

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Case No. 14-72327

SANDRA L. BAHR and DAVID MATUSOW,

Petitioners,

v.

GINA McCARTHY, Administrator, United States Environmental Protection Agency,
JARED BLUMENFELD, Regional Administrator, United States Environmental
Protection Agency, and the U. S. ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

On Petition for Review of Final Action of the
United States Environmental Protection Agency

RESPONDENTS' BRIEF

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STATEMENT OF JURISDICTION

On June 10, 2014, the United States Environmental Protection Agency (“EPA”) issued a final rule entitled “Approval and Promulgation of Implementation Plans – Maricopa County PM-10 Non-Attainment Area; Five Percent Plan for Attainment of the 24-Hour PM-10 Standard, 79 Fed. Reg. 33,107 (Jun. 10, 2014) (the “Final Rule”). EPA promulgated the Final Rule pursuant to its authority under the Clean Air Act (the “Act”), 42 U.S.C. §§ 7401-7671q.

This Court has subject matter jurisdiction over the petition for review of the Final Rule under 42 U.S.C. § 7607(b)(1), because the Final Rule applies to Arizona and, therefore, this Court of Appeals is an “appropriate circuit.” Petitioners timely filed their petition for review on July 29, 2014. *See* 42 U.S.C. § 7607(b)(1) (petitions must be filed within sixty days of notice in the Federal Register).

ISSUES PRESENTED FOR REVIEW

1. Whether EPA reasonably concurred with Arizona's determination that air quality monitoring data that showed exceedances of air quality standards for particulate matter during 25 days over a three year period from 2010 through 2012 when high wind dust events occurred were exceptional events that should be excluded from the data used to determine compliance with air quality standards.
2. Whether EPA reasonably approved Arizona's plan to attain air quality standards in the Maricopa County area when the plan's provisions satisfied all applicable Clean Air Act requirements and, consistent with EPA's reasonable interpretation of the Act, did not revisit emission controls that were previously triggered, and approved by EPA in 2002.
3. Whether EPA reasonably approved Arizona's plan to attain air quality standards in the Maricopa County area when the plan's contingency measures – measures intended to be undertaken if the area fails to reach attainment – were implemented early, consistent with EPA's reasonable interpretation of the Act and established case law.

ADDENDUM TO BRIEF

The full text of significant statutory and regulatory provisions is provided in an addendum to this brief.

STATEMENT OF THE CASE

During the past two decades, EPA and the State of Arizona have collaborated under the Clean Air Act's regulatory structure of cooperative federalism to attain the national air quality standard for particulate matter in the Phoenix, Arizona metropolitan area. This national air quality standard addresses small particles in the air less than 10 micrometers in diameter (known as PM-10), such as dust and soot, that EPA determined cause or exacerbate cardiovascular and respiratory illnesses. The Phoenix area has faced challenges achieving the particulate matter standard due to a combination of the area's fine, highly erosive soils that easily generate dust when disturbed, the relatively large amounts of dust generated from travelling on paved and unpaved roads, a substantial level of construction activities, and weather conditions, including stagnant air masses and high wind events. *See* Petitioners' Excerpts of Record ("ER") at 251-52.

The State and local governments in Maricopa and Pinal Counties have adopted a series of successively more rigorous measures to tackle these challenges and to minimize the levels of airborne particulate matter. In 2002, EPA approved the State's plan that contained approximately 77 control measures to be implemented by State and local governments. Examples of these measures to limit fugitive dust include stabilizing unpaved roads and disturbed surface areas, minimizing unpaved access points to paved roads, applying water and dust suppressants during construction activities, and implementing agricultural best management practices for farm activities.

When these measures proved insufficient to attain the air quality standard for particulate matter, the State and local governments proposed numerous additional control measures to regulate activities ranging from residential wood burning to leaf blowers, and focused on limiting dust-producing activities on predicted high wind days. The State prepared, as required by the Act, a new plan that incorporated these additional measures and provided for annual reductions of PM-10 emissions of at least five percent of the total amount of such emissions for each year from

the date of submission until attainment. In 2012, the State submitted this five percent plan to EPA for approval (the “2012 Five Percent Plan”). EPA approved the plan as demonstrating the required five percent annual reduction and attainment of the PM-10 NAAQS by December 2012. As part of its approval, EPA reasonably interpreted the Act not to require updating of previously-approved control measures and to allow early implementation of contingency measures.

EPA also took action on the State’s request that air quality exceedances on 25 days over a three year period from 2010 through 2012 be classified as “exceptional events” attributable to high wind dust events. The Clean Air Act and EPA’s regulations establish criteria and procedures for excluding from certain regulatory activities, including air quality compliance review, data influenced by events that qualify as “exceptional events.” Exceptional events include natural events that are not reasonably controllable or preventable. The Maricopa County area experiences thunderstorms and associated high wind dust events primarily during the non-winter months. These high wind dust events can generate significant

dust storms that entrain large quantities of particulate matter, as shown in the photograph from the June 27, 2012, event below:



Supplemental Excerpts of Record (“SER”) 00001.

The State reviewed monitored exceedances during 2010 through 2012 and determined that exceedances on 27 days were caused by high wind dust events. The State, in accordance with the Act, submitted to EPA its

request that these exceedances be attributed to exceptional events. It supported its request with extensive meteorological data, descriptions of the existing emission controls, and explanations that the high levels of particulate matter during these high wind events were not reasonably controllable or preventable. EPA reviewed the State's submissions and concurred that 135 exceedances at local air monitoring stations, occurring on 25 days, qualified as exceptional events. As a result, the data associated with these exceptional events were excluded, thereby supporting the State's demonstration that the 2012 Five Percent Plan attained the PM-10 NAAQS by December 2012.

Petitioners Sandra Bahr and David Matusow challenge EPA's approval of the 2012 Five Percent Plan and EPA's concurrence with Arizona's determinations that air quality exceedances on 25 high wind days were exceptional events.

I. Statutory and Regulatory Background

A. The Clean Air Act and National Ambient Air Quality Standards

The Clean Air Act, 42 U.S.C. §§ 7401-7671q, establishes a comprehensive program for controlling and improving the nation's air quality through both state and federal regulation. Among other requirements, the Act instructs EPA to establish National Ambient Air Quality Standards ("NAAQS") for air pollutants that may endanger public health or welfare. 42 U.S.C. §§ 7408, 7409.

One of the pollutants for which EPA has established NAAQS is particulate matter with a diameter of 10 micrometers or less ("PM-10").¹ 40 C.F.R. § 50.6(c). PM-10 causes adverse health effects by penetrating deep in the lungs, thereby aggravating the cardiopulmonary system. 79 Fed. Reg. 7,118 (Feb. 6, 2014) (ER 211). EPA has established a 24-hour PM-10 NAAQS standard of 150 micrograms/cubic meter (" $\mu\text{g}/\text{m}^3$ ") of air. 40 C.F.R. § 50.6(a). The 24-hour standard is attained when the number of days

¹ Particulate matter includes particles found in the air, such as dust, dirt, soot, smoke and liquid droplets.

with a 24-hour average concentration above 150 $\mu\text{g}/\text{m}^3$ per calendar year, averaged over a three year period, is equal to or less than one. 40 C.F.R. § 50.6(a).

Under the Act, States have the primary responsibility for formulating pollution control strategies and ensuring that their ambient air meets the NAAQS. 42 U.S.C. § 7407(a) (each State shall “specify the manner” in which NAAQS will be achieved); see *Union Elec. Co. v. EPA*, 427 U.S. 246, 256 (1976). Each State presents its comprehensive approach for attaining the NAAQS in a State Implementation Plan (“SIP”). 42 U.S.C. § 7410(a). The SIP provides for the implementation, maintenance, and enforcement of the NAAQS in each “air quality control region” within a State. *Id.* SIPs are generally required to include enforceable emissions limitations and other control mechanisms to meet the requirements of the Act. See 42 U.S.C. § 7410(a)(2)(A). Every SIP or SIP revision must be adopted by the State after reasonable notice and hearing, and must be submitted to EPA for approval. *Id.* § 7410(a)(1), (l).

B. Nonattainment Areas

Upon enactment of the 1990 Clean Air Act amendments, Congress designated certain areas as “nonattainment” for PM-10 by operation of law. 42 U.S.C. § 7407(d)(4)(B); *see* 56 Fed. Reg. 11,101 (Mar. 15, 1991) (designating Maricopa County as a nonattainment area). Once a PM-10 area is designated as nonattainment, the Act outlines the process for further classification of the area based on the severity of the problem and establishes the area’s attainment deadline. All PM-10 nonattainment areas were initially classified as “moderate” areas upon initial designation as nonattainment. 42 U.S.C. § 7513(a); *see* 40 C.F.R. Pt. 81 (codification of PM-10 nonattainment area designations and classifications). A number of these areas, including Maricopa County, have since been reclassified as “serious” nonattainment areas for PM-10 due to their inability to attain the PM-10 NAAQS by the attainment date applicable to moderate areas. *See* 61 Fed. Reg. 21,372 (May 10, 1996).

A SIP for a serious PM-10 nonattainment area must contain provisions to assure the implementation of the best available control measures (“BACM”). 42 U.S.C. § 7513a(b)(1)(B). The Act does not define

BACM. Although there is no formula for determining BACM, EPA has defined BACM as:

the maximum degree of emissions reduction of PM-10 and PM-10 precursors from a source . . . which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant.

59 Fed. Reg. 41,998, 42,010 (Aug. 16, 1994).

A serious PM-10 nonattainment area must reach attainment as “expeditiously as practicable,” and serious areas were required to do so no later than December 31, 2001. 42 U.S.C. § 7513(c)(2). However, a State may request an extension of the attainment date for a serious PM-10 nonattainment area if attainment by the statutory deadline would be “impracticable” and if the State meets other conditions. *Id.* § 7513(e). As one of these conditions, a State seeking this extension must show that the plan for the nonattainment area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the nonattainment area. *Id.* The State, at the time of its request for an

extension, must submit a revision to its SIP that includes a demonstration of attainment by the most expeditious alternative date practicable. *Id.*

Under this provision, EPA may grant each area one extension of no more than five years. *Id.*

The Act contains additional requirements for a serious PM-10 nonattainment area that does not attain the PM-10 NAAQS by its “applicable attainment date.” *Id.* § 7513a(d). Upon an area’s failure to attain by the PM-10 serious area attainment date, the State must submit a new SIP revision that provides for at least a five percent annual reduction of PM-10 or PM-10 precursor emissions until attainment. *Id.* The five percent reduction is calculated from the total amount of PM-10 emissions reported in the most recent baseline emissions inventory for the area. *Id.*

The Act also requires that a nonattainment area PM-10 SIP contain contingency measures. Contingency measures are specific measures to be undertaken if the area fails to attain the NAAQS by the attainment date. 42 U.S.C. § 7502(c)(9). Such measures must take effect without further action by the State or EPA. *Id.*

C. Air Quality Monitoring and Exceptional Events

States demonstrate attainment with the NAAQS through air quality data collected from a network of air quality monitoring stations. *See* 42 U.S.C. § 7619. In 2005, Congress amended the Act to require EPA to promulgate regulations to govern the review and handling of air quality monitoring data influenced by air quality events that qualify as “exceptional events.” *Id.* § 7619(b)(2). The Act defines an “exceptional event” as 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; and (iv) is determined by the Administrator . . . to be an exceptional event.” *Id.* § 7619(b)(1)(A).

In 2007, EPA promulgated its “Exceptional Events Rule.” 72 Fed. Reg. 13,560 (Mar. 22, 2007). The Exceptional Events Rule provides the procedures by which a State may request that EPA exclude data attributable to an exceptional event from EPA’s evaluation of NAAQS compliance. 40 C.F.R. § 50.14. A State may “flag” specific data and submit to EPA evidence that demonstrates that the event meets the criteria for an

exceptional event. 40 C.F.R. § 50.14(c)(2), (3). The State's demonstration to justify data exclusion must provide evidence that:

1. The event affects air quality;
2. The event was not reasonably controllable or preventable;
3. The event was caused by human activity unlikely to recur or was a natural event;
4. There was a clear causal relationship between the measurement under consideration and the event;
5. The event was associated with a measurement in excess of normal historical fluctuations; and
6. There would have been no exceedance but for the event.

40 C.F.R. § 50.14(c)(3)(iv)(A) – (D). EPA reviews the submitted information and makes decisions concerning the exclusion of the data related to the event using a weight-of-the-evidence approach on a case-by-case basis. 72 Fed. Reg. at 13,569, 13,577.

The Exceptional Events Rule directs that EPA “shall” exclude data from its determinations of exceedances and NAAQS violations where a State demonstrates “that an exceptional event caused a specific [NAAQS

exceedance] at a particular air quality monitoring location” and where the State otherwise satisfies the requirements of the Exceptional Events Rule.

40 C.F.R. § 50.14(b).

II. PM-10 Regulation in Maricopa County

The Maricopa County PM-10 nonattainment area (the “Maricopa Area”) is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, and Glendale, as well as 15 other jurisdictions, four tribal lands, and unincorporated County lands. 79 Fed. Reg. at 7,118 (ER 211). The Maricopa Area also includes a small portion of Pinal County. *See* 40 C.F.R. § 81.303.

The Maricopa Area was designated as a moderate PM-10 nonattainment area upon the enactment of the 1990 Clean Air Act Amendments. In 1996, EPA reclassified the Maricopa Area as a serious PM-10 nonattainment area. 61 Fed. Reg. 21,372. As a serious PM-10 nonattainment area, the Maricopa Area acquired a new attainment deadline of December 31, 2001. *Id.*

In 2000, Arizona submitted a SIP revision to EPA to address the Maricopa Area through the adoption of numerous best available control measures (“BACM”). *See* 65 Fed. Reg. 19,964, 19,970 (Apr. 13, 2000). The SIP revision included over 70 BACM adopted by the State and local governments to minimize dust generated from significant source categories, including paved and unpaved roads, alleys, and parking lots; construction activities; and motor vehicle exhaust. *See* 65 Fed. Reg. at 19,972-83; *see also* Maricopa County, AZ, Regulation III, Rules 310 and 310.01 (Maricopa County fugitive dust rules) (EPA Addendum at A-22 – A-80), ER 268 (noting approximately 77 control measures). The BACM measures in the SIP included requirements that commercial farmers comply with a general permit rule for agriculture that specified best management practices for regulated agricultural activities in order to reduce PM-10 emissions. 65 Fed. Reg. at 19,981; 67 Fed. Reg. 48,718, 48,719 (July 25, 2002); *see* Ariz. Admin. Code §§ 18-2-610, 18-2-611; *see also* *Vigil v. Leavitt*, 381 F.3d 826, 833 (9th Cir. 2004) (upholding the agricultural best management practices as BACM).

The State also requested a five-year attainment date extension under 42 U.S.C. § 7513(c)(2). 65 Fed. Reg. at 19,984. In its extension request, the State asserted that: (i) attainment by the December 31, 2001, attainment date would be impracticable; (ii) the state complied with all requirements and commitments in its SIP; and (iii) the plan included the most stringent measures that are included in the implementation plan of any state, or are achieved in practice in any state, and can be feasibly implemented in the Maricopa Area. 65 Fed. Reg. at 19,984-88.

