requirement of “reasonableness” under CAA section 319, EPA’s prior approval of the elements constitutes a determination that such measures are, in fact, reasonable.

The Draft Guidance instead represents that windblown dust Best Available Control Measures (“BACM”) *generally* should be adequate where a high wind threshold is exceeded.<sup>9</sup> The Draft Guidance also indicates that such measures constitute a “reference point” for consideration of reasonable measures in *other areas*.<sup>10</sup> Thus, EPA is proposing to implement a procedure for exceptional events whereby multiple bites at the apple occur: first, during the SIP review process, and repeatedly after this time when BACM and Reasonably Available Control Measures (“RACM”) already approved must be reviewed again before being considered adequate in the context of an exceptional event. In addition, EPA is effectively seeking a third tier of “apple bites” by implying that the Agency will consider not only measures already in place with respect to the area seeking approval of an exceptional event, but that EPA will look to whether an area has adopted measures that a different area has adopted. EPA has no basis within CAA section 319 to impose such a process on the review of EER determinations and such a procedure is inapposite to streamlining.<sup>11</sup> Instead, this part of the Draft Guidance must be thoroughly revised to avoid the imposition of additional state and local burdens in the EER review process.

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<sup>7</sup> *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*, United States Environmental Protection Agency, June 2012 at 4.

<sup>8</sup> See Section I of Attachment A.

<sup>9</sup> *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule*, United States Environmental Protection Agency, June 2012 at 66.

<sup>10</sup> *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*, United States Environmental Protection Agency, June 2012 at 8.

<sup>11</sup> The Draft Guidance also offers no detail as to what criteria might be applicable to insist that measures appropriate in one area are also appropriate for another area.

## II. EPA Should Develop Additional Guidance Measures to Allow Greater Deference to State and Local Determinations

Section 319 of the CAA (42 U.S.C. § 7619) requires the Administrator to determine that an event is an exceptional event.<sup>12</sup> While the Administrator is required under this section to promulgate regulations to “govern[ ] the review and handling of air monitoring data influenced by an exceptional event”,<sup>13</sup> the requirement for such regulations does not constrain the degree of deference that the Administrator may afford to state or local determinations regarding exceptional events. In addition, while CAA section 319 also requires that regulations contain criteria and procedures whereby states petition the EPA Administrator for exclusion of air quality data affected by exceptional events,<sup>14</sup> this provision does not place specific restraints on the Administrator from adopting the recommendations of a state with regard to such exclusions.

EPA is also not prevented under current regulations from providing much greater latitude to state submissions on exceptional events than is contained in the Draft Guidance. Current regulations provide only that various demonstrations to justify data exclusion be “to EPA’s satisfaction” with regard to whether air pollution concentrations in excess of a NAAQS were directly due and caused by an exceptional event.<sup>15</sup> Thus, current regulations do not limit the Administrator’s ability to accept state technical information, evaluations and demonstrations regarding exceptional events and to defer to the judgment of air pollution officials who are responsible for the day-to-day implementation of CAA measures. Indeed, the regulatory use of a noun as broadly defined as “satisfaction” (e.g., “an act of satisfying”) allows the Administrator to accept a range of state demonstrations on exceptional events. Thus, as proposed in comments contained in I.B.1 above, EPA should adopt additional measures in the Draft Guidance utilizing forms, check off lists and other straightforward mechanisms which give proper deference to the role of states in implementing the CAA.

The “cooperative federalism” structure of the CAA amply supports such an interpretation of the Administrator’s authority in CAA section 319. CAA section 101(a)(3), enacted as part of the Clean Air Act of 1963<sup>16</sup>, provides that “air pollution control at its source is the primary responsibility of States and local governments.” CAA section 102(a) further requires EPA to “encourage cooperative activities by the States and local governments for the prevention and control of air pollution . . .”<sup>17</sup> EPA should consider these provisions, in conjunction with CAA section 319(b), as forming the basis for far greater deference to state and local decision-making on exceptional events. Such deference is not only supported in the CAA, but would also promote greater efficiency at the federal, state and local governmental level.

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<sup>12</sup> See CAA section 319(b)(1)(A)(iv).

<sup>13</sup> CAA section 319(b)(2)(B).

<sup>14</sup> CAA section 319(b)(1)(B)(iv).

<sup>15</sup> See 40 C.F.R. § 50.14(a)-(b) generally and 40 C.F.R. § 50.14(b)(2) and (b)(3) with respect to fireworks and prescribed fires.

<sup>16</sup> Pub. Law 88-206 (December 17, 1963). Current CAA section 101(a)(3) was originally enacted as Section 1(a)(3).

<sup>17</sup> This section was also enacted in 1963 in slightly different form as Section 2(a).

### III. Prospective Controls Analysis and High Wind Action Plan Requirements

The concept behind a Prospective Controls Analysis is a positive one, if the intent of this analysis is to provide state and local air agencies a mechanism by which current level of high wind controls can be evaluated ahead of time for reasonableness and need not be re-evaluated for each recurring high wind dust event. Unfortunately, the resources involved in preparing a Prospective Controls Analysis as outlined in the Draft Guidance would likely not be warranted given the demands placed upon state and local air agencies in producing exceptional event documentation. Especially for areas where control programs may be more than three years old, the Draft Guidance requires extensive documentation detailing the history of control programs, SIP submissions, prior exceptional events, source category reviews, high wind threshold analysis and other requirements.

In addition, under the Draft Guidance, the Prospective Controls Analysis is required to undergo a separate review and approval process by EPA. Given the complexity of the proposed Prospective Controls Analysis, it appears that it will be more efficient to describe the controls in place and their implementation during each exceptional event than to try and prepare a separate Prospective Controls Analysis (which is comparable in character to a SIP) that may or may not be approved by EPA. Given that EPA already has access to the majority of the information required in a Prospective Controls Analysis through review of existing SIP documents and air quality plans, a separate analysis that largely repeats this information appears unnecessary.

The Draft Guidance concept of a High Wind Action Plan is also of limited usefulness in the MAG region, since new sources of windblown dust and additional high wind controls are unlikely to be identified. The guidance should continue to make clear that a High Wind Action Plan is a voluntary tool that a state or local air agency may utilize. To require a High Wind Action Plan be in place in order to concur on exceptional events clearly goes beyond the scope of the exceptional events rule. In addition, nothing within CAA section 319 would authorize EPA to require the submission of either a Prospective Controls Analysis or a High Wind Action Plan. Regulations under this section are limited to the "review and handling of air monitoring data" and do not extend to controls and other state or local planning measures.

As stated earlier in Section I, the current structure of the Prospective Controls Analysis and the High Wind Action Plan are of limited usefulness given the resources required to create them. EPA needs to revise the Draft Guidance to eliminate the redundancy and unnecessary approvals associated with these items.

### IV. Comments Relating to High Wind Events and Related Guidance Documents

MAG appreciates EPA's acknowledgement that when identifying a high wind threshold, EPA is not setting a bright line as to what speed constitutes a high wind dust event. As explicitly set forth in the Draft Guidance, "In identifying a high wind dust threshold, the EPA does NOT intend to set a bright line as to what speed constitutes a high wind dust event or to categorically concur with all events with sustained wind speeds above a given threshold. Both the nullified preamble language and current EPA

interpretation require appropriate event-specific information that EPA will review on a case-by-case basis.”<sup>18</sup>

However, the flexibility EPA allows of itself to interpret each event on a case-by-case basis is not afforded to state and local air agencies in practice, as the high wind threshold is presented as a mandatory item by which EPA evaluates reasonableness of existing controls. The Draft Guidance asserts that either a state or local air agency will submit its own locally developed threshold (a resource-intensive activity by itself) or EPA will assume the default of 25 mph for western states.<sup>19</sup>

Additionally, the Draft Guidance presumes that dust from a high wind event, with winds under a preset high wind threshold, is the result of uncontrolled anthropogenic sources. As stated by EPA, “The EPA believes air agencies should submit a comprehensive controls analysis when wind speeds are below the high wind threshold because events with wind speeds below this threshold should entrain very little dust from natural and reasonably-controlled disturbed surfaces. Further, the EPA expects that windblown emissions would include significant contributions from sources that are neither natural nor reasonably-controlled. Thus, the event is less likely to be not reasonably controllable or preventable.”<sup>20</sup> In addition to implying that all events below a preset wind threshold will not be concurred upon by EPA, this assumption goes beyond the scope of the exceptional events rule by establishing a wind speed threshold test that event demonstrations must meet in order for the event to be considered not reasonably controllable or preventable. Specifically, under current regulations, demonstrations are only required to include “*any* reliable and accurate data”<sup>21</sup> (emphasis added) and are not required to meet specific cut-off points with respect to wind speed. As a result, imposition of this limit cannot be utilized by EPA as a rationale for not accepting an exceptional events demonstration.<sup>22</sup>

Furthermore, the very real and practical problem with the use of a fixed high wind threshold in evaluating high wind dust events is that wind speed by itself is a poor predictor of dust emissions. While wind speed certainly provides the energy needed to lift dust emissions into the air, the conditions of the soil have a far greater impact on the duration and intensity of the dust emissions than does wind speed alone. In the MAG region, the amount of dust entrained by a collapsing thunderstorm(s) during the monsoon season is strongly dependent on the state of the soil when that thunderstorm(s) collapses; in particular the amount of rain the soil has received prior to or during the thunderstorm generated winds. The same wind speed will produce dramatically different levels of

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<sup>18</sup> *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule*, United States Environmental Protection Agency, June 2012 at 41.

<sup>19</sup> *Draft Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule*, United States Environmental Protection Agency, June 2102 at 16.

<sup>20</sup> *Id.* at 17.

<sup>21</sup> 40 C.F.R. § 50.14(a)(2)

<sup>22</sup> EPA’s Federal Register notice explicitly states that “guidance documents do not change, increase, or decrease rule requirements; they assist by providing information and illustrations for better understanding of and compliance with the rule.” 77 Fed. Reg. at 39,960.

dust depending on the soil moisture content and level of natural crusting that result from significant rainfall. Hypothetically, it may be that in periods of drought only 15 mph winds are required to produce levels of dust that would cause an exceedance, while in years with rainfall, 30 mph winds may be required to produce similar levels of dust.

The wind speeds capable of causing a high wind dust event in the above example have no direct relationship to whether anthropogenic sources were reasonably controlled. Yet, under the current guidance, the assumption is that the high wind dust event caused by 15 mph winds were the result of “significant contributions from sources that are neither natural or reasonably-controlled”<sup>23</sup> because the wind speed may be below some preset high wind threshold. This assumption is totally without foundation. A set threshold also does not explain the role of transport in high wind dust events. Many times, the affected monitor during a high wind dust event will experience only low to moderate wind speeds and still be impacted by transported dust. The dust may be transported from regions outside of the affected area, yet the threshold would seemingly need to be based upon local data inside of the affected area, which may have dramatically different natural conditions or control programs.

While it is obviously important to investigate wind speeds when explaining a high wind dust event, they should not be used to make a regulatory presumption when compared to an arbitrary threshold. In the Draft Guidance, the role of wind speed is used specifically to determine if the controls in place are reasonable. This is a rigid and arbitrary distinction which is unfair to state and local air agencies. Given that the Draft Guidance acknowledges the need to evaluate each event on a case-by-case basis, EPA must provide this opportunity to state and local air agencies by not requiring them to meet a fixed wind speed threshold.

In addition, while it may be understandable that EPA would propose a standard wind speed metric, the choice of hourly average wind speeds is problematic. Dust emissions in the MAG region tend to be sporadic and non-uniform depending on the given soil conditions during a high wind event. Some of the thunderstorm-outflow high wind dust events are very transient and may only affect a monitor for twenty to thirty minutes, briefly recording elevated wind speeds with the passage of the gust front of the dust storm. Hourly averages in these situations under-predict the ability of wind energy to entrain dust. In fact, much of the research into dust emissions finds that wind gusts are a much better predictor of emissions than sustained wind speeds, especially sustained wind speeds averaged over an hour.<sup>24</sup> The focus of state and local air agencies should be on using the wind speed metrics that best describe the nature of the high wind dust event and how those winds entrained the dust that caused the exceedance. This will likely involve utilizing a combination of wind gust and sustained wind data. EPA should not mandate a wind speed metric as there is no benefit to prescribing a set wind speed metric which may not adequately explain the nature of the event.

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<sup>23</sup> *Draft Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule*, United States Environmental Protection Agency, June 2102 at 17.

<sup>24</sup> As an example, see: Engelstaedter and Washington, 2007. *Temporal controls on global dust emissions: The role of surface gustiness*, Journal of Geophysical Research Letters.

## V. Frequent Natural Events Do Not Require A Determination of Reasonable Controls

EPA refers in several places within its Response to Comments document to the previous Natural Events Policy. As an initial matter, it is irrelevant whether an approach using the authority of CAA section 319 is “consistent with” this policy. There is no evidence presented in the record for the EER that Congress intended the new statutory requirements regarding “natural events” include any aspect of the pre-existing EPA guidance document and, as a matter of law, guidance cannot trump statutory text. Therefore, EPA’s Natural Events Policy has no bearing with regard to the interpretation of “natural events” in the statutory construct of CAA section 319 or within the Draft Guidance which must be based on the statute and its proper regulatory interpretation.

In addition, we must also point out that EPA is attempting to advance a mistaken interpretation of the statute when it indicates that “Clean Air Act section 319 recognizes that natural events can be both recurring and exceptional.”<sup>25</sup> In fact, as previously pointed out by MAG, “recurrence” within CAA section 319 refers *only* to events caused by human activity. There is no similar qualification which modifies in any way what is or is not a “natural event” under CAA section 319(b)(1)(A)(iii). Therefore, whether or not a natural event occurs frequently or infrequently is not a basis for determining whether or not it is an exceptional event. EPA received comments on this issue both from the South Coast Air Quality Management District (Comment 7.5.7) and from MAG<sup>26</sup> but failed to specifically respond to both.

EPA is similarly in error when it indicates that the Draft Guidance “raised the concept of recurrence as it pertains to the reasonableness of controls with the belief that a natural event that recurs merits more effort at control than a one-time or very infrequent type of event.”<sup>27</sup> EPA indicates that the issue of recurrence for natural events is most likely with reference to high wind dust events. While MAG appreciates EPA’s statement that natural events do not have to be infrequent to qualify as exceptional events<sup>28</sup> EPA must correct its previous statements of law and regulatory policy and recognize the separate statutory construct of a “natural event.” Thus, EPA should not finalize any guidance documents which would impose greater burdens on areas that experience more frequent natural events than areas that do not, or impose any additional requirements beyond those required in applicable SIPs for addressing nonattainment issues related to such exceptional events.

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<sup>25</sup> *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule*, United States Environmental Protection Agency, June 2012 at 52.

<sup>26</sup> See Attachment A, Section I.B.

<sup>27</sup> *Responses to Significant First-Round Comments on the Draft Guidance Documents on the Implementation of the Exceptional Events Rule*, United States Environmental Protection Agency, June 2012 at 54.

<sup>28</sup> *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*, United States Environmental Protection Agency, June 2012 at 6.

## VI. EPA Must Accelerate Exceptional Event Review Process

EPA's review of exceptional events demonstrations includes a distinction between packages that are required "sooner" by near-term regulatory action versus other submissions. We believe that EPA must make every attempt to speed up any review process from the timelines proposed in the rule. Our proposal in Attachment B is designed to assist in this effort.

Otherwise, the EPA review process as outlined in the Draft Guidance would provide for a total of 667 days of Agency review time once a demonstration package was submitted (presuming that such a package was considered to be "complete" by the Agency). EPA is allowing itself 120 days from the initial submission of a package for responding via letter on a completeness determination and whether there is a need for additional information to be submitted. Following this process, the Draft Guidance allows EPA 547 days in order for the Agency to actually make a decision regarding an exceptional event. This timeline is far too long.

MAG previously provided specific comments on the timing issue<sup>29</sup> but EPA failed to respond to the specific comments. Other responses contained within the Response to Comments document are vague and inadequate to give states and local communities assurance that they may promptly resolve air quality monitoring issues with EPA. Overall, EPA must work with states and local air agencies to accelerate the review and approval process for exceptional events. The Agency must recognize that air monitoring information, even without a near-term regulatory event, is not completely "harmless." The mere existence of air monitoring values above the level of a NAAQS can hinder ability of an area to attract investment.

## VII. Conclusion

EPA should work diligently to review the comments submitted by MAG and other individuals and organizations and promptly issue a revised Guidance Document. Our comments, including the multiple attachments to our comments, note many deficiencies in the current Draft Guidance. We also have identified areas where we believe EPA's interpretation of the CAA is either incorrect or unwise. As indicated above, before the Draft Guidance is implemented in a generalized manner, we believe that EPA must make changes that will truly streamline the exceptional event approval process and ease the burden on both EPA and state and local agencies. The most direct way to accomplish this goal is to provide for much greater deference to state and local determinations as allowed by CAA section 319 and current regulations.

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<sup>29</sup> Section III of Attachment A.

ATTACHMENT A

MAG COMMENTS ON MAY 2011 EPA DRAFT GUIDANCE REGARDING IMPLEMENTATION  
OF THE EXCEPTIONAL EVENTS RULE

June 29, 2011

Ms. Gina McCarthy  
Assistant Administrator for Air and Radiation  
U.S. Environmental Protection Agency  
Room 5406 Ariel Rios North  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Assistant Administrator McCarthy,

The Maricopa Association of Governments (“MAG”) is pleased to submit the following comments regarding draft Exceptional Events Rule (“EER”) guidance documents, released by the Environmental Protection Agency (“EPA”) on May 2, 2011.

We appreciate your continued interest in this matter and the Agency's follow-up to your March 8, 2010 commitment to “develop solutions that will improve rule implementation.”<sup>1</sup> We also appreciate the time and effort that EPA staff have invested in developing various documents to help guide the review and consideration of requests to exclude certain ambient air quality data on the basis of exceptional events.

We strongly believe, however, that the current draft guidance documents can be improved substantially to both clarify matters regarding the implementation of the EER, and to save scarce federal, state and local resources. Specifically, we would recommend that:

- EPA should provide that implementation of Reasonably Available Control Measures (“RACM”) and Best Available Control Measures (“BACM”) will be considered to meet EER requirements related to “reasonably controllable or preventable.”
- EPA should not specify a minimum wind speed for definition of an exceptional event (“EE”) or create a regulatory presumption as to minimum wind speed.
- EPA should not link the “recurrence” criteria in the statutory EE definition to requirements for additional controls or to otherwise establish a “more than once a year” definition of recurrence.
- If EPA decides to allow for voluntary High Wind Action Plans, the Agency should not require continual revision and updating of the plans (e.g., upon recurrence of EEs).
- EPA should recognize that EEs can and do occur at one monitor while other monitors in the same area may not violate an air quality standard.

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<sup>1</sup> Letter to Martin Bauer, President, Western States Air Resources Council, March 8, 2010.

June 29, 2011

Page 2

- EPA should accelerate the contemplated timeframes for review and decisions on EEs and not require up to 18 months for Agency review of complete requests for treatment of data as an EE.
- EPA should consider additional technical information with regard to wind speed and aerodynamic entrainment (such as that provided in the attached detailed comments) and correct errors in its analysis of these matters.

Altogether, we thank you for your efforts in this area and for your thorough consideration of our comments. We look forward to working with you, the Office of Air and Radiation, the Office of Air Quality Policy and Standards and EPA Regional offices as the Agency works to finalize its EER guidance and any associated policies or statements. We would be happy to provide additional information on any of the matters discussed in the attached detailed comments.

If you have any questions please do not hesitate to contact Lindy Bauer or Matt Poppen, MAG, at (602) 254-6300.

Sincerely,



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

cc: Janet McCabe, EPA Office of Air and Radiation Principal Deputy Assistant Administrator  
Peter Tsirigotis, EPA Office of Air Quality and Planning Standards  
Phil Lorang, EPA Office of Air Quality and Planning Standards  
Colleen McKaughan, EPA Region IX  
Matt Lakin, EPA Region IX  
Meredith Kurpius, EPA Region IX  
Michael Flagg, EPA Region IX  
Henry Darwin, Arizona Department of Environmental Quality Director  
Dave Klemp, Western States Air Resources Council President

MAG Comments on EPA Draft Guidance Regarding Implementation of the Exceptional Events Rule  
Including Associated Attachments

I. Requirements Relating to the “Not Reasonably Controllable or Preventable” Element Should be Revised.

In the draft guidance<sup>2</sup>, EPA makes several assertions regarding its interpretation of Clean Air Act (“CAA”) section 319 and the definition of an EE contained within CAA section 319(b)(1)(A)(ii). In specific, EPA states that it “believes the event-relevant measures that have already been included in the approved SIP as RACM or BACM to be an essential part of the set of controls that need to be in place for an event to be considered ‘not reasonably controllable or preventable’, but they may not be sufficient by themselves particularly if the SIP has not been recently reviewed or revised.”<sup>3</sup> EPA also indicates that, under the “reasonableness” factor, “[t]here is no defined *de minimis* emission rate or ambient contribution that limits which sources should be considered for control, and EPA will review this on a case by case basis.”<sup>4</sup> EPA further states that “RACM/BACM list may be a reference point, but not the sole means, by which EPA assesses the reasonableness of controls.”<sup>5</sup>

We do not believe that the plain language of CAA section 319 can or should be interpreted by EPA in this manner. The statutory language that EPA relies on is part of the definition of an “exceptional event.” It only requires that an event not be “reasonably controllable or preventable” and does not convey any additional authority to EPA to apply stricter requirements. In this regard, it is notable and relevant that measures that have been adopted into a State Implementation Plan (“SIP”) pursuant to CAA section 110, have previously been determined to be measures “*necessary to assure* that national ambient air quality standards are achieved . . .” (Emphasis added) Thus, EPA has already rendered an assessment of the adequacy of such measures. Moreover, under CAA section 110, a SIP must contain adequate provisions “*as may be necessary or appropriate* to meet the applicable requirements [of the CAA]” including elements to provide for sufficient monitoring, data compilation and enforcement. Therefore, not only do SIP elements easily meet any requirement of “reasonableness” under CAA section 319 but EPA’s prior approval of such elements constitutes an a priori determination by the Agency that the measures are, in fact, reasonable.

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<sup>2</sup> Guidance on Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule, United States Environmental Protection Agency, May 2, 2011.

<sup>3</sup> Id. at 13.

<sup>4</sup> Id.

<sup>5</sup> Id. at 14.

On a policy level – by indicating that if a SIP is not recently reviewed or revised, it automatically merits additional scrutiny -- EPA is creating a situation in which states and localities can never have any assurance that EPA will not use the EER to effectively “reopen” a SIP and impose a series of ad hoc determinations and assessments. This is precisely the opposite of a major goal of the new EER guidance -- to provide assurance to states and localities that properly classified EEs can be excluded from ambient air quality data. The current structure of EPA’s guidance provides no means for a state or local agency to be assured that prior determinations with respect to existing and planned controls will be considered “reasonable” upon implementation, even if these controls have been previously determined to constitute BACM or MSM through an approved SIP process. In effect, EPA is taking the “we’ll know it when we see it” approach to evaluating reasonableness of existing controls on a case by case basis.

The approach as outlined in the guidance also has no *de minimis* level for emission sources and includes no limits regarding EPA’s evaluation of controls on natural sources. Such an approach is diametrically opposed to the intent of Congress to protect state and local agencies from being penalized for events outside of their control, particularly events that arise from natural conditions.. In fact, it is striking to the degree which the draft guidance fails to even discuss natural events at all, even though this is a separate and distinct category of EE under CAA section 319(b)(1)(A)(iii). There is literally no discussion of the type of events that may be considered to be “a natural event” under the definition of an EE even though arid areas like Arizona may be subject to unique natural events such as haboobs and lesser dust storms.

This approach is also contrary to the statutory structure of CAA section 319 which specifically limited the scope of EE regulations. Under CAA section 319, EE regulations were limited to the “review and handling of air quality monitoring data . . .” Guidance cannot and should not attempt to read the definition of an EE far more broadly or attempt to convey additional authority for EPA to revise previous SIP determinations. Such an approach would constantly “move the chains” on what state and local efforts would be considered as adequate by EPA Regional Offices, again opposite the Congressional goal of providing more certainty and uniformity to EPA’s assessment of EEs. This effect can be demonstrated in several specific areas of EPA’s approach to the determination of “reasonableness” discussed below.

#### **A. Wind Speed.**

The guidance indicates that “[i]n evaluating reasonableness, EPA will generally consider first and foremost whether the wind speeds were above the minimum threshold to entrain dust from stable

surfaces.”<sup>6</sup> EPA also states that “[i]n the absence of local studies, EPA intends to use 25 mph as the minimum sustained wind speed sufficient to entrain particles from stable surfaces for western states.”<sup>7</sup>

We are providing technical comments regarding the use of a specific wind speed threshold in Sections IV and V of this document. However, as an overall comment, it is important to point out that other jurisdictions have reported significantly lower thresholds for the initiation of windblown dust (12, 15 and 18 mph)<sup>8</sup> and that the individual conditions of the land (soil moisture, soil texture, vegetative cover, topography, land use, etc.) over which the wind passes on the event day will have a greater influence on the amount of windblown dust created than an averaged wind tunnel threshold can provide. Therefore, we believe that state and local agencies should be given the opportunity to explain these conditions without bias from EPA based upon a pre-determined wind speed threshold. As explained below, this concern is heightened by our technical assessment that a 25 mph is not supportable. Rather than add clarity to the determination of exceptional “high wind” events, we believe a presumed level of wind speed would place an unfair burden on a state or locality of defeating an unsupported presumption.

## **B. Requirements Regarding “Recurrence”**

We believe that EPA has misinterpreted CAA section 319 as it respects the recurrence of anthropological events. The Agency has not: (1) clearly confined this concept to events caused by human activity as required by CAA section 319(b)(1)(A)(iii); (2) attempted to create new authority not conveyed by statute to require additional controls based merely on the existence of recurrence; and (3) established an empirical threshold for recurrence without adequate support. In specific, EPA states that “[f]or recurring high wind dust events, EPA believes these principles can be achieved using a progressive approach in which states are expected to consider and implement further controls as events continue to recur”<sup>9</sup> and that “[m]ore stringent controls are reasonable if an area experiences frequent and/or severe exceptional event exceedances due to high winds than if the area has experienced only rare and/or mild isolated exceedances.”<sup>10</sup> Finally, the Agency states that it “will generally consider recurrence for high wind dust events as more than one high wind dust event per year, averaged over three years.”<sup>11</sup> We find no support in the statute for such statements and believe

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<sup>6</sup> Id. at 12.

<sup>7</sup> Id. at 14.

<sup>8</sup> 12 mph (Maricopa County Air Quality Department, Appendix 4 of 2008 PM-10 Periodic Emissions Inventory); 15 mph (Imperial County, as quoted in Mojave County April 12, 2007 Exceptional Event Documentation); and 18 mph (San Joaquin Valley, as quoted in Mojave County April 12, 2007 Exceptional Event Documentation and 73 Fed. Reg. 14,696).

<sup>9</sup> Id. at 2.

<sup>10</sup> Id. at 12.

<sup>11</sup> Id. at 15.

that it is inappropriate, arbitrary and outside the scope of the EER for EPA to set a recurrence threshold for high wind dust events, or any other natural event (e.g., wildfires, volcanic eruptions).

The EER plainly acknowledges that natural events such as high winds can recur and that they do not have to be rare to be considered exceptional. The frequency of high wind events are clearly outside the control of state and local agencies. But the guidance documents nonetheless appear to require additional actions based on recurrence for natural events (e.g., “analysis should be more extensive if events recur, particularly at wind speeds below 25 mph . . .”<sup>12</sup> EPA may consider High Wind Action Plans “reasonable as long as events do not recur . . .”<sup>13</sup>). Yet CAA section 319 applies “recurrence” only to the definition of exceptional events where human activity is involved (i.e., the statute clearly separates such events from natural events by use of the term “or” in CAA section 319(b)(1)(A)(iii)). While EPA acknowledges this fact in the guidance document,<sup>14</sup> EPA does not clearly state that other parts of the guidance document addressing recurrence as inapplicable, as a matter of law, to natural events. Instead, the guidance document appears to ignore the explicit association of recurrence with human activity and create overarching obligations on state and local entities simply because they are located in areas where exceptional events may occur more often than other areas. This not only is unfair, but it is again opposite of Congressional intent to alleviate the burden on such areas.

There is even less support in the statute or legislative history for a requirement that more than one exceptional event per year means that an event is likely to recur. Setting aside the fact that this standard is being set without statutory support, it is clear that EEs can extend over several days, affecting the air quality data for sometimes weeks at a time (e.g., fires that have plagued Southern California and Arizona are proof of this concept). In addition, EPA provides no data or technical support to buttress its determination that events happening more than once a year should be considered as those likely to recur given that exceedances in any one year may plausibly be related to different types of EEs.. EPA should therefore not impose an arbitrary “trigger” of one event/year for which it has provided no empirical support. At bottom, there should be no quota system on EEs, nor can any quota system be derived from the language of CAA section 319.

### C. High Wind Action Plans

The guidance provides that “EPA and the submitting state can consider the development of a High Wind Action Plan that would identify mutually agreed upon reasonable controls that a state could implement for subsequent high wind events.”<sup>15</sup> EPA further provides that it “would consider the

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<sup>12</sup> Id.

<sup>13</sup> Id. at 20.

<sup>14</sup> EPA states that “natural events can be likely to recur and still be eligible for data exclusion.” Id. at 23.

<sup>15</sup> Id. at 19.

controls to be reasonable as long as events do not recur...If events recur, EPA will need to re-approve the High Wind Action Plan regardless of whether it is revised or remains as-is.”<sup>16</sup>

EPA can clearly not require a High Wind Action Plan under CAA section 319. No such authority is conveyed by this provision. As noted above, the scope of regulatory authority within CAA section 319 is constrained to the review and handling of air quality data. In the event that EPA pursues a “voluntary” provision to allow states to consider and EPA to review High Wind Action Plans, however, we would note that linking a High Wind Action Plan to recurrence provides no incentive for state or local agencies to complete such a plan. The purpose of such a plan should be the opposite of what EPA proposes.

For example, if a state or local agency details all of the control measures in place, and the implementation and enforcement strategies for those control measures (as concurred by EPA), then the state or local agency should be protected from having to vigorously demonstrate that future events were not reasonably controllable or preventable. An incentive for completing such a plan by the state or local agency would be that they would have some assurance ahead of time that EPA finds their existing controls and implementation measures adequate. If the High Wind Action Plan is not valid for recurring events, then there is little or no benefit for a state or local agency to complete such an intensive, publicly reviewed, SIP-like plan for one event a year. The state or local agency would be better served under the current scenario by simply documenting the reasonableness of controls in place during each recurring event, rather than trying to update a High Wind Action Plan after every exceptional event occurrence.

## II. Requirements Relating to the “Clear Causal Relationship” Element Should be Revised.

### A. EPA Wrongly Concludes That Single Monitors Cannot Show Exceptional Events from High Winds.

EPA’s guidance document attempts to oversimplify the conditions under which EEs can occur. The guidance document provides that EE event demonstrations are “less compelling” if there is evidence which is inconsistent with the conceptual model or theory under which the exceptional event occurs. While this observation may border on a truism (data at variance with a theory will no doubt detract from the theory) the observation has limited utility and cannot serve as an overall “screen” between supportable and unsupported EEs. In this regard, we specifically and strongly disagree with EPA’s contention that “an exceedance was caused by a large-scale wind event is inconsistent with a situation where an isolated monitor exceeds while nearby monitors do not.”<sup>17</sup>

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<sup>16</sup> Id. at 20.

<sup>17</sup> Id. at 22.

In making this statement, EPA seems to be implying that a large-scale wind event must result in large-scale transport of windblown dust. This is a simplistic view of the relationship between wind speed and the creation of windblown dust. There are dozens of factors that control the production of windblown dust (e.g., wind, precipitation, temperature, soil texture, soil composition, soil aggregation, soil moisture, surface roughness length, vegetation, land uses, topography) and these factors vary significantly within a region affected by a large-scale wind event. In almost all cases, windblown dust production is not a homogenous process, but rather is linked to a specific set of conditions that allow for the energy from the wind to entrain dust.

As stated by Gillette, “[p]revious field studies and remote sensing studies have pointed out that the sources of dust carried globally are not homogenous over large areas...These ‘hot spots’ are often part of ‘source regions’ that for a large extent are ‘hot spots’ surrounded by areas of much lower dust production. On a smaller scale, aerial photographs of agricultural lands in the West Texas USA show that a very small fraction of the fields actually produce visible dust plumes. The fields where I studied dust emissions in West Texas (Gillette, 1981) were hot spots: intense areas of dust production surrounded fields where little if any dust was being emitted.”<sup>18</sup>

A common source of a windblown dust event in the West is the prefrontal storm system. Gillette takes pains to point out that this type of system does not produce homogenous dust levels. In specific, Gillette states that “[s]ynoptic scale and meso-scale meteorological systems deliver momentum to the surface in a variety of forms. An example of a synoptic-scale structure that is often associated with wind erosion is the prefrontal wind storm. Large-scale systems do not explain the existence of local ‘hot spots’ since strong dust production is not uniformly observed for the entire land surface over which the system passes. Meso-scale structures such as haboobs (downdrafts of thunderstorms) create short-lived intense local dust production, but are short lived, and may cause erosion in locations that do not normally produce dust.”<sup>19</sup>

Given these observations, it is expected that events resulting from synoptic scale wind events would not result in uniform exceedances or elevated monitor concentrations across a region or monitoring network. In fact, this type of event is previously documented, with three western state agencies submitting examples of exceedances that occur only at one monitor in the region during synoptic scale wind events.<sup>20</sup> It is completely plausible that the monitor located nearest an area that has the most potential of producing “hot spots” should exceed while other monitors in the region do not.

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<sup>18</sup> Gillette, 1999. A Qualitative Geophysical Explanation for “Hot Spot” Dust Emitting Source Regions. *Contr. Atmos. Phys.*, 72, 67–77.

<sup>19</sup> *Id.*

<sup>20</sup> Examples include but are not limited to: San Joaquin Valley Air Pollution Control District, January 4, 2008 Event; Clark County Department of Air Quality and Environmental Management, May 21, 2008 Event; Arizona Department of Environmental Quality, March 14, 2008 Event. Additionally, South

Exceedances at one monitor in a network cannot be assumed a priori to be caused by anthropogenic activities causing soil disturbance near the exceeding monitor. PM-10 monitors throughout a network have different land uses and monitoring purposes. A PM-10 monitor located near sources of windblown dust (open, and exposed soils) should be expected to record higher concentrations of PM-10 during a wind event than monitors located in a downtown or residential core that are surrounded by built sources incapable of producing windblown dust.