In 2002, EPA approved the PM-10 SIP revision for the Maricopa Area as meeting the requirements of the Act. 67 Fed. Reg. 48,718 (July 25, 2002). EPA determined that the SIP included requirements for implementing BACM. *Id.* EPA also determined that the SIP included requirements for the most stringent measures and, therefore, granted Arizona's request to extend the attainment date for the Maricopa Area to December 31, 2006. *Id.* Three Maricopa County residents petitioned for review of EPA's approval of the SIP and its extension of the attainment date. *Vigil*, 381 F.3d 826. This Court denied the petition as to all but one of the numerous issues presented; the Court found arbitrary and capricious only EPA's approval

of the State's rejection of a reformulated diesel fuel under the BACM standard because EPA did not provide a full explanation of its reasoning.

Id. at 845.²

In 2007, EPA found that the Maricopa Area failed to attain the PM-10 NAAQS by the applicable attainment date of December 31, 2006. 72 Fed. Reg. 31,183 (June 6, 2007). As a result, the Act required Arizona to submit a new plan that provides for annual reductions of PM-10 of at least five percent of the total amount of such emissions. *Id.* at 31,184. EPA's finding of nonattainment also established a new attainment date of June 6, 2012. *See id.*; 42 U.S.C. § 7509(d)(3).

In December 2007, Arizona submitted to EPA a five percent plan for PM-10 for the Maricopa Area. 75 Fed. Reg. 54,806, 54,807 (Sept. 9, 2010) (ER 373). This plan contained 53 measures designed to reduce emissions of PM-10. 75 Fed. Reg. at 54,810 (ER 376). EPA proposed to partially disapprove this plan, in part because EPA believed the emissions inventory was inaccurate and overestimated emissions, which resulted in erroneous

² EPA later addressed this issue with its approval of updated BACM and most stringent measures demonstrations for reformulated diesel fuel. *See* 73 Fed. Reg. 47,542 (Aug. 14, 2008).

calculations of emission reductions associated with control measures. 75 Fed. Reg. at 54,808-10, 54,814 (ER 374-76, 380). EPA also proposed to disapprove the plan because the monitoring data showed exceedances of the NAAQS that EPA determined did not meet the criteria for exclusion as an exceptional event. *Id.* at 54,814 (ER 380). In 2011, Arizona withdrew the 2007 plan from EPA's consideration prior to EPA taking final action on the plan. *See* 79 Fed. Reg. at 7,119 (ER 212).

On May 25, 2012, Arizona submitted to EPA a SIP revision containing a new five percent plan for PM-10 for the Maricopa Area. 79 Fed. Reg. at 7,119 (ER 212); ER 239. The 2012 Five Percent Plan contained many of the 53 control measures Arizona previously included in the 2007 plan. ER 258. The 2012 Five Percent Plan also adopted a new emission control measure, a Dust Action General Permit, which identifies a series of best management practices for specific dust generating operations. ER 260. When the Arizona Department of Environmental Quality predicts that a day is at high risk for dust generation, those dust generating activities not already required by a permit to control dust are expected to implement at least one practice to reduce or prevent PM-10 emissions. ER 260. The 2012 Five

Percent Plan also took credit for increases in rule effectiveness attributable to strengthened enforcement and increased compliance with various emission control rules. ER 259. The 2012 Five Percent Plan demonstrated an annual five percent reduction through the attainment year using 2007 as the baseline from which reductions were calculated. ER 299-303. The 2012 Five Percent Plan predicted attainment of the PM-10 NAAQS through modeled emission attainment demonstrations by December 31, 2012. ER 305-337.

The State separately submitted documentation to EPA to demonstrate that certain exceedances of the PM-10 NAAQS standard during 2011 and 2012 met the elements for being attributable to exceptional events. Administrative Record (“A.R.”) D.3.f., D.3.g, D.3.h, and D.3.j. Although the monitoring data showed 146 exceedances of the standard during 2010-2012, Arizona submitted lengthy documentation to demonstrate that 137 measured exceedances occurring on 27 days were the result of high wind exceptional events. *Id.*; see ER 108.

EPA proposed to approve the 2012 Five Percent Plan in a Federal Register notice published on February 6, 2014. 79 Fed. Reg. at 7,118 (ER

211). EPA based its proposed approval on its finding that the 2012 Five Percent Plan met the requirements to demonstrate five percent annual reductions in emissions through attainment, and demonstrated attainment of the PM-10 NAAQS by the December 31, 2012, attainment date. *Id.* at 7,122-23 (ER 215-16). EPA supported its proposed finding with its concurrence on Arizona's determinations with respect to 135 of the 137 monitoring exceedances during 2010-2012 that the State flagged as caused by high wind exceptional events. *Id.* at 7,122 (ER 215).

EPA solicited public comments on its proposal and received 12 comment letters from the State, local governments, industry, congressional representatives, and environmental groups. 79 Fed. Reg. at 33,108 (ER 2). After reviewing and responding to the comments, EPA issued the Final Rule approving the SIP revision containing the 2012 Five Percent Plan as meeting all relevant statutory and regulatory requirements. 79 Fed. Reg. at 33,107 (ER 1).

Sandra Bahr and David Matusow (collectively "Bahr") filed a petition for review of EPA's Final Rule.

SUMMARY OF ARGUMENT

Congress instructed EPA to promulgate rules establishing criteria and a process for States to petition EPA to exclude monitoring data attributable to exceptional events from use in EPA's evaluation of compliance with air quality standards. A high wind dust event can qualify as an exceptional event if it meets the statutory definition of an exceptional event: a natural event that affects air quality and is not reasonably controllable or preventable. The Exceptional Event Rule further requires that a State's demonstration to justify data exclusion provides evidence that a clear causal relationship exists between the monitoring data that exceed air quality standards and the event, there would have been no exceedance but for the event, and the monitoring data exceed normal, historical fluctuations.

Arizona extensively documented these elements for high wind dust events that occurred on 25 days during 2011 and 2012. For each event, Arizona recorded the wind speeds, analyzed the meteorological and air quality conditions, described the reasonable control measures in place, and established a clear causal connection between the high wind dust event

and the monitored exceedances. EPA thoroughly reviewed each submission, documented its analysis, and concurred that the monitoring exceedances on these 25 days when the Maricopa Area experienced high wind dust events constituted exceptional events. EPA's informed judgment based on its technical analysis is entitled to deference.

Bahr challenges EPA's concurrences by arguing that Arizona did not adequately demonstrate that the high wind dust events were not reasonably controllable or preventable. In the case of anthropogenic sources of dust, a high wind dust event is generally considered not reasonably controllable or preventable if reasonable controls are in place, the controls are effectively implemented and enforced, and the wind speed is high enough to overwhelm reasonable controls. Contrary to Bahr's arguments, EPA explained in the Final Rule the basis for its determination that reasonable controls were in place, both inside and outside the Maricopa Area. Because EPA considered the relevant factors and articulated a rational connection between the facts found and the decision made, this Court should uphold EPA's concurrence with Arizona's exceptional event determinations.

Bahr also contests EPA's reasonable interpretations of the Act associated with EPA's approval of the 2012 Five Percent Plan. Bahr incorrectly argues that the Act requires the State to reevaluate previously-triggered and approved requirements for BACM and most stringent measures. BACM and most stringent measures were each triggered by a specific statutory requirement, were reviewed and approved by EPA in 2002, and remain part of the Arizona SIP. The Act requires the adoption of additional, increasingly stringent controls over time, including the additional five percent annual reduction requirement incorporated in the 2012 Five Percent Plan, which creates the cumulative emissions control strategy at the heart of the Act. EPA did not act inconsistently when it addressed BACM in the 2007 Five Percent Plan and not the 2012 Five Percent Plan, because the 2007 Plan proposed revisions to BACM and the 2012 Plan did not. EPA's approval of the 2012 Five Percent Plan without reevaluating BACM and most stringent measures reflects EPA's reasonable interpretation of the Act, entitled to deference under *Chevron*, and is not contrary to law.

EPA also reasonably approved the already-implemented contingency measures in the 2012 Five Percent Plan because they complied with EPA's reasonable interpretation of the Act and established case law. EPA has consistently allowed States to implement contingency measures early, and has approved numerous SIPs that contain already-implemented contingency measures. The Fifth Circuit upheld EPA's longstanding and reasonable interpretation allowing the early implementation of contingency measures in *Louisiana Env'tl. Action Network v. EPA*, 382 F.3d 575 (5th Cir. 2004) ("*LEAN*"). The Fifth Circuit found EPA's interpretation aligned with the general purpose and structure of the Act, and that disallowing early implementation measures would counterproductively cut against the purpose of the Act by delaying emissions control implementation. Because the contingency measures in the 2012 Five Percent Plan provide continuing emissions reductions, are in addition to the Maricopa Area's control strategies meeting other statutory requirements, and are implementable without further action by EPA or the State, the contingency measures comply with EPA's reasonable

interpretation of the Act that is entitled to deference under *Chevron*, and EPA's approval is not an abuse of discretion.

STANDARD OF REVIEW

An EPA action that approves a SIP is reviewed under the deferential standard of review for agency actions set forth in the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); *Vigil*, 381 F.3d at 833. Under this standard of review, agency action will not be set aside unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* (quoting 5 U.S.C. § 706(2)(A)); see *Ober v. EPA*, 84 F.3d 304, 307 (9th Cir. 1996). The arbitrary and capricious standard "is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); see also *Lands Council v. McNair*, 629 F.3d 1070, 1074 (9th Cir. 2010).

An agency action is arbitrary and capricious only "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in

view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43; *Lands Council*, 629 F.3d at 1074. Under this standard, the reviewing court may not set aside agency action so long as the agency has considered the relevant factors and articulated a rational connection between the facts found and the choice made. *Vigil*, 381 F.3d at 833.

Judicial deference to an agency’s decision also extends to an agency’s interpretation of a statute it administers. *United States v. Mead Corp.*, 533 U.S. 218, 227-31 (2001). Questions of statutory interpretation are governed by the familiar two-step test set forth in *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-45 (1984). Under *Chevron’s* first step, if Congress has “directly spoken to the precise question at issue,” then that intent must be given effect. *Chevron*, 467 U.S. at 842-43. However, “if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.” *Id.* at 843; *NRDC v. EPA*, 966 F.2d 1292, 1297 (9th Cir. 1992). To uphold EPA’s interpretation of the Act, the Court need not find that EPA’s interpretation is the only permissible construction that EPA might have

adopted, or even the reading the court would have reached, but only that EPA's interpretation is reasonable. *NRDC v. EPA*, 966 F.2d at 1297.

EPA's statutory interpretations articulated in the Final Rule are entitled to *Chevron* deference. Congress delegated to EPA the authority to review SIPs for compliance with the Act and EPA's implementing regulations, 42 U.S.C. § 7410(k), and EPA exercised that authority here through a notice-and-comment rulemaking. 79 Fed. Reg. 7,118 (proposed rule) (ER 211-19); 79 Fed. Reg. 33,107 (final rule) (ER 1-10). Once EPA approves a SIP provision, that provision has the force and effect of federal law and it may be enforced in federal courts. *Union Elec. Co. v. EPA*, 515 F.2d 206, 211 (8th Cir. 1975). Therefore, EPA's statutory interpretations set forth in the Final Rule qualify for *Chevron* deference. *See United States v. Mead Corp.*, 533 U.S. at 227-30; *see also BCCA Appeal Group v. EPA*, 355 F.3d 817, 825 (5th Cir. 2003) (SIP approval entitled to *Chevron* deference); *Sierra Club v. EPA*, 356 F.3d 296, 306 & n.6 (D.C. Cir. 2004) (determining that

Chevron deference is required under *Mead* when court is reviewing EPA action on a State SIP).³

EPA's interpretation of its own regulations implementing the Act, such as the Exceptional Events Rule, is "controlling" unless "plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 461 (1997); *Akiak Native Cmty. v. EPA*, 625 F.3d 1162, 1167 (9th Cir. 2010). This deference is especially warranted where, as here, the regulation concerns a "complex and highly technical regulatory program." *NRDC, Inc. v. EPA*, 638 F.3d 1183, 1192 (9th Cir. 2011).

EPA's factual determinations under the Act are similarly entitled to deference. *See Vigil*, 381 F.3d at 833. Courts will not overturn EPA's factual decisions under the Act, even if made with less than ideal clarity, as long as EPA's path may fairly be discerned. *Id.* This Court should defer to EPA's interpretation of equivocal evidence as long as it is reasonable. *Id.*

³ In *Vigil*, the Court determined that it need not resolve the question of whether EPA's action on a SIP is entitled to *Chevron* deference because its ruling in that case would be the same under any standard of deference. *Vigil*, 381 F. 3d at 835. However, as shown above, such deference is due, and Bahr has not asserted to the contrary.

Finally, judicial deference is appropriate in this case with respect to several of the issues presented because they involve scientific judgment and technical analyses within EPA's area of expertise. *See Lands Council*, 629 F.3d at 1074. When the resolution of a dispute primarily involves issues of fact, and analysis of the relevant information requires a high level of technical expertise, this Court must defer to the informed discretion of the responsible federal agency. *Vigil*, 381 F.3d at 833; *Latino Issues Forum v. EPA*, 558 F.3d 936, 941 (9th Cir. 2009). "When specialists express conflicting views, an agency must have discretion to rely upon the reasonable opinions of its own qualified experts, even if, as an original matter, the court might find contrary views more persuasive." *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 377-78 (1989); *see Lands Council v. McNair*, 537 F.3d 981, 1000 (9th Cir. 2008).

ARGUMENT

I. EPA Reasonably Concurred with Arizona's Determination that Air Quality Monitoring Data that Showed Exceedances of Air Quality Standards for Particulate Matter During 25 Days over a Three Year Period from 2010 through 2012 when High Wind Dust Events Occurred Were Exceptional Events.

The Clean Air Act and EPA regulations provide States with a means to exclude from NAAQS compliance review those air quality “exceptional events” that are beyond the ability of state and local agencies to effectively control. 42 U.S.C. § 7619; 40 C.F.R. § 50.14. The Maricopa Area's experience attaining compliance with the PM-10 NAAQS demonstrates the reasonable use of this Congressionally-sanctioned process for exclusion of data. In 2010, the Maricopa Area had only one monitor on one day record data above the PM-10 NAAQS; that exceedance was not attributable to a high wind dust event. *See* ER 108. In contrast, 2011 was a year of numerous high wind dust events, and the Maricopa Area recorded monitored exceedances on 18 high wind days that Arizona flagged as exceptional events. In 2012, the Maricopa Area experienced monitored exceedances on nine high wind days that Arizona flagged as exceptional events. For each of these events, Arizona submitted to EPA its

demonstration the event was an exceptional event meeting the criteria set forth in the Exceptional Events Rule. The State's demonstrations include photographs and video of the large dust storms associated with the events, providing a vivid image of the significant air quality impacts caused by these events. *See, e.g., supra* at 6; *infra* at 36. EPA conducted a thorough review of the data and information provided by the State for each of the high wind events and concurred that 135 exceedances occurring during 25 high wind dust events were exceptional events. EPA's technical evaluation and judgments are entitled to deference and should be upheld.