Additionally, it is unclear what EPA exactly means by the phrase, “nearby monitors”. The guidance document does not detail whether the Agency is intending by use of this term to impose a specific distance requirement. Should this be the intent, setting such a distance requirement would be extremely tenuous, given the limited knowledge on transport and deposition rates of PM-10 from a high wind event. Moreover, if EPA would adopt this approach, it would be arbitrarily setting up a system where regions that have a dense network of PM-10 monitors face more scrutiny during natural events than do regions with fewer PM-10 monitors (for the simple reason that dense monitoring networks will have more situations where only individual monitors exceed). There is nothing in the EER that even hints that large-scale high wind events are required to show multiple monitored exceedances in order to be considered an exceptional event. In fact, the opposite reality is reflected in the preamble of the EER.<sup>21</sup>

### **III. Timelines Contained in the Draft Guidance Are Too Long.**

With regard to the review and approval of exceptional events, EPA indicates that “[t]he timing of EPA’s final decision will depend on the regulatory impact of the data and will be described in the initial review letter. For EE packages that impact a regulatory decision EPA intends to make a decision regarding concurrence within 18 months of submittal of the complete package, or sooner if required by a regulatory action.”<sup>22</sup>

Eighteen months is clearly an excessive and unnecessary amount of time for EPA to act upon a final submittal. This is especially true, since under the process outlined in the EER and the draft guidance, prior to a final decision on an exceptional event request, EPA will have already done a completeness

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Coast Air Quality Management District also reported a single monitor exceedance under Santa Ana wind conditions on October 13, 2008.

<sup>21</sup> For example, the EER states that “[s]ince the conditions that cause or contribute to high wind events vary from area to area with soil type, precipitation, and the speed of wind gusts, States should provide appropriate documentation which indicates what types of circumstances contributed to the exceedances or violations at the monitoring site in question.” 72 Fed. Reg. 13,560, 13577 (March 22, 2007)

<sup>22</sup> Draft Guidance at 28-29.

review (within a prior timeframe of 120 days) and possibly asked for additional information from the submitting agency (which would extend this timeframe another 60 days). Given the fact the EPA intends to only act upon exceptional events that have a regulatory impact, EPA should be able to issue a final concurrence with these events in substantially less time than 18 months. State and local agencies need quick action on these decisions, as waiting for concurrence from EPA on regulatory significant exceptional events can easily hold planning processes hostage.

#### IV. Technical Comments on Use of Wind Speed.

The draft guidance provides the following discussion of wind speed calculation:

Sustained wind speed is generally calculated as the wind speed averaged over a period of at least one minute: typical averaging times for a sustained wind speed are one to five minutes.<sup>31</sup> EPA will not consider any average less than one minute to represent a sustained wind speed. Packages should include the maximum sustained wind speed for each hour of the event and also the number of periods above 25 mph (as part of the clear causal relationship a time series with sustained wind speeds during the event should also be included (see Section 6.2.2.4)). The maximum sustained wind speed does not necessarily have to be at the site of the exceedance, but it should represent the source area. If the sustained wind speed provided is not at the exceeding monitor then the CCR demonstration will generally be expected to support this claim. Sustained wind speed data are typically available from sources such as local air monitoring stations and National Weather Service Stations.<sup>23</sup>

There are important technical details to be cognizant of when comparing wind speed values during a high wind dust event. First, meteorological stations operated by different agencies can report significantly different wind speeds from the same area depending upon the unique conditions of their exact location and averaging time used to report wind speed. As an example, data from National Weather Service (NWS) stations comes from meteorological towers located at airports, where surface roughness is low and long fetches of open space exist. Also, the averaging time of the NWS sustained wind speed values is either one or two minutes. As a result, NWS wind speeds are usually the highest wind speeds reported for an area. Meteorological stations run by air agencies often report wind speed in hourly averages and have stations towers that are situated in areas with high surface roughness values (e.g., near or on existing buildings, in dense residential or industrial areas, etc.) in order to access available power sources. As an example, see the table below which shows wind speeds as measured by the Maricopa County Air Quality Department Central Phoenix monitor and the NWS Sky Harbor Airport station. These two sites are approximately 3 miles apart and are both located within the urban core of Phoenix.

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<sup>23</sup> Id. at 34.

Date	Hour	MCAQD wind speed	NWS wind speed
9/11/08	18:00	20 mph hourly avg.; 28 mph highest 5-minute avg.	39 mph 2-minute avg.
11/9/08	17:00	15 mph hourly avg.; 18 mph highest 5-minute avg.	25 mph 2-minute avg.

This example shows that under the same region-wide wind conditions, two monitors located in the same micro-area can report vastly differing wind speeds due to averaging times and surface roughness changes. Some state and local agencies do not operate their own meteorological stations and rely exclusively on NWS data. In the example table above, both of these days would be good candidates for exceptional events using EPA's threshold of 25 mph at 10 meters. However, for those jurisdictions like Maricopa County that do operate independent meteorological stations, the local wind data in the example table above does not exceed the 25 mph threshold based upon hourly average data, and only slightly exceeds the threshold on one day based upon a 5-minute average. The same level of wind energy passed over both monitoring sites in the example above, yet the unique micro-conditions (especially surface roughness as compared to an ultra-smooth paved runway) and differing averaging times yield differing wind speed values. It is important for EPA to realize the differences between measurement techniques and micro-site conditions and not penalize agencies that have more meteorological data available for comparison.

Additionally, the most common wind speed value reported by meteorological stations is wind speed at 10 meters. However, what is most critical to windblown dust production is not the wind speed at 10 meters, but the wind shear at ground level, usually represented as  $u^*$ . This value is highly controlled by surface roughness. The following example shows 10-meter wind speeds ( $U$ ) values at a given wind shear value with differing surface roughness heights.<sup>24</sup>

$u^*$ (cm/s)	Surface roughness value (cm)	10-meter wind speed (mph)
40	0.001	30.9
40	0.01	25.8
40	0.1	20.6
40	1.0	15.5

This table demonstrates that rough surfaces significantly diminish the 10-meter wind speed under the same wind shear force. The soils in the table above are all subject to the same wind shear of 40 cm/s, yet the 10-meter wind speeds are dramatically different. This also helps to explain why in the previous example the NWS stations located at airport runways have consistently higher 10-meter

<sup>24</sup> The fluid dynamics Prandtl equation:  $U = \frac{u^* z}{k}$ , allows for the calculation of  $U$ , where  $U$  is wind speed at 10 meters,  $k$  is Von Karman's constant (0.4),  $z$  is 10 meters, and  $z_0$  is measured surface roughness value.

wind speeds than a monitor located in a residential or industrial area surrounded by built structures. The majority of the wind tunnel tests performed by Clark County (as referenced by EPA) were done on smooth surfaces, with almost all surface roughness values at 0.04 cm or less. As such, the 25 mph 10-meter threshold is representative of wind speeds across smooth surfaces. 10-meter wind speeds over rougher surfaces will be less than 25 mph while still producing wind shears capable of generating windblown dust. It is critical that EPA is cognizant of the effects of surface roughness and averaging times when evaluating wind speed data and when comparing wind speed measurements at different meteorological stations in the same region.

## V. Technical Comments Related to Appendix A.

Appendix A provides that:

In EPA's weight of evidence analysis of high wind dust events, sustained wind speeds above 25 mph will be assumed to have the potential ability to raise dust emissions from some stable surfaces in arid, semi-arid, or seasonally dry regions. Wind speeds below this threshold will be assumed to entrain dust primarily from disturbed anthropogenic sources that have not been reasonably controlled...The 2004 data [Clark County wind tunnel tests] show that non-linear increases in PM10 flux generally begin to occur at sustained 10 meter velocities exceeding 25 mph. These data form the basis for EPA's selection of a 25 mph threshold for natural events.<sup>25</sup>

Wind speed thresholds for the creation of PM-10 emissions from fugitive dust sources provide one insight into the wind erosion process, but do not address the phases of transport and deposition of PM-10 at differing monitoring sites. Wind speed at the PM-10 concentration monitor in question may not be relevant especially during long range transport events. Additionally, EPA should not presume that PM-10 dust generated at wind speeds lower than 25 mph must be a result of disturbed soils, especially since the Clark County data EPA references shows that stable and disturbed soils appear to emit at about the same rate under 25 mph. EPA should take a neutral stance on the source of emissions and let the state or local agency present their evidence on likely sources of windblown PM-10 emissions and the status of the implementation of controls on those same suspected sources. A presumption that all dust from wind speed events below 25 mph must be the result of uncontrolled anthropogenic activity is unfairly biased against any agency submittal. If the agency submits evidence that all reasonable controls were in place and enforced, either in an individual submittal or through an agreed upon High Wind Action Plan, than EPA should not summarily dismiss such demonstration unless there is proof that anthropogenic activities were the cause of the exceedance exists.

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<sup>25</sup> Appendix A at 57.

## A. Aerodynamic Entrainment

EPA's Appendix A further states that "the Clark County study found small amounts of entrainment below 25 mph. The small PM<sub>10</sub> fluxes observed at lower wind speeds could be attributed to aerodynamic entrainment, which occurs primarily when fine particles are lifted directly off the ground and remain elevated. While it is expected that small amounts of aerodynamic entrainment could occur when wind speeds are below 25 mph, these are not expected to result in exceedances in most western areas, particularly the desert areas such as in Clark County."<sup>26</sup>

Several recent articles have shown how direct aerodynamic entrainment can produce substantial dust, if not the majority of dust in the absence of saltation.<sup>27</sup> While the Clark County wind tunnel tests did collect sediment in the elutriation chamber, cyclone, and glass fiber filter, this sediment data was not used to estimate PM-10. Specifically, the study notes that:

Experience in the 1995, 1998-99 and 2003 wind tunnel studies showed that, unless an unusually high PM-10 concentration was eroded from the soil surface, 10-minute wind tunnel sampling runs were of insufficient duration to obtain detectable weight changes on the glass fiber filters. For this reason, TSI Dust-Trak PM-10 data were used to estimate PM-10 fluxes. Additionally, since the 2004 study used progressive velocity increases, the collected saltation, cyclone or filter data do not correspond to any particular velocity during a run, but instead represent an integrated mass measurement. The mass data could be analyzed to determine if there are differences between stable and unstable soil surface conditions.<sup>28</sup>

Because saltation was not specifically measured in concert with PM-10 concentrations, it cannot be known if the dust emissions recorded in the Clark County wind tunnel studies are the result of direct

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<sup>26</sup> Id.

<sup>27</sup> Macpherson et al., 2008. Dust emissions from undisturbed and disturbed supply-limited desert environments. *J. GeoPhys. Res.* 113, F02S04; Roney and White, 2004. Definition of measurement of dust aeolian threshold. *J. GeoPhys. Res.* 109, F01013; Kjelgaard et al., 2004. PM<sub>10</sub> emission from agricultural soils on the Columbia Plateau: Comparison of dynamic and time-integrated field-scale measurements and entrainment mechanisms. *Agric. For. Meteorol.* 125, 259-277; Loosmore and Hunt, 2000. Dust suspension without saltation. *J. GeoPhys. Res.* 105, 20663-20671; Harrison et al., 2009. A Monte Carlo Model for Soil Particle Resuspension Including Saltation and Turbulent Fluctuations. *Aero. Sci. and Technol.* 43, 161-173.

<sup>28</sup> Pages 37-38 of: Wacaser et al., 2006. Refined PM<sub>10</sub> Aeolian Emission Factors for Native Desert and Disturbed Vacant Areas. In: Appendix E of PM10 State Implementation Milestone Achievement Report. Clark County, Nevada Department of Air Quality and Environmental Management.

aerodynamic entrainment, saltation, or some combination of both, for any of the recorded velocities. Thus it is not appropriate to assume (based upon Clark County wind tunnel data) that direct aerodynamic entrainment is not responsible for high PM-10 concentrations, or may even lead to exceedances, at elevated wind speeds.

The majority of field studies regarding threshold velocities rely on the visible movement of soil before determining a minimum threshold velocity for windblown dust to occur (see discussion below on effects of soil disturbance) and subsequently rely on the horizontal movement of soil to be a surrogate for the vertical production of dust. Visible verification of soil movement is only possible for particles approximately PM-70 or greater. PM-10 particles are likely ejected from the surface much earlier than can be visibly verified through observation of saltation. For those studies that actually measure vertical PM-10 emissions, the role of direct aerodynamic entrainment plays a significant role and results in threshold friction velocities for dust that are much lower than what is required for saltation.

## B. Soil Disturbance

Appendix A states that “[t]he effect of surface disturbance on threshold wind speed was further examined for a number of natural desert soils by a number of researches. The main conclusion was that disturbance of soils profoundly lowers the threshold friction velocity of desert soils.”<sup>29</sup>

In the four studies referenced by EPA in support of the above quotation, it is vital to remember that the threshold friction velocity measured in these studies was the horizontal movement of soil. As quoted from the studies EPA references:

“The threshold velocity profile was obtained when continuous movement of grains was first visible” (Gillette 1980 & 1982). “The threshold friction velocity (TFV) was defined as the velocity at which fragments were initially detached from the soil surface. Wind speed inside the wind tunnel was gradually increased until forward particle movement was observable across the soil surface” (Belnap et al., 2007).

None of the four studies measured actual dust concentrations (vertical flux), but rather relied on the traditional assumption that dust concentrations scale with horizontal flux (saltation). This is an important distinction, because recent studies performed in the same locations as the articles referenced by EPA<sup>30</sup> show that significant dust emissions occur in the absence of saltation and are not

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<sup>29</sup> Id. at 59.

<sup>30</sup> In the Macpherson article, some of the soils from the same general area as the EPA referenced 1980 Gillette article are tested. Macpherson et al., 2008. Dust emissions from undisturbed and disturbed supply-limited desert surfaces, *J. Geophys. Res.*, 113, F02S04.

directly correlated with horizontal flux.<sup>31</sup> While the studies referenced by EPA indicate that disturbance lowers the threshold friction velocity at which saltation occurs, the threshold friction velocity at which dust emissions occur is often significantly lower (50 to 75%) than the threshold required for saltation to occur.<sup>32</sup> Additionally, the saltation threshold friction velocities of undisturbed soils measured by Gillette (1980) were often unobtainable, or only reached at velocities higher than what occurs in nature (> 100 cm/s),<sup>33</sup> suggesting that many undisturbed desert soils never produce windblown dust. However, dust emissions from the natural soils studied by Gillette are frequent and occur in both undisturbed and disturbed states, regardless if saltation was observed.<sup>34</sup> Since the concern of EPA, and state and local air agencies, is the control of fugitive dust (particularly PM-10), it is essential to recognize that the threshold velocity required to create dust emissions is significantly lower than saltation thresholds and often is uncorrelated to the measured horizontal flux.

Additionally, assuming disturbance only has the effect of lowering threshold friction velocities implies that disturbed and undisturbed soils have the same emission rate, just with differing trigger points (i.e., assume a hypothetical soil with an undisturbed threshold friction velocity of 50 cm/s and a disturbed threshold friction velocity of 25 cm/s. Both soils will emit at the same rate once velocities exceed 50 cm/s). The Clark County wind tunnel data earlier referenced by EPA disputes this (Figure ES-1, pg. 58). The disturbed and stable soils have the same threshold friction velocity of approximately 10 mph, with the disturbed soils producing more dust relative to stable soils as wind velocities increase. This result is consistent with the Macpherson et al. 2008 study which found that, "Following mechanical disturbance, clay-crusted and non-cohesive surfaces experience an increase in available fines on the surface, resulting in a large increase in emission rate and  $E_{total}/q$ ."<sup>35</sup>

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<sup>31</sup> "Past research suggests that when dust uplift is driven by saltation, a linear relationship exists between the dust emission rate and the saltation flux [Shao et al., 1993; Houser and Nickling, 2001], thus abrasion efficiency is relatively constant with  $u^*$ . Evaluating the relationship between  $E_{total}/q$  and  $u^*$  revealed large data scatter and failed to produce and significant trends with strong correlation coefficients (shown in Figure 6), indicating that  $E_{total}/q$  is not constant, nor can it be accurately described by a direct relationship with  $u^*$ ." Macpherson et al., 2008. Dust emissions from undisturbed and disturbed supply-limited desert surfaces, J. Geophys. Res., 113, F02S04.

<sup>32</sup> Roney and White, 2004. Definition and measurement of dust aeolian thresholds. J. Geophys. Res., 109, F01013.

<sup>33</sup> "Since field measurements show that  $u^*$  only exceptionally reaches 100 cm/s on Earth, this will be the upper limit for our computations." Alfaro and Gomes, 2001. Modeling mineral aerosol production by wind erosion: Emission intensities and aerosol size distribution in source areas. J. Geophys. Res., 106, 18075–18084.

<sup>34</sup> Macpherson et al., 2008. Dust emissions from undisturbed and disturbed supply-limited desert surfaces, J. Geophys. Res., 113, F02S04. The April 12, 2007 exceptional event in the Mojave Desert documents high PM-10 concentrations from non-anthropogenic sources associated with wind speeds below the saltation friction velocities of undisturbed soils recorded by Gillette (1980).

<sup>35</sup> Macpherson et al., 2008. Dust emissions from undisturbed and disturbed supply-limited desert surfaces, J. Geophys. Res., 113, F02S04.

This shows that dust emissions (E) increase at a faster rate with rising wind than do saltation (q) rates. This is an important distinction, and shows that the role of disturbance primarily increases the reservoir of material available for dust suspension and does not necessarily lower the threshold velocity. A correct understanding of the differences between how disturbed and undisturbed soils create dust in response to high winds is key to explaining dust emissions during an exceptional event, especially at speeds that are lower than observed saltation thresholds.

## VI. Conclusion

MAG appreciates the difficult task that EPA faces in constructing an EE guidance document that can both lend certainty to the process of excluding certain ambient air data as an EE while maintaining the ability to recognize varying conditions in different states and regions. We are more than willing to continue to work with EPA to develop a more robust and responsive guidance document that can further our mutual goal of protecting the public health while not unduly penalizing areas that experience EEs. On a macro level, we believe one approach that EPA should consider is fuller reliance on state and local authorities to both consider and designate certain conditions as constituting EEs. The current guidance document offers little assurance that EPA is willing to improve the efficiency of the EE process by relying more heavily on state and local air pollution agencies to determine, based on their on-the-ground knowledge of conditions in an area, what natural and anthropologically-based events are exceptional and what events are not.

MAG also believes that neither the CAA nor EE policy should be interpreted as requiring or authorizing EPA to “second guess” SIP requirements related to the control of National Ambient Air Quality pollutants and their precursors. EPA can and should rely on previous determinations of RACM and BACM. Such an approach could both simplify the process of EE review and lend more certainty to the EE process. In an era when federal, state and local governments need to do “more with less,” it seems incredible that we are engaging in a process that may take 400 hours to determine the approvability of a single EE event. Relying on existing SIP mechanisms and the considered professional judgment of state and local air regulators offers a way to streamline this process and ensure that determinations on EE can be made quickly and efficiently. Finally, EPA could also presume that SIP measures were implemented and are being implemented to reasonably address EEs unless evidence exists otherwise. This is not just a matter of trust. States and localities have committed, by law, to implement such measures. In addition, under other provisions of EER, a public review process for EEs is provided. Such factors are more than sufficient to assure EPA that state and local governments are carrying out duties and measures they have previously agreed to implement.

ATTACHMENT B

HIGH WIND DUST EXCEPTIONAL EVENT DEMONSTRATION FORM AND ASSOCIATED  
DOCUMENTATION

# High Wind Dust Exceptional Event Demonstration Form

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**Agency:** Arizona Department of Environmental Quality

**Date of Submission:** March 8, 2012

**Contact:** Air Quality Division Assessment Section, 602-771-2300

**Event Type:** Haboob

**Pollutant Affected by Event:** PM-10

**Date of Event:** July 5, 2011

**Regulated Area Affected by Event:** Maricopa County PM-10 nonattainment area

**Size of Regulated Area:** Approximately 2,888 square miles

**Approximate Spatial Extent of Event in Affected Area:** 100 miles in width, 5000 ft in height, traveling a distance of over 150 miles from origin

**Monitoring Stations Affected (AQS ID):** 04-013-4011-81102-1; 04-013-3002-81102-4; 04-013-9812-81102-1; 04-013-4010-81102-1; 04-013-2001-81102-1; 04-013-3010-81102-1; 04-013-4006-81102-1; 04-013-9997-81102-4; 04-013-4003-81102-1; 04-013-4004-81102-1; 04-013-0019-81102-1

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Picture or Map of Event



High Wind Dust Exceptional Event Demonstration Form

Conceptual Model			
Description of Event:	<p>A very large and historic dust storm (haboob) moved through a large portion of southern and central Arizona during the late afternoon and evening hours of July 5, 2011. Strong to severe thunderstorms developed in the area east of Tucson, AZ, producing downburst winds in excess of 70 mph, creating a massive wall of dust.</p> <p>Outflow winds from the collapsing thunderstorms pushed the wall of dust northwest into the Phoenix area at 30 to 40 mph. The NWS Phoenix office issued a local dust storm warning for the entire Phoenix area at 7:21 p.m. Trained NWS spotters inundated the Phoenix office with reports of zero visibility and winds gusting 30 to 50 mph.</p> <p>Eleven continuous Maricopa County PM-10 monitors exceeded the PM-10 standard as a result of the event, with hourly maximum concentrations ranging from about 1,000 to 6,000 <math>\mu\text{g}/\text{m}^3</math> during the event.</p>		
Exceptional Event Rule Demonstration Elements			
	Yes	No	Comments
Did the event affect air quality?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Dust generated directly from the event caused PM-10 concentrations that exceeded the PM-10 standard at 11 monitors in Maricopa County.
Was the event not reasonably controllable or preventable?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The clear causal link between the arrival of the haboob and the extremely elevated PM-10 concentrations, along with the massive spatial extent of the haboob demonstrates that all reasonably available controls were overwhelmed and that the event was not reasonably controllable or preventable.
Was the event a natural event?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	A haboob is a natural event caused by gusting outflow winds from the collapse of thunderstorms.
Was there a clear causal relationship between the event and the monitored concentration?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The maximum hourly PM-10 concentrations at the exceeding monitors in Maricopa County coincide with the arrival of the haboob.
Would there have been no exceedance but for the event?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	PM-10 concentrations at the exceeding monitors were within normal historical fluctuations before and after the arrival of the haboob and would not have exceeded the PM-10 standard without the extremely high hourly PM-10 concentrations associated with the arrival of the haboob.
Was the event associated with monitored concentrations in excess of normal historical fluctuations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The event was clearly outside normal historical fluctuations. At some exceeding monitors, no day prior to the event had recorded higher 24-hour average PM-10 concentrations.

High Wind Dust Exceptional Event Demonstration Form

Procedural Items			
	Yes	No	Comments
Was the public notified that the event was occurring?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADEQ issued a Dust Control Action Forecast and Ensemble Forecast for the greater Phoenix area during the event timeframe.
Was an informational flag placed on data in AQS?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The presence of the flag can be confirmed in AQS.
Was EPA notified of intent to flag through submission of initial event description by July 1 of the calendar year following event?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	This demonstration report serves as both the initial notification to EPA of ADEQ's intention to flag the event data, as well as the demonstration supporting the flagging of the event data.
Was documentation submitted to EPA in support of the exceptional event flag?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	This document serves as the demonstration supporting the flagging of the event data.
Was the public comment process followed and documented for the event?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ADEQ opened a 30-day public comment period on February 6, 2012. A copy of the public notice certification is attached to this demonstration. No public comments were received.

**\*Additional Documentation Included:**

1. Summary of Statewide Air Quality Measurements for July 5, 2011
2. ADEQ Dust Control Action Forecast and Ensemble Forecast for July 5, 2011
3. Pictures and links to videos of July 5, 2011 haboob
4. News coverage of July 5, 2011 haboob
5. Local National Weather Service Hourly Observations Tables for July 5, 2011 haboob
6. Plot of hourly PM-10 and wind speed at Maricopa County PM-10 monitors that exceeded the 24-hour PM-10 standard
7. Copy of public notice certification for July 5, 2011 exceptional event demonstration

*\*The additional documentation listed above is an example of the types of information that can be included to provide the "weight of evidence" needed in a high wind dust exceptional event demonstration. Since each high wind dust exceptional event is unique and evaluated on a case-by-case basis, other types of information than those listed above may be more or less appropriate given the particular circumstances of each event.*

**Additional Documentation for July 5, 2011  
High Wind Dust Exceptional Event**

July 5, 2011

Summary of Statewide Air Quality Measurements for July 5, 2011.

Monitor	Monitor Type	Operator	AQS Monitor ID	24-hr Avg PM10 (µg/m <sup>3</sup> )	1-hr Max PM10 (µg/m <sup>3</sup> )	Max Time	AQS Qualifier Flag
<b>Apache County</b>							
N/A	N/A	WMAT	04-001-1003-81102-1	15	49	1200	
<b>Coconino County</b>							
N/A	N/A	ADEQ	04-005-1237-81102-1	21	54	0400	
<b>Gila County</b>							
Hayden Old Jail	TEOM	ADEQ	04-007-1001-81102-3	31	91	1600	
<b>Maricopa County</b>							
Buckeye	TEOM	MC	04-013-4011-81102-1	163	2186	2000	RJ
Central Phoenix	TEOM	MC	04-013-3002-81102-4	277	3578	2000	RJ
Durango Complex	TEOM	MC	04-013-9812-81102-1	156	1974	2000	RJ
Dysart	TEOM	MC	04-013-4010-81102-1	219	2731	2000	RJ
Fort McDowell/Yuma Frank	TEOM	FMIR	04-013-5100-81102-1	559	N/A	N/A	
Glendale	TEOM	MC	04-013-2001-81102-1	167	2095	2000	RJ
Greenwood	TEOM	MC	04-013-3010-81102-1	155	1990	2000	RJ
Higley	TEOM	MC	04-013-4006-81102-1	362	5189	2000	RJ
JLG Supersite	BAM	ADEQ	04-013-9997-81102-3	118*	985	2000	IJ, EH
JLG Supersite	TEOM	ADEQ	04-013-9997-81102-4	331	6348	2000	RJ
South Phoenix	TEOM	MC	04-013-4003-81102-1	206	2575	2000	RJ
West Chandler	TEOM	MC	04-013-4004-81102-1	360	2967	2000	RJ
West Forty Third	TEOM	MC	04-013-4009-81102-1	150	1946	2000	
West Phoenix	TEOM	MC	04-013-0019-81102-1	278	4623	2000	RJ
Zuni Hills AQD	TEOM	MC	04-013-4016-81102-1	147	1804	2100	
<b>Navajo County</b>							
N/A	N/A	WMAT	04-017-1002-81102-1	14	33	1700	
<b>Pima County</b>							
Ajo	TEOM	ADEQ	04-019-0001-81102-3	21	116	2300	
Geronimo	BAM	PCDEQ	04-019-1113-81102-1	25	77	1700	
Green Valley	BAM	PCDEQ	04-019-1030-81102-1	30	97	0500	
Orange Grove	FRM	PCDEQ	04-019-0011-81102-2	28	N/A	N/A	
Rillito	TEOM	ADEQ	04-019-0020-81102-3	NA	N/A	N/A	
South Tucson	FRM	PCDEQ	04-019-1001-81102-1	29	N/A	N/A	
<b>Pinal County</b>							
Casa Grande Downtown	TEOM	PCAQCD	04-021-0001-81102-3	479	5300	1900	RJ
Combs School	TEOM	PCAQCD	04-021-3009-81102-3	419	8437	1900	RJ
Cowtown	TEOM	PCAQCD	04-021-3013-81102-3	2316	49377	1900	RJ
Maricopa	TEOM	PCAQCD	04-021-3010-81102-3	NA	NA	N/A	
Pinal County Housing	TEOM	PCAQCD	04-021-3011-81102-3	2040	41582	1800	RJ
Stanfield	TEOM	PCAQCD	04-021-3008-81102-3	54*	188	1800	
<b>Santa Cruz County</b>							
Nogales Post Office	BAM	ADEQ	04-023-0004-81102-3	23	46	1300	
<b>Yuma County</b>							
Yuma Supersite	TEOM	ADEQ	04-027-8011-81102-3	71*	850	2200	

Operator Abbreviations:

MC – Maricopa County Air Quality Department

PCAQCD – Pinal County Air Quality Control District

ADEQ – Arizona Department of Environmental Quality

FMIR – Fort McDowell Indian Reservation

PCDEQ – Pima County Department of Environmental Quality

WMAT – White Mountain Apache Tribe of Fort Apache Reservation, AZ

\*Power failure and/or instrumentation range limitation occurred during expected maximum concentration hour(s) likely resulting in an underestimate of 24-hour average



**MARICOPA COUNTY DUST CONTROL FORECAST**  
ISSUED MONDAY, JULY 4, 2011

Three-day weather outlook:

Monsoon moisture will keep the area primed for thunderstorm activity the next 7 days. Along with the threat of thunderstorms comes the risk of dust storm from the outflow winds. Otherwise, general winds will be relatively light. Thus, the risk of exceeding the 24-hr PM10 health standard in Phoenix will be **MODERATE** through Saturday.

**R I S K F A C T O R S**

	<u>WINDS</u>	<u>STAGNATION</u>	<u>UNHEALTHY PM-10 RISK LEVEL</u>
<b>Day 1: Tue 07/05/2011</b>	West winds around 10 mph are expected. Thunderstorm outflow may generate gusty winds and possible blowing dust late.	Rather stagnant conditions are likely early, improving late.	<b>MODERATE</b>
<b>Day 2: Wed 07/06/2011</b>	Southwest winds around 10 mph are expected. Thunderstorm outflow may generate gusty winds and possible blowing dust late.	Rather stagnant conditions are likely early, improving late.	<b>MODERATE</b>
<b>Day 3: Thu 07/07/2011</b>	Mostly light winds are likely much of the day. Thunderstorm outflow may generate gusty winds and possible blowing dust.	Rather stagnant conditions are likely early, improving late.	<b>MODERATE</b>

**EXTENDED OUTLOOK**

<b>Day 4: Fri 07/08/2011</b>	West winds around 10 mph are expected. Thunderstorm outflow may generate gusty winds and possible blowing dust late.	Rather stagnant conditions are likely early, improving late.	<b>MODERATE</b>
<b>Day 5: Sat 07/09/2011</b>	West winds around 10 mph are expected. Thunderstorm outflow may generate gusty winds and possible blowing dust late.	Rather stagnant conditions are likely early, improving late.	<b>MODERATE</b>

The Maricopa County Dust Control Action Forecast is issued to assist in the planning of work activities to help reduce dust pollution. A recorded message of this forecast can be accessed at [602-771-2368](tel:602-771-2368). To review the complete air quality forecast for the Phoenix metropolitan area, as well as the health impacts and reduction methods for different air pollutants, call [602-771-2367](tel:602-771-2367) for recorded forecast information or click on ADEQ's Air Quality Forecast at <http://www.azdeq.gov/environ/air/ozone/ensemble.pdf>.



**NEW!!! CLICK HERE FOR UPDATED OZONE SEASON STATS NEW!!!**

**AIR QUALITY FORECAST FOR WEDNESDAY, JULY 6, 2011**

This report is updated by 1:00 p.m. Sunday thru Friday and is valid for areas within and bordering Maricopa County in Arizona

FORECAST DATE	YESTERDAY MON 07/04/2011	TODAY TUE 07/05/2011	TOMORROW WED 07/06/2011	EXTENDED THU 07/06/2011
<b>NOTICES</b> (*SEE BELOW FOR DETAILS)			(Ozone)	(Ozone) Possible
AIR POLLUTANT	DUST Highest AQI Reading/Site (Preliminary data only)	DUST		
O3*	122 RIO VERDE	61 MODERATE	93 MODERATE	90 MODERATE
CO*	5 GREENWOOD	7 GOOD	6 GOOD	6 GOOD
PM-10*	122 HIGLEY	75 MODERATE	58 MODERATE	55 MODERATE
PM-2.5*	42 PHOENIX SUPERSITE	43 GOOD	40 GOOD	42 GOOD

\* O3 = Ozone    CO = Carbon Monoxide    PM-10 = Particles 10 microns & smaller    PM-2.5 = Particles smaller than 2.5 microns  
 \*\*"Ozone Health Watch" means that the highest concentration of OZONE may approach the federal health standard.  
 "PM-10 or PM-2.5 Health Watch" means that the highest concentration of PM-10 or PM-2.5 may approach the federal health standard.  
 "High Pollution Advisory" means that the highest concentration of OZONE, PM-10, or PM-2.5 may exceed the federal health standard.  
 "DUST" means that short periods of high PM-10 concentrations caused by outflow from thunderstorms are possible.

**Health message for Tuesday, July 5: Unusually sensitive people should consider limiting prolonged exertion outdoors.**

**Health message for Wednesday, July 6: Unusually sensitive people should consider limiting prolonged exertion outdoors.**

**...AN OZONE HEALTH WATCH HAS BEEN ISSUED FOR WEDNESDAY, JULY 6, 2011...**

A double whammy hit the Valley on Monday, July 4<sup>th</sup>. Ozone levels soared above the health standard Monday in the far east part of the forecast area. Rio Verde’s monitor hit 122 on the Air Quality Index (AQI), which is unhealthy for sensitive groups. A line of thunderstorms moved west, generating a significant dust storm that impacted the southeast and south part of the Valley. Higley’s monitor exceeded the PM10 health standard as a result. A pop-up cell over the 51-101 interchange in the north Valley dropped the only measurable rain, but it wasn’t the Valley-wide event we’re looking for to end the threat of dust in the near future.

Models suggest that there will be one more good shot of showers and thunderstorms (and likely blowing dust) this evening before high pressure slides east a bit. Wednesday through Sunday will have a much lower chance of Monsoon activity locally as storms will be limited to the mountains of eastern Arizona and western New Mexico. Phoenix’s chances increase once again by next Monday as high pressure moves back over the Four Corners area.

We’re issuing an Ozone Health Watch for Wednesday with the eastern part of the forecast area expected to see the highest levels. Concentrations may tail off a bit Thursday and Friday.

Particulates could push deep into the MODERATE range this evening, but decrease Wednesday through the weekend as the threat of thunderstorms decrease.

Check back on tomorrow for the latest. Until then, have a good day! -J.Paul

<b>MONITORING SITE MAPS</b>	
<b>STATIC MAP</b>	<a href="http://www.azdeq.gov/environ/air/monitoring/images/map.jpg">http://www.azdeq.gov/environ/air/monitoring/images/map.jpg</a>
<b>INTERACTIVE MAPS</b>	<a href="http://aqwww.maricopa.gov/AirMonitoring/SitePollutionMap.aspx">http://aqwww.maricopa.gov/AirMonitoring/SitePollutionMap.aspx</a> <a href="http://www.airnow.gov/">http://www.airnow.gov/</a>

**POLLUTION MONITOR READINGS FOR MONDAY, JULY 4, 2011**

**O3 (OZONE)**

Info on current 8-hour ozone standard: [http://www.epa.gov/air/ozonepollution/pdfs/2008\\_03\\_aqi\\_changes.pdf](http://www.epa.gov/air/ozonepollution/pdfs/2008_03_aqi_changes.pdf)

For archived AQI maps go to: <http://www.airnow.gov/index.cfm?action=airnow.maps>

<b>SITE NAME</b>	<b>MAX 8-HR VALUE (PPB)</b>	<b>MAX AQI</b>	<b>AQI COLOR CODE</b>
Alamo Lake (La Paz County)	55	47	
Apache Junction (Pinal County)	66	71	
Blue Point	69	80	
Buckeye	51	43	
Casa Grande	57	48	
Cave Creek	67	74	
Central Phoenix	67	74	
Dysart	57	48	
Falcon Field	66	71	
Fountain Hills	NOT AVBL	NOT AVBL	NOT AVBL
Glendale	60	51	
Humboldt Mountain	64	64	
North Phoenix	66	71	
Phoenix Supersite	66	71	
Pinal Air Park (Pinal County)	58	49	
Pinnacle Peak	62	58	
Queen Valley (Pinal County)	73	97	

Rio Verde	84	122	
South Phoenix	NOT AVBL	NOT AVBL	NOT AVBL
South Scottsdale	69	80	
Tempe	64	64	
Tonto Nat'l Mon. (Gila County)	57	48	
West Chandler	73	93	
West Phoenix	65	67	
Yuma	36	31	

### CO (CARBON MONOXIDE)

SITE NAME	MAX 8-HR VALUE (PPB)	MAX AQI	AQI COLOR CODE
Central Phoenix	0.2	2	
Greenwood	0.4	5	
Phoenix Supersite	NOT AVBL	NOT AVBL	NOT AVBL
West Phoenix	0.2	2	

### PM-10 (PARTICLES)

SITE NAME	MAX 8-HR VALUE (PPB)	MAX AQI	AQI COLOR CODE
Buckeye	24.5	22	
Central Phoenix	52.3	48	
Combs School (Pinal County)	210.3	128	
Durango	50.4	46	
Dysart	38.3	35	
Glendale	38.0	35	
Greenwood	47.4	43	
Higley	198.6	122	HIGHEST LOCALLY
Maricopa (Pinal County)	118.4	82	
Phoenix Supersite	51.1	47	
South Phoenix	55.9	51	
West Chandler	109.6	78	
West Forty Third	47.1	43	
West Phoenix	51.5	47	
Zuni Hills	35.5	32	

### PM-2.5 (PARTICLES)

(Some data derived from light-scattering equipment)

For maps go to: <http://www.airnow.gov/>

SITE NAME	MAX 8-HR VALUE (PPB)	MAX AQI	AQI COLOR CODE
Durango	11.2	36	
Dysart	7.3	24	
Estrella Mountain Park	6.1	20	
Glendale	11.6	38	
Phoenix Supersite	13.0	42	
South Phoenix	8.6	28	
Vehicle Emissions Lab	7.2	23	
West Phoenix	10.4	34	

## LOCAL AIR POLLUTANTS IN DETAIL



### **O3 (OZONE):**

**Description** – This is a secondary pollutant that is formed by the reaction of other primary pollutants (precursors) such as VOCs (volatile organic compounds) and NO<sub>x</sub> (Nitrogen Oxides) in the presence of heat and sunlight.

**Sources** – VOCs are emitted from motor vehicles, chemical plants, refineries, factories, and other industrial sources. NO<sub>x</sub> is emitted from motor vehicles, power plants, and other sources of combustion.

**Potential health impacts** – Exposure to ozone can make people more susceptible to respiratory infection, result in lung inflammation, and aggravate pre-existing respiratory diseases such as asthma. Other effects include decrease in lung function, chest pain, and cough.

**Unit of measurement** – Parts per billion (ppb).

**Averaging interval** – Highest eight-hour period within a 24-hour period (midnight to midnight).

**Reduction tips** – Curtail daytime driving, refuel cars and use gasoline-powered equipment as late in the day as possible.

### **CO (CARBON MONOXIDE):**

**Description** – A colorless, odorless, poisonous gas formed when carbon in fuels is not burned completely.

**Sources** – In cities, as much as 95 percent of all CO emissions emanate from automobile exhaust. Other sources include industrial processes, non-transportation fuel combustion, and natural sources such as wildfires. Peak concentrations occur in colder winter months.

**Potential health impacts** – Reduces oxygen delivery to the body's organs and tissues. The health threat is most serious for those who suffer from cardiovascular disease.

**Unit of measurement** – Parts per million (ppm).

**Averaging interval** – Highest eight-hour period within a 24-hour period (midnight to midnight)

**Reduction tips** – Keep motor vehicle tuned properly and minimize nighttime driving.

### **PM-10 & PM-2.5 (PARTICLES):**

**Description** – The term “particulate matter” (PM) includes both solid particles and liquid droplets found in air. Many manmade and natural sources emit PM directly or emit other pollutants that react in the atmosphere to form PM. Particles less than 10 micrometers in diameter tend to pose the greatest health concern because they can be inhaled into and accumulate in the respiratory system. Particles less than 2.5 micrometers in diameter are referred to as “fine” particles and are responsible for many visibility degradations such as the “Valley Brown Cloud” (see <http://www.phoenixvis.net/>). Particles with diameters between 2.5 and 10 micrometers are referred to as “coarse”.

**Sources** – Fine = All types of combustion (motor vehicles, power plants, wood burning, etc.) and some industrial processes. Coarse = crushing or grinding operations and dust from paved or unpaved roads.

**Potential health impacts** – PM can increase susceptibility to respiratory infections and can aggravate existing respiratory diseases, such as asthma and chronic bronchitis.

**Units of measurement** – Micrograms per cubic meter (ug/m<sup>3</sup>)

**Averaging interval** – 24 hours (midnight to midnight).

[Reduction tips](#) – Stabilize loose soils, slow down on dirt roads, carpool, and use public transit.

{Updated 03/23/2010}

**Pictures and link to videos of July 5, 2011 haboob:**



**Pictures and link to videos of July 5, 2011 haboob (continued):**



Videos of the July 5, 2011 event are stored on ADEQ's website at:

<http://www.azdeq.gov/function/about/videos/2011/index.html>

## Articles and Links

7/6/2011 4:26 PM

### **Ariz. washes away dust deposited by massive storm**

By AMANDA LEE MYERS Associated Press



Arizonans are calling it the mother of all dust storms. The mile-high wall of ominous, billowing dust that appeared to swallow Phoenix and its suburbs is all that locals can talk about.

It moved through the state around sundown Tuesday, halting airline flights, knocking out power to nearly 10,000 people, turning swimming pools into mud pits and caking cars with dirt.

The sky was still filled with a hazy shade of brown Wednesday as residents washed their cars and swept sidewalks.

Because dust storms, also known by the Arabic term "haboobs," are so hard to predict, Tuesday's took everyone by surprise.

Seemingly out of nowhere, the 100-mile-wide storm moved like a giant wave, the dust roiling as it approached at up to 60 mph. Once it hit, visibility dropped to zero in some areas, the sky turned nearly black, trees blew sideways, and even downtown Phoenix skyscrapers became invisible.

"Just the height of it looked like a special-effect scene from a movie, like a dust storm out in Africa," said Charlotte Dewey, a National Weather Service meteorologist in Phoenix. "It looked so huge, looking at the city down below, it was just specks of light and miniature buildings.

"I have a feeling that people will be talking about this for another week or two, at least," Dewey said.

She said meteorologists were still trying to get exact measures from satellite and radar to figure out how big the dust storm was and compare it with previous ones, but they estimate it was more than a mile high and more than 100 miles wide.

"People who've lived here their whole lives, 30 or 40 years, are saying they've never seen a storm this large," Dewey said.

She said winds from separate thunderstorms in the eastern and southern parts of the state collided somewhere between Phoenix and Tucson and combined with a severe lack of moisture to create the wall of dust. The storm also hit the Yuma area in southwestern Arizona, and far western Arizona.

Haboobs only happen in Arizona, the Sahara desert and parts of the Middle East because of dry conditions and large amounts of sand, Dewey said.

"It's a pretty rare thing to be able to see," she said.

While some Arizonans revel in the strange weather, many were unlucky enough to be outside when the storm rolled in. The storm blasted them with dust that went up their noses, behind their contact lenses and in their mouths, leaving behind a gritty taste.

Holly Ward, a spokeswoman at the Maricopa County Air Quality Department, said pollution levels skyrocketed.

During the storm, the amount of particulate matter in the air reached 375 micrograms per cubic meter, more than double the level federal standards consider healthy.

"You didn't have to go far anywhere in the dust storm to feel the remnants of that dust in your throat and in your nose," Ward said. "If someone already has breathing problems like asthma and bronchitis, this is an incredible health challenge and serious health threat for those folks."

The dust storm also grounded flights at Phoenix's Sky Harbor International Airport for 45 minutes. At least three flights were canceled and more than a dozen were delayed, while several incoming flights were diverted to Tucson and Ontario, Calif., said airport spokesman Julie Rodriguez.

Federal Aviation Administration spokesman Lynn Lunsford said planes need to be grounded during dust storms because of the low visibility, high winds and potential damage from the dirt.

"If you think about it, glass is made from sand that has been melted, and if you think about the temperature inside a jet engine, it's hot enough to melt sand," he said. "If you can't see through it, you definitely don't want to fly through it."

He likened the storm to volcanic ash that wreaked havoc in the skies in April 2010, when an eruption grounded flights across Europe for days, disrupting travel for 10 million people.

Arizona's dust storm annoyed others who couldn't see out of their car windows or found their pools filthy in the morning. But that created pay dirt at local businesses.

"It's crazy here," said Margaret Vioria, manager of Los Olivos Hand Car Wash near downtown Phoenix. "When we opened this morning cars were lined up outside. It's just been nonstop."

On a typical day, the car wash cleans about 25 to 30 cars an hour. It was averaging 55 an hour Tuesday, Vioria said.

Joe Pinelli, owner of The Pool Service in Phoenix, was also having an "absolutely chaotic" day.

"I don't think I've been off the phone since about 6 a.m.," he said.

Dewey, the weather service meteorologist, said there was a slight chance of blowing dust in the Phoenix area Wednesday and Thursday and a slight chance of thunderstorms the rest of the week.

"As far as if it would be of any magnitude we saw Tuesday, I don't know," she said.

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## Arizona dust storm leaves big mess, health fears in its wake

### Car washes and pool firms cash in; health fears lingering

[28 comments](#) by **Jim Walsh and Elvina Nawaguna-Clemente** - Jul. 7, 2011 12:00 AM  
The Arizona Republic

#### • [Graphic: More information on the huge dust storm](#)

An enormous wall of dust that barreled across the Valley during a monsoon storm left so much dirt behind on the ground and in the air that it didn't just coat cars and clog up pools, it prevented pilots approaching Sky Harbor International Airport from seeing the runways a day later.

The windstorm that took Valley residents by surprise Tuesday around sunset was a rare monster that reached theatrical proportions. It spawned a 100- to 150-mile-wide plume of dust more than 5,000 feet high, moving at 50 mph to 60 mph from northwest Tucson along Interstate 10 through the Valley before petering out in Yavapai County, according to Elizabeth Padian, a National Weather Service spokeswoman.

"The magnitude of it, how high it was, how wide it was, how dense it was, this is remarkable," she said.

The storm was all anyone could talk about Wednesday after it cut power to 10,000 Valley customers, grounded flights and left people cleaning up cars and pools caked with dirt and mud.

Ken Waters, a warning-coordination meteorologist with the Weather Service, said the storm hung together like a weather front of its own. "This is like special effects from a Hollywood movie," he said. "It's kind of once in a lifetime."

The aftereffects forced the Federal Aviation Administration to reduce aircraft arrivals at Sky Harbor on Wednesday from about 78 per hour to 48 an hour because of poor visibility caused by a layer of dust still hanging around at 4,000 to 6,000 feet.

Pilots compensated by using instrument-arrival equipment, similar to that used to land during a thunderstorm, said Lynn Lunsford, an FAA spokesman in Fort Worth, Texas. Although conditions were improving late Wednesday afternoon, planes were still "descending through the dust," he said.

Randy Cerveny, an Arizona State University professor of geographical sciences who has studied Arizona's weather for decades, said the Valley used to have more frequent dust storms like Tuesday's before development paved over the desert. But this one was impressive, he said.

"It's the biggest I've seen in 10 or 15 years," he said.

Cerveny and the Weather Service said the winds were created by a powerful downdraft as thunderstorms near Marana and Oro Valley fell apart. Rain forced the winds to ground level, and they quickly swept up dust because of the extremely dry conditions. The amount of dust grew larger as the storm blew northwest toward the Valley.

"It's kind of like a bomb blast," Cerveny said, adding that most of the winds headed northwest toward Phoenix while a spur went west through Tacna, eventually passing through Yuma and crossing the Colorado River.

Cervany theorized that unkempt yards in houses abandoned during the economic downturn created more dust that fed the storm.

Mark Shaffer, a spokesman for the Arizona Department of Environmental Quality, said the testing station on 15th Avenue, between Thomas and Indian School roads in Phoenix, recorded an astronomical reading of 6,349 micrograms per cubic meter at 10 p.m. Tuesday. The federal EPA standard is 150.

Because of the dust that lingered through Wednesday, those with respiratory issues were warned to stay inside.

"It's a little bit frantic today," Dr. Laura Ispas-Ponas said. "Patients are calling complaining of symptoms that seem to be, but aren't necessarily, allergy-related."

The specialist at Sonoran Allergy and Asthma Center in Scottsdale said dust particles act as irritants, mimicking allergy symptoms such as nasal drainage, dry cough and itchy, watery eyes.

Dust also can cause serious reactions in people with asthma, chronic obstructive pulmonary disease and other respiratory conditions, Ispas-Ponas said.

Residents caught in the dust storm could end up with valley fever, a usually harmless lung infection that occasionally spreads to the spinal fluid, bones and other parts of the body, with potentially devastating effects, said Dr. Rick Helmers, a pulmonologist at Mayo Clinic in Scottsdale. Valley fever is caused by inhaling spores of the fungus *coccidioides*, which grows in the soil in the Southwest. The spores become airborne when stirred by wind, construction or farming and can cause fatigue, fever, coughs and muscle and joint aches.

Across the Valley, many people were busy cleaning up cars, pools and yards Wednesday.

Scottsdale's Eldorado Aquatic and Fitness Center was expected to reopen today after workers spent most of the day cleaning up a "huge mud hole" in the swimming pool, employee Joyce Shorr said.

Car-washing and pool-cleaning services were inundated.

Quick N Clean car wash saw about a 50 percent increase in customers, with anywhere from six to 15 cars lined up at several Valley locations before opening time, company President Richard Karle said.

"Our car-wash business was good today," he said. "It will be a nice little run for the next week or so. There are a lot of dirty cars out there."

For pool-cleaning businesses, the storm brought a mix of good and bad.

"The new-service requests are coming in hot and heavy," said Chip Bury, owner of Splish Splash Pool Service in Phoenix. But on the down side, companies face a lot more work cleaning up existing customers' pools.

"You have to take the good with the bad," Bury said. "We don't pray for storms. It's such a tremendous burden."

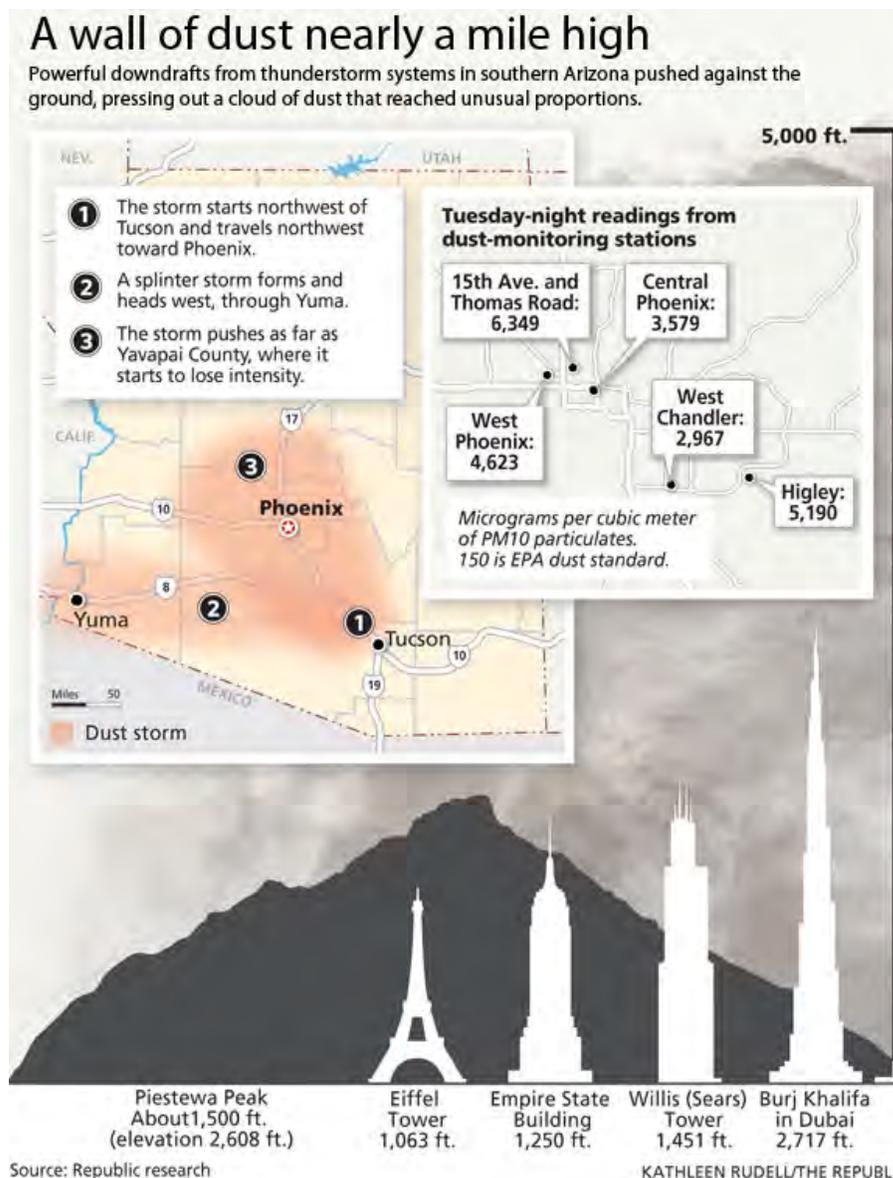
For auto dealers with cars out on open lots, the "haboob" was a big inconvenience. Dealerships opened with cars covered in dirt and debris.

Mark Gruwell, co-owner of Courtesy Chevrolet knew he was in for a long day as he watched the storm move in Tuesday night.

"I was like, 'Oh, my gosh, this is just going to make a big mess for the next day.' I knew it was going to be a lot of work," Gruwell said.

The company hired two extra workers to help clean up for the next two days. "I've lived here my whole life, and I have never seen anything like that," he said. "It was just unbelievable."

Republic reporter Connie Midey contributed to this article.



U.S. Department of Commerce  
National Oceanic & Atmospheric Administration

**QUALITY CONTROLLED LOCAL  
CLIMATOLOGICAL DATA  
(final)  
HOURLY OBSERVATIONS TABLE  
PHOENIX SKY HARBOR INTL AIRPORT (23183)  
PHOENIX, AZ  
(07/2011)**

National Climatic Data Center  
Federal Building  
151 Patton Avenue  
Asheville, North Carolina 28801

Elevation: 1107 ft. above sea level  
Latitude: 33.427  
Longitude: -112.003  
Data Version: VER3

Date	Time (LST)	Station Type	Sky Conditions	Visibility (SM)	Weather Type	Dry Bulb Temp		Wet Bulb Temp		Dew Point Temp		Rel Humd %	Wind Speed (MPH)	Wind Dir	Wind Gusts (MPH)	Station Pressure (in. hg)	Press Tend	Net 3-hr Chg (mb)	Sea Level Pressure (in. hg)	Report Type	Precip. Total (in)	Alti-meter (in. hg)
						(F)	(C)	(F)	(C)	(F)	(C)											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
05	0051	11	SCT120 BKN150 OVC250	10.00		89	31.7	72	22.3	64	17.8	44	8	090		28.66			AA		29.84	
05	0151	11	SCT120 BKN150 BKN250	10.00		90	32.2	71	21.9	62	16.7	39	8	110		28.66	6	007	AA		29.83	
05	0251	11	SCT120 BKN150 OVC250	10.00		90	32.2	72	22.2	63	17.2	41	7	140		28.65			AA		29.82	
05	0351	11	SCT120 BKN150 BKN250	10.00		89	31.7	71	21.4	61	16.1	39	0	000		28.65			AA		29.82	
05	0451	11	BKN140 BKN250	10.00		87	30.6	72	22.0	64	17.8	46	9	140		28.66	3	002	AA		29.84	
05	0551	11	BKN200 BKN250	10.00		87	30.6	71	21.7	63	17.2	45	11	110		28.69			AA		29.86	
05	0651	11	SCT210 SCT250	10.00		88	31.1	72	22.1	64	17.8	45	8	100		28.70			AA		29.88	
05	0751	11	FEW150 SCT210	10.00		89	31.7	73	22.6	65	18.3	45	5	100		28.72	1	020	AA		29.90	
05	0851	11	FEW100 SCT210	10.00		92	33.3	73	22.8	64	17.8	40	0	000		28.73			AA		29.91	
05	0951	11	FEW210	10.00		94	34.4	74	23.1	64	17.8	37	6	VR		28.71			AA		29.89	
05	1051	11	FEW070 SCT210	10.00		96	35.6	74	23.4	64	17.8	35	7	350		28.69	8	009	AA		29.87	
05	1151	11	FEW075 SCT210	10.00		98	36.7	75	23.7	64	17.8	33	6	VR		28.68			AA		29.85	
05	1251	11	FEW080 SCT180 SCT210	10.00		100	37.8	75	23.6	63	17.2	30	5	VR		28.65			AA		29.82	
05	1351	11	FEW080 SCT180 SCT210	10.00		102	38.9	75	23.9	63	17.2	28	8	230		28.62	8	027	AA		29.79	
05	1451	11	FEW080 SCT180 SCT210	10.00		103	39.4	74	23.5	61	16.1	25	6	VR		28.58			AA		29.75	
05	1551	11	FEW080 SCT140 BKN220	10.00		104	40.0	75	23.9	62	16.7	25	6	VR	16	28.57			AA		29.74	
05	1554	11	FEW080 SCT140 BKN220	10.00		102	39.0	75	23.9	63	17.0	28	10	300	16	28.57			SP		29.74	
05	1651	11	FEW080 SCT140 BKN220	10.00		105	40.6	75	23.8	61	16.1	24	10	290	18	28.54	6	026	AA		29.71	
05	1751	11	FEW080 SCT140 BKN220	10.00		105	40.6	75	23.8	61	16.1	24	8	260		28.54			AA		29.71	
05	1851	11	FEW080 SCT140 BKN180	10.00		104	40.0	75	23.6	61	16.1	24	8	250		28.54			AA		29.71	
05	1951	11	FEW080 SCT140 BKN180	3.00		100	37.8	73	22.6	59	15.0	26	20	180	24	28.65	3	036	AA		29.82	
05	1953	11	FEW080 SCT140 BKN180	0.75		97	36.0	73	22.7	61	16.0	30	20	190	28	28.65			SP		29.82	
05	1955	11	VV002	0.25	+DS	93	34.0	73	22.6	63	17.0	37	31	170	44	28.66			M		29.83	
05	2005	11	VV003	0.12	-RA +DS	86	30.0	71	21.8	64	18.0	48	22	200	53	28.68			M		29.85	
05	2012	11	VV001	0.12	-RA +DS	82	28.0	71	21.8	66	19.0	58	18	190	38	28.68			M		29.85	
05	2016	11	VV002	0.25	-RA +DS	82	28.0	74	23.2	70	21.0	67	20	190	31	28.68			M		29.85	
05	2030	11	VV003	0.50	-RA DS	79	26.0	73	22.7	70	21.0	74	26	200	38	28.66			M		29.83	
05	2041	11	OVC004	1.25	-RA BLDU	81	27.0	73	23.0	70	21.0	69	20	200	34	28.65			M		29.82	
05	2045	11	FEW004 BKN011	2.00	-RA BLDU	81	27.0	72	22.3	68	20.0	65	13	200	25	28.65			M		29.82	
05	2049	11	FEW004 BKN022	5.00	BLDU	81	27.0	72	22.3	68	20.0	65	16	220	25	28.65			M		29.82	
05	2051	11	FEW004 BKN027 BKN180	6.00		81	27.2	72	22.3	68	20.0	65	13	230	23	28.65			M		29.82	
05	2113	11	OVC050	10.00		84	29.0	70	21.2	63	17.0	49	9	240		28.66			M	0.04	29.84	
05	2151	11	SCT070 SCT095 BKN210	10.00		86	30.0	72	22.1	65	18.3	50	11	350		28.70			M		29.88	
05	2220	11	BKN075 BKN095 OVC210	3.00	HZ	84	29.0	71	21.5	64	18.0	51	17	060	23	28.74			M		29.92	
05	2223	11	BKN075 BKN095 OVC210	1.75	BLDU	84	29.0	71	21.5	64	18.0	51	16	060		28.74			M		29.92	
05	2231	11	BKN009 BKN090 OVC210	0.75	BLDU	84	29.0	70	21.2	63	17.0	49	16	080		28.75			M		29.93	
05	2248	11	BKN009 BKN090 OVC210	1.25	BLDU	82	28.0	71	21.8	66	19.0	58	11	030		28.76			M		29.94	
05	2251	11	BKN009 BKN090 OVC210	1.25	BLDU	82	27.8	71	21.8	66	18.9	58	10	030		28.76	1	041	AA		29.94	
05	2258	11	BKN009 BKN090 OVC210	1.75	BLDU	82	28.0	71	21.8	66	19.0	58	11	360		28.76			M		29.94	
05	2328	11	BKN012 BKN090 OVC210	2.50	BLDU	81	27.0	71	21.6	66	19.0	60	13	330		28.73			M		29.91	
05	2342	11	BKN012 BKN090 OVC210	10.00		81	27.0	71	21.6	66	19.0	60	15	300		28.73			M		29.91	
05	2351	11	BKN012 BKN090 OVC210	10.00		81	27.2	70	21.0	64	17.8	56	14	280		28.74			M		29.92	

Dynamically generated Mon Aug 06 17:10:56 EDT 2012 via <http://cdo.ncdc.noaa.gov/qclcd/QCLCD>

U.S. Department of Commerce  
National Oceanic & Atmospheric Administration

**QUALITY CONTROLLED LOCAL  
CLIMATOLOGICAL DATA**  
(final)  
**HOURLY OBSERVATIONS TABLE**  
**WILLIAMS GATEWAY AIRPORT (23104)**  
**PHOENIX, AZ**  
**(07/2011)**

National Climatic Data Center  
Federal Building  
151 Patton Avenue  
Asheville, North Carolina 28801

Elevation: 1382 ft. above sea level  
Latitude: 33.3  
Longitude: -111.666  
Data Version: VER2

Date	Time (LST)	Station Type	Sky Conditions	Visibility (SM)	Weather Type	Dry Bulb Temp		Wet Bulb Temp		Dew Point Temp		Rel Humd %	Wind Speed (MPH)	Wind Dir	Wind Gusts (MPH)	Station Pressure (in. hg)	Press Tend	Net 3-hr Chg (mb)	Sea Level Pressure (in. hg)	Report Type	Precip. Total (in)	Alti-meter (in. hg)
						(F)	(C)	(F)	(C)	(F)	(C)											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
05	0015	0	CLR	10.00		88	31.0	70	21.2	61	16.0	40	9	130		28.44			M	AA		29.90
05	0035	0	CLR	10.00		88	31.0	70	21.2	61	16.0	40	10	150		28.44			M	AA		29.90
05	0055	0	CLR	10.00		88	31.0	70	21.2	61	16.0	40	11	160		28.44			M	AA		29.90
05	0115	0	CLR	10.00		88	31.0	70	21.2	61	16.0	40	10	160		28.44			M	AA		29.90
05	0135	0	CLR	10.00		86	30.0	71	21.5	63	17.0	46	9	150		28.43			M	AA		29.89
05	0155	0	CLR	10.00		86	30.0	71	21.8	64	18.0	48	6	120		28.43			M	AA		29.89
05	0215	0	CLR	10.00		86	30.0	71	21.8	64	18.0	48	6	140		28.41			M	AA		29.87
05	0235	0	CLR	10.00		86	30.0	71	21.8	64	18.0	48	5	180		28.40			M	AA		29.86
05	0255	0	CLR	10.00		86	30.0	71	21.8	64	18.0	48	3	150		28.40			M	AA		29.86
05	0315	0	CLR	10.00		86	30.0	71	21.8	64	18.0	48	6	130		28.41			M	AA		29.87
05	0335	0	CLR	10.00		86	30.0	72	22.4	66	19.0	51	7	090		28.41			M	AA		29.87
05	0355	0	CLR	10.00		86	30.0	71	21.8	64	18.0	48	7	110		28.42			M	AA		29.88
05	0415	0	CLR	10.00		82	28.0	71	21.8	66	19.0	58	7	120		28.42			M	AA		29.88
05	0435	0	CLR	10.00		82	28.0	71	21.8	66	19.0	58	5	110		28.42			M	AA		29.88
05	0455	0	CLR	10.00		82	28.0	71	21.8	66	19.0	58	6	110		28.42			M	AA		29.88
05	0515	0	CLR	10.00		82	28.0	73	22.5	68	20.0	63	8	100		28.43			M	AA		29.89
05	0547	0	SCT150 BKN250	30.00		86	30.0	75	23.8	70	21.0	59	10	110		28.45			M	AA		29.91
05	0647	0	SCT150 BKN250	30.00		88	31.0	74	23.4	68	20.0	52	8	110		28.46			M	AA		29.93
05	0748	0	SCT150	30.00		88	31.0	74	23.4	68	20.0	52	8	130		28.48			M	AA		29.94
05	0847	0	FEW200	30.00		90	32.0	75	23.7	68	20.0	48	8	120		28.48			M	AA		29.95
05	0947	0	FEW200	30.00		97	36.0	78	25.3	70	21.0	42	7	100		28.46			M	AA		29.93
05	1047	0	FEW200	30.00		97	36.0	74	23.5	64	18.0	34	0	000		28.46			M	AA		29.92
05	1147	0	SCT200	30.00		100	38.0	75	23.9	64	18.0	31	9	320		28.43			M	AA		29.89
05	1249	0	SCT200	30.00		102	39.0	75	23.9	63	17.0	28	7	330		28.41			M	AA		29.87
05	1349	0	FEW120 SCT200	20.00		102	39.0	74	23.3	61	16.0	26	14	310		28.38			M	AA		29.84
05	1447	0	FEW120 SCT200	20.00		106	41.0	76	24.4	63	17.0	25	13	310		28.34			M	AA		29.80
05	1648	0	SCT120 BKN200	20.00		106	41.0	76	24.4	63	17.0	25	14	330		28.30			M	AA		29.76
05	1747	0	SCT120 BKN200	20.00		106	41.0	74	23.4	59	15.0	21	7	320		28.29			M	AA		29.75
05	1847	0	SCT120 BKN200	20.00		106	41.0	75	23.9	61	16.0	23	7	280		28.30			M	AA		29.76
05	1919	0	VV000	0.00s	+DSs	104	40.0	75	23.6	61	16.0	24	33s	150	44	28.36			M	AA		29.82
05	1947	0	VV	0.25		90	32.0	M	M	63	17.0	M	29	190	43	M			M	AA		29.84
05	1955	0	OVC003	1.00	HZ	86	30.0	71	21.8	64	18.0	48	29	200	41	28.39			M	AA		29.85
05	2015	0	BKN005 BKN011 OVC017	2.50	HZ	88	31.0	70	21.2	61	16.0	40	29	210	38	28.39			M	AA		29.85
05	2018	0	BKN010 OVC031	2.00	BLDU	88	31.0	71	21.8	63	17.0	43	30	210	41	28.39			M	AA		29.85
05	2035	0	SCT007 SCT022 BKN034	4.00	HZ	84	29.0	71	21.5	64	18.0	51	24	220	41	28.41			M	AA		29.87
05	2055	0	SCT045	4.00	HZ	86	30.0	70	20.9	61	16.0	43	10	310	21	28.45			M	AA		29.91
05	2115	0	SCT060 SCT075	5.00	TSHZ	82	28.0	68	20.2	61	16.0	49	5	200		28.46			M	AA		29.92
05	2135	0	SCT090	7.00		86	30.0	70	20.9	61	16.0	43	9	140		28.48			M	AA		29.94
05	2155	0	SCT090	7.00		86	30.0	70	20.9	61	16.0	43	10	110		28.48			M	AA		29.94
05	2215	0	SCT095	10.00	VCTS	82	28.0	70	21.1	64	18.0	55	7	130		28.48			M	AA		29.95
05	2235	0	SCT095	10.00		84	29.0	71	21.5	64	18.0	51	3	020		28.48			M	AA		29.95
05	2255	0	CLR	10.00		86	30.0	71	21.5	63	17.0	46	8	340		28.48			M	AA		29.94
05	2315	0	CLR	10.00		86	30.0	71	21.8	64	18.0	48	5	360		28.48			M	AA		29.94
05	2335	0	CLR	10.00		86	30.0	71	21.5	63	17.0	46	7	360		28.46			M	AA		29.93
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Dynamically generated Mon Aug 06 17:13:25 EDT 2012 via <http://cdо.ncdc.noaa.gov/qclcd/QCLCD>

U.S. Department of Commerce  
National Oceanic & Atmospheric Administration

**QUALITY CONTROLLED LOCAL  
CLIMATOLOGICAL DATA  
(final)  
HOURLY OBSERVATIONS TABLE  
LUKE AFB AIRPORT (23111)  
GLENDALE, AZ  
(07/2011)**