A. EPA May Exclude Monitoring Data Attributable to High Wind Dust Events from the Data Used to Determine Compliance with Air Quality Standards.

Congress' definition of an "exceptional event" includes natural events that affect air quality, are not reasonably controllable or preventable, and are determined by the Administrator to be an exceptional event. 42 U.S.C. § 7619(b)(1)(A). The Exceptional Events Rule adopts the statutory definition of exceptional event and defines "natural event" as one in "which human activity plays little or no direct causal role." 40 C.F.R. § 50.1(j), (k).

In May 2013, EPA published guidance to help States implement the Exceptional Events Rule for high wind dust events by describing the types of information that EPA would generally find meaningful and relevant for the purposes of reviewing documentation required under the rule (the “High Winds Guidance”).⁴ ER 112. The High Winds Guidance defines a high wind dust event to include both the high wind and the dust that the wind entrains and transports to a monitoring site. ER 113. The High Winds Guidance reiterates the six elements identified in the Exceptional Events Rule that a State must demonstrate to establish a high wind dust event as an exceptional event. ER 113; *see supra* at 14 (listing six elements). EPA observed that three of the elements identified in the Exceptional Events Rule play a significant role in EPA’s review of a State’s submission: “not reasonably controllable or preventable,” “clear causal relationship,”

⁴ EPA formally issued the High Winds Guidance (“Interim 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”) after EPA’s September 6, 2012, and May 6, 2013, concurrences on Arizona’s flagged data. However, EPA had issued a draft version of the Guidance in June 2012 and publicly announced its availability in the Federal Register in July 2012, prior to EPA’s concurrences. 77 Fed. Reg. 39,959 (July 6, 2012).

and “no exceedance or violation but for the event.” ER 113. Wind speed and direction also play an important role in informing EPA’s decision on elements such as whether the event was not reasonably controllable or preventable and whether a clear causal relationship existed; the higher the wind speed, the more likely the wind speed has the potential to overwhelm reasonable controls and the event not be reasonably controllable or preventable. ER 114, 121.

B. EPA Reasonably Determined that Arizona’s Exceptional Events Submissions Demonstrated Each of the 25 Events Met the Criteria for an Exceptional Event.

Arizona thoroughly documented the six elements identified in the Exceptional Events Rule for each of the 25 days on which exceedances caused by a high wind dust event occurred. Arizona made three submissions, totaling over 1,750 pages, to demonstrate that each of the exceedances satisfied the statutory and regulatory criteria of an exceptional event. 79 Fed. Reg. at 33,111 (ER 5); Administrative Record D.3.f., D.3.g, D.3.h, and D.3.j. These events typically involved sustained wind speeds over 25 miles per hour and gusts over 30 miles per hour that overwhelmed reasonable controls on anthropogenic sources of PM-10, resulting in events

that were not reasonably controllable or preventable. *Id.* The State demonstrated that emissions generated by high winds caused the exceedances, and there would have been no exceedances but for the high wind event.

The State's submission associated with two exceedances of the PM-10 NAAQS on August 11, 2012, provides a representative sample of the State's demonstration of a high wind exceptional event experienced in the Maricopa Area.⁵ *See* SER 00008-049. On that afternoon, thunderstorms developed over Pima and Pinal County, south of the Maricopa Area. SER 000023. The storms generated wind gusts exceeding 30 mph, and transported dust that likely originated over undeveloped lands consisting of natural, undisturbed desert south of the Maricopa Area. SER 000023, 000027. A view of the storm:

⁵ Significantly, Bahr does not identify a single exceedance associated with a specific high wind dust event on a particular date that she contends should not have been excluded as an exceptional event. Because Bahr does not identify a specific event that she alleges EPA incorrectly evaluated, EPA has selected a representative event for purposes of discussion. EPA believes that this event is representative because it does not fall at one extreme (*e.g.*, July 3, 2011, 14 monitoring exceedances), ER 14, or the other (*e.g.*, September 6, 2012, one exceedance), ER 102.



SER 00008. Exceedances were recorded at only the two southernmost monitors in the Maricopa Area, although other monitors recorded elevated PM-10 levels that did not exceed the NAAQS. SER 000023-24.

The State's submission for August 11, 2012, documented the causal relationship between the dust carried by the high wind event and the two monitor exceedances. Arizona showed that the location and timing of sustained wind speeds over 25 miles per hour and gusts as high as 41 mph

coincided spatially and temporally with high PM-10 data at the two monitors recording exceedances. SER 000028-036. Arizona prepared a detailed Geographic Information System analysis that showed PM-10 concentrations, sustained wind speeds, wind gusts, wind direction, and visibility to track the transport over time of PM-10 throughout the region. SER 000032-35. Visibility cameras showed significant reductions in visibility, as reflected in the videos and media coverage referenced in the submission. SER 000028. Prior to the storm, winds were much lighter and PM-10 concentrations much lower, further demonstrating the causal connection between the storm and the exceedance. SER 000028.

The State also explained why the event was not reasonably controllable or preventable. SER 000039-046. The State listed and described the numerous control measures that Maricopa County and Pinal County implemented within the Maricopa Area, and the control measures Pinal County implemented outside of the Maricopa Area. SER 000040-42. The State documented the effectiveness of these controls, and the compliance and enforcement activities employed to maximize effectiveness. SER 000042-43. The State's report described the real-time

monitoring alert systems and public notification activities used to notify citizens of the anticipated high wind event so that they can take appropriate precautions. SER 000045. The State asserted that BACM on significant anthropogenic sources were in place in the Maricopa Area, and were enforced during the event. SER 000045. However, the State identified the source region of the winds and dust that caused the exceedances as largely located outside the Maricopa Area and, therefore, not subject to the Maricopa Area's emission controls. SER 000045-46. The high winds transported from outside the Maricopa Area high concentrations of PM-10 into the Maricopa Area, where the particulate matter overwhelmed the Area's controls. SER 000045-46. As a result, the State concluded that the exceedances were not reasonably controllable and preventable. *Id.*

The State also established that the exceedances would not have occurred but for the high wind dust event. SER 000047. The maps and time series plots of PM-10 and wind speed established the causal connection between the windblown dust due to the thunderstorm and the elevated PM-10 monitor concentrations. SER 000047. The State noted that

PM-10 concentrations were well below the NAAQS on days immediately before and after the August 11 windblown dust event. *Id.* The State determined that because no alternative explanation could tie the exceedances of August 11, 2012, to any cause other than the high wind dust event, there would have been no exceedance “but for” the natural event that was not reasonably controllable or preventable. *Id.*⁶

EPA reviewed the State’s detailed submission and reasonably concurred that the August 11, 2012, exceedance was an exceptional event. ER 92. EPA determined that the event was not reasonably controllable or preventable based on the wind speeds, the transport of PM-10 from areas south of the Maricopa Area where emission controls were not yet required to be implemented (*see infra* at 57-58), the documentation of monitor exceedances occurring despite the deployment of comprehensive control measures within the Maricopa Area, and the spatial extent of elevated PM-10 concentrations throughout the Maricopa Area. ER 92. EPA also agreed that the August 11, 2012, event was outside historical fluctuations based on

⁶ The submission also addressed the three other elements of an exceptional exceedance. SER 000037 (historical normal fluctuations), SER 000048 (affecting air quality and natural event).

measured PM-10 concentrations that were some of the highest 24-hour averages measured during 2007-2012. ER 93. EPA reviewed the State's conceptual model of the event, as well as satellite imagery, visibility photos, time-lapse video evidence, data from National Weather Service stations, National Weather Service weather advisories and warnings,⁷ National Oceanic and Atmospheric Administration storm reports, and wind speed and visibility data to confirm the causal connection between the uncontrollable levels of PM-10 generated from thunderstorm winds and the exceedances measured at the two monitors. ER 93-94. EPA also found that the State's submission established that the high wind dust event affected air quality, was a natural event, and that the exceedances would not have occurred but for the event. ER 94-95.

EPA documented its review and concurrence of the August 11, 2012, event in a five-page summary that individually addressed each of the six elements of an exceptional event from the Exceptional Events Rule. ER 92-

⁷ National Weather Service weather advisories and warnings include: Dust Storm Warnings, Wind Advisories, Blowing Dust Advisories, Severe Thunderstorm Warnings, and Significant Weather Advisories. *See, e.g.*, ER 93, ER 64, and ER 46.

96. EPA provided a similarly thorough analysis for each of the other 24 days on which exceedances took place during 2011 and 2012 for which EPA concurred with Arizona's exceptional event determinations. ER 11-107. EPA used the same template for each of its analyses because each analysis required consideration of the same six elements. The analyses were similar in certain respects because they involved review of a high wind dust event in the same region during a two-year period when the same emission controls were in place. However, EPA's concurrences were not, as alleged by Bahr, "boilerplate." Pet. Br. at 40 n.9. Each addressed the specific wind sources, wind speeds, historical fluctuations, and causal connection based upon the extensive data presented by the State for each day. EPA applied a weight-of-the-evidence approach for its analysis. ER 68. This Court should defer to EPA's informed discretion regarding its technical evaluation of each of the exceptional events and find EPA's conclusions reasonable. *Vigil*, 381 F.3d at 833; see *Ass'n of Irrigated Residents v. EPA*, 423 F.3d 989, 997 (9th Cir. 2005) (there is no basis for this Court to second guess EPA's scientific determinations when approving a five percent plan).

C. Bahr's Challenges to EPA's Concurrence with Arizona's Exceptional Event Demonstrations Should Be Rejected.

Bahr primarily challenges EPA's concurrences with Arizona's exceptional events demonstrations by arguing that Arizona did not adequately demonstrate that the high wind dust events were not reasonably controllable or preventable; according to Bahr, BACM-level controls were not in place. Bahr's arguments, however, lack a statutory basis and rely on misapplications of the Exceptional Events Rule and the High Winds Guidance. Thus, Bahr fails to show that EPA abused its discretion or acted contrary to law. This Court should not set aside EPA's action (particularly one that relates to highly technical determinations) where, as here, EPA considered the relevant factors and articulated a rational connection between the facts found and the choice made. *Vigil*, 381 F.3d at 833.

1. Bahr's Arguments Rest on a Fundamental Misconception of the Role of BACM in the Context of Exceptional Events Determinations.

Bahr erroneously argues that "the exceptional events provisions serve as . . . a trigger [for BACM] when a state seeks to exclude data in a

serious nonattainment areas.” Pet. Br. at 53. However, neither the Act nor EPA’s regulations support this claim. The Act defines exceptional events, including the criterion that the event not be reasonably controllable or preventable, but makes no mention of BACM. *See* 42 U.S.C. § 7619. The Act requires EPA to promulgate regulations for exceptional events, but does not mention BACM as part of the exceptional events process. *Id.* Similarly, the Exceptional Events Rule identifies the six elements for a demonstration of an exceptional event, yet makes no mention of BACM. 40 C.F.R. § 50.14(c)(3)(iv)(A) – (D). As further explained in Part II, *infra*, EPA reasonably interprets the Act as not requiring a new BACM analysis as part of its evaluation of a five percent plan.

Rather, BACM only plays a role as a reference point for an assessment of whether a high wind dust event was reasonably controllable or preventable, and EPA exercises significant discretion in weighing this factor on a case-by-case basis. EPA’s High Winds Guidance draws a distinction between natural and anthropogenic sources of dust when

evaluating whether an event is reasonably controllable or preventable.⁸

For anthropogenic sources of dust, the High Winds Guidance instructs that a high wind dust event may be considered not reasonably controllable or preventable if: (i) the anthropogenic sources of dust have reasonable controls in place; (ii) the reasonable control have been effectively implemented and enforced; and (3) the wind speed was high enough to overwhelm the reasonable controls. ER 121. The High Winds Guidance further suggests that EPA will use the local list of BACM “as a *reference point* to review the reasonableness of controls.” ER 126 (emphasis added).

The High Winds Guidance does not establish a limit for how long a BACM determination will remain viable for purposes of determining whether reasonable controls were in place at the time of a PM-10 NAAQS exceedance. As guidance, the High Winds Guidance does not impose any new requirements and is not binding on any party. ER 112. Rather, the High Winds Guidance suggests that EPA will generally “consider windblown dust BACM to constitute reasonable controls if these measures

⁸ For natural sources of dust, a high wind dust event can generally be considered not reasonably controllable or preventable if winds are high enough to cause emissions from natural undisturbed areas. ER 121.

have been reviewed and approved in the context of a SIP revision for the emission source area within the past three years.” ER 126. However, this does not mean that the converse is true, and that only BACM approved within the past three years should be considered reasonable. As Bahr acknowledges, the guidance “does not preclude the State or EPA from relying upon a BACM determination more than three years old.” Pet. Br. at 43. As discussed in the next section, EPA reasonably explained in the Final Rule its use of BACM as a reference point to determine whether reasonable controls were in place and effectively implemented during the high wind dust events flagged by Arizona as exceptional events.

2. EPA Provided Reasoned Explanations in the Final Rule for Its Concurrence that the High Wind Dust Events Were Not Reasonably Controllable or Preventable.

Bahr seeks to have this Court set aside EPA’s approval of the 2012 Five Percent Plan even though EPA adequately explained its reliance on wind speed, transport of PM-10 from outside the Maricopa Area, the spatial extent of elevated PM-10 concentrations, and the prior BACM determinations when it agreed with the State’s demonstration that exceedances of the PM-10 NAAQS were not reasonably controllable or

preventable. Citing various administrative law principles, Bahr claims that EPA violated its “duty to explain” when “it makes a decision that departs from precedent.” Pet. Br. at 40. Bahr’s arguments must fail, however, because she overlooks important aspects of these principles: (i) EPA’s action did not depart from “precedent” (rather, EPA based its actions on reasonable interpretations of its own regulations and guidance); and (ii) EPA provided a reasoned explanation for its action in response to comments, thus establishing an adequate record to explain its decision making process.⁹

⁹ Contrary to Bahr’s argument, Pet. Br. at 41, EPA fully explained in the Final Rule its determinations with respect to the High Winds Guidance and the evaluation of agricultural controls. 79 Fed. Reg. at 33,112-13 (ER 6-7). Bahr incorrectly claims that EPA was required to provide its explanation in the documents concurring on the State’s exceptional events claims. *See* Pet. Br. at 42-43. The letters to the State accompanying EPA’s concurrences all stated that the concurrences did not constitute final EPA action and that final action would take place “only after EPA completes notice and comment rulemaking” on determinations regarding attainment status or classifications. *See, e.g.*, PER 12, PER 21; *see also* High Winds Guidance, PER 112 (EPA will respond to comments on any aspect of an exceptional event demonstration when it takes action that relies on a decision to exclude data under the Exceptional Events Rule). Therefore, Bahr’s attempts to discount EPA’s explanations because they are in response to comments in the Final Rule are without merit.