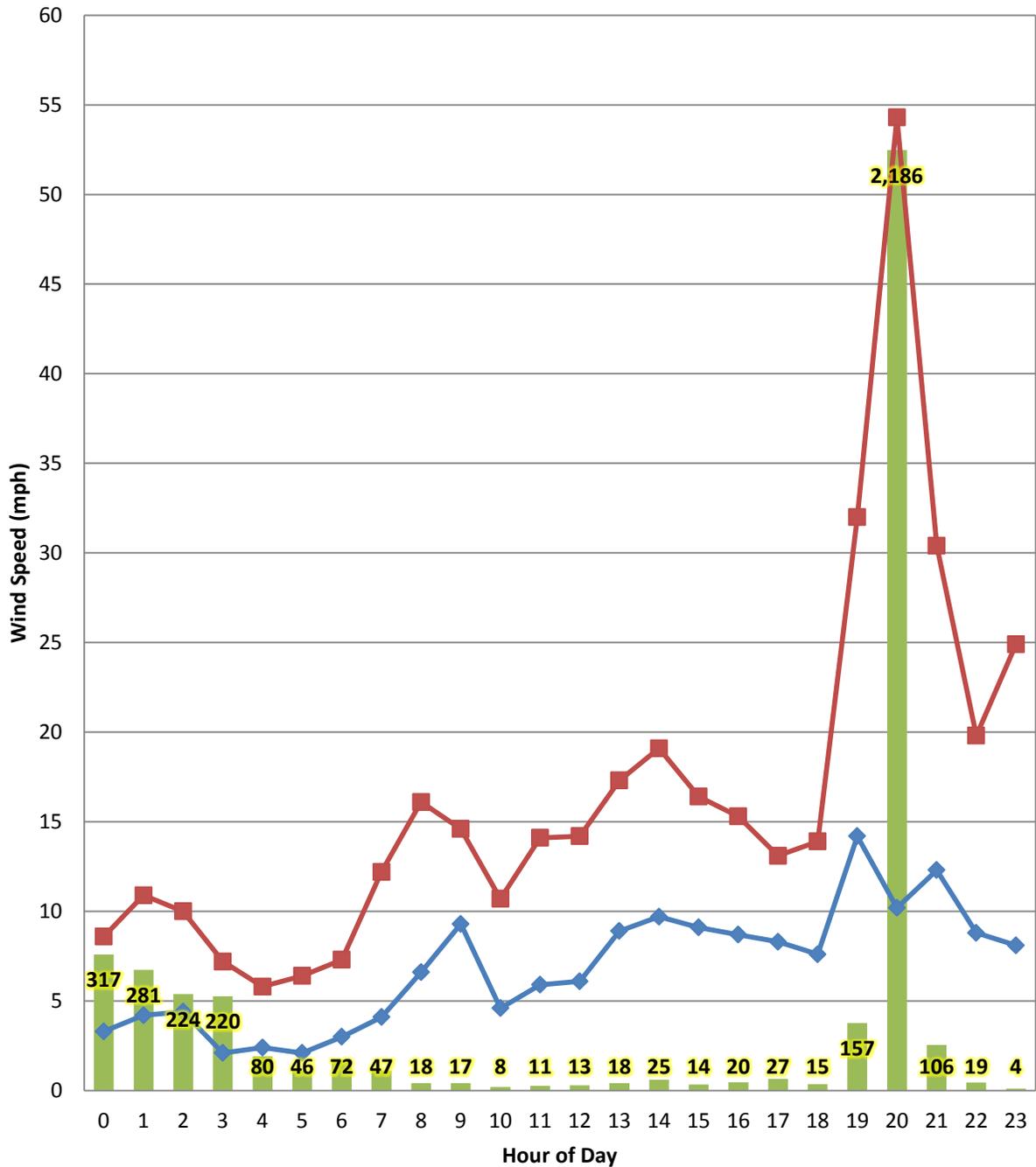
National Climatic Data Center  
Federal Building  
151 Patton Avenue  
Asheville, North Carolina 28801

Elevation: 1085 ft. above sea level  
Latitude: 33.55  
Longitude: -112.366  
Data Version: VER2

Date	Time (LST)	Station Type	Sky Conditions	Visibility (SM)	Weather Type	Dry Bulb Temp		Wet Bulb Temp		Dew Point Temp		Rel Humd %	Wind Speed (MPH)	Wind Dir	Wind Gusts (MPH)	Station Pressure (in. hg)	Press Tend	Net 3-hr Chg (mb)	Sea Level Pressure (in. hg)	Report Type	Precip. Total (in)	Alti-meter (in. hg)
						(F)	(C)	(F)	(C)	(F)	(C)											
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
05	0055	0	BKN150 BKN180	10.00		89	31.7	72	22.3	64	18.0	44	0	000		28.68		29.75	AA		29.83	
05	0155	0	SCT160 BKN190	10.00		90	32.0	74	23.4	67	19.2	47	9	080		28.69	5	001	29.76	AA	29.84	
05	0255	0	BKN200	10.00		88	30.9	74	23.4	68	20.0	52	0	000		28.68		29.75	AA		29.83	
05	0355	0	OVC210	10.00		87	30.7	74	23.3	68	19.8	53	0	000		28.68		29.74	AA		29.83	
05	0455	0	BKN210	10.00		88	31.2	73	22.5	65	18.2	47	3	150		28.69	5	000	29.76	AA	29.84	
05	0555	0	SCT220	10.00		88	31.0	73	22.5	65	18.3	47	8	210		28.71		29.78	AA		29.86	
05	0655	0	FEW220	10.00		90	32.1	74	23.4	67	19.5	47	10	210		28.72		29.80	AA		29.88	
05	0755	0	CLR	10.00		91	33.0	75	23.9	68	19.8	47	13	190		28.74	1	018	29.81	AA	29.89	
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05	1155	0	CLR	10.00		98	36.4	76	24.6	67	19.3	36	10	220		28.70		29.77	AA		29.85	
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05	1355	0	CLR	10.00		102	38.9	77	24.8	66	19.0	31	11	180		28.64	8	029	29.71	AA	29.79	
05	1455	0	CLR	10.00		105	40.4	77	25.2	66	18.7	28	16	200	24	28.60		29.66	AA		29.75	
05	1555	0	CLR	10.00		106	41.0	77	25.0	65	18.2	27	13	220	18	28.58		29.65	AA		29.73	
05	1655	0	CLR	10.00		107	41.4	77	24.9	64	18.0	25	13	220		28.55	6	029	29.62	AA	29.70	
05	1703	0	CLR	10.00		106	41.0	77	24.7	64	18.0	26	11	210		28.55		29.61	AA		29.70	
05	1755	0	CLR	10.00		105	40.3	77	24.9	65	18.1	27	14	190		28.55		29.62	AA		29.70	
05	1832	0	BKN060	10.00		104	40.0	76	24.5	64	18.0	27	13	190		28.55		M	AA		29.70	
05	1855	0	BKN070 BKN100	10.00		100	37.6	74	23.1	61	15.9	28	15	010	22	28.59		29.65	AA		29.74	
05	1859	0	BKN100	10.00		99	37.0	73	22.9	61	16.0	29	17	020	22	28.59		29.66	AA		29.74	
05	1911	0	BKN100	10.00	TS	97	36.0	73	22.6	61	16.0	30	24	340	36	28.59		M	AA		29.74	
05	1917	0	SCT100 BKN120	10.00	TS	93	34.0	74	23.5	66	19.0	41	16	300	31	28.60		M	AA		29.75	
05	1947	0	BKN120	10.00		90	32.8	75	23.7	68	20.0	48	21	280	26	28.59		M	AA		29.74	
05	1955	0	BKN180	10.00		91	32.5	74	23.2	66	18.9	44	17	290		28.60	3	015	29.67	AA	29.75	
05	2024	0	FEW100 SCT170 SCT190	4.00	HZ	95	35.0	73	22.9	63	17.0	35	18	110	25	28.65		29.72	AA	T	29.80	
05	2025	0	FEW002 SCT170	2.50	HZ	93	34.0	73	22.6	63	17.0	37	20	120	25	28.65		29.72	AA	T	29.80	
05	2026	0	FEW002 SCT100 SCT170	1.75		93	34.0	73	22.9	64	18.0	38	20	120	25	28.66		29.73	AA	T	29.81	
05	2027	0	FEW002 SCT100 SCT170	1.25		93	34.0	73	22.9	64	18.0	38	17	130	25	28.66		29.73	AA	T	29.81	
05	2028	0	FEW002 SCT100 SCT170	1.00	HZ	93	34.0	73	22.9	64	18.0	38	14	140	25	28.66		29.73	AA	T	29.81	
05	2030	0	SCT002 SCT100 BKN170	0.75	HZ	91	33.0	73	22.6	64	18.0	41	10	130	25	28.67		29.74	AA	T	29.82	
05	2041	0	BKN004 BKN100 OVC170	1.00	HZ	91	33.0	73	22.6	64	18.0	41	17	180	28	28.68		29.76	AA	T	29.83	
05	2045	0	SCT006 BKN100	1.75	-TSRA	90	32.0	75	23.7	68	20.0	48	26	190	31	28.68		29.76	AA	T	29.83	
05	2055	0	OVC005	2.50	-TSRA BLDU	82	27.8	73	22.8	69	20.7	65	24	200	38	28.81		29.79	AA	T	29.86	
05	2109	0	OVC005	1.75	TS HZ	79	26.0	72	22.0	68	20.0	69	22	210	44	28.71		29.80	AA	T	29.87	
05	2122	0	SCT004	7.00	HZ	79	26.0	73	22.7	70	21.0	74	24	220	30	28.71		M	AA	T	29.87	
05	2155	0	CLR	10.00		80	26.7	73	22.5	69	20.5	69	11	240		28.75		29.84	AA	T	29.91	
05	2255	0	SCT120	10.00		83	28.1	72	22.3	67	19.2	59	5	260		28.77		29.86	AA		29.93	
05	2314	0	BKN110	10.00	TS	82	28.0	71	21.8	66	19.0	58	2	VR		28.76	1	062	M	AA	29.92	
05	2340	0	FEW100	10.00		81	27.0	71	21.6	66	19.0	60	14	240		28.76		29.85	AA		29.92	
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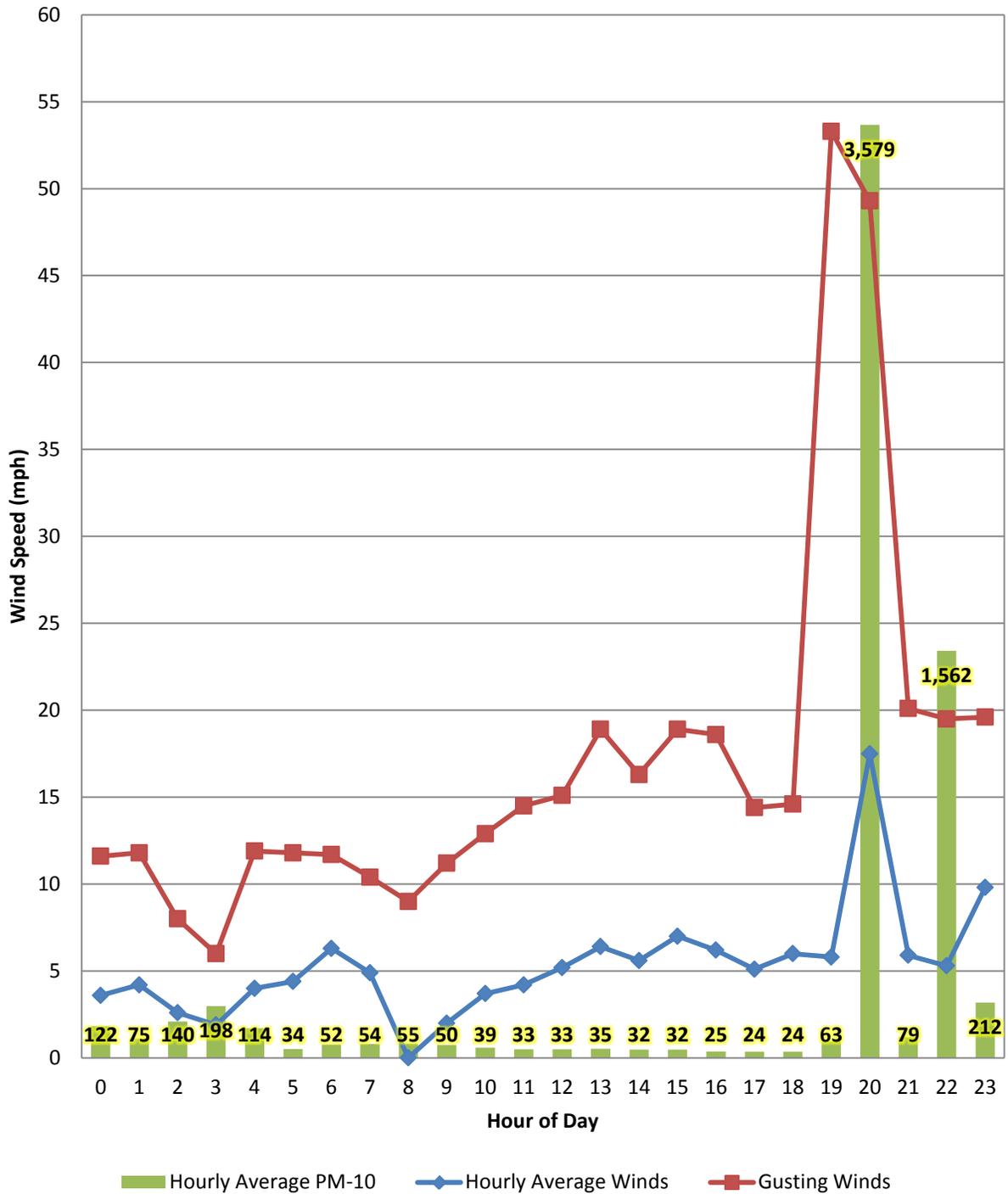
Dynamically generated Mon Aug 06 17:14:51 EDT 2012 via <http://cdo.ncdc.noaa.gov/qclcd/QCLCD>

# Buckeye Monitor, July 5, 2011

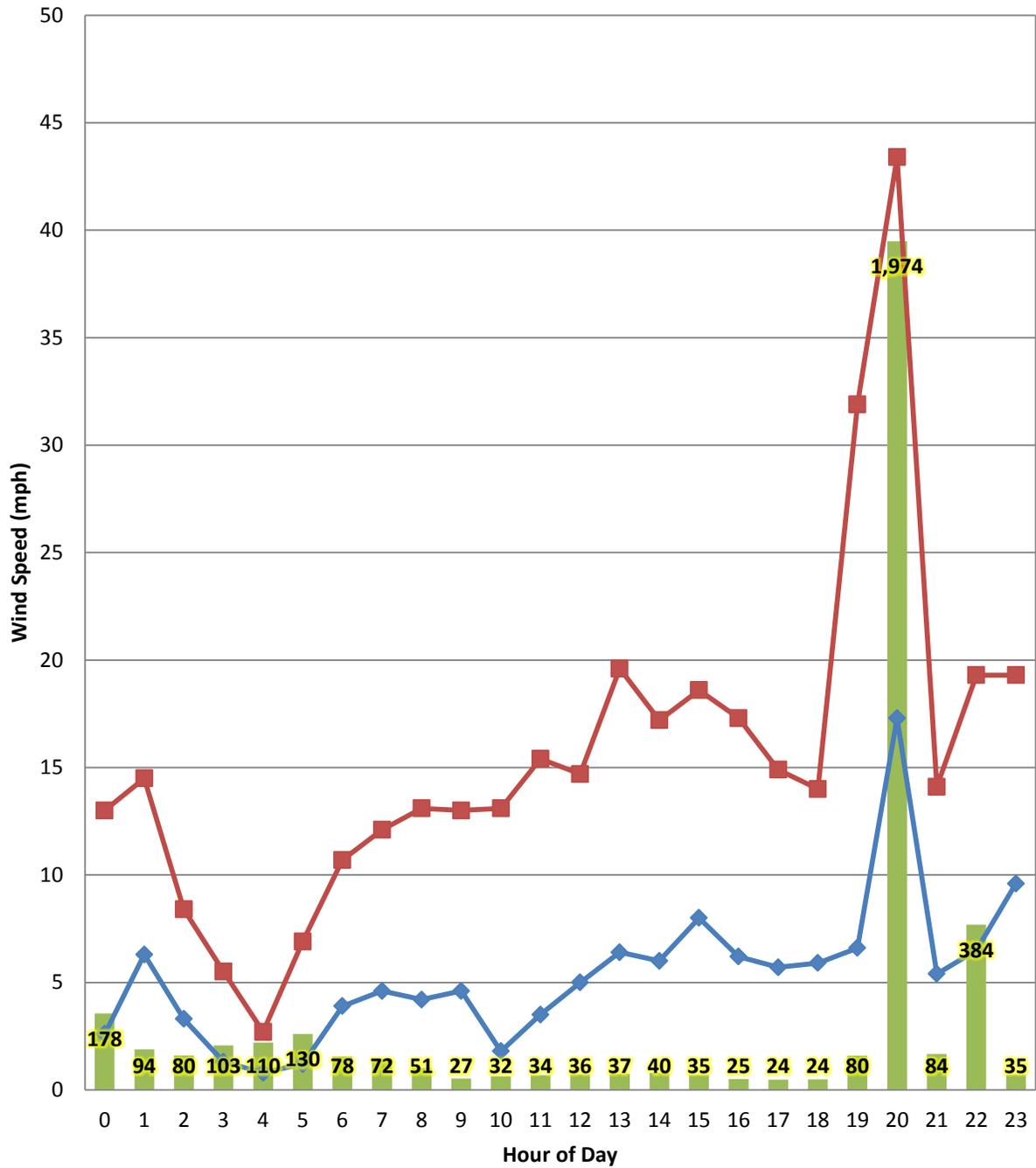


■ Hourly Average PM-10    
 ◆ Hourly Average Winds    
 ■ Gusting Winds

## Central Phoenix Monitor, July 5, 2011

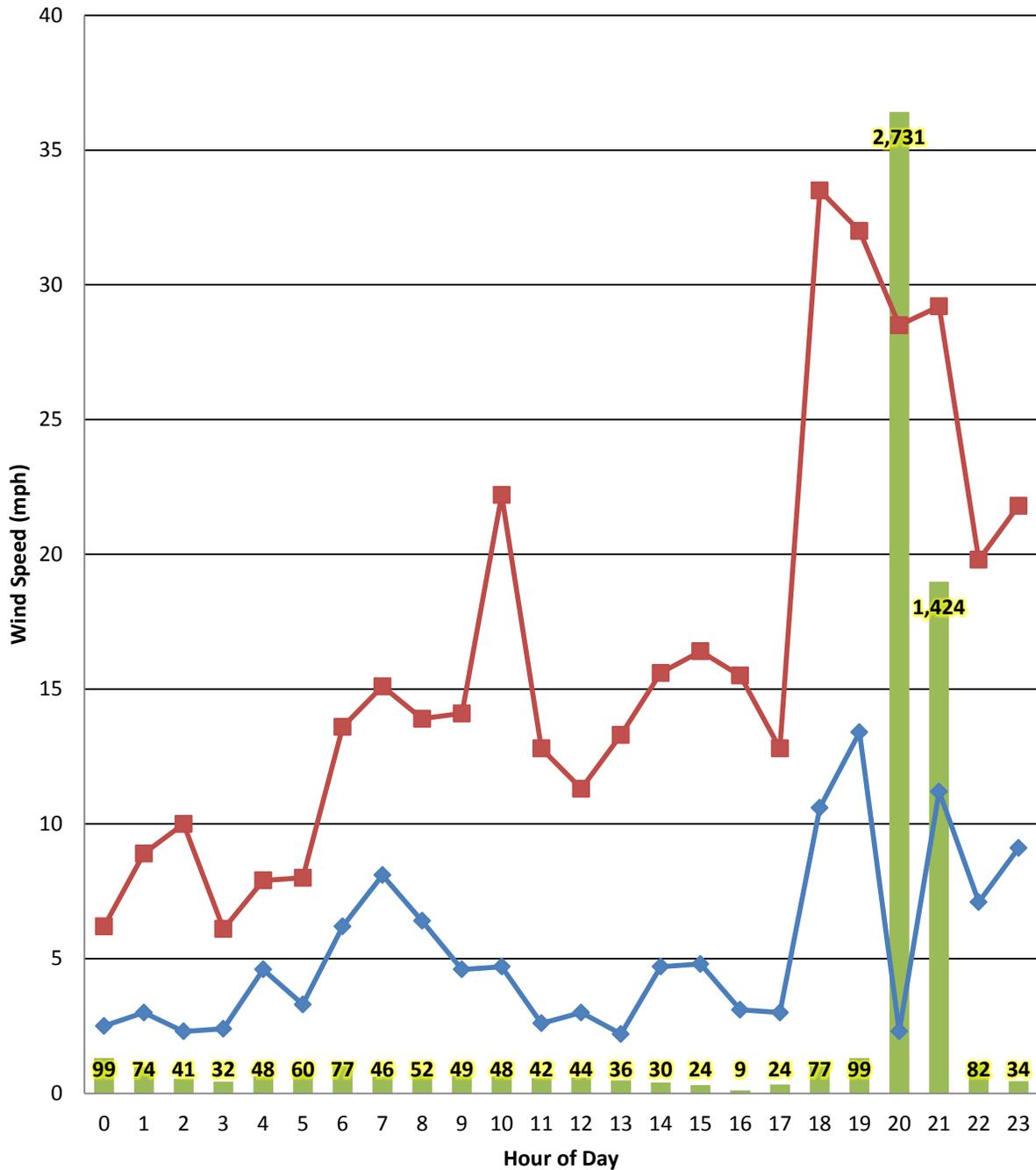


## Durango Complex Monitor, July 5, 2011



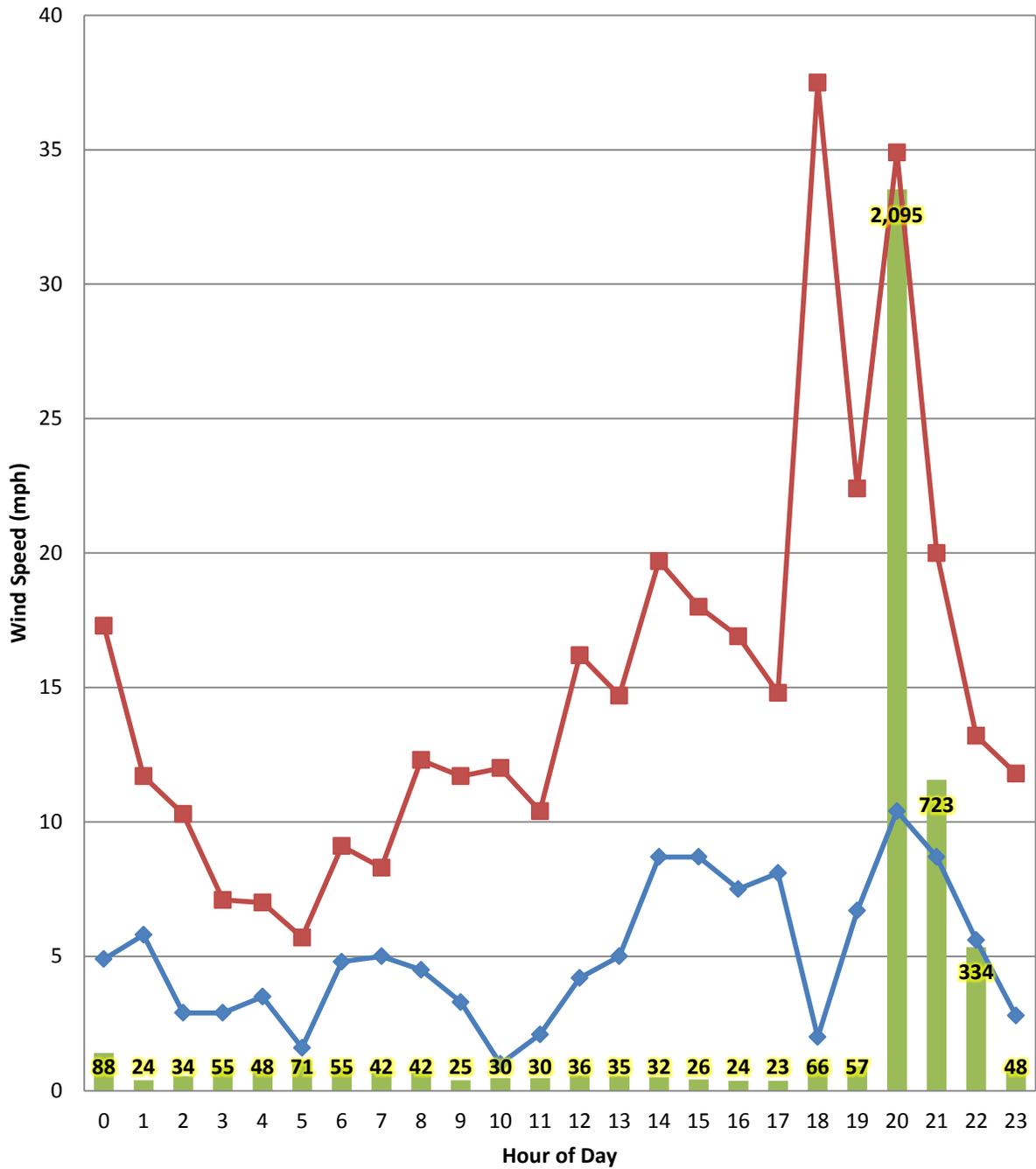
Hourly Average PM-10    
  Hourly Average Winds    
  Gusting Winds

# Dysart Monitor, July 5, 2011



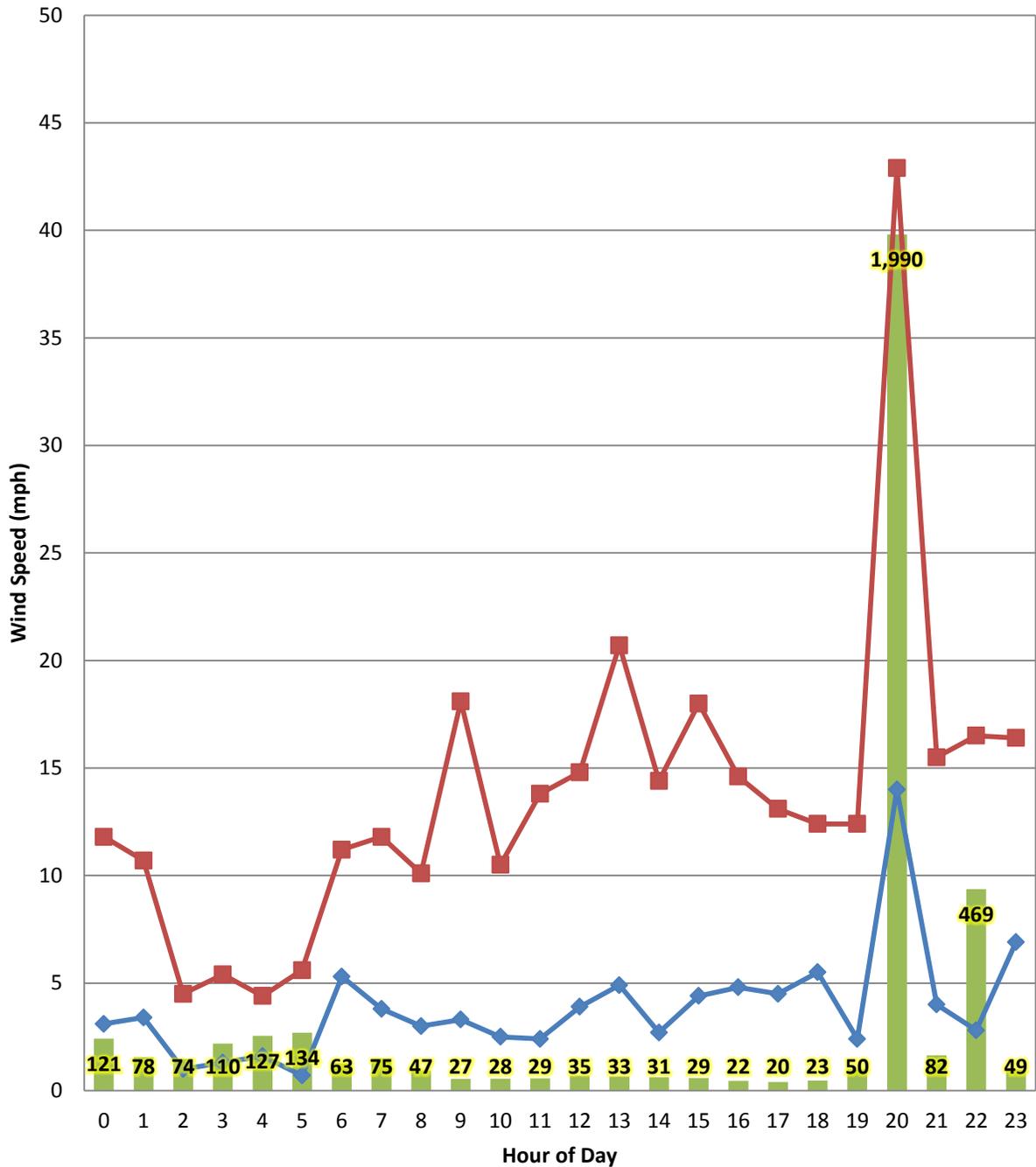
Hourly Average PM-10      Hourly Average Winds      Gusting Winds

# Glendale Monitor, July 5, 2011



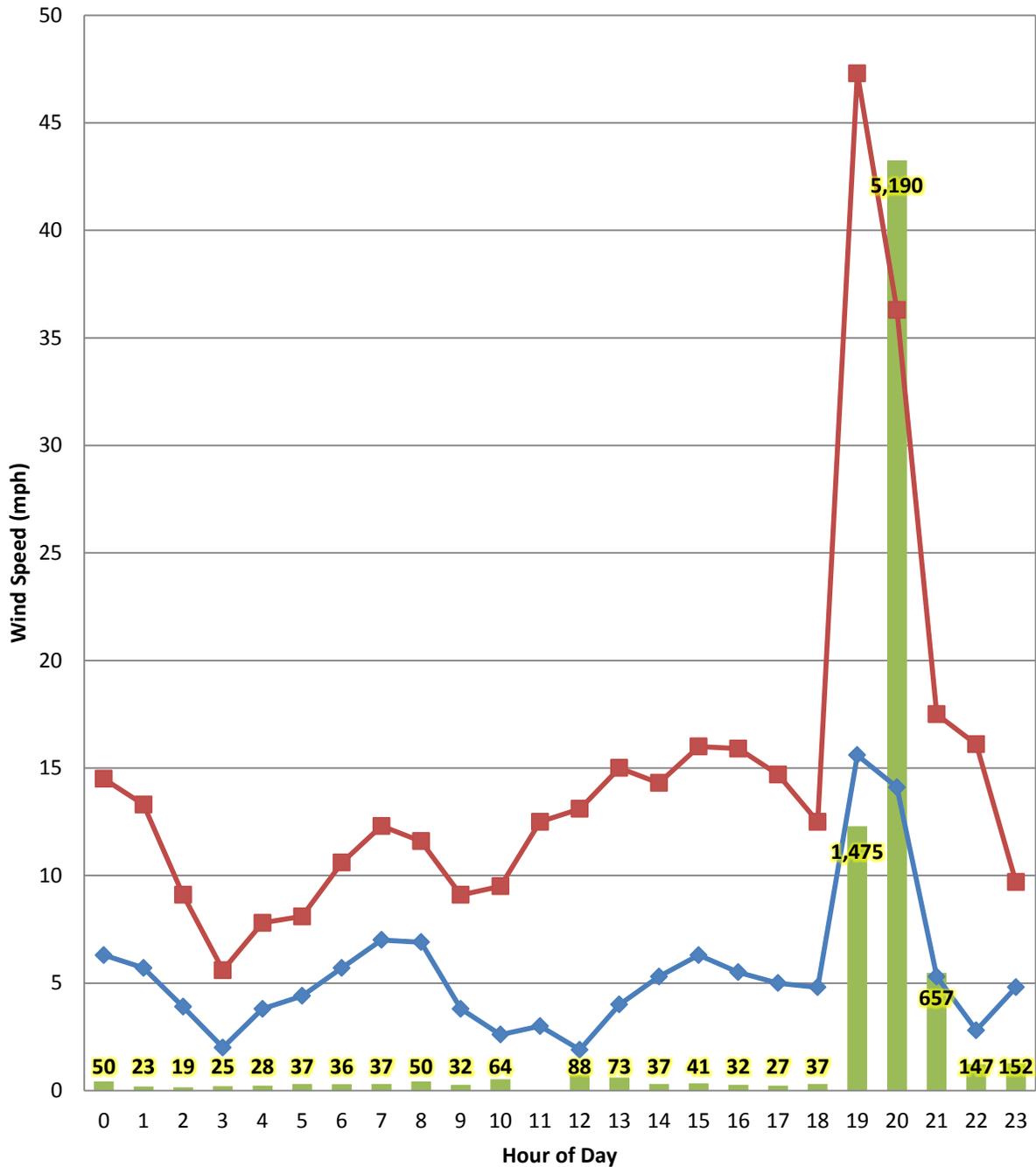
■ Hourly Average PM-10    
 ◆ Hourly Average Winds    
 ■ Gusting Winds

# Greenwood Monitor, July 5, 2011



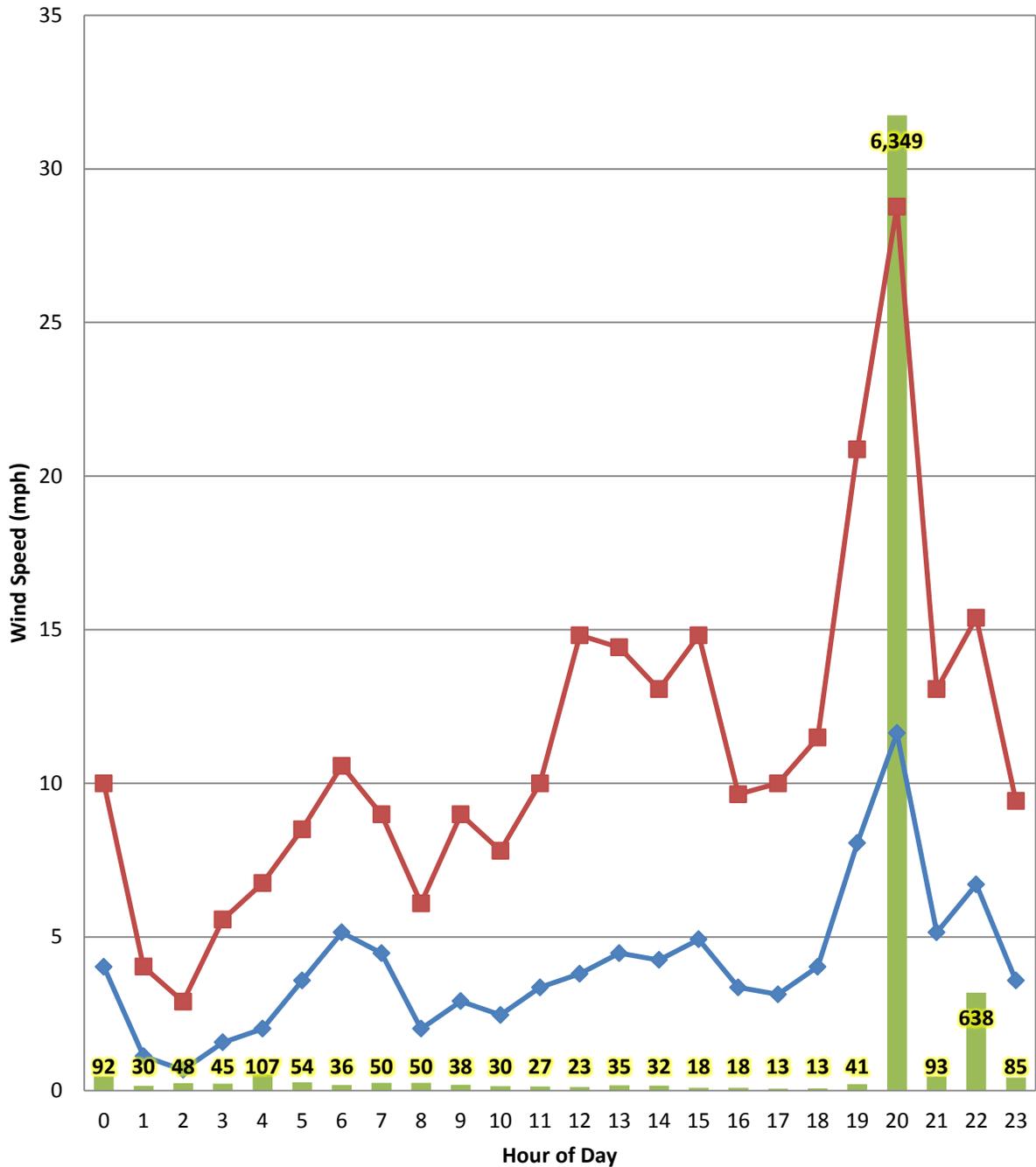
Hourly Average PM-10    Hourly Average Winds    Gusting Winds

# Higley Monitor, July 5, 2011



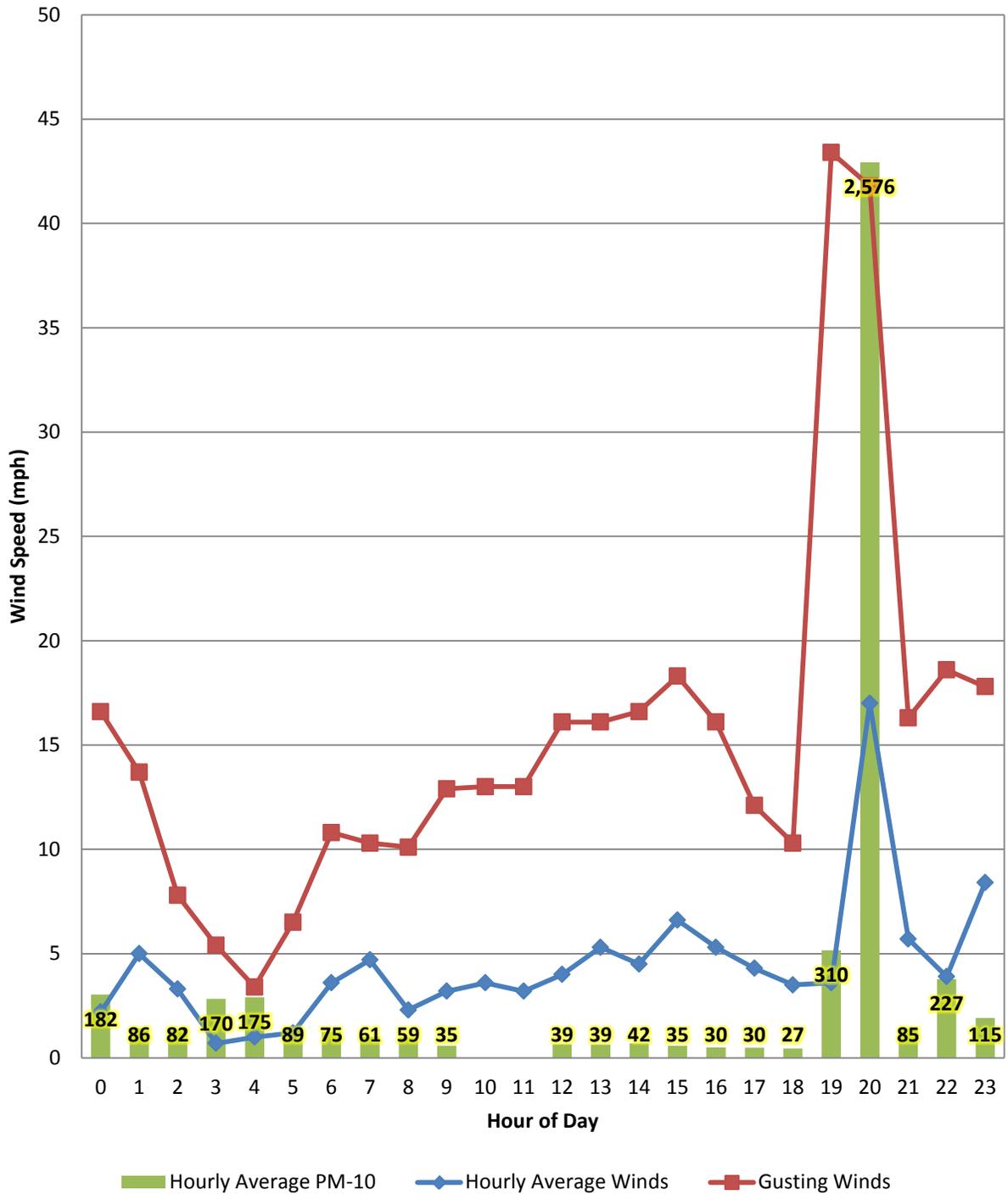
■ Hourly Average PM-10    
 ◆ Hourly Average Winds    
 ■ Gusting Winds

# JLG Supersite Monitor, July 5, 2011

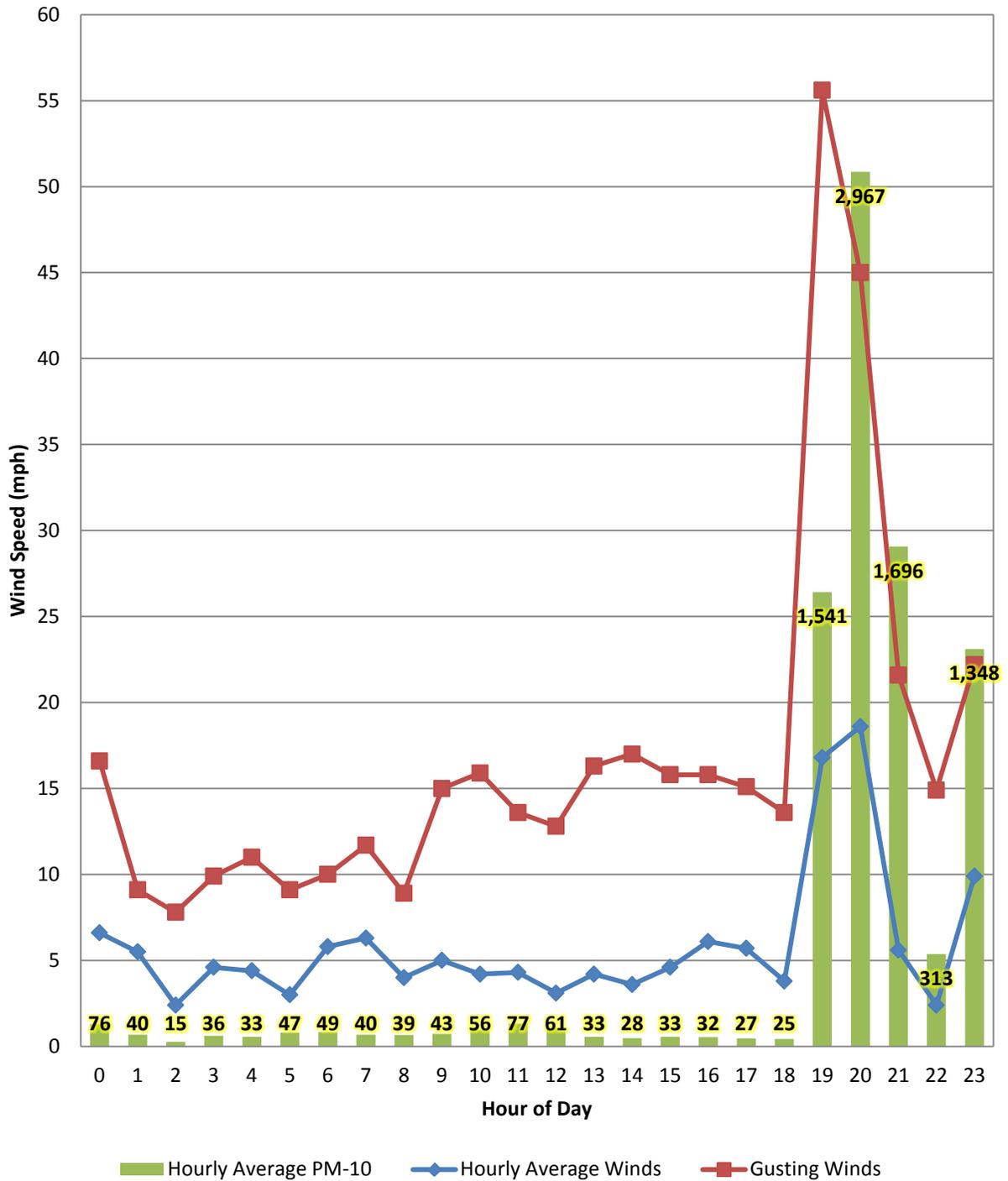


Hourly Average PM-10    Hourly Average Winds    Gusting Winds

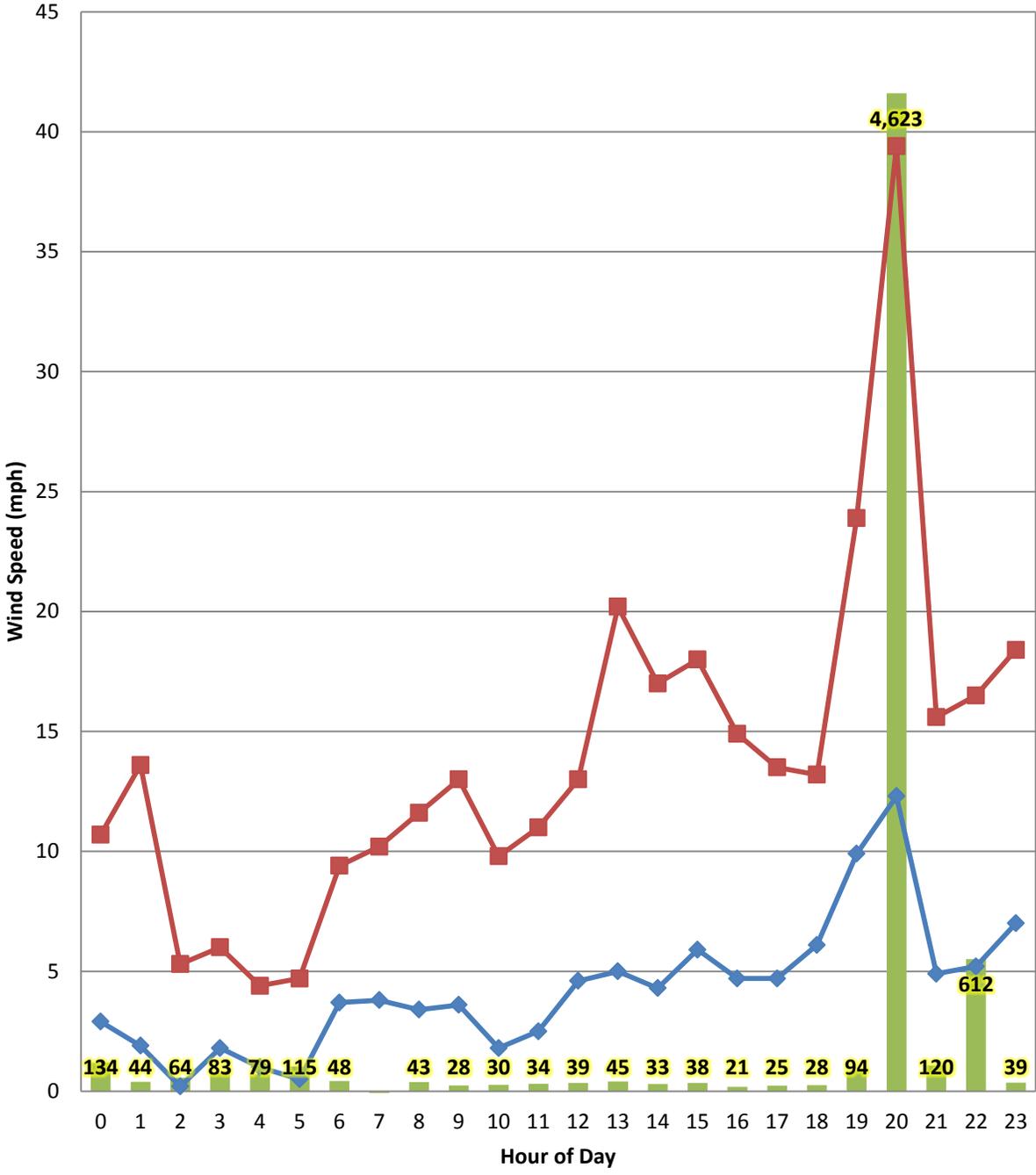
# South Phoenix Monitor, July 5, 2011



## West Chandler Monitor, July 5, 2011



# West Phoenix Monitor, July 5, 2011



■ Hourly Average PM-10    
 ◆ Hourly Average Winds    
 ■ Gusting Winds

**PUBLIC NOTICE**  
Arizona Department of Environmental Quality  
Request for Public Comments  
On Exceptional Events in the Greater Phoenix Area

In 2005, Congress identified a need to account for events that result in exceedances of the National Ambient Air Quality Standards (NAAQS) that are exceptional in nature (e.g., not expected to reoccur or caused by acts of nature beyond man-made controls.) In response, EPA promulgated the Exceptional Events Rule (EER) to address exceptional events in 40 CFR Parts 50 and 51 on March 22, 2007 (72 FR 13560). On May 2, 2011, EPA released draft guidance documents on the implementation of the EER to State, tribal and local air agencies for review. The EER allows for states and tribes to “flag” air quality monitoring data as an exceptional event, and therefore exclude these data from consideration in air quality planning, if EPA concurs with the demonstration submitted by the flagging agency that all procedural and technical requirements have been met. Pursuant to 40 CFR 50.14(c)(3)(i), the Arizona Department of Environmental Quality (ADEQ) is soliciting comments on its final demonstrations of events that have caused elevated concentrations of PM<sub>10</sub> in the Greater Phoenix area during July 3<sup>rd</sup> through 5<sup>th</sup> and on July 7<sup>th</sup> and 8<sup>th</sup>, 2011 and ADEQ’s decision to flag these episodes based on these analyses. Copies of the demonstrations are available for review beginning Monday, February 6, 2012 on the ADEQ website at [www.azdeq.gov/environ/air/plan/](http://www.azdeq.gov/environ/air/plan/). Interested parties can submit written comments throughout the comment period which will end at 5:00 p.m. on Tuesday, March 6, 2012. Any comments received will be forwarded to EPA with the final demonstrations.

Written comments should be addressed, faxed, or e-mailed to:

Andra Juniel, Air Assessment Section, Arizona Department of Environmental Quality, 1110 W. Washington Street, 3415-A, Phoenix, AZ 85007, PHONE: (602) 771-4417; FAX: (602) 771-2366, E-mail: [juniel.andra@azdeq.gov](mailto:juniel.andra@azdeq.gov).

In addition to being available on-line, a copy of the analyses is available for review at the following location:

Arizona Department of Environmental Quality, Records Retention Center, First Floor, 1110 W. Washington Street, Phoenix, Arizona 85007, Attn: Christina Silva, (602) 771-4380.

Persons with a disability may request reasonable accommodations, such as a sign language interpreter, by contacting Linda Morrison at (602) 771-4793 or 1-800-234-5677 ext. 771-4793. This document is available in alternative formats by contacting ADEQ TDD phone number at (602) 771-4829.

ATTACHMENT C

NOVEMBER 2011 LETTER TO EPA OFFICE OF AIR AND RADIATION DEPUTY ASSISTANT  
ADMINISTRATOR JANET MCCABE

November 22, 2011

Ms. Janet McCabe  
Principal Deputy Assistant Administrator for the Office of Air and Radiation  
U. S. Environmental Protection Agency Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Mail Code: 6101A  
Washington, D.C. 20460

Dear Ms. McCabe:

The Maricopa Association of Governments (MAG) has appreciated the efforts of the Environmental Protection Agency (EPA) to clarify the EPA Exceptional Events Rule through the issuance of the draft guidance documents. We recognize that the exceptional events process is resource intensive for both states and EPA. Located in a desert environment, the MAG region has experienced several exceptional events caused by high winds. Our goal is to establish a more reasonable exceptional events process for all those concerned: EPA, states, tribes, and local governments. At this time, we would like to discuss a concept for streamlining the exceptional events process by enabling the states and tribes to make the exceptional events determinations, after consultation with EPA.

Although there were a limited number of exceptional events in 2009 and no events in 2010 in the Maricopa area, there have been 102 exceedances of the PM-10 standard in 2011. All but one of these have been due to exceptional events caused by haboobs, dust storms, thunderstorms, and residual dust. The 101 exceptional event exceedances across the monitor network resulted in 21 days of exceptional events. The San Joaquin Valley Unified Air Pollution Control District has indicated that 453 staff hours are needed to prepare the documentation for one high wind exceptional event. Based upon this estimate, the documentation of the 21 days of exceptional events in the Maricopa area would take 9,513 staff hours or 1,189 work days.

The Arizona Department of Environmental Quality (ADEQ) has been preparing the documentation for the 2011 exceptional events with assistance from Maricopa County and MAG staff. The first group of exceptional events for July 2- 8, 2011 was recently submitted to EPA for an informal review. The documentation for the first package took several months to prepare and was based upon the Draft Guidance Documents on the Implementation of the Exceptional Events Rule issued by EPA in May 2011. The ADEQ is currently overwhelmed with the exceptional events workload.

From a policy perspective, it raises the question of whether or not this constitutes a wise use of resources when the exceedances were clearly due to natural causes. MAG has been researching possible legislative remedies regarding the amount of documentation required. With the advice of legal counsel, MAG has prepared some draft legislation to streamline the exceptional events process by enabling states and tribes to determine exceptional events, after consultation with the Environmental Protection Agency. Overall, this concept would maintain EPA in its defined role in the Clean Air Act implementation process, while returning the control of the exceptional events determinations to states and tribes that are in the best position to evaluate local air quality

conditions. The draft legislation also includes some revisions to the EPA Exceptional Events Rule. A copy of the draft legislation, section by section summary, redlines of the Clean Air Act Section 319 and rule changes, and talking points are provided.

As the designated Regional Air Quality Planning Agency for the Maricopa Nonattainment Area, the Maricopa Association of Governments appreciates the opportunity to discuss this concept for streamlining the exceptional events process by enabling the states and tribes to make the exceptional events determinations, after consultation with EPA. Again, we have appreciated the efforts made by EPA to clarify the Exceptional Events Rule and the assistance of the EPA Region IX staff for informally reviewing the first package of exceptional events for 2011.

We will look forward to working with the Environmental Protection Agency in the future as we strive to attain the federal air quality standards to protect the public health of our citizenry. If you have any questions, please contact Lindy Bauer, MAG staff, at (602) 254-6300.

Sincerely,

A handwritten signature in black ink, appearing to read "Hugh Hallman", written over a horizontal line.

Hugh Hallman  
Chair, MAG Regional Council  
Mayor of Tempe

cc: Jared Blumenfeld, EPA Region IX Administrator  
Colleen McKaughan, EPA Region IX  
Michael Flagg, EPA Region IX  
Henry Darwin, ADEQ Director  
Eric Massey, ADEQ Air Quality Director  
Kevin Kinsall, Governor's Office  
William Wiley, Maricopa County  
MAG Regional Council

# H.R. \_\_\_\_\_

(11/07/2011 DRAFT)

To provide for the state implementation of exceptional events determinations and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

XX, 2011

### **A BILL**

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

#### **Section 1. Short Title.**

This Act may be cited as the “Exceptional Events Reform Act of 2011”.

#### **Section 2. Findings.**

(a) The Congress finds –

- (1) The Clean Air Act (42 U.S.C. 7401 et seq.) provides that air pollution prevention and control is the primary responsibility of state and local governments.
- (2) Courts have recognized that the Act is an exercise in “cooperative federalism” in which the Environmental Protection Agency sets the level and form of national ambient air quality standards while States retain the authority to flexibly determine how best to meet those standards.
- (3) States are in the best position to evaluate local and regional conditions, such as windy conditions and the transport of particulate matter, which can temporarily affect monitoring of local air quality.
- (4) There is a need to more efficiently determine when air quality data is influenced by exceptional events as well as provide for the review and handling of air quality monitoring data influenced by exceptional events in a timely manner.

### Section 3. Amendments

Section 319 of the Clean Air Act (42 U.S.C. 7619) is amended by --

- (1) striking “location or a natural event; and” in section 319(b)(1)(A)(iii) and inserting in lieu thereof “location, a natural event or a high wind event; and”
- (2) striking section 319(b)(1)(A)(iv) in its entirety and inserting in lieu thereof “(iv) is determined by a State or tribal government, or a state or tribal entity that has been delegated authority by the Governor of a state or by a tribal government, after consultation with the Administrator, to be an exceptional event.”
- (3) deleting section 319(b)(1)(B) in its entirety.
- (4) inserting after section 319(b)(1)(A) the following:
  - “(B) Definition
  - “In this subsection –
  - (i) the term ‘natural event’ means an event in which human activity plays little or no direct causal role;”
  - (ii) the term ‘high wind event’ means an event where particulate matter is raised or transported by high winds.”
- (5) deleting section 319(b)(3)(B)(iv) in its entirety and strike “; and” at the end of section 319(b)(3)(B)(iii) and insert instead “.”.
- (6) deleting section 319(b)(4) in its entirety.

### Section 4. Revision

- (a) In General. – On the first day of publication of the Federal Register that is 180 days or more after the date of enactment of this Act but not more than 270 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall publish in the Federal Register a final rule regarding exceptional events, which –
  - (1) is deemed to be issued under section 319 of the Clean Air Act (42 U.S.C. 7619), as amended by this Act; and
  - (2) shall be deemed to be in compliance with all applicable provisions of chapter 5 of title 5, United States Code, section 307 of the Clean Air Act (42 U.S.C. 7607), and all other provisions of law relating to rulemaking procedures.
- (b) Contents of Rule. – Except as provided in this subsection, the final rule published under subsection (a) of this section shall be identical in its provisions to the part 50 and part 51 regulations promulgated by the Administrator of the Environmental Protection Agency in the March 22, 2007, issue of the Federal Register (72 Fed. Reg. 13,580-13,581). Such rule shall --
  - (1) delete “or a natural event” in 40 C.F.R. 50.1(j) and insert “or a natural event or high wind event” in lieu thereof;
  - (2) “the Administrator” in 40 C.F.R. 50.1(j) and insert “a State or tribal government, or a state or tribal entity that has been delegated authority by the Governor of a state or tribal government” in lieu thereof;
  - (3) strike the last sentence in 40 C.F.R. 50.1(j)
  - (4) insert the following definition in 40 C.F.R. 50.1: “(m) “*High wind event* means an event where ambient particulate matter concentrations due to dust and other matter

- are raised by high winds. Such an event exists where: (1) the dust or other matter originated from nonanthropogenic sources, or (2) the dust or other matter originated from anthropogenic sources within a State, that are determined by the State to have been reasonably controlled at the time that the event occurred, or (3) the dust or other matter originated from anthropogenic sources outside the State.”;
- (5) delete “may request EPA to” in 40 C.F.R. 50.14(a)(1) and insert “or tribal government or state or tribal entity may, after consultation with the Administrator,” in lieu thereof;
  - (6) delete “demonstrating to EPA’s satisfaction” in 40 C.F.R. 50.14(a)(1) and insert “determining” in lieu thereof;
  - (7) delete “Demonstration to justify data exclusion may include” in 40 C.F.R. 50.14(a)(2) and insert “A State or tribal government or a state or tribal entity may rely on” in lieu thereof;
  - (8) delete “demonstrate” in 40 C.F.R. 50.14(a)(2) and insert “determine” in lieu thereof;
  - (9) insert before the period at the end of 40 C.F.R. 50.14(a)(2) “for events for which data was flagged during calendar years 2004-2006. For exceptional events in years following 2006, a State or tribal government or state or tribal entity may rely on any reliable data that indicates a clear causal relationship between the measured exceedence or violation of such standard and the event and comply with paragraph (c)(4)(i) of this section”
  - (10) delete “State demonstrates to EPA’s satisfaction” in 40 C.F.R. 50.14(b)(1) and insert “State or tribal government or state or tribal entity determines” in lieu thereof;
  - (11) delete “State demonstrates to EPA’s satisfaction” in 40 C.F. R. 50.14(b)(2) and insert “State or tribal government or state or tribal entity determines” in lieu thereof;
  - (12) delete “a State demonstrates” in 40 C.F. R. 50.14(b)(2) and insert “a State or tribal government or state or tribal entity determines” in lieu thereof;
  - (13) delete “where a State demonstrates to EPA’s satisfaction” in 40 C.F.R. 50.14(b)(3) and insert “where a State or tribal government or state or tribal entity determines” in lieu thereof;
  - (14) delete “that EPA determines meets the definition in § 50.1(j), and provided that the State has certified to EPA that it” in 40 C.F.R. 50.14(b)(3) and insert “and a State or tribal government or state or tribal entity” in lieu thereof;
  - (15) insert following the reserved section in 40 C.F.R. 50.14(b)(4) the following: “EPA shall exclude data from use in determinations of exceedences and NAAQS violations where a State or tribal government or state or tribal entity determines that emissions causing the exceedences or NAAQS violations were caused by a natural event or a high wind event.”
  - (16) delete 40 C.F.R. 50.14(c)(2)(ii) in its entirety;
  - (17) delete 40 C.F.R. 50.14(c)(3) and 40 C.F.R. 50.14(c)(3)(i) in its entirety, insert “(3) *Demonstrations.*” in lieu thereof and renumber the remaining subparagraphs accordingly;
  - (18) delete “, must adopt procedures and requirements specified in paragraph (c)(3)(i) of this section and” in 40 C.F.R. 50.14(c)(3)(ii)
  - (19) insert “for data collected during calendar years 2004-2006” after “The demonstration” in 40 C.F.R. 50.14(c)(3)(iii);

- (20) insert following “(v) [Reserved] (A) [Reserved]” in 40 C.F.R. 50.14(c)(3) the following “(4) *Documentation.* (i) A State or tribal government that has flagged data as being due to an exceptional event shall document that the event meets the requirements of section 319 of the Clean Air Act (42 U.S.C. § 7619). (ii) Upon receipt of such documentation, the Administrator shall exclude the flagged data from use in determinations by the Administrator with respect to exceedences or violations of the NAAQS.”
- (21) delete “requesting to exclude” in 40 C.F. R. 51.930(a) and insert “or tribal government or state or tribal authority that determines” in lieu thereof and insert “is” after “data”;
- (22) insert “or tribal government or state or tribal entity” after “State” in the second sentence of 40 C.F.R. 51.930(a); and
- (23) insert after 40 C.F.R. 51.930(a)(3) the following: “(4) Provide as necessary that all provisions of the rule take effect no later than 1 year after the date of enactment of this Act.

(c) Amendments to Rule. – Prior to making amendments to the rule published under paragraph (1), the Administrator of the Environmental Protection Agency shall promulgate a proposed rule in accordance with chapter 5 of title 5, United States Code and section 307 of the Clean Air Act (42 U.S.C. 7607).

(d) Rule of Construction.—Except as provided in subsection (b) of this section, nothing in this section shall be construed to limit the authority of the Administrator of the Environmental Protection Agency to amend, in accordance with chapter 5 of title 5, United States Code, or sections 307 and 319 of the Clean Air Act (42 U.S.C. 7607, 7619) the regulation promulgated pursuant to this section.

## **Section 5. Effect**

Legislative amendments enacted by this Act shall take effect upon the date of enactment and be applicable to exceptional events that occur after December 31, 2006.

# Exceptional Events Reform Act of 2011

## Section 1. Short Title

The short title for the legislation is the “Exceptional Events Reform Act of 2011.”

## Section 2. Findings

The legislation makes four findings based on the historic construction and interpretation of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the need to more efficiently address the review and treatment of air quality data affected by exceptional events.

## Section 3. Amendments

The legislation makes several targeted amendments to section 319 of the Clean Air Act (42 U.S.C. § 7619):

- First, the legislation provides that States and tribal governments (or state and tribal organizations that are delegated authority) are to determine when air quality conditions qualify as “exceptional events.” Consistent with the Findings, the legislation places responsibility at the state and tribal levels for determining, after consultation with the Environmental Protection Agency (“EPA”), when exceptional events occur and therefore, when air quality data associated with exceptional events can be excluded from determinations of compliance with national ambient air quality standards (“NAAQS”).
- Second, the legislation retains the previous definition of what constitutes an “exceptional event” while also providing a definition for a “natural event” consistent with the definition utilized in existing Environmental Protection Agency (“EPA”) regulations. The legislation also provides a definition for “high wind event” to clarify the treatment of windblown dust and other particulate matter.
- Third, the legislation deletes limitations on the definition of an exceptional event which provide that stagnant air masses, high temperatures and a lack of precipitation or air pollution “relating to” source noncompliance prevent flagging and excluding associated air quality data as an exceptional event. Instead, state and tribal governments will make a case-by-case determination as to whether measured air quality qualifies as an exceptional event.
- Finally, the legislation deletes an unnecessary transitional provision that provided, prior to the promulgation of regulations under Clean Air Act section 319, pre-existing EPA guidance controlled the consideration and exclusion of air quality data associated with exceptional events.

## **Section 4 Revision**

The legislation requires EPA to propose and publish final regulations for exceptional events no later than 270 days after the enactment of the legislation. In order to meet this schedule and to ensure that final regulations are consistent with Congressional intent and the legislative amendments to Clean Air Act section 319, the legislation: (1) retains current regulations promulgated by EPA in 2007; while (2) making targeted changes to the 2007 regulations.

The legislation provides three different categories of regulatory changes:

- First, the legislation makes several changes to ensure that a State or tribal government, or a state or tribal entity that has been delegated authority is the locus of decisionmaking on exceptional events determinations after consultation with EPA. The regulatory changes ensure that states and tribes or entities that have been delegated state or tribal authority, after consultation with the EPA, make all decisions on what air quality data qualifies as an exceptional event. Under the new regulations, EPA will be required to exclude data determined by states, tribes or other qualified authorities to constitute an “exceptional event”.
- Second, the legislation imposes regulations to require that States and tribal governments document data that has been “flagged” as an exceptional event and retains requirements in current regulations that there is a clear causal relationship between a measured exceedence of a NAAQS and an exceptional event. The legislation also retains current regulatory requirements that require prompt public notification whenever air quality is expected to exceed NAAQS levels, public education efforts to inform individuals how to reduce exposure to elevated levels of NAAQS pollutants and implementation of appropriate measures to protect public health.
- Third, the legislation provides for conforming regulatory changes to incorporate the specification of “natural events” and “high wind events” contained in the legislative changes to the Clean Air Act and for transitional provisions for events occurring in 2006 and prior to 2006 and for events occurring in 2007 and thereafter.

## **Section 5. Effect**

The legislation provides that the amendments to the Clean Air Act take effect upon date of enactment of this legislation and are applicable to events that occur in 2007 and thereafter.

## Clean Air Act Section 319 – Air Quality Monitoring

### (a) In general

After notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

- (1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,
- (2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,
- (3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and
- (4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 7410 of this title shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

### (b) Air quality monitoring data influenced by exceptional events

#### (1) Definition of exceptional event

In this section:

##### (A) In general

The term “exceptional event” means an event that—

- (i) affects air quality;
- (ii) is not reasonably controllable or preventable;
- (iii) is an event caused by human activity that is unlikely to recur at a particular ~~location or a natural event~~ location, a natural event or a high wind event; and
- (iv) ~~is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.~~ is determined by a State or tribal government, or state or tribal entity that has been delegated authority by the Governor of a state or by a tribal government, after consultation with the Administrator, to be an exceptional event.

**~~(B) Exclusions~~**

~~In this subsection, the term “exceptional event” does not include—~~

- ~~(i) —stagnation of air masses or meteorological inversions;~~
- ~~(ii) —a meteorological event involving high temperatures or lack of precipitation; or~~
- ~~(iii) —air pollution relating to source noncompliance.~~

**(B) Definition**

**In this subsection –**

- (i) the term ‘natural event’ means an event in which human activity plays little or no direct causal role;**
- (ii) the term ‘high wind event’ means an event where particulate matter is raised or transported by high winds.**

**(2) Regulations**

**(A) Proposed regulations**

Not later than March 1, 2006, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

**(C) Final regulations**

Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or <sup>[1]</sup> air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

**(3) Principles and requirements**

**(A) Principles**

In promulgating regulations under this section, the Administrator shall follow—

- (i) the principle that protection of public health is the highest priority;
- (ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;
- (iii) the principle that all ambient air quality data should be included in a timely manner, an appropriate Federal air quality database that is accessible to the public;
- (iv) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

## **(B) Requirements**

Regulations promulgated under this section shall, at a minimum, provide that—

- (i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;
- (ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;
- (iii) there is a public process for determining whether an event is exceptional; ~~and~~
- ~~(iv) — there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.~~

### ~~(4) Interim provision~~

~~—Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:~~

- ~~(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).~~
  - ~~(B) Areas affected by PM-10 natural events, May 30, 1996.~~
  - ~~(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.~~
-

## PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

### § 50.1 Definitions.

(j) *Exceptional event* means an event that affects air quality, is not reasonably controllable or preventable, is an event caused by human activity that is unlikely to recur at a particular location ~~or a natural event or a natural event or high wind event~~, and is determined by ~~the Administrator, a State or tribal government, or a state or tribal entity that has been delegated authority by the Governor of a state or tribal government~~ in accordance with 40 CFR 50.14 to be an exceptional event. ~~It does not include stagnation of air masses or meteorological inversions, a meteorological event involving high temperatures or lack of precipitation, or air pollution relating to source noncompliance.~~

(k) *Natural event* means an event in which human activity plays little or no direct causal role.

(l) *Exceedance with respect to a national ambient air quality standard* means one occurrence of a measured or modeled concentration that exceeds the specified concentration level of such standard for the averaging period specified by the standard.