Bahr incorrectly argues that the anthropogenic sources of dust did not have reasonable controls in place. The State and local governments adopted and effectively implemented BACM, including Maricopa County fugitive dust Rules 310 and 310.01, which EPA approved in 2002. *See* 67 Fed. Reg. at 48,719. In addition, local governments adopted even more stringent controls since 2002 to address windblown dust. *See, e.g.*, 75 Fed. Reg. 78,167 (Dec. 15, 2010) (revisions to Maricopa County Rules 310 and 310.01); 74 Fed. Reg. 58,553 (Nov. 13, 2009) (revisions to Maricopa County Rule 316). EPA relied on both BACM and these additional controls as reference points to determine that the Maricopa Area had reasonable controls in place at the time of the exceedances.

EPA's approval of the Maricopa Area's BACM in 2002, rather than within the last three years, does not render the controls unreasonable. As discussed above, *supra* at 44-45, the High Winds Guidance contemplates that BACM can constitute reasonable controls whether or not approved within the past three years. Although the Maricopa Area's BACM were not approved within three years of the Final Rule, EPA provided a reasonable explanation in the Final Rule why reliance on these controls was

nonetheless reasonable in this case for both nonagricultural and agricultural controls.

EPA provided two reasonable explanations for its finding that the Maricopa Area had reasonable controls in place for non-agricultural sources. First, the Final Rule explained that the 2012 Five Percent Plan identifies the highest emitters of PM-10: unpaved roads and alleys; construction; paved road dust; windblown dust (non-agriculture); unpaved parking lots; and off-road recreational vehicles. 79 Fed. Reg. 33,112 (ER 6); *see also*, ER 302. EPA's Final Rule pointed out that each of these source categories was included in EPA's 2002 BACM determinations. *See* 67 Fed. Reg. 48,718, 48,734 (finding that Maricopa County Rules 310 and 310.01 met the standard for BACM for construction sites, unpaved roads, unpaved parking lots, and disturbed vacant lands); *see* 65 Fed. Reg. at 19,972-83 (identification of BACM for each of these sources). EPA determined that the significant source categories emitting PM-10 during 2010-2012 were the same significant source categories emitting PM-10 at the time of its 2002 BACM determination.

EPA's Final Rule further explained that the techniques for controlling fugitive dust that it had approved as BACM in 2002 – stabilization of disturbed areas, application of water or dust suppressants, prevention of tracking dirt and dust from unpaved areas – had not changed significantly and thus the intervening time between 2002 and 2012 did not produce new control techniques or technologies that would have prompted the need for a more in-depth review of available control measures. 79 Fed. Reg. at 33,112 (ER 6). Thus, EPA's previous BACM determination in 2002 provided a reasonable reference point for an assessment of reasonable controls for purposes of making exceptional event determinations.

Second, EPA's determination that reasonable controls were in place reasonably relied on the adoption of post-2002 revisions to Rules 310 and 310.01 that make application of each control measure more stringent. 79 Fed. Reg. at 33,112 (ER 6). Maricopa County adopted these measures in January 2010, and EPA approved them as amendments to the Arizona SIP in December 2010. *See* 75 Fed. Reg. at 78,167. These more stringent measures were in place during the 2011 and 2012 period when the State experienced PM-10 NAAQS exceedances on 25 high wind days.

EPA's consideration of these more stringent rule revisions does not represent an inconsistency in EPA's position, as alleged by Bahr. Pet. Br. at 42. EPA's responsibility when reviewing an exceptional events submission is not to determine BACM, but to determine whether the emissions generated by the event were not reasonably controllable or preventable. EPA considered the Maricopa Area's BACM as a reference point to constitute reasonable controls for purposes of making its exceptional events determinations, and the subsequently adopted, more stringent controls further supported the reasonableness of the totality of the controls in place. When monitors recorded exceedances of NAAQS standards during high wind dust events even when the Maricopa Area was implementing measures more stringent than previously-approved BACM, EPA reasonably determined, based on its technical and factual assessment of all relevant factors, that the high wind dust events were not reasonably controllable or preventable. This determination is entitled to deference from this Court and should be affirmed. *See Lands Council*, 629 F.3d at 1074.

Similarly, the agricultural controls in place at the time of the exceptional events – the agricultural best management practices rules,

approved by EPA as BACM in 2002, *see* 67 Fed. Reg. at 48,733 — do not provide a basis for finding EPA’s concurrence an abuse of discretion. EPA appropriately used the existing agricultural best management practice rules (“Agricultural BMP Rules”) as a reference point in its evaluation of whether the events are “not reasonably controllable or preventable” because, consistent with the High Winds Guidance, they are on the “local list of BACM . . . measures.” ER 126. In addition, EPA considered the State’s documentation that agricultural sources within the Maricopa Area represent only a minimal contribution to the PM-10 levels in the air. This evaluation was reasonable.

EPA found, consistent with the State’s 2008 PM-10 Periodic Emissions Inventory for Maricopa County (Revised 2011), that agricultural sources contributed approximately 2.7% to the annual PM-10 emissions. *See* ER 301 (2012 data). Of the 2.7% contribution, agricultural windblown dust comprises approximately 0.9% of the total annual PM-10 emissions in the Maricopa Area. *Id.* Other agricultural sources, such as tilling, harvesting and cotton ginning comprise an additional 1.8% of the total annual PM-10 emissions. *Id.* Thus, agricultural sources in Maricopa

County contribute only a small portion to annual PM-10 emissions in the Maricopa Area. EPA's reliance on the Agricultural BMP Rules was reasonable because implementation of additional controls on agricultural sources would still not have made the total emissions caused by the high wind speeds reasonably controllable and preventable given the small portion of such emissions coming from agricultural sources.¹⁰

Bahr incorrectly claims that the Final Rule is inconsistent with two prior EPA statements regarding agricultural controls.¹¹ Pet. Br. at 38-39. In the first statement, made in EPA's proposed rule to disapprove the State's 2007 Five Percent Plan, EPA stated that one of the 2002 Agricultural BMP Rules no longer met the Act's requirements and would need to be revised

¹⁰ EPA's reliance on the existing Agricultural BMP Rules is consistent with the State's demonstration that it could reduce emissions by five percent annually to reach attainment without relying on additional reductions from agricultural sources. 79 Fed. Reg. at 33,112; ER 355. Instead, the State relied on more stringent controls on larger contributors to PM-10 emissions, *e.g.*, construction activities, to show annual five percent reductions and to demonstrate attainment under the 2012 Five Percent Plan.

¹¹ Bahr refers to an alleged EPA "finding" that the Agricultural BMP rule was no longer BACM, Pet. Br. at 40, when EPA never promulgated any final rule with that finding.

to ensure that BMPs would be enforceable and implemented at a BACM level. 75 Fed. Reg. at 54,813. The second statement, to the State's agricultural BMP committee, suggested that the State consider adopting certain more stringent agricultural controls on agricultural sources of PM-10. But neither of these statements is inconsistent with EPA's position in the Final Rule. In the Final Rule, EPA stated that it "believes that it is important to continue to improve the controls on agricultural sources." 79 Fed. Reg. at 33,113 (ER 7). EPA's acknowledgement that existing controls need improvement and its encouragement of the State to adopt more stringent agricultural controls -- some of which the State adopted and made effective in 2011 -- does not mean EPA abused its discretion when it found that the existing Agricultural BMP rules were reasonable controls on agricultural sources for purposes of its concurrence on the State's demonstration of exceptional events. *See* ER 114.

In addition, new emission inventory information compiled after EPA made its statements in 2010 remove any remaining alleged inconsistency with EPA's statements in the Final Rule. The statement EPA made in the 2010 proposed rule was based on a 2005 emission inventory that EPA

believed inaccurate. 75 Fed. Reg. at 54,808-10. The statement in the proposed rule, as well as EPA's comments to the State's agricultural BMP committee, both preceded Arizona's May 2012 submittal of the 2008 Inventory to EPA, which indicated agricultural emissions from Maricopa Area sources were a much smaller part of the PM-10 inventory. The perceived need for additional controls on agricultural sources in 2010 based upon much higher and inaccurate estimates of agriculture's contributions to PM-10 emissions, became less pressing once the State compiled accurate inventory information that demonstrated the much lower contribution of agricultural emissions. 79 Fed. Reg. at 33,113 (ER 7).

Bahr's focus on the frequency or severity of exceptional event exceedances does not indicate that EPA's analysis of the events was deficient. Pet. Br. at 33-35. The Maricopa Area experiences frequent high wind dust events, some of which are severe, due to weather patterns that create extreme dust storms. Because of the unique meteorology and geography that give rise to these events, the Maricopa Area has, consistent with the High Winds Guidance, adopted numerous more stringent controls to better protect the health and safety of its citizens. See ER 124 (more

stringent controls may be reasonable if an area experiences frequent and/or severe exceptional event exceedances due to high winds). The State and local governments continue to adopt more stringent control measures. EPA did not abuse its discretion when it concurred on the flagged exceptional events based on existing reasonable control measures.

3. The State Demonstrated that Sources Outside the Maricopa Area Were Subject to Reasonable Controls, and EPA's Concurrence with that Demonstration was Not an Abuse of Discretion.

Bahr incorrectly claims that the State and EPA did not adequately address the contributions and controls of upwind areas outside the Maricopa Area. Pet. Br. at 44-49. Bahr focuses on the language from EPA's High Wind Guidance that states that an analysis of controls should "identify all contributing emission sources in upwind areas and provide evidence that those sources were reasonably controlled, whether anthropogenic or natural." Pet. Br. at 45; ER 153. The High Wind Guidance states in the following sentence that the analysis should "include a brief description of local/upwind sources contributing to the event and a description of the controls on the anthropogenic sources in place at the

time of the event (*e.g.*, local BACM measures).” ER 153. The State satisfied these requirements, and EPA’s concurrence was reasonable.

Using the same August 11, 2012, event as an example, the State provided more than a “brief description” of the upwind sources suspected of causing the event. The State’s submission provided a conceptual model of the events of August 11, including a description of the thunderstorms that developed over Pima and Pinal counties, outside the boundaries of the Maricopa Area. SER at 00023. The submission explained that the storms moved north and weakened, but generated gusty winds that transported dust northward into the Phoenix area. *Id.* The State asserted that the “dust was naturally occurring and likely originated over undeveloped lands south of Maricopa County, and wind gusts in excess of 30 mph overwhelmed reasonable dust control measures.” SER 000023-24. The State documented its description with maps and Geographic Information System analysis. Thus, the State provided the requested brief description of sources suspected to significantly contribute to the exceedance. *See* ER 130, 153. EPA reviewed the State’s submissions and reasonably

determined that the level of detail provided was adequate given relevant factors such as the wind speeds associated with the event. ER 92-96.

The State submission also documented the reasonable controls in place outside the Maricopa Area. Pinal County has adopted two rules that regulate conduct outside the Maricopa Area. Article 2 regulates 11 activities that may cause fugitive dust emission by prohibiting persons from engaging in these activities without taking reasonable precautions to effectively prevent fugitive dust from becoming airborne. Pet. Add. 96 of 107, *et seq.*; SER 000041. Article 3 provides performance standards to regulate fugitive dust emissions associated with construction, earthwork, and land development. Pet. Add. 98 of 107, *et. seq.* SER 000041. EPA referenced Arizona's identification of these controls in its analysis of each of the exceptional events. *See e.g.*, ER 93 (citing SER 00039-46).

EPA's concurrence with the reasonableness of these controls outside the Maricopa Area was not an abuse of discretion, particularly given that Pima County and the areas of Pinal County not in the Maricopa Area had a different obligation with respect to controls during 2010-12 than the Maricopa Area. The level of controls that can be considered reasonable for

lands outside a nonattainment area are understandably less stringent than those governing nonattainment areas. The High Winds Guidance expressly addresses this issue and suggests that, generally, EPA does not expect areas not classified as nonattainment of a NAAQS to have the same level of controls as areas that are nonattainment for the same NAAQS. ER at 126. Similarly, if an area has recently been designated nonattainment but has not yet been required to implement controls, EPA will expect only the level of controls that is appropriate for the planning stage. *Id.*

Bahr critiques the level of emission controls applicable in Pinal County outside the nonattainment area, but discounts the fact that Pinal County was only redesignated to nonattainment effective July 2, 2012. 77 Fed. Reg. 32,024 (May 31, 2012). The recent designation will trigger planning obligations to implement controls, such as reasonably available control measures and a preconstruction permitting program for new and modified sources. *Id.* at 32,030. However, the State's obligation to submit a plan for Pinal County occurred well after the exceptional events in 2011 and 2012 for which EPA concurred. *Id.* at 32,030 (State must submit an

implementation plan within 18 months of the effective date, which was January 2, 2014).

EPA agrees with Bahr that Arizona has the responsibility to ensure that reasonable controls exist both inside and outside the Maricopa Area, but disagrees that the State has not fulfilled that obligation. The portion of Pinal County within the Maricopa Area has five rules regulating fugitive dust from unpaved parking lots, residential properties, unpaved or unstable vacant lots, construction, earthwork or land development, and disturbed areas at vacant lots. SER 000041-42. The portions of Pinal County outside the Maricopa Area have less stringent rules, but they are not unreasonable because that area was not designated nonattainment until recently and thus was not expected to have the same level of controls. *See* ER at 126. EPA did not abuse its discretion when it determined that reasonable controls were in place outside the Maricopa Area such that the high wind dust events were not reasonably controllable or preventable.

II. EPA Reasonably Approved the Maricopa Area's 2012 Five Percent Plan when the Plan's Provisions Satisfied All Applicable Clean Air Act Requirements and, Consistent with EPA's Reasonable Interpretation of the Act, Did Not Revisit Previously Triggered and Approved BACM or Most Stringent Measure Requirements.

Section 189(d) of the Clean Air Act prescribes the obligations that arise when a serious PM-10 nonattainment area fails to meet its attainment date:

[T]he State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

42 U.S.C. § 7513a(d). When the Maricopa Area failed to attain PM-10 standards by December 31, 2006, Section 189(d) required the State to revise its plan to provide for attainment and an annual five percent reduction of PM-10 or PM-10 precursors. *Id.* The Area's 2012 Five Percent Plan satisfied these Section 189(d) obligations. ER at 223. Because the Act is silent on whether to require States to update BACM or most stringent measures in a five percent plan, EPA's reasonable interpretation not to require updates is

entitled to deference. EPA's approval of the 2012 Five Percent Plan in the State SIP was reasonable, and was not contrary to law.