~~(m) High wind event means an event where ambient particulate matter concentrations due to dust and other matter are raised by high winds. Such an event exists where: (1) the dust or other matter originated from nonanthropogenic sources, or (2) the dust or other matter originated from anthropogenic sources within a State, that are determined by the State to have been reasonably controlled at the time the event occurred, or (3) the dust or other matter originated from anthropogenic sources outside the State.~~

### § 50.14 Treatment of air quality monitoring data influenced by exceptional events.

~~(a) Requirements. (1) A State may request EPA to or tribal government or state or tribal entity may, after consultation with the Administrator, exclude data showing exceedances or violations of the national ambient air quality standard that are directly due to an exceptional event from use in determinations by demonstrating to EPA's satisfaction determining that such event caused a specific air pollution concentration at a particular air quality monitoring location.~~

~~(2) Demonstration to justify data exclusion may include A State or tribal government or a state or tribal entity may rely on any reliable and accurate data, but must demonstrate determine a clear causal relationship between the measured exceedance or violation of such standard and the event in accordance with paragraph (c)(3)(iii) of this section for events for which data was flagged during calendar years 2004-2006. For exceptional events in years following 2006, a State or tribal government or state or tribal entity may rely on any reliable data that indicates a clear causal relationship between the measured exceedance or violation of such standard and the event and comply with paragraph (c)(4)(i) of this section.~~

~~(b) Determinations by EPA. (1) EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a State demonstrates to EPA's satisfaction State or tribal government or state or tribal entity determines that an exceptional event caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section.~~

~~(2) EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a State demonstrates to EPA's satisfaction State or tribal government or state or tribal entity determines that emissions from fireworks displays caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section. Such data will be treated in the same manner as exceptional events under this rule, provided a State demonstrates a State or tribal government or state or tribal entity determines that such use of fireworks is significantly integral to traditional national, ethnic, or other cultural events including, but not limited to July Fourth celebrations which satisfy the requirements of this section.~~

~~(3) EPA shall exclude data from use in determinations of exceedances and NAAQS violations, where a State demonstrates to EPA's satisfaction where a State or tribal government or state or tribal entity determines that emissions from prescribed fires caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section provided that such emissions are from prescribed fires that EPA determines meets the definition in § 50.1(j), and provided that the State has certified to EPA that it and a State or tribal government or state or tribal entity has adopted and is implementing a Smoke Management Program or the State has ensured that the burner employed basic smoke management practices. If an exceptional event occurs using the basic smoke management practices approach, the State must undertake a review of its approach to ensure public health is being protected and must include consideration of development of a SMP.~~

~~(4) [Reserved] EPA shall exclude data from use in determinations of exceedances and NAAQS violations where a State or tribal government or state or tribal entity determines that emissions causing the exceedances or NAAQS violations were caused by a natural event or a high wind event.~~

~~(c) Schedules and Procedures. (1) Public notification.~~

~~(i) All States and, where applicable, their political subdivisions must notify the public promptly whenever an event occurs or is reasonably anticipated to occur which may result in the exceedance of an applicable air quality standard.~~

~~(ii) [Reserved.]~~

~~(2) Flagging of data. (i) A State shall notify EPA of its intent to exclude one or more measured exceedances of an applicable ambient air quality standard as being due to an exceptional event by placing a flag in the appropriate field for the data record of concern in accordance with the schedules for submission of data to the AQS database in 40 CFR 58.16.~~

~~(ii) Flags placed on data in accordance with this section shall be deemed informational only, and the data shall not be excluded from determinations with respect to exceedances or violations of the national ambient air quality standards unless and until,~~

~~following the State's submittal of its demonstration pursuant to paragraph (c)(3) of this section and EPA review, EPA notifies the State of its concurrence by placing a concurrence flag in the appropriate field for the data record in the AQS database.~~

(iii) Flags placed on data as being due to an exceptional event together with an initial description of the event shall be submitted to EPA not later than July 1<sup>st</sup> of the calendar year following the year in which the flagged measurement occurred, except as allowed under paragraph (c)(2)(iv) of this section.

(iv) For PM<sub>2.5</sub> data collected during calendar years 2004–2006, that the State identifies as resulting from an exceptional event, the State must notify EPA of the flag and submit an initial description of the event no later than October 1, 2007. EPA may grant an extension, if a State requests an extension, and permit the State to submit the notification of the flag and initial description by no later than December 1, 2007.

(v) When EPA sets a NAAQS for a new pollutant, or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging data for the initial designation of areas for those NAAQS.

~~(3) *Submission of demonstrations.* (i) A State that has flagged data as being due to an exceptional event and is requesting exclusion of the affected measurement data shall, after notice and opportunity for public comment, submit a demonstration to justify data exclusion to EPA not later than the lesser of, 3 years following the end of the calendar quarter in which the flagged concentration was recorded or, 12 months prior to the date that a regulatory decision must be made by EPA. A State must submit the public comments it received along with its demonstration to EPA.~~ (3) *Demonstrations.*

~~(ii) (i) A State that flags data collected during calendar years 2004–2006, pursuant to paragraph (c)(2)(iv) of this section, must adopt the procedures and requirements specified in paragraph (c)(3)(i) of this section and must include a demonstration to justify the exclusion of the data not later than the submittal of the Governor's recommendation letter on nonattainment areas.~~

~~(iii) (ii) The demonstration for data collected during calendar years 2004-2006 to justify data exclusion shall provide evidence that:~~

(A) The event satisfies the criteria set forth in 40 CFR 50.1(j);

(B) There is a clear causal relationship between the measurement under consideration and the event that is claimed to have affected the air quality in the area;

(C) The event is associated with a measured concentration in excess of normal historical fluctuations, including background; and

(D) There would have been no exceedance or violation but for the event.

(iv) With the submission of the demonstration, the State must document that the public comment process was followed.

(v) [Reserved.]

(A) [Reserved]

~~(4) *Documentation.* (i) A State or tribal government that has flagged data as being due to an exceptional event shall document that the event meets the requirements of section 319 of the Clean Air Act (42 U.S.C. § 7619).~~

~~(ii) Upon receipt of such documentation, the Administrator shall exclude the flagged data from use in determinations by the Administrator with respect to exceedances or violations of the NAAQS.~~

## PART 51—NATIONAL PRIMARY AND SECONDARY NATIONAL AMBIENT AIR QUALITY STANDARDS

### Subpart Y—Mitigation Requirements

#### § 51.930 Mitigation of Exceptional Events.

(a) A State ~~requesting to exclude or tribal government or state or tribal authority that determines~~ air quality data ~~is~~ due to exceptional events must take appropriate and reasonable actions to protect public health from exceedances or violations of the national ambient air quality standards. At a minimum, the State ~~or tribal government or state or tribal entity~~ must:

(1) Provide for prompt public notification whenever air quality concentrations exceed or are expected to exceed an applicable ambient air quality standard;

(2) Provide for public education concerning actions that individuals may take to reduce exposures to unhealthy levels of air quality during and following an exceptional event; and

(3) Provide for the implementation of appropriate measures to protect public health from exceedances or violations of ambient air quality standards caused by exceptional events.

~~(4) Provide as necessary that all provisions of the rule take effect no later than 1 year after the date of enactment of this Act.~~

(b) [Reserved]

## Exceptional Events Reform Act of 2011

### Need for Legislation

- Many areas of the country are affected by air quality conditions that are out of their control. Windblown dust and particulate matter may travel tens or hundreds of miles affecting air quality in “downwind” areas. Excessive heat and drought can exacerbate normal conditions and make elevated levels of air pollution more likely.
- The Clean Air Act (“CAA”) contains authority to exclude “exceptional events” from determinations of whether an area is in compliance with National Ambient Air Quality Standards (“NAAQS”). Under the CAA, air quality conditions associated with events that are not “reasonably controllable or preventable” and other events can be excluded from the determination of whether an area is meeting (“attaining”) a NAAQS.
- Although the Environmental Protection Agency (“EPA”) promulgated regulations to address exceptional events in 2007, current regulations present states, tribes and local governments with a data-intensive and time-consuming process for obtaining EPA assent. States and localities must obtain agreement from EPA Regional offices in consultation with EPA Headquarters regarding their assessment of local air quality conditions and the reasons why an area experienced air monitoring exceedences.
- The Exceptional Events Reform Act of 2011 attempts to streamline the exceptional events process by returning control over such decisions to states and tribes. States and tribes would be authorized to make “case-by-case” determinations as to when natural conditions, windblown dust and other forces outside of their control caused air quality monitors to register a NAAQS exceedence. Upon determination by a state or tribal government that an exceedence was due to an exceptional event, EPA would be required to exclude the data from determinations of CAA compliance.
- The legislation recognizes that States, tribes and local governments have been primarily responsible for implementing the CAA for the last 50 years. In addition, by developing and implementing multiple State Implementation Plans (“SIPs”) and SIP revisions to address CAA requirements, states, tribes and local governments have developed the necessary technical expertise and staff resources to evaluate the complex meteorology and atmospheric conditions that may be involved in exceptional events.
- A legislative fix would allow EPA to continue its defined role in the CAA implementation process – EPA would continue to review and approve SIPs that provide the detailed mechanisms to attain NAAQS. But the legislative fix would return control of exceptional event determinations to states and tribes who are in the best position to evaluate local air quality conditions and programs.

- Importantly, the Exceptional Events Reform Act of 2011 retains all current requirements to notify and the public of air quality conditions and provide information to the public on how to reduce exposures to elevated levels of air pollution. States or tribes must also provide for the implementation of appropriate measures to protect public health from exceedances or violations of NAAQS caused by exceptional events. But the legislation would ensure that states, tribes and local governments are not penalized for air quality conditions that are beyond their ability to control or prevent.

## **Background Information**

- Congress recognized that there are exceptional events – such as high winds and wildfires – that cannot be controlled by air quality plans. In 2005, Congress amended the CAA to allow for exceptional events so that regions would not be penalized for NAAQS exceedances at air quality monitors due to exceptional events. EPA then developed the Exceptional Events Rule during 2006 and finalized the rule in 2007.
- Implementation of the Exceptional Events Rule, however, has been cumbersome and time consuming. In order to have data excluded from NAAQS determinations, States and local governments must assemble massive amounts of data regarding even a single exceedance of a NAAQS. Considerable resources are spent both in developing the information for submittal to EPA and for EPA’s review of the data and information submitted by states.
- Due to the requirements that must be met and the number of exceptional events that have occurred, the documentation effort is extremely resource intensive. For example, the San Joaquin Valley Unified Air Pollution Control District has estimated that 453 staff hours are needed to prepare the documentation for just one high wind exceptional event. Based upon this estimate, the documentation of the 21 days of exceptional events that the Maricopa area in Arizona experienced in one year would take 9,513 staff hours or 1,189 work days.
- The Arizona Department of Environmental Quality is currently overwhelmed with the exceptional events workload. For example, although there were limited numbers of exceptional events in 2009 and no events in 2010 in the Maricopa area, during 2011 this area experienced 102 exceedances of the PM-10 standard. All but one of these events was due to the existence of haboobs, dust storms, thunderstorms, and residual dust. To have such events excluded from determinations of air quality compliance, Arizona will need to expend considerable financial resources to provide the detailed written descriptions, supporting information and data that EPA currently requires.
- While EPA and states have made efforts to work together to improve the exceptional events process, there is inevitable delay and uncertainty associated with current exceptional events regulations. Upon the submittal of data and information on exceptional events, States and local governments simply do not know whether EPA will agree with their technical assessments or require additional supporting information. In

certain cases, states and local governments may also disagree with EPA's assessment of the necessary conditions to establish an exceptional event occurred.

## **Legislative Provisions**

### **Findings**

- The Exceptional Events Reform Act of 2011 recognizes that state and local governments are primarily responsible to implement the CAA. This provision of the law dates back to 1963. Section 101(a)(3) of the CAA declares that “air pollution control at its source is the primary responsibility of States and local governments.”
- Second, the legislation cites court opinions that have described the CAA as an exercise in “cooperative federalism” where the EPA sets the level and form of air pollution control standards, but States and local governments are responsible to draft and implement SIPs for various NAAQS.
- Third, the legislation recognizes that states and local governments are responsible for day-to-day air quality management activities. States and local governments deploy air pollution control monitors and gain considerable on-the-ground experience with local and regional weather conditions and patterns and how conditions can affect the measurement of different NAAQS.

### **Clean Air Act Amendments**

- The Exceptional Events Reform Act of 2011 amends section 319 of the CAA to make targeted changes to current law defining exceptional events and when such events can be excluded from data determining NAAQS compliance. The legislation maintains the current “principles and requirements” regarding exceptional events enacted by Congress as well as requirements for the promulgation of regulations concerning the review and handling of air quality data affected by exceptional events.
- The Exceptional Events Reform Act provides that States or tribal governments, after consultation with the EPA, are responsible for determining when an exceptional event occurs. The legislation eliminates certain exclusions from exceptional events (stagnant air masses, inversions, high temperatures or lack of precipitation) and instead allows for a case-by-case determination of conditions. The legislation also removes source noncompliance as a separate basis for excluding an exceptional event, relying instead on implementation of SIPs to control sources and provide for NAAQS attainment.
- Finally, the legislation provides definitions for a “natural event” based on current EPA regulatory language and a separate definition for high wind events. High wind events were discussed in the preamble to EPA's current exceptional event regulations, but not originally included within those regulations.

## **Promulgation of New Regulations**

- The legislation requires EPA to propose and publish final regulations for exceptional events no later than 270 days after the enactment of the legislation. The legislation retains the structure and much of the text of current regulations promulgated by EPA in 2007; while making changes to conform the regulations to the new CAA requirements being established.
- First, the legislation makes several changes to ensure that a State or tribal government, or a state or tribal entity that has been delegated authority, after consultation with EPA, is the locus of decisionmaking on exceptional events determinations. The regulatory changes ensure that states and tribes or entities that have been delegated state or tribal authority make all decisions on what air quality data qualifies as an exceptional event, transferring this authority from EPA.
- Second, the legislation retains requirements in current regulations that there must be a clear causal relationship between a measured exceedence of a NAAQS and an exceptional event while imposing requirements for States and tribal governments to document data that has been “flagged” for exclusion as an exceptional event. The legislation also retains current regulatory requirements that require prompt public notification whenever air quality is expected to exceed NAAQS levels, public education efforts to inform individuals how to reduce exposure to elevated levels of NAAQS pollutants and implementation of appropriate measures to protect public health.
- Third, the legislation provides for conforming regulatory changes to incorporate the specification of “natural events” and “high wind events” contained in the legislative changes to the CAA and for transitional provisions for events occurring in 2006 and prior to 2006 and for events occurring in 2007 and thereafter.

## WESTERN STATES AIR RESOURCES COUNCIL



August 31, 2012

Air and Radiation Docket and Information Center  
U.S. Environmental Protection Agency  
Mail Code 6102T  
1200 Pennsylvania Ave., NW  
Washington DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2011-0887

Dear Sir or Madam:

The Western States Air Resources Council (WESTAR), an association of 15 western state air quality management agencies, is pleased to offer the following comments on the Environmental Protection Agency's (EPA) "Draft Guidance To Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events". WESTAR appreciates the effort EPA has made in preparing guidance to assist State and local agencies in the development of approvable exceptional events demonstrations. However, the draft guidance fails to address several fundamental issues we have raised over the years, as summarized below. Please note that the California Air Resources Board is submitting separate comments on its own behalf.

WESTAR previously commented on a preliminary draft of the subject guidance, highlighting four areas of particular concern: The level of effort needed to support an exceptional events request, including the need for a dispute resolution process; EPA's use of guidance to impose requirements on state and local agencies; The imposition of escalating emission control programs in areas subject to chronic exceptional events and; The requirement that state and local agencies show that, but for the event, there would not have been an exceedance or violation. With regard to this last issue, WESTAR reiterates its view that EPA should revise the exceptional events rule to either remove the "but for" test, or promulgate techniques that State and local agencies can use to adjust monitored data so as to remove the impact of an exceptional event.

#### Workload

WESTAR initially reached out to EPA regarding the need to streamline the demonstration process to lessen the burden on air agencies and to define uniform methods to determine the

impact of exceptional events on downwind concentrations, recognizing technical limitations and limited resources. We appreciate the effort EPA has made to address the challenges faced by State and local agencies in the implementation of the exceptional events rule, and fully support the goal of the guidance to allow air agencies to “better manage resources” given acknowledged limitations.

We think that the voluntary prospective controls analysis introduced in the June 2012 guidance has potential for significant process streamlining, both for states as well as EPA. However, a state that prepares a prospective controls analysis may not realize any benefits from such an effort if the scope of work to prepare the prospective controls analysis is not substantially less than the demonstration analysis. Other concerns include: 1.) changing circumstances, such as a controls analysis that is deemed out-of-date, causing the pre-approved analysis to be unusable as reference for the “Not Controllable or Preventable” demonstration; 2.) the review triggers a requirement to revise the prospective controls analysis.

In addition, while the draft guidance provides suggested methodology for an approvable technical demonstration, air agencies with limited resources or infrastructure will be hard pressed to submit a reasonable demonstration similar to examples cited in the guidance. For example, the sample apportionment analysis presented on page 46 of the guidance would require tremendous resource commitment for a local event and would be unattainable for a regional annual event that might occur in the desert southwest. In other places the guidance uses examples that many air agencies simply do not have the resources or technical expertise to replicate.

### Dispute Resolution

In previous comments on ways to streamline implementation of the exceptional events rule, WESTAR requested that EPA establish an administrative dispute resolution process to resolve disagreements over concurrence or approvals before a significant regulatory action is taken. The Q and A section of the draft guidance states that existing remedies are available, such as more communication with Regional Office staff, elevation to senior management, and reconsideration where errors are discovered. Inconsistencies between EPA Regional Offices in evaluating and acting on substantially similar exceptional events demonstrations have been and remain a concern - an aspect that the guidance is meant to address. While we appreciate the knowledge and abilities of Regional Office staff, we do not think the existing remedies suggested in the Q and A would be particularly effective. We reiterate our recommendation for EPA to develop an administrative dispute resolution process that could involve a third party with technical expertise.

### Guidance in Lieu of Rules

At several locations in the new guidance material, (e.g. the disclaimers in the guidance documents and Part 6 of the “Responses to First Round Significant Comments...”) EPA states that the purpose of the draft guidance is to assist states in complying with the exceptional events rule, and that the guidance documents do not change, increase, or decrease rule

requirements, and are not binding. We wholeheartedly agree. However, a number of western states have cited cases of Regional Office reviewers expecting strict adherence to the guidance, or requiring extensive additional analyses from the submitting agency to justify deviation from the guidance.

#### Not Reasonably Controllable or Preventable

WESTAR believes that the option for states to develop a prospective controls analysis is a step in the right direction. This would provide a positive mechanism to ensure that an assessment of reasonable controls does not need to be revisited with each individual event request. However, WESTAR remains concerned that the prospective controls analysis may still represent a significant workload for the states, as discussed in the workload paragraph above. In addition, it is not clear what EPA's expectations are for demonstrating the adequacy of existing state or local rules, or what the process would be for rule/program revisions suggested by EPA beyond those approved in SIPs. WESTAR is also concerned that there is a presumption by EPA that each recurring event suggests a need for increasingly more stringent controls on sources of windblown dust as a condition of concurrence. The frequency of chronically occurring natural windblown dust events in the west should not change the assessment of what constitutes reasonable controls for anthropogenic windblown dust sources.

#### The "No Exceedance But For" Demonstration

WESTAR reiterates its view that revisions to the exceptional events rule are needed to address issues related to the requirement that States demonstrate there would have been "no exceedance but for" the event (NEBF). The draft guidance includes a new recommendation that the NEBF demonstration should follow and build upon the technical demonstrations of the other required elements of the submittal, especially "Clear Causal Relationship." We agree that using these earlier analyses as the basis for the NEBF demonstration would streamline the process for *qualitative* NEBF assessments as well as for events occurring in urban areas with more extensive monitoring, as illustrated in the examples. However, the guidance is much less helpful where the event concentrations are close to the NAAQS, calling for *quantitative* NEBF analysis. Many states do not have the resources or the expertise to perform the types of refined and highly technical analyses suggested in the draft guidance. Accordingly, WESTAR believes that the NEBF test should be removed from the rule until EPA promulgates acceptable methodologies for quantifying event-caused concentrations, and examples are available.

There is a clear need to find an acceptable method or methods to quantify PM concentrations that are solely due to high wind events. We urge EPA to work with state and local agencies in a joint effort to develop commonly recognized default methodologies to separate exceedance concentrations due to high wind events from concentrations that would have occurred otherwise. By promulgating approved methods to determine event-caused contributions to downwind concentrations, the preparation of exceptional events requests by state and local agencies would be greatly simplified in most cases, as would EPA's review and approval of the request.

## Additional Comments

*Dust from Agriculture Sources:* The draft high winds guidance draws a distinction between BACM/RACM for non-agricultural sources and wind erosion best management practices (BMPs) developed by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) to prevent the loss of soil during high winds (p. 15 of the draft guidance). NRCS is just part of the larger agricultural community involved in the development and the implementation of wind erosion BMPs. This larger community includes the Agricultural Research Service, university researchers, the state conservation commission, conservation districts, the cooperative extension service, and farmers. EPA would benefit by using expertise available in the agricultural communities for addressing reasonable controls on agricultural lands. WESTAR urges EPA to collaborate with the agricultural community on the implementation of the Exceptional Events Rule.

*Wildfire Events:* While we understand that the primary focus of this draft guidance is dust from high wind events, there is an urgent need for EPA to work with State and local agencies on guidance for other types of exceptional events, most especially smoke impacts from fires. Likewise, we are eager to work with EPA on updates to the Interim Air Quality Policy on Wildland and Prescribed Fires.

If you have any questions or require further clarification of our comments, please contact WESTAR Executive Director Dan Johnson at 206-254-9145.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Remer".

Greg Remer, President  
Western States Air Resources Council



Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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



Henry R. Darwin  
Director

August 31, 2012

U.S. Environmental Protection Agency  
Attention Docket ID No. EPA-HQ-OAR-2011-0887  
1200 Pennsylvania Avenue, NW  
Mail Code: 6102T  
Washington, DC 20460

Re: Comments to the Exceptional Event Guidance Documents

To Whom it may concern,

The Arizona Department of Environmental Quality (ADEQ) has long been a proponent for changes to EPA's Exceptional Events Rule (EER) and we appreciate the opportunity to provide comment on the *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events* that EPA released on July 12, 2012.

ADEQ supports EPA's overall efforts to add clarity to the agency's interpretation of the existing rule and the creation of a process for reviewing exceptional events along with deadlines for action. We also agree with the guiding principle that States should not be held accountable for exceedances due to events that were beyond their control at the time of the event. Exclusion of exceptional events that overwhelm reasonable control measures from regulatory decisions enables the state to focus its resources on sources of pollution that can be controlled.

In this submittal ADEQ also incorporates by reference our June 30, 2011 comments pertaining to the May 2, 2011 version of the *Draft Guidance on the Implementation of the Exceptional Events Rule* release by EPA. ADEQ appreciates consideration of our prior comments in the latest review but believes that many comments need additional review by EPA.

ADEQ maintains that additional rulemaking remains necessary. While the draft guidance represents much needed progress, it is ultimately limited in its usefulness, as guidance can not carry the weight of rule. ADEQ believes that several of the approaches in EPA's guidance, described fully in this letter, require rule revisions before the guidance can be fully implemented.

ADEQ also supports the comments submitted by the Western States Air Resources Council (WESTAR). ADEQ is a member of WESTAR so those specific comments are not repeated in

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

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this letter. Instead, this letter contains ADEQ's comments about how the proposed guidance will impact the review of Exceptional Events within its jurisdiction.

I. Need for Rule Revision

The Draft Guidance frequently presents new "optional" analyses that appear to be quasi-requirements that need to be addressed through a rule revision. Rather than requiring submitting agencies make qualifying statements about the reasonability of controls on natural sources, ADEQ suggests a rule revision stating "due to the cost of applying controls over such large land areas and the potential to disturb those areas, and because of the detrimental effect on the natural ecosystem that could result, controls on natural, undisturbed sources are not expected and no investigation of controls on natural, undisturbed sources is required."

II. Investigation of Controls on Natural Sources

The Revised Draft Guidance for High Wind Exceptional Events continues to contain language that implies that submitting agencies would need to investigate whether natural sources could have been reasonably controlled during a high wind dust event. It should be apparent that in all cases once a natural, undisturbed source is determined to have been a contributing source of particulate matter during a high wind event, not having controls on that natural, undisturbed source is reasonable and therefore, no investigation of or statements about controls on natural sources should be required as a part of an exceptional event demonstration.

EPA's response to comment 7.5.22 regarding EPA's stance on controls on natural sources states that "for a high wind event implicating only natural, undisturbed and non-anthropogenic sources, not having controls on these sources may be reasonable and therefore considered to meet the not reasonably controllable or preventable requirement". Natural sources, whether the only implicated potential sources of particulate matter for an event or not, should not require controls or any control investigation. Additionally, the use of "may be" in EPA's response to comment 7.5.22 implies that there are situations where natural, undisturbed non-anthropogenic sources may require controls in EPA's view. If this is the case, EPA should clarify in what situations they foresee requiring controls on natural undisturbed sources and why this requirement is reasonable. On page 43 of the main Guidance document, EPA seems to require that states include a statement in submittals indicating emissions from given natural sources were not reasonably controllable "due to the cost of applying controls over such a large land area and because of the detrimental effect on the natural ecosystem that could result." Additionally, as was stated in comment 7.5.22, attempting to place controls on natural sources might inherently disturb those sources, rendering them "disturbed" and thus anthropogenic in EPA's view. EPA did not address this portion of the comment in their initial response. As a part of streamlining submittals, rather than requiring submitting agencies to go through the time consuming exercise of investigating controls on natural sources and

making the sort of qualifying statement suggested on page 43, EPA should revise the rule to make it clear that controls on natural, undisturbed sources are not expected or required.

III. The Control and “Extinguishing” of Wildfires

EPA’s response to comment 1.1.9 addressing the not reasonably controllable or preventable aspect of wildfire emissions states that reasonable action should be taken to control a fire once it has started in order to meet the NRCP criteria. Additionally, EPA’s response suggests that for unplanned and unwanted fires, submitting agencies should be able to make a statement to show that they “did their reasonable best to control the extent of and extinguish the fire by taking the following actions...” The word “extinguish” is not appropriate and should be removed, as fire managers work to contain wildfires, not necessarily to extinguish them. There are times where the most reasonable action a wildfire manager can take is to remove fire crews from the ground near a wildfire for safety, and work on creating containment barriers for the fire a safe distance away and/or from the air using air resources. Due to concerns involving firefighter safety, cost, resource management, and resource objectives, it is often prudent for fire managers to monitor, confine, or contain a wildfire while allowing it to burn itself out or play its natural role until adequate precipitation ends the wildfire. These sorts of management actions should not exclude submitting agencies from pursuing Exceptional Event Demonstrations related to wildfires.

IV. Hourly Averaged winds vs. NWS 2-minute Winds and Wind Gusts

On page 40 of the Revised Draft Guidance document, EPA states in footnote 47 that “while the National Weather Service defines a “sustained wind” as the speed determined by averaging observed value over a two-minute period, the EPA believes that it would take a longer period of high wind speeds to raise enough dust to significantly influence measured 24-hour average values of PM10 or PM2.5”. Studies that may have led the EPA to this belief are not cited. ADEQ believes that such citations are necessary to support inclusion of this approach in the guidance. Short lived strong winds carrying vast amounts of PM can cause exceedances. During some of Arizona’s monsoonal outflow dominated dust events, five minute values of PM10 at monitors can reach over 10,000 micrograms, and it can only take a few extremely elevated 5-minute values to cause a 24 hour PM10 exceedance. Some studies have found that wind gusts are more strongly correlated to the onset of saltation and dust entrainment and that maximum wind gusts are a very important factor in dust generation (Holcombe et al., 1996; Zobeck and Van Pelt, 2006).

V. Interstate and International Transport and Investigating Out-of-State Controls

In EPA's response to comment 6.4.1 regarding intra-state, interstate, and international transport, it is suggested that for situations where out of state emissions contributed to an exceedance submitting states should “provide available information on the status of

control measures” and that they also may make a determination based on available information that “controls on out-of-state sources constitute reasonable controls” and that the “not reasonably controllable or preventable” criterion is satisfied. Based on jurisdictional boundaries alone, contributions from out-of-state sources are not reasonably controllable or preventable by the impacted state. Regardless of any controls on out-of-state sources, once it is determined and shown that emissions from sources outside of the submitting state contributed to an exceedance, the emissions from that contribution should be classified as not reasonably controllable or preventable and no investigation of controls or the reasonableness of controls on out-of-state sources should be required. ADEQ suggests the guidance not include a requirement for the affected state to investigate controls or the reasonableness of controls in neighboring states or countries with emissions contributing to an exceedance.

#### VI. Area Specific Wind Threshold Establishment

The development of area specific High Wind Thresholds will be very resource intensive and costly to develop. Additionally, High Wind Thresholds may vary over time due to changes in ground cover, soil moisture, and countless other variables.

Wind speed (default 25 mph threshold) appears to be EPA’s only criterion for the expected rigor of analysis needed in EE submittals, but numerous other variables are involved and should be considered in determining the rigor of analyses. Regarding the default 25 mile per hour threshold, ADEQ requests, as in our June 20, 2011 comments, that EPA provide literature citations or analytical process used to establish the 25 mile per hour threshold.

#### VII. Resource Intensity

Some of the optional components put forth in the Draft Guidance are quasi-requirements and have the potential to add significant resource commitments to develop an approvable exceptional events package. The development of area specific High Wind Thresholds will be very resource intensive and costly to develop. This also applies to development of area specific Prospective Controls Analyses, a portion of which is the development of High Wind Thresholds. Another portion (#4) of the Prospective Controls Analysis requires information on whether natural sources are reasonably controlled. ADEQ believes that no investigation of or statements about controls on natural sources should be required as a part of an exceptional event demonstration. Attempting to place controls on natural sources might inherently disturb those sources, rendering them “disturbed” and thus anthropogenic in EPA’s view. ADEQ is currently utilizing the services of a contractor to assist in the development of exceptional event submittals. The anticipated contractor cost for the Maricopa County and Yuma area exceptional events demonstrations in 2011 is estimated to be \$500,000. These additional analyses have the potential to increase that cost.

### VIII. Timeframe and Resources for EPA Review

Given the resource intensity and resource commitments being put forward by submitting agencies in researching and putting together an approvable exceptional event package, will EPA have available similar resource commitments in order to ensure the timely review of submitted packages? ADEQ will be developing and submitting EE packages on a very ambitious schedule and is concerned that concurrence may be hindered or delayed with the increased volume of exceptional event packages.

The Draft Guidance states that EPA anticipates completing their initial review of a submitted package and will provide submitting agencies with a letter outlining the preliminary assessment of completeness and whether there is a need for additional information within 120 days of submittal. However, this timing is not specified by the Exceptional Events Rule and unless adequate EPA resources are designated to completing this task, it is not clear that EPA can meet such a schedule. Additionally, the Guidance states that EPA's final decision regarding concurrence on a submitted package (for packages impacting regulatory decisions) is expected to be made within 18 months of the initial submittal. This is about 420 days or 14 months after EPA's initial (120 day) review. This timing seems excessive, particularly for packages deemed complete and requiring no supplemental information based on EPA's initial (120 day) review.

### IX. Historic Land Use

On page 11, "artificially exposed beds of natural lakes and rivers" are not eligible for exceptional event concurrence, but "naturally dry" beds of lakes and rivers are eligible. After long term drought (more than 6 months as shown with "L" for most of Arizona on the U.S. Department of Agriculture's Drought Monitor <http://droughtmonitor.unl.edu/>) it is logical to conclude that most riverbeds in Arizona become "naturally dry" no matter if they were originally dammed or not.

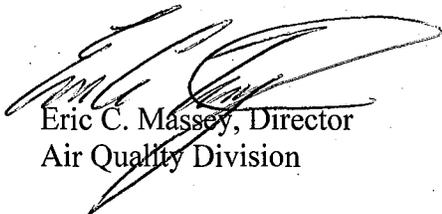
In closing, the preparation of the exceptional event demonstration packages requires extensive time and resource investments by State and Local agencies. This draft guidance appears to include more reliance on continuous ambient monitors, requires additional meteorological data collection, increased data storage and processing capabilities, independent research to establish appropriate local wind speed thresholds, inspection and enforcement databases capable of localized queries, meteorological expertise for evaluating weather phenomenon, expertise capable of producing event specific back trajectories and date specific source emission inventories, and possibly additional resources for the development of ever evolving High Wind Action Plans. Many agencies are at historically low staffing levels due to budgetary constraints. The complex data packages supporting exceptional event demonstrations often consist of 50-100 pages of technical data (tables, graphs, maps and diagrams). For each package prepared, hundred

of hours of staff time have been invested. Most agencies are already making priority decisions on which events to pursue simply based on manpower availability.

The draft guidance seems to acknowledge that EPA has similar constraints, as it discusses how EPA will prioritize review of exceptional events, and spend the most time looking at those packages that relate to regulatory decisions. In Arizona's experience, most of the exceptional event demonstrations that are submitted are related to regulatory decisions. While this guidance was meant to streamline the process for submitting and reviewing exceptional event demonstrations, ADEQ's application of the guidance to its existing exceptional events indicates that the draft guidance, as currently written, provides little or no added efficiency for ADEQ or EPA.

ADEQ appreciates EPA's efforts in this matter, and looks forward to continuing a partnership to better achieve the underlying goals of the draft guidance. If you have any questions, please contact me at (602) 771-2308.

Sincerely,



Eric C. Massey, Director  
Air Quality Division

Enclosures

cc: Deborah Jordan, EPA Region IX  
Colleen McKaughan, EPA Region IX  
William Wiley, Maricopa County Air Quality Department  
Lindy Bauer, Maricopa Association of Governments  
Don Gabrielson, Pinal County Air Quality Management District  
Ursula Kramer, Pima County Department of Environmental Quality



# Maricopa County

Air Quality Department

Office of the Director  
William D. Wiley, P.E.  
1001 North Central Avenue  
Suite 125  
Phoenix, Arizona 85004  
(602) 506-6443 – desk  
(602) 372-6440 – fax

September 4, 2012

Air Docket

Attention Docket Id No: EPA-HQ-OAR-2011-0887

Mail Code 6102T

U.S. Environmental Protection Agency

1200 Pennsylvania Ave. NW.,

Washington, DC 20640

To Whom It May Concern:

Maricopa County Air Quality Department (MCAQD) welcomes the opportunity to provide the following comments on EPA's draft guidance implementing the Exceptional Events Rule (EER) specifically *Draft Guidance on Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule* (high Wind Guidance). This is in response to the U.S. Environmental Protection Agency's (EPA) solicitation for public comment published in Federal Register on July 6, 2012 (77 FR 39959).

MCAQD supports EPA's effort to clarify its interpretation of the existing EER and to provide an efficient and effective process to make determinations regarding air quality data affected by high-wind events over which an agency has little, if any, control. Exclusion of exceptional events that overwhelm reasonable control measures from regulatory decisions enables our agency to focus our resources on sources of pollution that can be controlled. We believe the draft guidance represents movement in the right direction, but that the guidance does not yet provide a streamlined, predictable process that can be performed by state and local agencies. As a result, MCAQD still has several key concerns.

MCAQD also supports the comments submitted by the Arizona Department of Environmental Quality (ADEQ), the Maricopa Association of Governments (MAG), and the Western States Air Resources Council (WESTAR). While we may refer to those specific comments, we are not repeating them in this letter.

## I. Level of Resources and Timeframes

Various components, including some of the optional components, put forth in the draft High Winds Guidance require significant resource commitments to develop an approvable exceptional events demonstration. Based on Arizona agencies' experiences completing exceptional event demonstrations, significant manpower and technical expertise, including thousands of dollars of consultant assistance, were required to complete the multi-day demonstration submitted for July 2 through July 8, 2011. All of this effort was necessary to document a series of weather-related events and subsequent impacts including a July 5, 2012, haboob pictured in a National Geographic article on extreme weather events (September 2012). That level of effort should not be necessary to document a request for an event of that magnitude. EPA needs to substantially streamline what air agencies must include in order for an exceptional event request to be approved.

While the July 2011 demonstrations were prepared in consultation with EPA and the agency indicated they will take action in less than the 18 months allowed in the guidance, the amount of time that has elapsed for agency preparation and EPA review still extends beyond six months. We mention six months to illustrate the disconnect between the exceptional event process as laid out by the EER / High Winds Guidance and the Clean Air Act (CAA) deadlines for determining attainment of the National Ambient Air Quality Standards (NAAQS). This is just one of several exceptional events demonstrations that must be submitted by the State and acted on by EPA to meet this impending deadline. MCAQD urges EPA to synchronize the EER and guidance with the requirements of the CAA.

## II. Wind Speed Threshold

Maricopa County has a range of soil types and textures in the complex terrain of a desert valley in which metropolitan Phoenix resides. Consequently, wind speeds and the ability of wind to overwhelm reasonable controls can vary greatly. A wind speed threshold may vary over time due to changes in ground cover, soil moisture and other variables. As a result, the development of a Maricopa County specific wind speed threshold may be event specific and will be very resource intensive, costly, and not practical to develop. MCAQD supports the analysis and recommendations of both ADEQ and MAG on wind speed threshold analyses and the related topic of hourly versus "sustained" winds.

## III. Controls on Natural Sources

The draft guidance document and EPA's response to comments document still contain language implying that agencies need to investigate where natural sources could have been reasonably controlled during a high wind event. MCAQD believes that it is neither reasonable nor required that an analysis of controls on natural, undisturbed sources of particulate matter be prepared as part of an exceptional events demonstration. Control of natural undisturbed surfaces is beyond the current authority of MCAQD. Further, MCAQD also believes that attempting to control natural, undisturbed sources could render them disturbed and thus anthropogenic under EPA's current definitions.

## IV. Optional Streamlining Mechanisms

EPA has proposed optional streamlining mechanisms for exceptional event demonstrations that include "High Wind Action Plans", "Prospective Controls Analysis", and area specific "Wind Speed Threshold" analysis. However, the level of effort necessary to develop these documents would be substantial. The "High Wind Action Plans" and "Prospective Controls Analysis" are SIP-like documents and the resources required to produce these documents as outlined in the draft guidance would tax our already limited resources and are duplicative of the SIP. Likewise, the underlying science behind a "Wind Speed Threshold" analysis is complex and would consume

extensive resources. MCAQD supports ADEQ's and MAG's comments regarding these optional streamlining mechanisms.

V. Reasonable Controls Determination

As a long time PM-10 nonattainment area, the Maricopa County PM-10 State Implementation Plan (SIP) contains an exhaustive list of control measures analyzed to meet the CAA requirements to demonstrate the implementation of Reasonably Available Control Measures (RACM), Best Available Control Measures (BACM), and Most Stringent Measures (MSM) for moderate and serious PM-10 nonattainment areas. The guidance documents, however, do not recognize these measures as reasonable and continue to link recurrence with potential additional control measure feasibility even though the event is overwhelming. EPA should offer more certainty to agencies by recognizing the extensive work included in the SIP by not requiring significant control analysis for each event.

In closing, MCAQD appreciates EPA's efforts in this area and looks forward to continuing to work with the agency on improving the guidance. In this effort, please recognize the implications of this guidance on our local citizens, economy and agencies' resources. We do not look forward to being showcased in the Natural Geographic for our Exceptional Events, but neither do we relish the work required to document them. If you have any questions, please do not hesitate to contact me at (602) 506-6443.

Sincerely,



William D. Wiley, P.E.  
Director

cc: Deborah Jordan, EPA Region IX  
Colleen McKaughan, EPA Region IX  
Eric Massey, Arizona Department of Environmental Quality  
Lindy Bauer, Maricopa Association of Governments  
Don Gabrielson, Pinal County Air Quality management District  
Ursula Kramer, Pima County Department of Environmental Quality

JOSEPH H. JARBOE, President  
PAUL W. DIEDERICH, Senior Vice President  
ALAN L. LANDES, Vice President  
DAVID B. HANSON, Treasurer  
STEPHEN E. SANDHERR, Chief Executive Officer  
DAVID R. LUKENS, Chief Operating Officer

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September 4, 2012

Air Docket  
Attention Docket ID No. EPA-HQ-OAR-2011-0887  
U.S. Environmental Protection Agency  
Mail Code: 6102T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: Comments on EPA's Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events; Docket ID No. EPA-HQ-OAR-2011-0887**

Dear Sir or Madam:

The Associated General Contractors of America (AGC) appreciates this opportunity to provide comments on the *Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events* (Draft Guidance) published in the *Federal Register* on July 6, 2012.<sup>1</sup>

EPA's Exceptional Events Rule (EER) allows the Agency to exclude certain air-quality monitoring data when determining whether or not an area violates a National Ambient Air Quality Standard(s) (NAAQS). Under the EER, EPA may flag certain air monitoring readings as "exceptional" and exclude data from nonattainment determinations if a local air agency demonstrates that an exceptional event, such as a wildfire or dust storm, caused an air quality violation.

AGC chapters and members in arid western states face significant air quality challenges brought on by chronic wildfires, dust storms and high winds; they report that EPA has not consistently applied its Exceptional Events Rule. Many of the concerns and criticism over the EER center around the lack of clarity on what a state should include in its demonstration package, a lack of consistency between the preamble and the rule itself, as well as delays in processing and approving exceptional event submissions.

AGC is concerned that the Draft Guidance does little to reduce the overall burden required in producing and approving exceptional event documentation and – in some cases – may actually increase the effort and documentation required.

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<sup>1</sup> AGC support the comments of its Arizona Chapter and incorporates those comments herein by reference.

## About AGC

AGC is the leading trade association in the construction industry. It dates back to 1918, and it currently represents 33,000 firms in nearly 100 chapters across the United States. AGC's members include 7,500 of the nation's leading general contractors, nearly 12,500 specialty contractors and more than 13,000 material suppliers and service providers to the construction industry. These members engage in the construction of commercial buildings, hospitals and laboratories, schools, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, levees, water works facilities and multi-family housing units, and they prepare sites and install the utilities necessary for housing development.

AGC members are directly impacted by the implementation of the EER and EPA's Draft Guidance. If an event is ruled an exceptional event, then a NAAQS exceedance caused by high winds, for example, would not be counted in determining whether to reclassify the attainment area as nonattainment. Additional nonattainment areas would result in additional requirements and restrictions on the business of construction. AGC is most concerned about the potential restriction on the use and operation of construction equipment that is currently out in the field, the loss of federal highway funding and the loss of economic development opportunities in urban areas. AGC and its members therefore have a great interest in the outcome of this proposed rulemaking.

The active phase of construction and the equipment used to perform this work is heavily regulated by both federal and state agencies to reduce particulate matter emissions. States with PM<sub>10</sub> non-attainment areas have fugitive dust regulations in place that apply directly to the construction industry. In many cases, construction firms must obtain permits and submit dust management plans for each active construction site, and the permits are reviewed and approved by local air pollution control officers.

As discussed above, failure by any state to prove compliance with federal air standards can have serious repercussions for construction in the area(s) so designated – including potential restriction on the use and operation of equipment, the loss of federal highway funding and the loss of economic development opportunities.

The Draft Guidance would leave several well-documented concerns unresolved—

- It would set a “wind threshold” for what constitutes high wind events for all arid areas and anything below the threshold would require extensive information and data to show that the event was not reasonably controllable or preventable. But depending on local circumstances and conditions, the actual wind speed required to cause dust exceedances from undisturbed and reasonably controlled surfaces will vary greatly.
- A lack of precipitation would be excluded from the definition of exceptional events.

- To establish an exceptional event, a state would need to show that the event caused a specific concentration, at a specific place. Doing so is difficult, for example, given the lack of particulate matter (PM) monitors and the high spatial variability of PM.
- Furthermore, in many rural areas, insufficient monitoring is available to demonstrate the “clear causal” relationships between an exceptional event and a measured exceedance even when simple visual observations would establish such a relationship.

## **EPA Should Implement “Specific, Broadly Applicable, Streamlining Mechanisms”**

States face strict deadlines to make attainment determinations that could hinge on whether or not data affected by exceptional events are included or excluded. However, EPA is under no pressure to review this paperwork in a timely manner. The EPA review process as outlined in the Draft Guidance would provide for a total of 667 days of Agency review time once a demonstration package was submitted (presuming that such a package was considered to be “complete” by the Agency).<sup>2</sup> This timeline is far too long. AGC urges EPA to work with states and local air agencies to accelerate the review and approval process for exceptional events.

AGC urges EPA to take more meaningful steps to streamline the process for producing and reviewing exceptional event demonstrations. A state must submit costly and complicated demonstration projects to EPA for its review (and for public comment) before it may exclude any exceedance(s) of any air quality standard(s) caused by naturally-occurring events such as dust storms. AGC understands that many states do not have the resources or the time required to meet the demonstration requirements for an exceptional event.

## **EPA Should Give Greater Deference to State and Local Determinations**

AGC recommends that EPA adopt additional measures (using forms, check-off lists and other straightforward mechanisms) to rely on to the judgment of air pollution officials who are responsible for the day-to-day implementation of CAA measures.

Section 319 of the CAA (42 U.S.C. § 7619) requires the Administrator to determine that an event is an exceptional event. While the Administrator is required under this section to promulgate

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<sup>2</sup> EPA is allowing itself 120 days from the initial submission of a package for responding via letter on a completeness determination and whether there is a need for additional information to be submitted. Following this process, the Draft Guidance allows EPA 547 days in order for the Agency to actually make a decision regarding an exceptional event.

regulations to “govern[ ] the review and handling of air monitoring data influenced by an exceptional event,”<sup>3</sup> the requirement for such regulations does not constrain the degree of deference that the Administrator may afford to state or local determinations regarding exceptional events. EPA is also not prevented under current regulations from providing much greater latitude to state submissions on exceptional events than is contained in the Draft Guidance. Current regulations provide only that various demonstrations to justify data exclusion be “to EPA’s satisfaction” with regard to whether air pollution concentrations in excess of a NAAQS were directly due and caused by an exceptional event.<sup>4</sup>

## Dispute Resolution

The current regulations governing exceptional events demonstrations leave the decision entirely at the discretion of the EPA, and the decisions are not subject to appeal.<sup>5</sup>

Neither the EER nor the Draft Guidance provides for a mechanism to challenge an EPA non-concurrence determination on a submission by an air regulatory agency. There is no opportunity or clear direction for a state or locality to challenge an EPA denial. This can lead to inconsistency in how EPA regional offices evaluate and act upon similar events and circumstances. AGC recommends a path for a formal appeal process to address non-action or denial by EPA.

In light of likely adoption of a more stringent federal particulate matter and ozone standards expected to drastically increase the number of non-attainment areas across the nation, it is critical that EPA streamline the information required for demonstration submittals, the processing of requests and the underlying ambiguities in the rule. But moving ahead with guidance rather than a formal revision to the rule would mean less regulatory certainty and could violate federal rulemaking procedures under the Administrative Procedures Act.

While EPA “is deferring a decision on whether to revise the Exceptional Events Rule,” AGC urges the agency to carefully consider the key concept included in legislation that Rep. Jeff Flake (R-Ariz.) recently introduced a bill in the U.S. House of Representatives intended to help states prove more efficiently and effectively that their violations of dust-pollution (i.e., particulate matter) standards qualify as “exceptional events.” AGC and its Arizona Chapter have expressed support for the Commonsense Legislative Exceptional Events Reform Act of 2012, or CLEER Act, which proposes certain changes to the federal Clean Air Act’s requirements for demonstrating exceptional events. Specifically, the bill would (1) require EPA to work with states to develop criteria for proving exceptional events; (2) create a deadline for EPA to approve

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<sup>3</sup> CAA section 319(b)(2)(B).

<sup>4</sup> See 40 C.F.R. § 50.14(a)-(b) generally and 40 C.F.R. § 50.14(b)(2) and (b)(3) with respect to fireworks and prescribed fires.

<sup>5</sup> See 42 U.S.C. § 7619(b)(A)(iv) and 40 C.F.R. § 50.149.

Docket ID No. EPA-HQ-OAR-2011-0887  
AGC of America Comments  
September 4, 2012

a state's exceptional-events documentation; (3) make EPA's decisions on exceptional events appealable; and (4) require EPA to make its decisions based on the evidence that states provide.

AGC appreciates the opportunity to comment. Thank you for taking our concerns into account. If you have any questions, please contact me at [pilconisl@agc.org](mailto:pilconisl@agc.org) or (703) 837-5332.

Sincerely,

A handwritten signature in cursive script that reads "Leah Pilconis".

Leah F. Pilconis  
Senior Environmental Advisor to AGC of America

JEFF FLAKE  
6TH DISTRICT, ARIZONA

240 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
PHONE (202) 225-2635  
FAX (202) 226-4386

DISTRICT OFFICE:

1640 SOUTH STAPLEY DRIVE  
SUITE 215  
MESA, AZ 85204  
PHONE (480) 833-0092  
FAX (480) 833-6314



COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEES:  
INTERIOR, ENVIRONMENT, AND  
RELATED AGENCIES  
LABOR, HEALTH AND HUMAN SERVICES,  
EDUCATION AND RELATED AGENCIES  
MILITARY CONSTRUCTION, VETERANS AFFAIRS,  
AND RELATED AGENCIES

## Congress of the United States House of Representatives

September 4, 2012

U.S. Environmental Protection Agency  
Mail Code: 6102T  
1200 Pennsylvania Ave. NW  
Washington, DC 20406

Re: Docket ID No. EPA-HQ-OAR-2011-0887

To whom it may concern,

I write to provide comments on the Environmental Protection Agency's "Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events." EPA's handling of exceptional events has been problematic to say the least, with the agency's review timeframe unpredictable, decisions arbitrary, and approach cumbersome for even routine events. Unfortunately, it appears unlikely that draft guidance will provide much in the way of a solution to these problems even if finalized.

These issues are far from academic for Arizona, specifically when it comes to additional regulatory burdens and costs. With the Phoenix area having failed to meet the dust standard since the Clean Air Act amendments of 1990, the area is one of the hardest hit when it comes to issues pertaining to particulate matter. Yet, in January of last year due to a regulatory approach that does little to account for naturally occurring dust events in the desert, the Arizona Department of Environmental Quality (ADEQ) was forced to withdraw the *MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area*. Beyond the regulatory implications, the procedural hurdles for excluding air quality data from events that cannot be prevented or controlled are staggering. For example, the San Joaquin Valley Unified Air Pollution Control District has suggested that the paperwork for just one high wind exceptional event takes more than 400 staff hours to prepare. According to ADEQ, the anticipated cost for the necessary exceptional events demonstrations for 2011 is \$500,000.

To the extent that it is intended to produce a more streamlined and predictable process for exceptional events, the draft guidance being contemplated by the agency falls woefully short. EPA noted that regional officials "worked with agencies in Arizona to incorporate approaches presented in the draft guidance documents," and that the resulting demonstration "could be transferable and serve as a model for future events for both Arizona and areas experiencing high wind dust events." However, ADEQ submitted comments critical of what appears to be an increase in time and resources necessary to prepare such a demonstration under the draft guidance, noting specifically that:

"This draft guidance appears to include more reliance on continuous ambient monitors, requires additional meteorological data collection, increased data storage and processing capabilities, independent research to establish appropriate local wind speed thresholds, inspection and enforcement database capable of localized queries, meteorological expertise for evaluating weather phenomenon,

expertise capable of producing event specific back trajectories and date specific emissions inventories, and possibly additional resources for the development of ever evolving High Wind Action Plans.”

Beyond remaining a convoluted and expensive process for states and localities to endure simply for the chance of EPA taking them off the regulatory hook for events they could not possibly control or prevent, it would appear that EPA’s decisions remain final under the draft guidance. The Western States Air Resources Council has consistently called for a “process to resolve disagreements over concurrence or approvals before significant regulatory action is taken.” There should be a process to hold EPA accountable when it comes to exceptional event demonstrations approvals. In addition, rather than leaving the decisions entirely in the hands of the agency, states should be afforded wide deference in determining which events are truly exceptional in nature and which are not.

It is unfortunate that EPA has invested in a time-consuming process of multiple rounds of reviews that appear on track to produce guidance that will not address the persistent issues associated with the exceptional events process and even lacks the enforceability of a rule. While EPA “is deferring a decision on whether to revise the Exceptional Events Rule,” I would urge the agency to take a supportive posture towards legislation I have introduced and that would provide the legislative authority for a greater degree of transparency, predictability, accountability, and state deference for the exceptional events process. Enjoying widespread support among Arizona-based, regional, and national air quality stakeholders, H.R. 5381, the Commonsense Legislative Exceptional Events Reform Act of 2012 (CLEER Act), would:

- Require EPA to review states’ exceptional events documentations within 90 days of submission, with an optional 90 days available for a one-time request for more information;
- Require EPA to do a rulemaking providing specific and publically-disclosed criteria, developed with the states, on which exceptional events demonstrations will be evaluated (that reflect the varying levels of expertise and resources available at the state and local levels, monitoring data in rural areas, and the need for an expedited approval process);
- Make EPA’s decisions on exceptional events demonstrations judicially reviewable like other Clean Air Act regulatory requirements; and
- Require EPA’s decisions on exceptional event demonstrations to be based on the preponderance of the evidence and to accord substantial deference to the analysis and findings provided by the states.

I commend EPA for recognizing that the current exceptional events approach is untenable. However, I join with Arizona state, local, and regional stakeholders in concluding that the draft guidance falls far short. It is time to provide meaningful reforms to the exceptional events process and I urge the agency to support the much needed legislative remedies found in H.R. 5381. I appreciate your attention to these comments, in accordance with existing agency rules, regulations, and ethical guidelines. For additional information on the CLEER Act, please contact Chandler C. Morse on my staff at 202-225-2635.

Sincerely,



JEFF FLAKE  
Member of Congress

# MARICOPA ASSOCIATION OF GOVERNMENTS

## INFORMATION SUMMARY... for your review

**DATE:**

January 15, 2013

**SUBJECT:**

Status Update on the June 30, 2012 Single Audit and Management Letter Comments, MAG's Comprehensive Annual Financial Report and OMB Circular A-133 Reports (i.e., "Single Audit") for the Fiscal Year Ended June 30, 2012

**SUMMARY:**

The accounting firm of CliftonLarsonAllen LLP has completed the audit of MAG's Comprehensive Annual Financial Report (CAFR) and Single Audit for the fiscal year ended June 30, 2012. An unqualified audit opinion was issued on November 12, 2012, on the financial statements of governmental activities, the aggregate discretely presented component units, each major fund and the aggregate remaining fund information. The independent auditors' report on compliance, with the requirements applicable to major federal award programs, expressed an unqualified opinion on the Single Audit. The Single Audit report indicated there were no reportable conditions in MAG's internal control over financial reporting considered to be material weaknesses, no instances of noncompliance considered to be material and no questioned costs. The Single Audit report had no new or repeat findings.

The CAFR financial statements and related footnotes were prepared in accordance with the Government Finance Officers Association's (GFOA) standards for the Certificate of Achievement for Excellence in Financial Reporting awards program. Management intends to submit the June 30, 2012 CAFR to the GFOA awards program for review. If awarded the certificate for the June 30, 2012 CAFR, this would be the agency's 15th consecutive award.

**PUBLIC INPUT:**

None has been received.

**PROS & CONS:**

PROS: MAG is required by its By-Laws and federal regulations to have an audit performed for all major federal programs on an annual basis. The audit must be performed in compliance with the provisions described in the U.S. Office of Management and Budget ("OMB") Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

CONS: None.

**TECHNICAL & POLICY IMPLICATIONS:**

TECHNICAL: LarsonAllen, LLP conducted the audit in accordance with Generally Accepted Auditing Standards (GAAS), and the standards applicable to financial audits contained in the Government Audit Standards, issued by the Comptroller General of the United States and the provisions of OMB Circular A-133. For the year ended June 30, 2012, the audit report indicates that MAG conducted its activities

in conformance with the laws and regulations governing federal financial assistance programs and according to Generally Accepted Accounting Principles (GAAP).

POLICY: Pursuant to Article 12, Section 5 of the MAG By-Laws, the annual audit must be presented to the Regional Council.

**ACTION NEEDED:**

Recommend acceptance of the audit opinion issued on the MAG Comprehensive Annual Financial Report and Single Audit Report for the year ended June 30, 2012.

**PRIOR COMMITTEE ACTIONS:**

This item is on the January 16, 2013 MAG Management Committee for recommendation to approve

**CONTACT PERSON:**

Rebecca Kimbrough, MAG, (602) 254-6300



**CliftonLarsonAllen**

CliftonLarsonAllen LLP  
www.cliftonlarsonallen.com

Management and the Regional Council  
Maricopa Association of Governments  
Phoenix, Arizona

We have audited the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of Maricopa Association of Governments (MAG) for the year ended June 30, 2012, and have issued our report thereon dated November 12, 2012. Professional standards require that we provide you with the following information related to our audit.

**Our responsibility under U.S. Generally Accepted Auditing Standards and OMB Circular A-133**

As stated in our engagement letter dated May 15, 2012, our responsibility, as described by professional standards, is to express opinions about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

In planning and performing our audit, we considered MAG's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinions on the financial statements and not to provide assurance on the internal control over financial reporting. We also considered internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133.

As part of obtaining reasonable assurance about whether MAG's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grants, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit. Also in accordance with OMB Circular A-133, we examined, on a test basis, evidence about MAG's compliance with the types of compliance requirements described in the "U.S. Office of Management and Budget (OMB) Circular A-133 Compliance Supplement" applicable to each of its major federal programs for the purpose of expressing an opinion on MAG's compliance with those requirements. While our audit provides a reasonable basis for our opinion, it does not provide a legal determination on MAG's compliance with those requirements.

1. Our responsibility is to plan and perform the audit to obtain reasonable, but not absolute, assurance that the financial statements are free of material misstatement.
2. We are responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures specifically to identify such matters.

**Planned scope and timing of the audit**

We performed the audit according to the planned scope and timing previously communicated to you in our meeting about planning matters on October 10, 2012.



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## **Significant audit findings**

### ***Qualitative aspects of accounting practices***

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by MAG are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year.

We noted no transactions entered into by MAG during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimates affecting the financial statements were:

Management's estimate of the useful lives of capital assets is based on an analysis of historical data. We evaluated the key factors and assumptions used to develop the useful lives of capital assets in determining that it is reasonable in relation to the financial statements taken as a whole.

Management's estimate of the indirect costs is based on an estimate of the overhead and other indirect costs related to the grant program. We evaluated the key factors and assumption used to develop the indirect cost allocation in determining they are reasonable in relation to the financial statements taken as a whole, as well as determine they did not exceed the indirect cost allowable by the federal grantor.

Management's estimate of the fair value of investments is based on market values quoted by the financial institution. We evaluated the key factors and assumptions used to report the estimated fair value in determining that they are reasonable in relation to the financial statements taken as a whole.

The financial statement disclosures are neutral, consistent, and clear.

### ***Difficulties encountered in performing the audit***

We encountered no significant difficulties in dealing with management in performing and completing our audit.

### ***Corrected and uncorrected misstatements***

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole. Management did not identify and we did not notify them of any uncorrected financial statement misstatements.

***Disagreements with management***

For purposes of this letter, professional standards define a disagreement with management as a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditors' report. We are pleased to report that no such disagreements arose during the course of our audit.

***Management representations***

We have requested certain representations from management that are included in the management representation letter dated November 12, 2012.

***Management consultations with other independent accountants***

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to MAG's financial statements or a determination of the type of auditors' opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

***Other audit findings or issues***

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the MAG's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

**Other information in documents containing audited financial statements**

Our responsibility for the supplementary information accompanying the financial statements, as described by professional standards, is to evaluate the presentation of the supplementary information in relation to the financial statements as a whole and to report on whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole. With respect to the supplementary information accompanying the financial statements, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with U.S. generally accepted accounting principles, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves. We have issued our report thereon dated November 12, 2012.

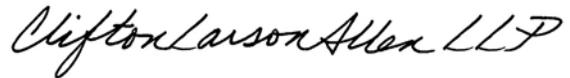
Other information is being included in documents containing the audited financial statements and the auditors' report thereon. Our responsibility for such other information does not extend beyond the financial information identified in our auditors' report. We have no responsibility for determining whether such other information is properly stated and do not have an obligation to perform any procedures to corroborate other information contained in such documents. As required by professional standards, we read the other information in order to identify material inconsistencies between the audited financial statements and the other information. We did not identify any material inconsistencies between the other information and the audited financial statements.

With respect to the required supplementary information (RSI) accompanying the financial statements, we made certain inquiries of management about the methods of preparing the RSI, including whether the RSI has been measured and presented in accordance with prescribed guidelines, whether the methods of measurement and preparation have been changed from the prior period, and whether there were any significant assumptions or interpretations underlying the measurement or presentation of the RSI. We compared the RSI for consistency with management's responses to the foregoing inquiries, the basic financial statements, and other knowledge obtained during the audit of the basic financial statements. Because these limited procedures do not provide sufficient evidence, we did not express an opinion or provide any assurance on the RSI.

Our auditors' opinion, the audited financial statements, and the notes to financial statements should only be used in their entirety. Inclusion of the audited financial statements in a document you prepare, such as an annual report, should be done only with our prior approval and review of the document.

\* \* \* \* \*

This information is intended solely for the use of the Regional Council and management of Maricopa Association of Governments and is not intended to be and should not be used by anyone other than these specified parties.



**CliftonLarsonAllen LLP**

Phoenix, Arizona  
November 12, 2012

**Regional Domestic Violence Council**

<u>Vice Chair</u>	<u>Agency</u>
Steven W. Campbell, Chief of Police	City of El Mirage
John L. Belatti, City Prosecutor	City of Chandler

*Current Chair of the Regional Domestic Violence Council is - Barbara Marshall, Maricopa County*



# City of El Mirage Police Department

14405 N. Palm St., Mailing Address: 12145 NW Grand Ave., El Mirage, AZ 85335  
Office (623) 433-9500 Fax (623) 815-5322



"Serving the Community"

December 18, 2012

The Honorable Marie Lopez Rogers  
Maricopa Association of Governments Chair  
302 N. 1<sup>st</sup> Avenue, Suite 300  
Phoenix, AZ 85003

Dear Madam Chair:

This letter is being submitted in response to the November 20, 2012, memorandum from Ms. Renae Tenney, Human Services Planner for Maricopa Association of Governments, calling for letters of interest to fill the Vice Chair position on the Domestic Violence Council.

I am currently the Chief of Police for the City of El Mirage and have served in this capacity for nearly two years. Prior to this appointment, I held leadership positions with the Phoenix Police Department and the Arizona Department of Public Safety, for a total 32 years of valley law enforcement experience.

Over the past two years, the El Mirage Police Department has taken an aggressive approach to modernizing its investigative processes to reduce domestic violence and other family related crimes. The Department is currently involved in a pilot project to improve the service of Orders of Protection in response to the AVON Project Task Force.

I would look forward to answering any questions you may have as part of the selection process to fill the vacancy on this vital Council. I can be reached at my office at (623) 433-9510 or on my cell phone at (623) 341-8338. My email address is [scampbell@cityofelmirage.org](mailto:scampbell@cityofelmirage.org).

Thank you for your time and consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Steven W. Campbell".

STEVEN W. CAMPBELL  
Police Chief

[www.cityofelmirage.org](http://www.cityofelmirage.org)

**16820 E. La Montana Drive  
Unit 117  
Fountain Hills, Arizona 85268**

December 12, 2012

MAG Regional Council Executive Committee  
Attn: Mayor Marie Lopez Rogers, MAG Chair  
302 N. 1<sup>st</sup> Avenue, Suite 300  
Phoenix, Arizona 85003

Re: Letter of Interest for Vice Chair, Domestic Violence Council

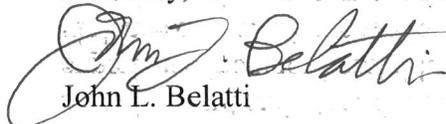
Dear Mayor Rogers and MAG Regional Council Executive Committee:

With this letter I am expressing my interest in being appointed vice chair of the MAG Domestic Violence Council, to succeed the position being vacated by Apache Junction Chief Jerald Monahan. I am currently the Chandler City Prosecutor and have been working in the area of domestic violence for well over twenty (20) years, beginning in 1989 as a felony prosecutor for the King County Prosecutor's Office in Seattle. As a prosecutor, I have handled hundreds of felony and misdemeanor criminal cases involving sexual assault and other domestic violence crimes against women and men. My experience includes homicide trials and appellate work directly related to domestic violence crime. I have worked closely with police, probation departments, treatment providers, advocates, survivors and courts on issues of domestic violence and have dedicated much of my career to the fight to end domestic violence. During the past ten years I have been a misdemeanor domestic violence prosecutor for both the cities of Scottsdale and Chandler.

By way of further background, I am the recent past Chair of the Public Lawyers Section of the State Bar of Arizona. I am on the State Bar Prosecution Practice and Procedures Committee. I am a member of the East Valley Domestic Violence Fatality Review Board. I am a member of the executive council of the Men's Anti-Violence Network (M.A.N.), a group formed by the Arizona Foundation for Women to end domestic violence. And, of course, I am a member of the MAG Domestic Violence Council.

With my background and experience, I feel confident that I can assist in implementing the recommendations of MAG's regional domestic violence plan and in continuing the great progress the Domestic Violence Council has already achieved. It would be an honor to serve as vice chair for this Council.

Sincerely,

  
John L. Belatti

PREFILED DEC 11 2012

REFERENCE TITLE: political subdivision entities; public access

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

## HB 2005

Introduced by  
Representative Ugenti

AN ACT

AMENDING SECTIONS 38-431, 38-431.02, 39-101, 39-103, 39-121.01, 39-123, 39-124 AND 41-1376.01, ARIZONA REVISED STATUTES; RELATING TO POLITICAL SUBDIVISION ENTITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-431, Arizona Revised Statutes, is amended to  
3 read:

4 38-431. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Advisory committee" or "subcommittee" means any entity, however  
7 designated, that is officially established, on motion and order of a public  
8 body or by the presiding officer of the public body, and whose members have  
9 been appointed for the specific purpose of making a recommendation concerning  
10 a decision to be made or considered or a course of conduct to be taken or  
11 considered by the public body.

12 2. "Executive session" means a gathering of a quorum of members of a  
13 public body from which the public is excluded for one or more of the reasons  
14 prescribed in section 38-431.03. In addition to the members of the public  
15 body, officers, appointees and employees as provided in section 38-431.03 and  
16 the auditor general as provided in section 41-1279.04, only individuals whose  
17 presence is reasonably necessary in order for the public body to carry out  
18 its executive session responsibilities may attend the executive session.

19 3. "Legal action" means a collective decision, commitment or promise  
20 made by a public body pursuant to the constitution, the public body's  
21 charter, bylaws or specified scope of appointment and the laws of this state.

22 4. "Meeting" means the gathering, in person or through technological  
23 devices, of a quorum of members of a public body at which they discuss,  
24 propose or take legal action, including any deliberations by a quorum with  
25 respect to such action.

26 5. "Political subdivision" means all political subdivisions of this  
27 state, including without limitation all counties, cities and towns, school  
28 districts and special districts.

29 6. "Public body" means the legislature, all boards and commissions of  
30 this state or political subdivisions, ALL POLITICAL SUBDIVISION ENTITIES AS  
31 DEFINED IN SECTION 38-711, all multimember governing bodies of departments,  
32 agencies, institutions and instrumentalities of this state or political  
33 subdivisions, including without limitation all corporations and other  
34 instrumentalities whose boards of directors are appointed or elected by this  
35 state or A political subdivision. Public body includes all quasi-judicial  
36 bodies and all standing, special or advisory committees or subcommittees of,  
37 or appointed by, the public body. Public body includes all commissions and  
38 other public entities established by the Arizona Constitution or by way of  
39 ballot initiative, including the independent redistricting commission, and  
40 this article applies except and only to the extent that specific  
41 constitutional provisions supersede this article.

42 7. "Quasi-judicial body" means a public body, other than a court of  
43 law, possessing the power to hold hearings on disputed matters between a  
44 private person and a public agency and to make decisions in the general  
45 manner of a court regarding such disputed claims.

1           Sec. 2. Section 38-431.02, Arizona Revised Statutes, is amended to  
2 read:

3           38-431.02. Notice of meetings

4           A. Public notice of all meetings of public bodies shall be given as  
5 follows:

6           1. The public bodies of this state, including governing bodies of  
7 charter schools, shall:

8           (a) Conspicuously post a statement on their website stating where all  
9 public notices of their meetings will be posted, including the physical and  
10 electronic locations, and shall give additional public notice as is  
11 reasonable and practicable as to all meetings.

12           (b) Post all public meeting notices on their website and give  
13 additional public notice as is reasonable and practicable as to all meetings.  
14 A technological problem or failure that either prevents the posting of public  
15 notices on a website or that temporarily or permanently prevents the use of  
16 all or part of the website does not preclude the holding of the meeting for  
17 which the notice was posted if the public body complies with all other public  
18 notice requirements required by this section.

19           2. The public bodies of the counties and school districts shall:

20           (a) Conspicuously post a statement on their website stating where all  
21 public notices of their meetings will be posted, including the physical and  
22 electronic locations, and shall give additional public notice as is  
23 reasonable and practicable as to all meetings.

24           (b) Post all public meeting notices on their website and give  
25 additional public notice as is reasonable and practicable as to all meetings.  
26 A technological problem or failure that either prevents the posting of public  
27 notices on a website or that temporarily or permanently prevents the use of  
28 all or part of the website does not preclude the holding of the meeting for  
29 which the notice was posted if the public body complies with all other public  
30 notice requirements required by this section.

31           3. Special districts that are formed pursuant to title 48:

32           (a) May conspicuously post a statement on their website stating where  
33 all public notices of their meetings will be posted, including the physical  
34 and electronic locations, and shall give additional public notice as is  
35 reasonable and practicable as to all meetings.

36           (b) May post all public meeting notices on their website and shall  
37 give additional public notice as is reasonable and practicable as to all  
38 meetings. A technological problem or failure that either prevents the  
39 posting of public notices on a website or that temporarily or permanently  
40 prevents the use of all or part of the website does not preclude the holding  
41 of the meeting for which the notice was posted if the public body complies  
42 with all other public notice requirements required by this section.