Bahr incorrectly argues that the 2012 Five Percent Plan also requires updated demonstrations of BACM and most stringent measures. Pet. Br. at 50–51. Neither Section 189(d) nor EPA's reasonable interpretation of Section 189(d) requires updates to BACM or most stringent measures for the 2012 Five Percent Plan. Both BACM and most stringent measures were obligations triggered at earlier dates, and have already been evaluated and approved by EPA. *See* 75 Fed. Reg. 54,806, 54,812. BACM was triggered when EPA reclassified the Maricopa Area from a "moderate" to a "serious" nonattainment area on May 10, 1996. *See* 42 U.S.C. § 7513a(b)(1)(B); *see also* 79 Fed. Reg. at 33,109 (ER 3). Most stringent measures were triggered when the Maricopa Area sought a five year extension from the original attainment date of December 31, 2001. *See* 42 U.S.C. § 7513(e); *see also* 79 Fed. Reg. at 33,109 (ER 3). BACM and most stringent measure were obligations appropriately imposed at the time they were triggered, and the State added control measures implementing BACM and most stringent measures to the Maricopa Area's PM-10 nonattainment area plan at that

time. EPA subsequently approved these measures as meeting the requirements for BACM and most stringent measures on July 25, 2002. 67 Fed. Reg. at 48,728; *see* 75 Fed. Reg. at 54,812. This Court later upheld EPA's approval of Arizona's agricultural measures as sufficiently stringent to meet the Act's BACM requirement. *See Vigil*, 381 F. 3d at 838.

Bahr argues, however, that because BACM's definition is tied to "availability," BACM must change as "availability" changes. Pet. Br. at 52. The Act imposes no obligation to continually review BACM, and Bahr provides no statutory basis for such an obligation. EPA has reasonably interpreted Section 189(b) to mandate a BACM determination when BACM is statutorily triggered, correlated to the "availability" at the time BACM is triggered. *See* 79 Fed. Reg. at 33,109 (ER 3). Similarly, EPA has reasonably interpreted Section 188(e) as requiring only those measures that are the most stringent when the requirement is triggered. *See* 79 Fed. Reg. at 33,109 (ER 3).

EPA's review of a State's SIP submission that revises its prior BACM does not result from any legal obligation in the Act to update BACM at any particular time. If a State elects to revise its BACM through a SIP revision,

then EPA will review the update to ensure it is consistent with the Act's requirements, but does not necessarily make a new determination regarding BACM. *See* 75 Fed. Reg. at 78,167 (EPA approval of revisions to Rules 310 and 310.01 into Arizona's SIP because they "complied with relevant [Act] requirements."). Similarly, if a State elects to commit itself to review select elements of BACM "every three years" for its own reasons, then it may do so even without a statutory requirement for States to incorporate such a reevaluation provision. *See Latino Issues Forum v. EPA*, 558 F.3d at 946-47; 42 U.S.C. § 7416 (retaining for the State the primary authority to adopt more stringent emissions standards). Each nonattainment area is unique, and the Maricopa Area must implement and revise BACM that apply to its own unique circumstances. Bahr fails to distinguish between what the Act requires of the Maricopa Area, and what Bahr wishes the Maricopa Area had included in its 2012 Five Percent Plan.

Contrary to Bahr's arguments, EPA's discussion of BACM when reviewing the 2007 Five Percent Plan, but not the 2012 Five Percent Plan, does not reflect a change in EPA's interpretation of the Act. Pet. Br. at 51-52. EPA's different approaches follow from a necessary distinction

between the two Plans. When EPA reviewed the 2007 Plan, EPA reviewed the Agriculture BMP Rules because the State had submitted revised Agriculture BMP Rules as part of the 2007 Plan. 75 Fed. Reg. 54,806, 54,812 (referencing the State's submittal of revised Ariz. Admin. Code §§ 18-2-610 and 18-2-611); *see generally* 42 U.S.C. § 7410(k) (requiring approval for any SIP or SIP revision). In contrast, the State did not include revised Agriculture BMP Rules as part of the 2012 Plan; therefore, EPA was not required to review the Agriculture BMP Rules in conjunction with its action on the 2012 Plan. *Cf.* Pet. Br. at 51 (confirming that "the revised [Agricultural BMP] Rule was not included in the 2012 Five Percent Plan"). Accordingly, there has been no inconsistent or changed agency interpretation regarding the reevaluation of BACM. *See Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 742 (1996) (holding that the agency's interpretation is entitled to deference especially when no change in position has occurred). Similarly, because the State did not revise its most stringent measures in connection with the 2012 Plan, EPA was not required to reevaluate requirements for most stringent measures when acting on the 2012 Plan.

Although Section 189(d) does not identify any additional requirements, EPA has reasonably interpreted the Act to require nonattainment areas to address in their five percent plan other “applicable requirements of the [Act], including sections 110(a), 172(c), 176(c) and 189(c)(1).” 72 Fed. Reg. at 31,184–85. Consequently, the 2012 Five Percent Plan satisfied Section 110(a), 172(c), 176(c), and 189(c) obligations. ER 294, ER 339, ER 346-47, and ER 338, respectively. Bahr wrongly alleges, however, that there is no legitimate reason for EPA’s evaluation of a Five Percent Plan to include some additional Act requirements while excluding others. Pet. Br. at 50. EPA’s inclusion of certain Sections as applicable to five percent plans follows from a reasonable interpretation of the Act, and serves only to reinforce the Act’s overall structure and purpose: Section 110(a), 42 U.S.C. § 7410(a), highlights overarching procedural and structural requirements applicable to all SIP submissions to ensure the implementation, maintenance, and enforcement of the NAAQS; Section 172(c), 42 U.S.C. § 7502(c), provides a general overview of nonattainment plan requirements for all NAAQS; Section 176(c), 42 U.S.C. § 7506(c), requires government organizations to conform prospective actions to all

existing implementation plans; and Section 189(c)(1), 42 U.S.C. § 7513a(c)(1), requires a long-term timeline demonstrating a PM-10 nonattainment area's gradual progression towards NAAQS attainment. These requirements are inherent obligations of any planning SIP, clearly distinguishable from specific emission control requirements such as BACM and most stringent measures. EPA's inclusion of these four Sections incorporates structural requirements to ensure enforcement authority, plan conformity, and Act compliance, and excludes reconsiderations of technical standards such as BACM and most stringent measures. EPA's choice to include these four Sections reflects a reasonable interpretation of the Act and is not contrary to law.

Finally, Bahr incorrectly argues that the 2012 Five Percent Plan approval does not comport with the structure of the Act, which requires a cumulative approach to emissions controls. Pet. Br. at 52–53. Bahr's interpretation of the Act aligns with EPA's long-standing interpretation that each statutory trigger in the Act imposes a separate and increasingly stringent obligation. Under EPA's interpretation of the Act, if an area fails to reach attainment with the NAAQS by the statutory attainment deadline,

then that area is met with additional and stricter requirements. *See* 59 Fed. Reg. at 42,002 (“The Act requires States to submit several SIP revisions, as necessary, providing for implementation of increasingly stringent control measures and demonstrating when those control measures will bring about attainment of the PM-10 NAAQS.”). The requirements for BACM and most stringent measures were each previously prompted by a distinct trigger, and were satisfied at the time of each trigger. These and other previously prompted requirements continue to be a part of the State’s SIP. Here, a new trigger specifically prompted the new annual five percent reduction requirement. *See* 72 Fed. Reg. at 31,184. The annual five percent reduction requirement is in addition to preceding requirements for BACM and most stringent measures, which impose ongoing emission control obligations. The Act is structured so that all of these requirements aggregate in quantity and severity, increasing emissions controls over time and providing for a cumulative pollution control strategy.

EPA reasonably approved the State’s 2012 Five Percent Plan without reevaluating BACM and most stringent measures. Because the Act is silent on whether to include or exclude reanalysis of requirements for BACM or

most stringent measures in a Five Percent Plan, this Court must defer under *Chevron* to EPA's reasonable interpretation of Section 189(d) as not requiring such reanalysis. This Court should uphold EPA's decision to approve the 2012 Five Percent Plan without requiring the unnecessary reevaluation of BACM and most stringent measures.

III. EPA Reasonably Approved the Maricopa Area's 2012 Five Percent Plan When It Allowed Previously Implemented Control Measures Providing Continuing Emissions Reductions to Satisfy the Act's Contingency Measure Requirements in Accordance with EPA's Reasonable Interpretation of the Act and Established Case Law.

Section 172(c)(9) of the Act requires all nonattainment area plans to include "specific measures to be undertaken if the area fails to make reasonable further progress, or to attain [NAAQS] by the attainment date applicable under this part." 42 U.S.C. § 7502(c)(9). These measures are to "be included in the plan revision as contingency measures," and are "to take effect in any such case without further action by the State or the Administrator." 42 U.S.C. § 7502(c)(9). The Maricopa Area has already implemented its Section 172(c)(9) contingency measures, which accords with EPA's long-standing, reasonable interpretation of this Section to allow for early implementation of such measures. *See* ER at 264.

Contingency measures must be in addition to the Maricopa Area's core PM-10 control strategy, which meets other applicable attainment requirements. *See* 59 Fed. Reg. 41,998, 42,015 ("Contingency measures should consist of other available control measures not contained in the applicable core control strategy."). The 2012 Five Percent Plan's contingency measures do not "count" toward any other planning requirement, are in addition to the Maricopa Area's measures ensuring a five percent annual decrease in PM-10 emissions, and are "not otherwise rel[ied] on to meet other attainment plan requirements in the area." 79 Fed. Reg. at 7,124 (ER 217). Bahr concedes that the Maricopa Area's contingency measures stand on their own, and were not relied upon by the State "to demonstrate how it planned to achieve the required five percent reductions, reasonable further progress, and attainment." Pet. Br. 55. These core requirements are satisfied elsewhere in the 2012 Five Percent Plan.¹²

¹² The Maricopa Area's measures, having already been implemented, comply with the plain language of the Act and "take effect without further action by the State or [EPA]." 42 U.S.C. § 7502(c)(9); 67 Fed. Reg. at 48,732 ("Measures that have already been implemented clearly meet the section

Since 1993, EPA has consistently allowed States to implement contingency measures before the State fails to reach an attainment deadline. Allowing the early implementation of contingency measures encourages States to take extra steps to assure prompt attainment of the NAAQS, and does not impose any lingering obligation on the State to adopt additional contingency measures on top of those already implemented. 57 Fed. Reg. 13,498, 13,511 (Apr. 16, 1992). EPA has approved numerous SIPs which incorporate contingency measures already in place and which already provide reductions in excess of the reductions required by the attainment demonstration or other requirements. *See* 79 Fed. Reg. at 33,114 (ER 8) (citing examples); 66 Fed. Reg. 30,811, 30, 814 (June 8, 2001) (approval of Rhode Island SIP revision that contained already implemented contingency measures); 62 Fed. Reg. 15,844, 15,846 (Apr. 3, 1997) (finding that Indiana appropriately used its discretion to implement contingency measures prior to a 1996 deadline); 62 Fed. Reg. 66,279, 66,280 (Dec. 18, 1997) (same for Illinois).

172(c)(9) requirement that contingency measures take effect without further action by the State or Administrator.”).

EPA's reasonable interpretation of Section 172(c)(9) allowing for the early implementation of contingency measures was upheld by the Fifth Circuit in *LEAN*. The Fifth Circuit found "EPA's argument persuasive" and determined "that the early activation of continuing contingency measures is consistent with the purpose and requirements of the [Act]." *LEAN*, 382 F.3d at 583-84. The Fifth Circuit explained that it is "illogical to penalize nonattainment areas that are taking extra steps, such as implementing contingency measures prior to a deadline, to comport with the [Act's] mandate that such states achieve NAAQS compliance as 'expeditiously as practicable.'" *LEAN*, 382 F.3d at 584.

Bahr nevertheless argues that the Fifth Circuit wrongly decided *LEAN* because allowing early contingency measures frustrates the measures' ability to "kick in" after a failure has occurred. *See* Pet. Br. 57. Bahr's interpretation cuts against "a primary purpose of the [Act] – the aim of ensuring that nonattainment areas reach NAAQS compliance in an efficient manner." *LEAN*, 382 F.3d at 583. Ongoing controls that provide additional emissions reductions provide more efficient relief than delayed implementation, and provide more incentive for an immediate rather than

a delayed response. *See LEAN*, 382 F.3d at 583–84. Dissuading a State from adopting measures early would controvert the Act’s fundamental purpose to protect public health as “expeditiously as practicable,” and would counterproductively persuade States to pursue only the minimum requirements of the Act. 42 U.S.C. § 7502(c)(1). Instead, EPA’s interpretation, as upheld by the Fifth Circuit, provides for expeditious emissions reductions and immediate “public health and welfare protection,” properly satisfying the plain language and purpose of the Act as a whole, and constitutes a reasonable interpretation of the ambiguous contingency measure obligations of Section 172(c)(9). 59 Fed. Reg. at 42015; *see also* 42 U.S.C. § 7502(c)(1).

Bahr wrongly contends that the Maricopa Area’s contingency measures, which are continuing in nature, are “clearly distinguishable” from the contingency measures reviewed in *LEAN*. Pet. Br. 57. Four of the Maricopa Area’s five contingency measures are permanent infrastructure projects, which were completed in 2011. ER 343. The four infrastructure projects include: paving and stabilizing existing public dirt roads and alleys; paving and stabilizing unpaved shoulders; repaving or overlaying

paved roads with rubberized asphalt; and lowering speed limits on dirt roads and alleys. *Id.* The Maricopa Area's fifth contingency measure involved the purchase of PM-10 certified sweepers in 2009, and provides for on-going PM-10 sweeping of freeways and ramps. *Id.* While the infrastructure projects are completed and the sweepers have already been purchased, the emissions reductions resulting from all five contingency measures are substantial and ongoing. For example, the 2012 Five Percent Plan demonstrates that early implementation of contingency measures that provide for the paving and stabilizing of existing public dirt roads and alleys resulted in decreased PM-10 emissions of over 2,600 tons per year by 2012. ER at 343. *LEAN* approved contingency measures that are "continuing in nature," and the Maricopa Area's contingency measures satisfy that requirement by annually reducing PM-10 levels from what otherwise would have existed without the implementation of these contingency measures. *See LEAN*, 382 F.3d at 582. The Maricopa Area's PM-10 emissions reductions continue "on an annual basis and are surplus,

permanent, and federally enforceable,” and are no different from the measure reviewed in *LEAN*.¹³ *LEAN*, 382 F.3d at 582–83.

Finally, the contingency measures appropriately target the Maricopa Area’s largest PM-10 emissions contributors. *Cf.* 59 Fed. Reg. 41,998, 42,015 (“In designing its contingency measures, the State should also take into consideration the potential nature and extent of any attainment shortfall for the area.”). Thirty-eight percent of the Maricopa Area’s 2012 PM-10 emissions arose from paved and unpaved road fugitive dust. ER 302. While “[f]ugitive dust emissions from unpaved roads” are a predominant concern in the Maricopa Area, their “emissions can be reduced by paving roads and limiting speeds on unpaved roads.” PER at 227. The Maricopa Area appropriately employed both of these types of controls in their

¹³ The Fifth Circuit ultimately found that the contingency measure in *LEAN* was erroneously approved because the emissions reductions at issue occurred outside the nonattainment area and the plan did not include a demonstration that such reductions benefitted the nonattainment area. However, the parties do not contest that the Maricopa Area’s contingency measures all occur within the nonattainment area. *See* ER 294 (“These PM-10 reduction projects were implemented in the PM-10 nonattainment area by twenty-one cities and towns, Maricopa County, Pinal County, Arizona Department of Transportation, and the Gila River Indian Community.”); *see also* *LEAN*, 382 F.3d at 586.

contingency measures, targeting their worst emission sources as “expeditiously as practicable.” 42 U.S.C. § 7502(c)(1). By paving roads and lowering speed limits earlier, the Maricopa Area experienced PM-10 emissions decreases earlier, providing for more immediate “public health and welfare protection.” 59 Fed. Reg. at 42,015.

The Maricopa Area’s contingency measures comply with EPA’s reasonable interpretation of the Act and the Fifth Circuit’s holding in *LEAN*. Because the Act is silent on the early implementation of contingency measures, this Court, like the Fifth Circuit, should defer under *Chevron* to EPA’s interpretation of Section 172(c)(9). This Court should uphold EPA’s decision to approve the 2012 Plan’s early implementation of contingency measures.

CONCLUSION

The petition for review should be denied for all of the reasons stated above.

Respectfully submitted,

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Dated: December 17, 2014

STATEMENT OF RELATED CASES

EPA is not aware of any related cases.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATIONS, TYPEFACE REQUIREMENTS, AND TYPE STYLE
REQUIREMENTS**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 13,909 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
Microsoft Word computed the word count.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Book Antiqua type style.

s/ Alan D. Greenberg.

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United States Environmental Protection Agency

Dated: December 17, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December 2014 I electronically filed the foregoing Respondents' Brief with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses of counsel of record:

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ADDENDUM

42 U.S.C § 7502 A-1

42 U.S.C § 7513 A-5

42 U.S.C § 7513a A-8

42 U.S.C § 7619 A-11

40 C.F.R. § 50.1 A-15

40 C.F.R. § 50.14 A-17

Maricopa County Regulation III, Rule 310 A-22

Maricopa County Regulation III, Rule 310.01 A-58

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 1. Nonattainment Areas in General (Refs & Annos)

42 U.S.C.A. § 7502

§ 7502. Nonattainment plan provisions in general

Currentness

(a) Classifications and attainment dates

(1) Classifications

(A) On or after the date the Administrator promulgates the designation of an area as a nonattainment area pursuant to section 7407(d) of this title with respect to any national ambient air quality standard (or any revised standard, including a revision of any standard in effect on November 15, 1990), the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

(B) The Administrator shall publish a notice in the Federal Register announcing each classification under subparagraph (A), except the Administrator shall provide an opportunity for at least 30 days for written comment. Such classification shall not be subject to the provisions of sections 553 through 557 of Title 5 (concerning notice and comment) and shall not be subject to judicial review until the Administrator takes final action under subsection (k) or (l) of section 7410 of this title (concerning action on plan submissions) or section 7509 of this title (concerning sanctions) with respect to any plan submissions required by virtue of such classification.

(C) This paragraph shall not apply with respect to nonattainment areas for which classifications are specifically provided under other provisions of this part.

(2) Attainment dates for nonattainment areas

(A) The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section 7407(d) of this title, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(B) The attainment date for an area designated nonattainment with respect to a secondary national ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable after the date such area was designated nonattainment under section 7407(d) of this title.

(C) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the attainment date determined by the Administrator under subparagraph (A) or (B) if--

(i) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(ii) in accordance with guidance published by the Administrator, no more than a minimal number of exceedances of the relevant national ambient air quality standard has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this subparagraph for a single nonattainment area.

(D) This paragraph shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part.

(b) Schedule for plan submissions

At the time the Administrator promulgates the designation of an area as nonattainment with respect to a national ambient air quality standard under section 7407(d) of this title, the Administrator shall establish a schedule according to which the State containing such area shall submit a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title. Such schedule shall at a minimum, include a date or dates, extending no later than 3 years from the date of the nonattainment designation, for the submission of a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title.

(c) Nonattainment plan provisions

The plan provisions (including plan items) required to be submitted under this part shall comply with each of the following:

(1) In general

Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

(2) RFP

Such plan provisions shall require reasonable further progress.

(3) Inventory

Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

(4) Identification and quantification

Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 7503(a)(1)(B) of this title, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.

(5) Permits for new and modified major stationary sources

Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 7503 of this title.

(6) Other measures

Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.

(7) Compliance with section 7410(a)(2)

Such plan provisions shall also meet the applicable provisions of section 7410(a)(2) of this title.

(8) Equivalent techniques

Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) Contingency measures

Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

(d) Plan revisions required in response to finding of plan inadequacy

Any plan revision for a nonattainment area which is required to be submitted in response to a finding by the Administrator pursuant to section 7410(k)(5) of this title (relating to calls for plan revisions) must correct the plan deficiency (or deficiencies) specified by the Administrator and meet all other applicable plan requirements of section 7410 of this title and this part. The Administrator may reasonably adjust the dates otherwise applicable under such requirements to such revision (except for attainment dates that have not yet elapsed), to the extent necessary to achieve a consistent application of such requirements. In order to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this chapter, the Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States which shall be available to the public, taking into consideration any such guidelines, interpretations, or information provided before November 15, 1990.

(e) Future modification of standard

If the Administrator relaxes a national primary ambient air quality standard after November 15, 1990, the Administrator shall, within 12 months after the relaxation, promulgate requirements applicable to all areas which have not attained that standard as of the date of such relaxation. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 172, as added Aug. 7, 1977, Pub.L. 95-95, Title I, § 129(b), 91 Stat. 746; amended Nov. 16, 1977, Pub.L. 95-190, § 14(a)(55), (56), 91 Stat. 1402; Nov. 15, 1990, Pub.L. 101-549, Title I, § 102(b), 104 Stat. 2412.)

Notes of Decisions (45)

42 U.S.C.A. § 7502, 42 USCA § 7502

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United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part D. Plan Requirements for Nonattainment Areas
Subpart 4. Additional Provisions for Particulate Matter Nonattainment Areas

42 U.S.C.A. § 7513

§ 7513. Classifications and attainment dates

Currentness

(a) Initial classifications

Every area designated nonattainment for PM-10 pursuant to section 7407(d) of this title shall be classified at the time of such designation, by operation of law, as a moderate PM-10 nonattainment area (also referred to in this subpart as a “Moderate Area”) at the time of such designation. At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each PM-10 nonattainment area, the Administrator shall publish a notice announcing the classification of such area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(b) Reclassification as Serious

(1) Reclassification before attainment date

The Administrator may reclassify as a Serious PM-10 nonattainment area (identified in this subpart also as a “Serious Area”) any area that the Administrator determines cannot practicably attain the national ambient air quality standard for PM-10 by the attainment date (as prescribed in subsection (c) of this section) for Moderate Areas. The Administrator shall reclassify appropriate areas as Serious by the following dates:

(A) For areas designated nonattainment for PM-10 under section 7407(d)(4) of this title, the Administrator shall propose to reclassify appropriate areas by June 30, 1991, and take final action by December 31, 1991.

(B) For areas subsequently designated nonattainment, the Administrator shall reclassify appropriate areas within 18 months after the required date for the State's submission of a SIP for the Moderate Area.

(2) Reclassification upon failure to attain

Within 6 months following the applicable attainment date for a PM-10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date--

(A) the area shall be reclassified by operation of law as a Serious Area; and

(B) the Administrator shall publish a notice in the Federal Register no later than 6 months following the attainment date, identifying the area as having failed to attain and identifying the reclassification described under subparagraph (A).

(c) Attainment dates

Except as provided under subsection (d) of this section, the attainment dates for PM-10 nonattainment areas shall be as follows:

(1) Moderate Areas

For a Moderate Area, the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 7407(d)(4) of this title, the attainment date shall not extend beyond December 31, 1994.

(2) Serious Areas

For a Serious Area, the attainment date shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 7407(d)(4) of this title, the date shall not extend beyond December 31, 2001.

(d) Extension of attainment date for Moderate Areas

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in paragraph ¹ (c)(1) if--

(1) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and

(2) no more than one exceedance of the 24-hour national ambient air quality standard level for PM-10 has occurred in the area in the year preceding the Extension Year, and the annual mean concentration of PM-10 in the area for such year is less than or equal to the standard level.

No more than 2 one-year extensions may be issued under the subsection for a single nonattainment area.

(e) Extension of attainment date for Serious Areas

Upon application by any State, the Administrator may extend the attainment date for a Serious Area beyond the date specified under subsection (c) of this section, if attainment by the date established under subsection (c) of this section would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. At the time of such application, the State must submit a revision to the implementation plan that includes a demonstration of attainment by the most expeditious alternative date practicable. In determining whether to grant an

extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures. The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than 5 years.

(f) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirement applicable to any Serious Area under this subpart where the Administrator determines that anthropogenic sources of PM-10 do not contribute significantly to the violation of the PM-10 standard in the area. The Administrator may also waive a specific date for attainment of the standard where the Administrator determines that nonanthropogenic sources of PM-10 contribute significantly to the violation of the PM-10 standard in the area.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 188, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 105(a), 104 Stat. 2458.)

Notes of Decisions (5)

Footnotes

- 1 So in original. Probably should be "subsection".
42 U.S.C.A. § 7513, 42 USCA § 7513
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United States Code Annotated

Title 42. The Public Health and Welfare

Chapter 85. Air Pollution Prevention and Control (Refs & Annos)

Subchapter I. Programs and Activities

Part D. Plan Requirements for Nonattainment Areas

Subpart 4. Additional Provisions for Particulate Matter Nonattainment Areas

42 U.S.C.A. § 7513a

§ 7513a. Plan provisions and schedules for plan submissions

Currentness

(a) Moderate Areas

(1) Plan provisions

Each State in which all or part of a Moderate Area is located shall submit, according to the applicable schedule under paragraph (2), an implementation plan that includes each of the following:

(A) For the purpose of meeting the requirements of section 7502(c)(5) of this title, a permit program providing that permits meeting the requirements of section 7503 of this title are required for the construction and operation of new and modified major stationary sources of PM-10.

(B) Either (i) a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or (ii) a demonstration that attainment by such date is impracticable.

(C) Provisions to assure that reasonably available control measures for the control of PM-10 shall be implemented no later than December 10, 1993, or 4 years after designation in the case of an area classified as moderate after November 15, 1990.

(2) Schedule for plan submissions

A State shall submit the plan required under subparagraph (1) no later than the following:

(A) Within 1 year of November 15, 1990, for areas designated nonattainment under section 7407(d)(4) of this title, except that the provision required under subparagraph (1)(A) shall be submitted no later than June 30, 1992.

(B) 18 months after the designation as nonattainment, for those areas designated nonattainment after the designations prescribed under section 7407(d)(4) of this title.

(b) Serious Areas

(1) Plan provisions

In addition to the provisions submitted to meet the requirements of paragraph ¹ (a)(1) (relating to Moderate Areas), each State in which all or part of a Serious Area is located shall submit an implementation plan for such area that includes each of the following:

(A) A demonstration (including air quality modeling)--

(i) that the plan provides for attainment of the PM-10 national ambient air quality standard by the applicable attainment date, or

(ii) for any area for which the State is seeking, pursuant to section 7513(e) of this title, an extension of the attainment date beyond the date set forth in section 7513(c) of this title, that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable.

(B) Provisions to assure that the best available control measures for the control of PM-10 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.

(2) Schedule for plan submissions

A State shall submit the demonstration required for an area under paragraph (1)(A) no later than 4 years after reclassification of the area to Serious, except that for areas reclassified under section 7513(b)(2) of this title, the State shall submit the attainment demonstration within 18 months after reclassification to Serious. A State shall submit the provisions described under paragraph (1)(B) no later than 18 months after reclassification of the area as a Serious Area.

(3) Major sources

For any Serious Area, the terms “major source” and “major stationary source” include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM-10.

(c) Milestones

(1) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

(2) Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall

determine whether or not a State's demonstration under this subsection is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) If a State fails to submit a demonstration under paragraph (2) with respect to a milestone within the required period or if the Administrator determines that the area has not met any applicable milestone, the Administrator shall require the State, within 9 months after such failure or determination to submit a plan revision that assures that the State will achieve the next milestone (or attain the national ambient air quality standard for PM-10, if there is no next milestone) by the applicable date.

(d) Failure to attain

In the case of a Serious PM-10 nonattainment area in which the PM-10 standard is not attained by the applicable attainment date, the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM-10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM-10 or PM-10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

(e) PM-10 precursors

The control requirements applicable under plans in effect under this part for major stationary sources of PM-10 shall also apply to major stationary sources of PM-10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the standard in the area. The Administrator shall issue guidelines regarding the application of the preceding sentence.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 189, as added Nov. 15, 1990, Pub.L. 101-549, Title I, § 105(a), 104 Stat. 2460.)

Notes of Decisions (6)

Footnotes

1 So in original. Probably should be "subsection".

42 U.S.C.A. § 7513a, 42 USCA § 7513a

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Yellow Flag - Negative Treatment
Proposed Legislation

KeyCite

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter III. General Provisions

42 U.S.C.A. § 7619

§ 7619. Air quality monitoring

Effective: August 10, 2005

Currentness

(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; and

(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) 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.

(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.

(B) 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 of 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 each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and
- (v) 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.

CREDIT(S)

(July 14, 1955, c. 360, Title III, § 319, as added Aug. 7, 1977, Pub.L. 95-95, Title III, § 309, 91 Stat. 781; amended Aug. 10, 2005, Pub.L. 109-59, Title VI, § 6013(a), 119 Stat. 1882.)

Notes of Decisions (1)

42 U.S.C.A. § 7619, 42 USCA § 7619

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Code of Federal Regulations
Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 50. National Primary and Secondary Ambient Air Quality Standards (Refs & Annos)

40 C.F.R. § 50.1

§ 50.1 Definitions.

Effective: May 21, 2007

Currentness

- (a) As used in this part, all terms not defined herein shall have the meaning given them by the Act.
- (b) Act means the Clean Air Act, as amended (42 U.S.C. 1857–18571, as amended by Pub.L. 91–604).
- (c) Agency means the Environmental Protection Agency.
- (d) Administrator means the Administrator of the Environmental Protection Agency.
- (e) Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access.
- (f) Reference method means a method of sampling and analyzing the ambient air for an air pollutant that is specified as a reference method in an appendix to this part, or a method that has been designated as a reference method in accordance with part 53 of this chapter; it does not include a method for which a reference method designation has been cancelled in accordance with § 53.11 or § 53.16 of this chapter.
- (g) Equivalent method means a method of sampling and analyzing the ambient air for an air pollutant that has been designated as an equivalent method in accordance with part 53 of this chapter; it does not include a method for which an equivalent method designation has been cancelled in accordance with § 53.11 or § 53.16 of this chapter.
- (h) Traceable means that a local standard has been compared and certified either directly or via not more than one intermediate standard, to a primary standard such as a National Bureau of Standards Standard Reference Material (NBS SRM), or a USEPA/NBS-approved Certified Reference Material (CRM).
- (i) Indian country is as defined in 18 U.S.C. 1151.
- (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, and is determined by the Administrator 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.