43           (c) If a statement or notice is not posted pursuant to subdivision (a)  
44 or (b) of this paragraph, shall file a statement with the clerk of the board  
45 of supervisors stating where all public notices of their meetings will be

1 posted and shall give additional public notice as is reasonable and  
2 practicable as to all meetings.

3 4. The public bodies of the cities and towns shall:

4 (a) Conspicuously post a statement on their website or on a website of  
5 an association of cities and towns stating where all public notices of their  
6 meetings will be posted, including the physical and electronic locations, and  
7 shall give additional public notice as is reasonable and practicable as to  
8 all meetings.

9 (b) Post all public meeting notices on their website or on a website  
10 of an association of cities and towns and give additional public notice as is  
11 reasonable and practicable as to all meetings. A technological problem or  
12 failure that either prevents the posting of public notices on a website or  
13 that temporarily or permanently prevents the use of all or part of the  
14 website does not preclude the holding of the meeting for which the notice was  
15 posted if the public body complies with all other public notice requirements  
16 required by this section.

17 5. POLITICAL SUBDIVISION ENTITIES AS DEFINED IN SECTION 38-711 SHALL:

18 (a) CONSPICUOUSLY POST A STATEMENT ON THEIR WEBSITE STATING WHERE ALL  
19 PUBLIC NOTICES OF THEIR MEETINGS WILL BE POSTED, INCLUDING THE PHYSICAL AND  
20 ELECTRONIC LOCATIONS, AND SHALL GIVE ADDITIONAL PUBLIC NOTICE AS IS  
21 REASONABLE AND PRACTICABLE AS TO ALL MEETINGS.

22 (b) POST ALL PUBLIC MEETING NOTICES ON THEIR WEBSITE AND GIVE  
23 ADDITIONAL PUBLIC NOTICE AS IS REASONABLE AND PRACTICABLE AS TO ALL MEETINGS.  
24 A TECHNOLOGICAL PROBLEM OR FAILURE THAT EITHER PREVENTS THE POSTING OF PUBLIC  
25 NOTICES ON A WEBSITE OR THAT TEMPORARILY OR PERMANENTLY PREVENTS THE USE OF  
26 ALL OR PART OF THE WEBSITE DOES NOT PRECLUDE THE HOLDING OF THE MEETING FOR  
27 WHICH THE NOTICE WAS POSTED IF THE PUBLIC BODY COMPLIES WITH ALL OTHER PUBLIC  
28 NOTICE REQUIREMENTS REQUIRED BY THIS SECTION.

29 B. If an executive session is scheduled, a notice of the executive  
30 session shall state the provision of law authorizing the executive session,  
31 and the notice shall be provided to the:

- 32 1. Members of the public body.
- 33 2. General public.

34 C. Except as provided in subsections D and E of this section, meetings  
35 shall not be held without at least twenty-four hours' notice to the members  
36 of the public body and to the general public. The twenty-four hour period  
37 includes Saturdays if the public has access to the physical posted location  
38 in addition to any website posting, but excludes Sundays and other holidays  
39 prescribed in section 1-301.

40 D. In case of an actual emergency, a meeting, including an executive  
41 session, may be held on such notice as is appropriate to the circumstances.  
42 If this subsection is utilized for conduct of an emergency session or the  
43 consideration of an emergency measure at a previously scheduled meeting, the  
44 public body must post a public notice within twenty-four hours declaring that  
45 an emergency session has been held and setting forth the information required  
46 in subsections H and I of this section.

1 E. A meeting may be recessed and resumed with less than twenty-four  
2 hours' notice if public notice of the initial session of the meeting is given  
3 as required in subsection A of this section, and if, before recessing, notice  
4 is publicly given as to the time and place of the resumption of the meeting  
5 or the method by which notice shall be publicly given.

6 F. A public body that intends to meet for a specified calendar period,  
7 on a regular day, date or event during the calendar period, and at a regular  
8 place and time, may post public notice of the meetings at the beginning of  
9 the period. The notice shall specify the period for which notice is  
10 applicable.

11 G. Notice required under this section shall include an agenda of the  
12 matters to be discussed or decided at the meeting or information on how the  
13 public may obtain a copy of such an agenda. The agenda must be available to  
14 the public at least twenty-four hours before the meeting, except in the case  
15 of an actual emergency under subsection D of this section. The twenty-four  
16 hour period includes Saturdays if the public has access to the physical  
17 posted location in addition to any website posting, but excludes Sundays and  
18 other holidays prescribed in section 1-301.

19 H. Agendas required under this section shall list the specific matters  
20 to be discussed, considered or decided at the meeting. The public body may  
21 discuss, consider or make decisions only on matters listed on the agenda and  
22 other matters related thereto.

23 I. Notwithstanding the other provisions of this section, notice of  
24 executive sessions shall be required to include only a general description of  
25 the matters to be considered. The agenda shall provide more than just a  
26 recital of the statutory provisions authorizing the executive session, but  
27 need not contain information that would defeat the purpose of the executive  
28 session, compromise the legitimate privacy interests of a public officer,  
29 appointee or employee or compromise the attorney-client privilege.

30 J. Notwithstanding subsections H and I of this section, in the case of  
31 an actual emergency a matter may be discussed and considered and, at public  
32 meetings, decided, if the matter was not listed on the agenda and a statement  
33 setting forth the reasons necessitating the discussion, consideration or  
34 decision is placed in the minutes of the meeting and is publicly announced at  
35 the public meeting. In the case of an executive session, the reason for  
36 consideration of the emergency measure shall be announced publicly  
37 immediately before the executive session.

38 K. Notwithstanding subsection H of this section, the chief  
39 administrator, presiding officer or a member of a public body may present a  
40 brief summary of current events without listing in the agenda the specific  
41 matters to be summarized, if:

- 42 1. The summary is listed on the agenda.
- 43 2. The public body does not propose, discuss, deliberate or take legal  
44 action at that meeting on any matter in the summary unless the specific  
45 matter is properly noticed for legal action.

1           Sec. 3. Section 39-101, Arizona Revised Statutes, is amended to read:  
2           39-101. Permanent public records; quality; storage; violation;  
3                                   classification

4           A. Permanent public records of the state, a county, city or town, ~~or~~  
5 ~~other~~ A political subdivision of the state, ~~OR A POLITICAL SUBDIVISION~~  
6 ENTITY AS DEFINED IN SECTION 38-711 shall be transcribed or kept on paper or  
7 other material ~~which~~ THAT is of durable or permanent quality and ~~which~~ THAT  
8 conforms to standards established by the director of the Arizona state  
9 library, archives and public records.

10           B. Permanent public records transcribed or kept as provided in  
11 subsection A OF THIS SECTION shall be stored and maintained according to  
12 standards for the storage of permanent public records established by the  
13 director of the Arizona state library, archives and public records.

14           C. A ~~public officer~~ PERSON WHO IS charged with transcribing or keeping  
15 ~~such~~ public records PURSUANT TO THIS SECTION AND who violates this section is  
16 guilty of a class 2 misdemeanor.

17           Sec. 4. Section 39-103, Arizona Revised Statutes, is amended to read:  
18           39-103. Size of public records; exemptions

19           A. All public records of this state, ~~or~~ a political subdivision of  
20 this state OR A POLITICAL SUBDIVISION ENTITY AS DEFINED IN SECTION 38-711  
21 THAT ARE created on paper, regardless of weight or composition, shall conform  
22 to standard letter size of eight and one-half inches by eleven inches, within  
23 standard paper manufacturing tolerances.

24           B. This section does not apply to public records THAT ARE smaller than  
25 eight and one-half inches by eleven inches, public records THAT ARE otherwise  
26 required by law to be of a different size, engineering drawings,  
27 architectural drawings, maps, computer generated printout, output from test  
28 measurement and diagnostic equipment, machine generated paper tapes and  
29 public records THAT ARE otherwise exempt by law. Additionally, records THAT  
30 ARE kept exclusively on photography, film, microfiche, digital imaging or  
31 other type of reproduction or electronic media as provided in section  
32 41-151.16, subsection A are exempt from the size restrictions of this  
33 section. On written application the director of the Arizona state library,  
34 archives and public records may approve additional exemptions from this  
35 section if based on such application the director finds that the cost of  
36 producing a particular type of public record in accordance with subsection A  
37 of this section is so great as to not be in the best interests of this state.

38           Sec. 5. Section 39-121.01, Arizona Revised Statutes, is amended to  
39 read:

40           39-121.01. Definitions; maintenance of records; copies,  
41                                   printouts or photographs of public records;  
42                                   examination by mail; index

43           A. In this article, unless the context otherwise requires:

44           1. "Officer" means any person WHO IS elected or appointed to hold any  
45 elective or appointive office of any public body and any chief administrative  
46 officer, head, director, superintendent or chairman of any public body.

1           2. "POLITICAL SUBDIVISION ENTITY" HAS THE SAME MEANING PRESCRIBED IN  
2 SECTION 38-711.

3           ~~2-~~ 3. "Public body" means this state, any county, city, town, school  
4 district, political subdivision or tax-supported district in this state, ANY  
5 POLITICAL SUBDIVISION ENTITY, any branch, department, board, bureau,  
6 commission, council or committee of the foregoing, and any public  
7 organization or agency, supported in whole or in part by monies from this  
8 state or any political subdivision of this state, or expending monies  
9 provided by this state or any political subdivision of this state.

10           B. All officers and public bodies shall maintain all records,  
11 including records as defined in section 41-151.18, THAT ARE reasonably  
12 necessary or appropriate to maintain an accurate knowledge of their official  
13 activities and of any of their activities ~~which~~ THAT are supported by monies  
14 from this state or any political subdivision of this state.

15           C. Each public body shall be responsible for the preservation,  
16 maintenance and care of that body's public records, and each officer shall be  
17 responsible for the preservation, maintenance and care of that officer's  
18 public records. ~~It shall be the duty of~~ Each ~~such~~ PUBLIC body ~~to~~ MUST  
19 carefully secure, protect and preserve public records from deterioration,  
20 mutilation, loss or destruction, unless disposed of pursuant to sections  
21 41-151.15 and 41-151.19.

22           D. Subject to section 39-121.03:

23           1. Any person may request to examine or be furnished copies, printouts  
24 or photographs of any public record during regular office hours or may  
25 request that the custodian mail a copy of any public record not otherwise  
26 available on the public body's website to the requesting person. The  
27 custodian may require any person requesting that the custodian mail a copy of  
28 any public record to pay in advance for any copying and postage charges. The  
29 custodian of such records shall promptly furnish such copies, printouts or  
30 photographs and may charge a fee if the facilities are available, except that  
31 public records for purposes listed in section 39-122 or 39-127 shall be  
32 furnished without charge.

33           2. If requested, the custodian of the records of an agency shall also  
34 furnish an index of records or categories of records that have been withheld  
35 and the reasons the records or categories of records have been withheld from  
36 the requesting person. The custodian shall not include in the index  
37 information that is expressly made privileged or confidential in statute or a  
38 court order. This paragraph shall not be construed by an administrative  
39 tribunal or a court of competent jurisdiction to prevent or require an order  
40 compelling a public body other than an agency to furnish an index. For the  
41 purposes of this paragraph, "agency" has the same meaning prescribed in  
42 section 41-1001, but does not include the department of public safety, the  
43 department of transportation motor vehicle division, the department of  
44 juvenile corrections and the state department of corrections.

45           3. If the custodian of a public record does not have facilities for  
46 making copies, printouts or photographs of a public record ~~which~~ THAT a

1 person has a right to inspect, such person shall be granted access to the  
2 public record for the purpose of making copies, printouts or photographs.  
3 The copies, printouts or photographs shall be made while the public record is  
4 in the possession, custody and control of the custodian of the public record  
5 and shall be subject to the supervision of such custodian.

6 E. Access to a public record is deemed denied if a custodian fails to  
7 promptly respond to a request for production of a public record or fails to  
8 provide to the requesting person an index of any record or categories of  
9 records that are withheld from production pursuant to subsection D, paragraph  
10 2 of this section.

11 Sec. 6. Section 39-123, Arizona Revised Statutes, is amended to read:  
12 39-123. Information identifying eligible persons;  
13 confidentiality; definitions

14 A. Nothing in this chapter requires disclosure from a personnel file  
15 by a law enforcement agency, ~~or~~ employing state or local governmental entity  
16 OR POLITICAL SUBDIVISION ENTITY of the home address or home telephone number  
17 of eligible persons.

18 B. The agency, ~~or~~ governmental entity OR POLITICAL SUBDIVISION ENTITY  
19 may release the information in subsection A of this section only if either:

20 1. The person consents in writing to the release.

21 2. The custodian of records of the agency, ~~or~~ governmental entity OR  
22 POLITICAL SUBDIVISION ENTITY determines that release of the information does  
23 not create a reasonable risk of physical injury to the person or the person's  
24 immediate family or damage to the property of the person or the person's  
25 immediate family.

26 C. A law enforcement agency may release a photograph of a peace  
27 officer if either:

28 1. The peace officer has been arrested or has been formally charged by  
29 complaint, information or indictment for a misdemeanor or a felony offense.

30 2. The photograph is requested by a representative of a newspaper for  
31 a specific newsworthy event unless:

32 (a) The peace officer is serving in an undercover capacity or is  
33 scheduled to be serving in an undercover capacity within sixty days.

34 (b) The release of the photograph is not in the best interest of this  
35 state after taking into consideration the privacy, confidentiality and safety  
36 of the peace officer.

37 (c) An order pursuant to section 28-454 is in effect.

38 D. This section does not prohibit the use of a peace officer's  
39 photograph that is either:

40 1. Used by a law enforcement agency to assist a person who has a  
41 complaint against an officer to identify the officer.

42 2. Obtained from a source other than the law enforcement agency.

43 E. This section does not apply to a certified peace officer or code  
44 enforcement officer who is no longer employed as a peace officer or code  
45 enforcement officer by a state or local government entity.

1 F. For the purposes of this section:

2 1. "Code enforcement officer" means a person who is employed by a  
3 state or local government and whose duties include performing field  
4 inspections of buildings, structures or property to ensure compliance with  
5 and enforce national, state and local laws, ordinances and codes.

6 2. "Commissioner" means a commissioner of the superior court.

7 3. "Corrections support staff member" means an adult or juvenile  
8 corrections employee who has direct contact with inmates.

9 4. "Eligible person" means a peace officer, border patrol agent,  
10 justice, judge, commissioner, public defender, prosecutor, code enforcement  
11 officer, adult or juvenile corrections officer, corrections support staff  
12 member, probation officer, member of the board of executive clemency, law  
13 enforcement support staff member, national guard member who is acting in  
14 support of a law enforcement agency, person who is protected under an order  
15 of protection or injunction against harassment, firefighter who is assigned  
16 to the Arizona counterterrorism center in the department of public safety or  
17 victim of domestic violence or stalking who is protected under an order of  
18 protection or injunction against harassment.

19 5. "Judge" means a judge of the United States district court, the  
20 United States court of appeals, the United States magistrate court, the  
21 United States bankruptcy court, the Arizona court of appeals, the superior  
22 court or a municipal court.

23 6. "Justice" means a justice of the United States or Arizona supreme  
24 court or a justice of the peace.

25 7. "Law enforcement support staff member" means a person who serves in  
26 the role of an investigator or prosecutorial assistant in an agency that  
27 investigates or prosecutes crimes, who is integral to the investigation or  
28 prosecution of crimes and whose name or identity will be revealed in the  
29 course of public proceedings.

30 8. "Peace officer" has the same meaning prescribed in section 13-105.

31 9. "Prosecutor" means a county attorney, a municipal prosecutor, the  
32 attorney general or a United States attorney and includes an assistant or  
33 deputy United States attorney, county attorney, municipal prosecutor or  
34 attorney general.

35 10. "Public defender" means a federal public defender, county public  
36 defender, county legal defender or county contract indigent defense counsel  
37 and includes an assistant or deputy federal public defender, county public  
38 defender or county legal defender.

39 Sec. 7. Section 39-124, Arizona Revised Statutes, is amended to read:

40 39-124. Releasing information identifying an eligible person;  
41 violations; classification; definitions

42 A. Any person who is employed by a state or local government entity OR  
43 A POLITICAL SUBDIVISION ENTITY and who, in violation of section 39-123,  
44 knowingly releases the home address or home telephone number of an eligible  
45 person with the intent to hinder an investigation, cause physical injury to  
46 an eligible person or the eligible person's immediate family or cause damage

1 to the property of an eligible person or the eligible person's immediate  
2 family is guilty of a class 6 felony.

3 B. Any person who is employed by a state or local government entity OR  
4 A POLITICAL SUBDIVISION ENTITY and who, in violation of section 39-123,  
5 knowingly releases a photograph of a peace officer with the intent to hinder  
6 an investigation, cause physical injury to a peace officer or the peace  
7 officer's immediate family or cause damage to the property of a peace officer  
8 or the peace officer's immediate family is guilty of a class 6 felony.

9 C. For the purposes of this section:

10 1. "Code enforcement officer" means a person who is employed by a  
11 state or local government and whose duties include performing field  
12 inspections of buildings, structures or property to ensure compliance with  
13 and enforce national, state and local laws, ordinances and codes.

14 2. "Commissioner" means a commissioner of the superior court.

15 3. "Corrections support staff member" means an adult or juvenile  
16 corrections employee who has direct contact with inmates.

17 4. "Eligible person" means a peace officer, border patrol agent,  
18 justice, judge, commissioner, public defender, prosecutor, code enforcement  
19 officer, adult or juvenile corrections officer, corrections support staff  
20 member, probation officer, member of the board of executive clemency, law  
21 enforcement support staff member, national guard member who is acting in  
22 support of a law enforcement agency, person who is protected under an order  
23 of protection or injunction against harassment, firefighter who is assigned  
24 to the Arizona counterterrorism center in the department of public safety or  
25 victim of domestic violence or stalking who is protected under an order of  
26 protection or injunction against harassment.

27 5. "Judge" means a judge of the United States district court, the  
28 United States court of appeals, the United States magistrate court, the  
29 United States bankruptcy court, the Arizona court of appeals, the superior  
30 court or a municipal court.

31 6. "Justice" means a justice of the United States or Arizona supreme  
32 court or a justice of the peace.

33 7. "Law enforcement support staff member" means a person who serves in  
34 the role of an investigator or prosecutorial assistant in an agency that  
35 investigates or prosecutes crimes, who is integral to the investigation or  
36 prosecution of crimes and whose name or identity will be revealed in the  
37 course of public proceedings.

38 8. "Peace officer" has the same meaning prescribed in section 13-105.

39 9. "Prosecutor" means a county attorney, a municipal prosecutor, the  
40 attorney general or a United States attorney and includes an assistant or  
41 deputy United States attorney, county attorney, municipal prosecutor or  
42 attorney general.

43 10. "Public defender" means a federal public defender, county public  
44 defender, county legal defender or county contract indigent defense counsel  
45 and includes an assistant or deputy federal public defender, county public  
46 defender or county legal defender.

1           Sec. 8. Section 41-1376.01, Arizona Revised Statutes, is amended to  
2 read:

3           41-1376.01. Additional powers and duties; definitions

4           A. In addition to the powers and duties prescribed in section 41-1376,  
5 the ombudsman-citizens aide shall appoint two assistants, one of whom shall  
6 be an attorney, to help the ombudsman-citizens aide investigate complaints  
7 relating to public access laws involving an agency. The assistants shall  
8 train public officials and educate the public on the rights of the public and  
9 the responsibilities of public agencies under the public access laws. The  
10 assistants shall prepare interpretive and educational materials and programs  
11 in cooperation with the ombudsman-citizens aide and shall distribute to  
12 elected or appointed public officials the public access laws and educational  
13 materials concerning the public access laws.

14           B. The annual report of the ombudsman-citizens aide shall include the  
15 following information about public access:

16           1. The number of inquiries that are received from the public, the  
17 media and government agencies.

18           2. The number of inquiries that are received about state agencies,  
19 county agencies, city or town agencies, school districts and other local  
20 jurisdictions.

21           3. The number of requests that are received concerning public records  
22 and public meetings.

23           4. The number of investigations that are conducted and the results of  
24 the investigations.

25           C. For investigations made pursuant to this section, the  
26 ombudsman-citizens aide may:

27           1. Make inquiries and obtain information considered necessary subject  
28 to the restrictions in section 41-1377.

29           2. Enter without notice to inspect agency premises with agency staff  
30 on the premises.

31           3. Hold hearings.

32           4. Notwithstanding any other law, have access to all agency records,  
33 including confidential records, except:

34           (a) Sealed court records without a subpoena.

35           (b) Active criminal investigation records.

36           (c) Records that could lead to the identity of confidential police  
37 informants.

38           (d) Attorney work product and communications that are protected under  
39 attorney-client privilege.

40           (e) Confidential information as defined in section 42-2001, except as  
41 provided in section 42-2003, subsection M.

42           (f) Information protected by section 6103(d), 6103(p) or 7213 of the  
43 internal revenue code.

44           (g) Confidential information relating to section 36-2903, subsection  
45 I, section 36-2917, section 36-2932, subsection F or section 36-2972.

1 (h) Confidential information relating to sections 36-507, 36-509 and  
2 36-2220.

3 (i) Documents that are protected by section 214 of the critical  
4 infrastructure information act of 2002 (6 United States Code section ~~133a~~  
5 133(a)) or by 49 Code of Federal Regulations part 1520.

6 (j) Information that is protected by section 214 of the critical  
7 infrastructure information act of 2002 (6 United States Code section ~~133a~~  
8 133(a)) or 49 Code of Federal Regulations part 1520 or critical  
9 infrastructure information as defined by section 41-1801 on government owned  
10 facilities that are classified as critical infrastructure by the federal  
11 government or as defined by section 41-1801.

12 5. Issue subpoenas if necessary to compel the attendance and testimony  
13 of witnesses and the production of books, records, documents and other  
14 evidence to which the ombudsman-citizens aide may have access pursuant to  
15 paragraph 4 of this subsection. The ombudsman-citizens aide may only issue a  
16 subpoena if the ombudsman-citizens aide has previously requested testimony or  
17 evidence and the person or agency to which the request was made has failed to  
18 comply with the request in a reasonable amount of time.

19 D. It is contrary to the public policy of this state for any agency or  
20 any individual acting for an agency to take any adverse action against an  
21 individual in retaliation because the individual cooperated with or provided  
22 information to the ombudsman-citizens aide or the ombudsman-citizens aide's  
23 staff.

24 E. For the purposes of this section:

25 1. "Agency" has the same meaning prescribed in section 41-1371 but  
26 includes a public body as defined in section 39-121.01, subsection A,  
27 paragraph ~~2~~ 3.

28 2. "Public access laws" means:

29 (a) Title 39, chapter 1.

30 (b) Title 38, chapter 3, article 3.1.

31 (c) Any other state statute or rule governing access to public  
32 meetings or public records.

PREFILED DEC 14 2012

REFERENCE TITLE: ASRS; political subdivision entities

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

## **HB 2006**

Introduced by  
Representative Ugenti

AN ACT

AMENDING SECTION 38-711, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-711, Arizona Revised Statutes, is amended to  
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 23,  
7 subdivision (b) of this section who satisfies the eligibility criteria  
8 prescribed in section 38-727 and who is currently making member contributions  
9 as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate  
11 amounts expected to be received under two different forms of payment, based  
12 on mortality and interest rate assumptions approved from time to time by the  
13 board.

14 3. "ASRS" means the Arizona state retirement system established by  
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,  
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January 1,  
20 1984 and who left the member's contributions on deposit or reinstated  
21 forfeited credited service pursuant to section 38-742 for a period of  
22 employment that commenced before January 1, 1984, the higher of either:

23 (i) The monthly average of compensation that is calculated pursuant to  
24 subdivision (b) of this paragraph.

25 (ii) The monthly average of compensation on which contributions were  
26 remitted during a period of sixty consecutive months during which the member  
27 receives the highest compensation within the last one hundred twenty months  
28 of credited service. Any month for which no contributions are reported to  
29 ASRS or that falls within a period of nonpaid or partially paid leave of  
30 absence or sabbatical leave shall be excluded from the computation. The  
31 sixty consecutive months may entirely precede, may be both before and after  
32 or may be completely after any excluded months. If the member was employed  
33 for less than sixty consecutive months, the average monthly compensation is  
34 based on the total consecutive months worked. Payments for accumulated  
35 vacation or annual leave, sick leave, compensatory time or other forms of  
36 termination pay which, before August 12, 2005, constitute compensation for  
37 members whose membership in ASRS commenced before January 1, 1984, do not  
38 cease to be included as compensation if paid in the form of nonelective  
39 employer contributions under a 26 United States Code section 403(b) plan if  
40 all payments of employer and employee contributions are made at the time of  
41 termination. Contributions shall be made to ASRS on these amounts pursuant  
42 to sections 38-735, 38-736 and 38-737.

43 (b) For a member whose membership in ASRS commenced on or after  
44 January 1, 1984 but before July 1, 2011, the monthly average of compensation  
45 on which contributions were remitted during a period of thirty-six

1 consecutive months during which a member receives the highest compensation  
2 within the last one hundred twenty months of credited service. Any month for  
3 which no contributions are reported to ASRS or that falls within a period of  
4 nonpaid or partially paid leave of absence or sabbatical leave shall be  
5 excluded from the computation. The thirty-six consecutive months may  
6 entirely precede, may be both before and after or may be completely after any  
7 excluded months. If the member was employed for less than thirty-six  
8 consecutive months, the average monthly compensation shall be based on the  
9 total consecutive months worked.

10 (c) For a member whose membership in ASRS commenced on or after July  
11 1, 2011, the monthly average of compensation on which contributions were  
12 remitted during a period of sixty consecutive months during which a member  
13 receives the highest compensation within the last one hundred twenty months  
14 of credited service. Any month for which no contributions are reported to  
15 ASRS or that falls within a period of nonpaid or partially paid leave of  
16 absence or sabbatical leave shall be excluded from the computation. The  
17 sixty consecutive months may entirely precede, may be both before and after  
18 or may be completely after any excluded months. If the member was employed  
19 for less than sixty consecutive months, the average monthly compensation  
20 shall be based on the total consecutive months worked.

21 6. "Board" means the ASRS board established in section 38-713.

22 7. "Compensation" means the gross amount paid to a member by an  
23 employer as salary or wages, including amounts that are subject to deferred  
24 compensation or tax shelter agreements, for services rendered to or for an  
25 employer, or that would have been paid to the member except for the member's  
26 election or a legal requirement that all or part of the gross amount be used  
27 for other purposes, but does not include amounts paid in excess of  
28 compensation limits established in section 38-746. Compensation includes  
29 amounts paid as salary or wages to a member by a second employer if the  
30 member meets the requirements prescribed in paragraph 23, subdivision (b) of  
31 this section with that second employer. Compensation, as provided in  
32 paragraph 5, subdivision (b) or (c) of this section, does not include:

33 (a) Lump sum payments, on termination of employment, for accumulated  
34 vacation or annual leave, sick leave, compensatory time or any other form of  
35 termination pay whether the payments are made in one payment or by  
36 installments over a period of time.

37 (b) Damages, costs, attorney fees, interest or other penalties paid  
38 pursuant to a court order or a compromise settlement or agreement to satisfy  
39 a grievance or claim even though the amount of the payment is based in whole  
40 or in part on previous salary or wage levels, except that, if the court order  
41 or compromise settlement or agreement directs salary or wages to be paid for  
42 a specific period of time, the payment is compensation for that specific  
43 period of time. If the amount directed to be paid is less than the actual  
44 salary or wages that would have been paid for the period if service had been

1 performed, the contributions for the period shall be based on the amount of  
2 compensation that would have been paid if the service had been performed.

3 (c) Payment, at the member's option, in lieu of fringe benefits that  
4 are normally paid for or provided by the employer.

5 (d) Merit awards pursuant to section 38-613 and performance bonuses  
6 paid to assistant attorneys general pursuant to section 41-192.

7 (e) Amounts that are paid as salary or wages to a member for which  
8 employer contributions have not been paid.

9 8. "Contingent annuitant" means the person named by a member to  
10 receive retirement income payable following a member's death after retirement  
11 as provided in section 38-760.

12 9. "Credited service" means, subject to section 38-739, the number of  
13 years standing to the member's credit on the books of ASRS during which the  
14 member made the required contributions.

15 10. "Current annual compensation" means the greater of:

16 (a) Annualized compensation of the typical pay period amount  
17 immediately before the date of a request to ASRS to purchase credited service  
18 pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount  
19 shall be determined by taking the five pay periods immediately before the  
20 date of a request, disregarding the highest and lowest compensation amount  
21 pay periods and averaging the three remaining pay periods.

22 (b) Annualized compensation of the partial year, disregarding the  
23 first compensation amount pay period, if the member has less than twelve  
24 months total compensation on the date of a request to purchase credited  
25 service pursuant to section 38-743, 38-744 or 38-745.

26 (c) The sum of the twelve months of compensation immediately before  
27 the date of a request to ASRS to purchase credited service pursuant to  
28 section 38-743, 38-744 or 38-745.

29 (d) The sum of the thirty-six months of compensation immediately  
30 before the date of a request to ASRS to purchase credited service pursuant to  
31 section 38-743, 38-744 or 38-745 divided by three.

32 (e) If the member has retired one or more times from ASRS, the average  
33 monthly compensation that was used for calculating the member's last pension  
34 benefit times twelve.

35 11. "Early retirement" means retirement before a member's normal  
36 retirement date after five years of total credited service and attainment of  
37 age fifty.

38 12. "Effective date" means July 1, 1970, except with respect to  
39 employers and members whose contributions to ASRS commence thereafter, the  
40 effective date of their membership in ASRS is as specified in the applicable  
41 joinder agreement.

42 13. "Employer" means:

43 (a) This state.

44 (b) Participating political subdivisions.

45 (c) Participating political subdivision entities.

- 1           14. "Employer contributions" means all amounts paid into ASRS by an  
2 employer on behalf of a member.
- 3           15. "Fiscal year" means the period from July 1 of any year to June 30  
4 of the following year.
- 5           16. "Inactive member" means a member who previously made contributions  
6 to ASRS and who satisfies each of the following:  
7           (a) Has not retired.  
8           (b) Is not eligible for active membership in ASRS.  
9           (c) Is not currently making contributions to ASRS.  
10          (d) Has not withdrawn contributions from ASRS.
- 11          17. "Interest" means the assumed actuarial investment earnings rate  
12 approved by the board.
- 13          18. "Internal revenue code" means the United States internal revenue  
14 code of 1986, as amended.
- 15          19. "Investment manager" means the persons, companies, banks, insurance  
16 company investment funds, mutual fund companies, management or any  
17 combinations of those entities that are appointed by ASRS and that have  
18 responsibility and authority for investment of the monies of ASRS.
- 19          20. "Late retirement" means retirement after normal retirement.
- 20          21. "Leave of absence" means any unpaid leave authorized by the  
21 employer, including leaves authorized for sickness or disability or to pursue  
22 education or training.
- 23          22. "Life annuity" means equal monthly installments payable during the  
24 member's lifetime after retirement.
- 25          23. "Member":  
26           (a) Means any employee of an employer on the effective date.  
27           (b) Means all employees of an employer who are eligible for membership  
28 pursuant to section 38-727 and who are engaged to work at least twenty weeks  
29 in each fiscal year and at least twenty hours each week.  
30           (c) Means any person receiving a benefit under ASRS.  
31           (d) Means any person who is a former active member of ASRS and who has  
32 not withdrawn contributions from ASRS pursuant to section 38-740.  
33           (e) Does not include any employee of an employer who is otherwise  
34 eligible pursuant to this article and who begins service in a limited  
35 appointment for not more than eighteen months on or after July 1, 1979. If  
36 the employment exceeds eighteen months, the employee shall be covered by ASRS  
37 as of the beginning of the nineteenth month of employment. In order to be  
38 excluded under this subdivision, classifications of employees designated by  
39 employers as limited appointments must be approved by the director.  
40           (f) Does not include any leased employee. For the purposes of section  
41 414(n) of the internal revenue code, "leased employee" means an individual  
42 who:  
43           (i) Is not otherwise an employee of an employer.

1 (ii) Pursuant to a leasing agreement between the employer and another  
2 person, performs services for the employer on a substantially full-time basis  
3 for at least one year.

4 (iii) Performs services under the primary direction or control of the  
5 employer.

6 (g) DOES NOT INCLUDE ANY EMPLOYEE OF A POLITICAL SUBDIVISION ENTITY  
7 WHO IS HIRED ON OR AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS  
8 SECTION.

9 24. "Member contributions" means all amounts paid to ASRS by a member.

10 25. "Normal costs" means the sum of the individual normal costs for all  
11 active members for each fiscal year. The normal cost for an individual  
12 active member is the cost that is assigned to the fiscal year using the  
13 projected unit credit method.

14 26. "Normal retirement age" means the age at which a member reaches the  
15 member's normal retirement date.

16 27. "Normal retirement date" means the earliest of the following:

17 (a) For a member whose membership commenced before July 1, 2011:

18 (i) A member's sixty-fifth birthday.

19 (ii) A member's sixty-second birthday and completion of at least ten  
20 years of credited service.

21 (iii) The first day that the sum of a member's age and years of total  
22 credited service equals eighty.

23 (b) For a member whose membership commenced on or after July 1, 2011:

24 (i) A member's sixty-fifth birthday.

25 (ii) A member's sixty-second birthday and completion of at least ten  
26 years of credited service.

27 (iii) A member's sixtieth birthday and completion of at least  
28 twenty-five years of credited service.

29 (iv) A member's fifty-fifth birthday and completion of at least thirty  
30 years of credited service.

31 28. "Political subdivision" means any political subdivision of this  
32 state and includes a political subdivision entity.

33 29. "Political subdivision entity" means an entity:

34 (a) That is located in this state.

35 (b) That is created in whole or in part by political subdivisions,  
36 including instrumentalities of political subdivisions.

37 (c) Where a majority of the membership of the entity is composed of  
38 political subdivisions.

39 (d) Whose primary purpose is the performance of a government related  
40 service.

41 30. "Retired member" means a member who is receiving retirement  
42 benefits pursuant to this article.

1           31. "Service year" means fiscal year, except that:

2           (a) If the normal work year required of a member is less than the full  
3 fiscal year but is for a period of at least nine months, the service year is  
4 the normal work year.

5           (b) For a salaried member employed on a contract basis under one  
6 contract, or two or more consecutive contracts, for a total period of at  
7 least nine months, the service year is the total period of the contract or  
8 consecutive contracts.

9           (c) In determining average monthly compensation pursuant to paragraph  
10 5 of this section, the service year is considered to be twelve months of  
11 compensation.

12          32. "State" means this state, including any department, office, board,  
13 commission, agency, institution or other instrumentality of this state.

14          33. "Vested" means that a member is eligible to receive a future  
15 retirement benefit.