Credits

[36 FR 22384, Nov. 25, 1971, as amended at 41 FR 11253, March 17, 1976; 48 FR 2529, Jan. 20, 1983; 63 FR 7274, Feb. 12, 1998; 72 FR 13580, March 22, 2007]

SOURCE: 36 FR 22384, Nov. 25, 1971; 50 FR 25544, June 19, 1985; 63 FR 7274, Feb. 12, 1998 unless otherwise noted., unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401, et seq.

Notes of Decisions (9)

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Code of Federal Regulations

Title 40. Protection of Environment

Chapter I. Environmental Protection Agency (Refs & Annos)

Subchapter C. Air Programs

Part 50. National Primary and Secondary Ambient Air Quality Standards (Refs & Annos)

40 C.F.R. § 50.14

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

Effective: March 18, 2013

Currentness

(a) Requirements.

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

(2) Demonstration to justify data exclusion may include any reliable and accurate data, but must demonstrate a clear causal relationship between the measured exceedance or violation of such standard and the event in accordance with paragraph (c)(3)(iv) 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 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 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 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 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 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]

(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 which has been submitted to the AQS database.

(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 1st of the calendar year following the year in which the flagged measurement occurred, except as allowed under paragraph (c)(2)(iv) or (c)(2)(v) of this section.

(iv) For PM_{2.5} 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) For lead (Pb) data collected during calendar years 2006–2008, 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 July 1, 2009. For Pb data collected during calendar year 2009, 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 July 1, 2010. For Pb data collected during calendar year 2010, 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 May 1, 2011.

(vi) 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 exceptional event data, providing initial data descriptions and providing detailed data documentation in AQS for the initial designations of areas for those NAAQS. Table 1 provides the schedule for submission of flags with initial descriptions in AQS and detailed documentation. These schedules shall apply for those data which will or may influence the initial designation of areas for those NAAQS. EPA anticipates revising Table 1 as necessary to accommodate revised data submission schedules for new or revised NAAQS.

Table 1—Special Schedules for Exceptional Event Flagging and Documentation Submission for Data To Be Used in Initial Designations for New or Revised NAAQS

NAAQS pollutant/ standard/(level/ promulgation date)	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
PM _{2.5} /24-Hr Standard (35 µg/m ³) Promulgated October 17, 2006	2004-2006	October 1, 2007.....	April 15, 2008.
Ozone/8-Hr Standard (0.075 ppm) Promulgated March 12, 2008	2005-2007	June 18, 2009	June 18, 2009.
	2008	June 18, 2009	June 18, 2009.
	2009	60 days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first.	60 days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first.
NO ₂ /1-Hr Standard (100 ppb) Promulgated February 9, 2010	2008	July 1, 2010	January 22, 2011.
	2009	July 1, 2010 ^a	January 22, 2011.
	2010	April 1, 2011	July 1, 2011.
SO ₂ /1-Hr Standard (75 ppb) Promulgated June 22, 2010	2008	October 1, 2010.....	June 1, 2011.
	2009	October 1, 2010.....	June 1, 2011.
	2010	June 1, 2011.....	June 1, 2011.
	2011	60 days after the end of the calendar quarter in which the event occurred or March 31, 2012, whichever date occurs first	60 days after the end of the calendar quarter in which the event occurred or March 31, 2012, whichever date occurs first.

PM _{2.5} /Primary Annual Standard (12 µg/m ³) Promulgated December 14, 2012	2010 and 2011	July 1, 2013	December 12, 2013.
	2012	July 1, 2013 ^a	December 12, 2013.
	2013	July 1, 2014 ^a	August 1, 2014.

Note: The table of revised deadlines only applies to data EPA will use to establish the initial area designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by the EPA for redesignations to attainment.

Note: EPA notes that the table of revised deadlines only applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

(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.

(ii) 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) A State that flags Pb data collected during calendar years 2006–2009, pursuant to paragraph (c)(2)(v) of this section shall, after notice and opportunity for public comment, submit to EPA a demonstration to justify exclusion of the data not later than October 15, 2010. A State that flags Pb data collected during calendar year 2010 shall, after notice and opportunity for public comment, submit to EPA a demonstration to justify the exclusion of the data not later than May 1, 2011. A state must submit the public comments it received along with its demonstration to EPA.

(iv) The demonstration 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.

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

Credits

[72 FR 13580, March 22, 2007; 72 FR 28612, May 22, 2007; 73 FR 58046, Oct. 6, 2008; 73 FR 67051, Nov. 12, 2008; 73 FR 70597, Nov. 21, 2008; 73 FR 76220, Dec. 16, 2008; 74 FR 23312, May 19, 2009; 75 FR 6531, Feb. 9, 2010; 75 FR 35592, June 22, 2010; 78 FR 3277, Jan. 15, 2013]

SOURCE: 36 FR 22384, Nov. 25, 1971; 50 FR 25544, June 19, 1985; 63 FR 7274, Feb. 12, 1998 unless otherwise noted., unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401, et seq.

Current through December. 4, 2014; 79 FR 72103.

Footnotes

a This date is the same as the general schedule in 40 CFR 50.14.

End of Document

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REGULATION III – CONTROL OF AIR CONTAMINANTS

**RULE 310
FUGITIVE DUST FROM DUST-GENERATING OPERATIONS**

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**MARICOPA COUNTY
AIR POLLUTION CONTROL REGULATIONS
REGULATION III – CONTROL OF AIR CONTAMINANTS**

**RULE 310
FUGITIVE DUST FROM DUST-GENERATING OPERATIONS**

SECTION 100 – GENERAL

- 101 PURPOSE:** To limit particulate matter (PM₁₀) emissions into the ambient air from any property, operation or activity that may serve as a fugitive dust source. The effect of this rule shall be to minimize the amount of PM₁₀ entrained into the ambient air as a result of the impact of human activities by requiring measures to prevent, reduce, or mitigate particulate matter emissions.
- 102 APPLICABILITY:** The provisions of this rule shall apply to all dust-generating operations except for those dust-generating operations listed in Section 103 of this rule.
- 103 EXEMPTIONS:**
- 103.1** The provisions of this rule shall not apply to normal farm cultural practices according to Arizona Revised Statutes (A.R.S.) § 49-457 and A.R.S. § 49-504.4.
- 103.2** The provisions of this rule shall not apply to the following non-traditional sources of fugitive dust that are located at sources that do not require any permit under these rules. These non-traditional sources of fugitive dust are subject to the standards and/or requirements described in Rule 310.01: Fugitive Dust from Non-Traditional Sources of Fugitive Dust of these rules:
- a. Vehicle use in open areas and vacant lots.
 - b. Open areas and vacant lots.
 - c. Unpaved parking lots.
 - d. Unpaved roadways (including alleys).

- e. Livestock activities.
- f. Erosion-caused deposition of bulk materials onto paved surfaces.
- g. Easements, rights-of-way, and access roads for utilities (transmission of electricity, natural gas, oil, water, and gas).

103.3 The provisions of this rule shall not apply to emergency activities that may disturb the soil conducted by any utility or government agency in order to prevent public injury or to restore critical utilities to functional status.

103.4 The provisions of this rule do not apply to the establishment of initial landscapes without the use of mechanized equipment, conducting landscape maintenance without the use of mechanized equipment, and playing on or maintaining a field used for non-motorized sports. However, establishing initial landscapes without the use of mechanized equipment and conducting landscape maintenance without the use of mechanized equipment shall not include grading, or trenching performed to establish initial landscapes or to redesign existing landscapes.

103.5 The provisions of this rule shall not apply to rooftop operations for cutting, drilling, grinding, or coring roofing tile when such activity is occurring on a pitched roof.

SECTION 200 – DEFINITIONS: For the purpose of this rule, the following definitions apply, in addition to those definitions found in Rule 100: General Provisions and Definitions of these rules. In the event of any inconsistency between any of the Maricopa County air pollution control rules, the definitions in this rule take precedence.

201 AREA A – As defined in A.R.S. § 49-541(1), the area in Maricopa County delineated as follows:

Township 8 North, Range 2 East and Range 3 East
Township 7 North, Range 2 West through Range 5 East
Township 6 North, Range 5 West through Range 6 East
Township 5 North, Range 5 West through Range 7 East
Township 4 North, Range 5 West through Range 8 East
Township 3 North, Range 5 West through Range 8 East
Township 2 North, Range 5 West through Range 8 East
Township 1 North, Range 5 West through Range 7 East
Township 1 South, Range 5 West through Range 7 East
Township 2 South, Range 5 West through Range 7 East
Township 3 South, Range 5 West through Range 1 East
Township 4 South, Range 5 West through Range 1 East

202 AREA ACCESSIBLE TO THE PUBLIC – Any paved parking lot or paved roadway that can be entered or used for public travel primarily for purposes unrelated to the dust-generating operation.

203 BULK MATERIAL – Any material, including, but not limited to, the following materials that are capable of producing fugitive dust:

- 203.1 Earth.
- 203.2 Rock.
- 203.3 Silt.
- 203.4 Sediment.
- 203.5 Sand.
- 203.6 Gravel.
- 203.7 Soil.
- 203.8 Fill.
- 203.9 Aggregate less than 2 inches in length or diameter (i.e., aggregate base course [ABC]).
- 203.10 Dirt.
- 203.11 Mud.
- 203.12 Demolition debris.
- 203.13 Cotton.
- 203.14 Trash.
- 203.15 Cinders.
- 203.16 Pumice.
- 203.17 Sawdust.
- 203.18 Feeds.
- 203.19 Grains.
- 203.20 Fertilizers.
- 203.21 Fluff from shredders.
- 203.22 Dry concrete.

204 BULK MATERIAL HANDLING, STORAGE, AND/OR TRANSPORTING OPERATION – The use of equipment, haul trucks, and/or motor vehicles, including, but not limited to, for the following activities that are capable of producing fugitive dust:

- 204.1 Loading.
- 204.2 Unloading.
- 204.3 Conveying.
- 204.4 Transporting.
- 204.5 Piling.
- 204.6 Stacking.
- 204.7 Screening.
- 204.8 Grading.
- 204.9 Moving bulk materials.

205 CONTROL MEASURE – A technique, practice, or procedure used to prevent or minimize the generation, emission, entrainment, suspension, and/or airborne transport of fugitive dust. Control measures include, but are not limited to:

- 205.1** Curbing;
- 205.2** Paving;
- 205.3** Pre-watering;
- 205.4** Applying dust suppressants;
- 205.5** Physically stabilizing with vegetation, gravel, recrushed/recycled asphalt or other forms of physical stabilization;
- 205.6** Limiting, restricting, phasing and/or rerouting motor vehicle access;
- 205.7** Reducing vehicle speeds and/or number of vehicle trips;
- 205.8** Limiting use of off-road vehicles on open areas and vacant lots;
- 205.9** Utilizing work practices and/or structural provisions to prevent wind and water erosion onto areas accessible to the public;
- 205.10** Appropriately using dust control implements;
- 205.11** Installing one or more grizzlies, gravel pads, and/or wash down pads adjacent to the entrance of an area accessible to the public to control carry-out and trackout;
- 205.12** Keeping open-bodied haul trucks in good repair, so that spillage may not occur from beds, sidewalls, and tailgates; and
- 205.13** Covering the cargo beds of haul trucks to minimize wind-blown dust emissions and spillage.

206 DISTURBED SURFACE AREA – A portion of the earth's surface or material placed on the earth's surface that has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed native condition if the potential for the emission of fugitive dust is increased by the movement, destabilization, or modification.

207 DUST CONTROL IMPLEMENT – A tool, machine, equipment, accessory, structure, enclosure, cover, material or supply, including an adequate readily available supply of water and its associated distribution/delivery system, used to control fugitive dust emissions.

208 DUST CONTROL PLAN – A written plan describing all control measures to be implemented and maintained in order to prevent or minimize the generation, emission, entrainment, suspension, and/or airborne transport of fugitive dust.

209 DUST-GENERATING OPERATION – Any activity capable of generating fugitive dust, including, but not limited to, the following activities:

- 209.1** Land clearing, maintenance, and land clean-up using mechanized equipment.
- 209.2** Earthmoving.
- 209.3** Weed abatement by discing or blading.
- 209.4** Excavating.
- 209.5** Construction.

- 209.6 Demolition.
 - 209.7 Bulk material handling (e.g., bulk material hauling and/or transporting, bulk material stacking, loading, and unloading operations).
 - 209.8 Storage and/or transporting operations (e.g., open storage piles).
 - 209.9 Operation of any outdoor equipment.
 - 209.10 Operation of motorized machinery.
 - 209.11 Establishing and/or using staging areas, parking areas, material storage areas, or access routes to and from a site.
 - 209.12 Establishing and/or using unpaved haul/access roads to, from, and within a site.
 - 209.13 Disturbed surface areas associated with a site.
 - 209.14 Installing initial landscapes using mechanized equipment.
- 210 **DUST SUPPRESSANT** – Water, hygroscopic material, solution of water and chemical surfactant, foam, non-toxic chemical stabilizer or any other dust palliative, which is not prohibited for ground surface application by the U.S. Environmental Protection Agency (EPA) or the Arizona Department of Environmental Quality (ADEQ) or any applicable law, rule, or regulation, as a treatment material for reducing fugitive dust emissions.
- 211 **EARTHMOVING OPERATION** – The use of any equipment for an activity that may generate fugitive dust, such as but not limited to, the following activities:
- 211.1 Cutting and filling.
 - 211.2 Grading.
 - 211.3 Leveling.
 - 211.4 Excavating.
 - 211.5 Trenching.
 - 211.6 Loading or unloading of bulk materials.
 - 211.7 Demolishing.
 - 211.8 Blasting.
 - 211.9 Drilling.
 - 211.10 Adding bulk materials to or removing bulk materials from open storage piles.
 - 211.11 Back filling.
 - 211.12 Soil mulching.
 - 211.13 Landfill operations.
 - 211.14 Weed abatement by discing or blading.
- 212 **EMERGENCY** – A situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a limitation in this rule, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include any noncompliance due to improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- 213 **EMERGENCY ACTIVITY** – Repairs that are a result of an emergency which prevents or hinders the provision of electricity, the distribution/collection of water, and the

availability of other utilities due to unforeseen circumstances that are beyond the routine maintenance and repair due to normal wear conducted by a utility or municipality.

- 214 END OF WORKDAY** – The end of a working period that may include one or more work shifts. If working 24 hours a day, the end of a working period shall be considered no later than 8 pm.
- 215 FREEBOARD** – The vertical distance between the top edge of a cargo container area and the highest point at which the bulk material contacts the sides, front, and back of a cargo container area.
- 216 FUGITIVE DUST** – The particulate matter not collected by a capture system, that is entrained in the ambient air, and is caused from human and/or natural activities, such as, but not limited to, the movement of soil, vehicles, equipment, blasting, and wind. For the purpose of this rule, fugitive dust does not include particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering, or welding equipment, and from piledrivers, and does not include emissions from process and combustion sources that are subject to other rules in Regulation III (Control of Air Contaminants) of these rules.
- 217 GRAVEL PAD** – A layer of washed gravel, rock, or crushed rock that is at least one inch or larger in diameter, that is maintained at the point of intersection of an area accessible to the public and a work site exit to dislodge mud, dirt, and/or debris from the tires of motor vehicles and/or haul trucks, prior to leaving the work site. Minimum dimensions must be 30 feet wide by 3 inches deep and 50 feet long, or the length of the longest haul truck, whichever is greater. If an unpaved surface exit does not have adequate width to install a 30-foot wide gravel pad, then the width of the gravel pad must cover the full width of the unpaved surface exit and such shorter width must be adequate to prevent trackout.
- 218 GRIZZLY** – A device (i.e., rails, pipes, or grates) used to dislodge mud, dirt, and/or debris from the tires and undercarriage of motor vehicles and/or haul trucks prior to leaving the work site.
- 219 HAUL TRUCK** – Any fully or partially open-bodied self-propelled vehicle including any non-motorized attachments, such as, but not limited to, trailers or other conveyances that are connected to or propelled by the actual motorized portion of the vehicle used for transporting bulk materials.
- 220 MOTOR VEHICLE** – A self-propelled vehicle for use on the public roads and highways of the State of Arizona and required to be registered under the Arizona State Uniform Motor Vehicle Act, including any non-motorized attachments, such as but not limited to, trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle.

- 221 NORMAL FARM CULTURAL PRACTICE** – All activities by the owner, lessee, agent, independent contractor, and/or supplier conducted on any facility for the production of crops and/or nursery plants. Disturbances of the field surface caused by turning under stalks, tilling, leveling, planting, fertilizing, or harvesting are included in this definition.
- 222 OFF-ROAD VEHICLE** – Any self-propelled conveyance specifically designed for off-road use, including, but not limited to, off-road or all-terrain equipment, trucks, cars, motorcycles, motorbikes, or motorbuggies.
- 223 OPEN STORAGE PILE** – Any accumulation of bulk material with a 5% or greater silt content that has a total surface area of 150 square feet or more and that at any one point attains a height of three feet. Silt content shall be assumed to be 5% or greater unless a person can show, by testing in accordance with ASTM Method C136-06 or other equivalent method approved in writing by the Control Officer and the Administrator, that the silt content is less than 5%.
- 224 OWNER AND/OR OPERATOR** – The person including, but not limited to, the property owner, lessee, developer, responsible official, Dust Control permit applicant (who may also be the responsible party contracting to do the work), general contractor, prime contractor, supervisor, management company, or any person who owns, leases, operates, controls, or supervises a dust-generating operation subject to the requirements of this rule.
- 225 PAVE** – To apply and maintain asphalt, concrete, or other similar material to a roadway surface (i.e., asphaltic concrete, concrete pavement, chip seal, or rubberized asphalt).
- 226 PROPERTY LINE** – The boundaries of an area in which either a person causing the emission or a person allowing the emission has the legal use or possession of the property. Where such property is divided into one or more sub-tenancies, the property line(s) shall refer to the boundaries dividing the areas of all sub-tenancies.
- 227 ROUTINE** – Any dust-generating operation which occurs more than 4 times per year or lasts 30 cumulative days or more per year.
- 228 SILT** – Any aggregate material with a particle size less than 75 micrometers in diameter, which passes through a No. 200 sieve.
- 229 TRACKOUT/CARRYOUT** – Any and all bulk materials that adhere to and agglomerate on the surfaces of motor vehicles, haul trucks, and/or equipment (including tires) and that have fallen or been deposited onto an area accessible to the public.
- 230 TRACKOUT CONTROL DEVICE** – A gravel pad, grizzly, wheel wash system, or a paved area, located at the point of intersection of an unpaved area and an area accessible to the public that controls or prevents vehicular trackout.

- 231 UNPAVED HAUL/ACCESS ROAD** – Any on-site unpaved road used by commercial, industrial, institutional, and/or governmental traffic.
- 232 UNPAVED PARKING LOT** – Any area that is not paved and that is designated for parking in the Dust Control Plan or that is used for parking, maneuvering, material handling, or storing motor vehicles and equipment. An unpaved parking lot includes, but is not limited to, automobile impound yards, wrecking yards, automobile dismantling yards, salvage yards, material handling yards, and storage yards. For the purpose of this rule, maneuvering shall not include military maneuvers or exercises conducted on federal facilities.
- 233 UNPAVED ROAD** – Any road or equipment path that is not paved. For the purpose of this rule, an unpaved road is not a horse trail, hiking path, bicycle path, or other similar path used exclusively for purposes other than travel by motor vehicles.
- 234 WIND-BLOWN DUST** – Visible emissions, from any disturbed surface area, that are generated by wind action alone.
- 235 WORK SITE** – Any property upon which any dust-generating operations occur.

SECTION 300 – STANDARDS

301 GENERAL REQUIREMENTS FOR DUST-GENERATING OPERATIONS:

- 301.1** Any person engaged in a dust-generating operation subject to this rule shall be subject to the standards and/or requirements of this rule before, after, and while conducting such dust-generating operation, including during weekends, after work hours, and on holidays.
- 301.2** For the purpose of this rule, any control measure that is implemented must achieve the applicable standard(s) described in this rule, as determined by the corresponding test method(s), as applicable, and must achieve other applicable standard(s) set forth in this rule.
- 301.3** Control measures described in Section 305 of this rule. Regardless of whether a dust-generating operation is in compliance with an approved Dust Control Plan or there is no approved Dust Control Plan, the owner and/or operator of a dust-generating operation shall be subject to all requirements of this rule at all times.
- 301.4** Failure to comply with the provisions of this rule, as applicable, and/or of an approved Dust Control Plan, shall constitute a violation.

302 PERMIT REQUIREMENTS FOR DUST-GENERATING OPERATIONS:

- 302.1** No person shall commence construction of, operate, or make a modification to any dust-generating operation when such dust-generating operations disturb a

total surface area of 0.10 acre (4,356 square feet) or more without first obtaining a permit or permit revision from the Control Officer.

- 302.2** No person shall commence construction of, operate, or make a modification to any dust-generating operation that disturbs a total surface area of less than 0.10 acre (4,356 square feet) under common control that are either contiguous or separated only by a public or private roadway and that cumulatively equal or exceed 0.10 acre in area without first obtaining a permit or permit revision from the Control Officer.
- 302.3** No person shall commence any routine dust-generating operation that disturbs a surface area of 0.10 acre or greater at a site that has obtained or must obtain a Title V, Non-Title V, or General permit under Regulation II (Permits and Fees) of these rules without first submitting to the Control Officer a Dust Control Plan.
- 302.4** The property owner, lessee, developer, responsible official, Dust Control permit applicant (who may also be the responsible party contracting to do the work), general contractor, prime contractor, supervisor, management company, or any person who owns, leases, operates, controls, or supervises a dust-generating operation subject to the requirements of this rule shall be responsible for obtaining a permit or permit revision from the Control Officer.
- 302.5** All permit applications shall be filed in the manner and form prescribed by the Control Officer, which includes, but is not limited to, the requirements of Section 400 of this rule. The application shall contain all the information necessary to enable the Control Officer to make the determination to grant or to deny a permit or permit revision, which shall contain such terms and conditions as the Control Officer deems necessary to assure a source's compliance with the requirements of this rule.
- 302.6** The issuance of any permit or permit revision shall not relieve any person subject to the requirements of this rule from compliance with any Federal laws, Arizona laws, or these rules.
- 302.7** Any other law, regulation or permit shall not relieve any person from obtaining a permit or permit revision required under this rule.

303 **VISIBLE EMISSIONS REQUIREMENTS FOR DUST-GENERATING OPERATIONS:**

- 303.1 Dust-Generating Operation Visible Emissions Requirement:** The owner and/or operator of a dust-generating operation shall not allow visible fugitive dust emissions to exceed the limits listed in either one of the following:
- a.** The owner and/or operator of a dust-generating operation shall not cause or allow visible fugitive dust emissions to exceed 20% opacity.

- b. The owner and/or operator of a dust-generating operation shall not cause or allow visible emissions of particulate matter, including fugitive dust, beyond the property line within which the emissions are generated. Visible emissions shall be determined by a standard of no visible emissions exceeding 30 seconds in duration in any six-minute period as determined by using EPA Reference Method 22.

303.2 Exemptions from Dust-Generating Operation Visible Emissions Requirement:

- a. If wind conditions cause fugitive dust emissions to exceed the visible emissions requirements in Section 303.1(a) of this rule, despite implementation of the Dust Control Plan, an owner and/or operator shall:
 - (1) Ensure that all control measures and requirements of the Dust Control Plan are implemented and the subject violations cannot be prevented by better application, operation, or maintenance of these measures and requirements.
 - (2) Cease dust-generating operations and stabilize any disturbed surface area consistent with Section 304.3 of this rule.
 - (3) Compile records consistent with Sections 502 and 503 of this rule and document control measure and other Dust Control Plan requirement implementation.
- b. **Emergency Maintenance of Flood Control Channels and Water Retention Basins:** The visible emissions limits described in Section 303.1 of this rule shall not apply to emergency maintenance of flood control channels and water retention basins, provided that control measures are implemented.
- c. **Vehicle Test and Development Facilities and Operations:** The visible emissions limit described in Section 303.1(a) of this rule shall not apply to vehicle test and development facilities and operations when dust is required to test and validate design integrity, product quality, and/or commercial acceptance, if such testing is not feasible within enclosed facilities. However, all areas used to test and validate design integrity, product quality, and/or commercial acceptance shall be stabilized after such testing, in compliance with Appendix C (Fugitive Dust Test Methods) of these rules. All areas not used to test and validate design integrity, product quality, and/or commercial acceptance shall be stabilized, in compliance with Appendix C (Fugitive Dust Test Methods) of these rules. In addition, vehicle test and development facilities may require a Dust Control permit in accordance with Section 302 of this rule.

- d. **Activities Near the Property Line:** The opacity limit described in Section 303.1(b) of this rule shall not apply to dust-generating operations conducted within 25 feet of the property line.
- e. **Ceasing Operations at a Solid Waste Management Facility:** The requirement in Section 303.2(a)(2) of this rule to cease dust-generating operations if wind conditions cause fugitive dust emissions to exceed the visible emissions requirements in Section 303.1(a) of this rule shall not apply to daily compaction and covering of refuse if ceasing operations violates Arizona Department of Environmental Quality solid waste management rules or causes or threatens to cause a public health hazard or nuisance. However, the owner and/or operator must comply with all other provisions in Section 303.2(a) of this rule.

304 STABILIZATION REQUIREMENTS FOR DUST-GENERATING OPERATIONS:

304.1 Unpaved Parking Lot: The owner and/or operator of any unpaved parking lot shall not allow visible fugitive dust emissions to exceed 20% opacity and shall not allow silt loading equal to or greater than 0.33 oz/ft^2 . However, if silt loading is equal to or greater than 0.33 oz/ft^2 , then the owner and/or operator shall not allow the silt content to exceed 8%.

304.2 Unpaved Haul/Access Road:

- a. The owner and/or operator of any unpaved haul/access road (whether at a work site that is under construction or at a work site that is temporarily or permanently inactive) shall not allow visible fugitive dust emissions to exceed 20% opacity and shall not allow silt loading equal to or greater than 0.33 oz/ft^2 . However, if silt loading is equal to or greater than 0.33 oz/ft^2 , then the owner and/or operator shall not allow the silt content to exceed 6%.
- b. The owner and/or operator of any unpaved haul/access road (whether at a work site that is under construction or a work site that is temporarily or permanently inactive) shall, as an alternative to meeting the stabilization requirements for an unpaved haul/access road in Section 304.2(a) of this rule, limit vehicle trips to no more than 20 per day per road and limit vehicle speeds to no more than 15 miles per hour. If complying with this section of this rule, the owner and/or operator must include, in a Dust Control Plan, the maximum number of vehicle trips on the unpaved haul/access roads each day (including number of employee vehicles, earthmoving equipment, haul trucks, and water trucks) and a description of how vehicle speeds will be restricted to no more than 15 miles per hour.

304.3 Disturbed Surface Area: The owner and/or operator of any disturbed surface area on which no activity is occurring (whether at a work site that is under construction or a work site that is temporarily or permanently inactive) shall meet

at least one of the standards described in Sections 304.3(a) through 304.3(g) below, as applicable. Should such a disturbed surface area contain more than one type of stabilization characteristic, such as soil, vegetation, or other characteristic, which is visibly distinguishable, then the owner and/or operator shall test each representative surface separately for stability, in an area that represents a random portion of the overall disturbed conditions of the site, in accordance with the appropriate test methods described in Section 501.2(c) of this rule and in Appendix C (Fugitive Dust Test Methods) of these rules. The owner and/or operator of such disturbed surface area on which no activity is occurring shall be considered in violation of this rule if the area is not maintained in a manner that meets at least one of the standards listed below, as applicable. An area is considered to be a disturbed surface area until the activity that caused the disturbance has been completed and the disturbed surface area meets the standards described in this section of this rule.

- a. Maintain a soil crust;
- b. Maintain a threshold friction velocity (TFV) for disturbed surface areas corrected for non-erodible elements of 100 cm/second or higher;
- c. Maintain a flat vegetative cover (i.e., attached [rooted] vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind) that is equal to at least 50%;
- d. Maintain a standing vegetative cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 30%;
- e. Maintain a standing vegetative cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 10% and where the threshold friction velocity is equal to or greater than 43 cm/second when corrected for non-erodible elements;
- f. Maintain a percent cover that is equal to or greater than 10% for non-erodible elements; or
- g. Comply with a standard of an alternative test method, upon obtaining the written approval from the Control Officer and the Administrator.

304.4 Vehicle Test and Development Facilities and Operations: No stabilization requirement shall apply to vehicle test and development facilities and operations when dust is required to test and validate design integrity, product quality, and/or commercial acceptance, if such testing is not feasible within enclosed facilities. However, all areas used to test and validate design integrity, product quality, and/or commercial acceptance shall be stabilized after such testing, in compliance with Appendix C (Fugitive Dust Test Methods) of these rules. All areas not used

to test and validate design integrity, product quality, and/or commercial acceptance shall be stabilized, in compliance with Appendix C (Fugitive Dust Test Methods) of these rules. In addition, vehicle test and development facilities may require a Dust Control permit in accordance with Section 302 of this rule.

305 CONTROL MEASURES FOR DUST-GENERATING OPERATIONS: When engaged in a dust-generating operation, the owner and/or operator shall install, maintain, and use control measures, as applicable. Control measures for specific dust-generating operations are described in Sections 305.1 through 305.12 of this rule. The owner and/or operator of a dust-generating operation shall implement control measures before, after, and while conducting dust-generating operations, including during weekends, after work hours, and on holidays. At least one primary control measure and one contingency control measure must be identified in the Dust Control Plan for all dust-generating sources.

305.1 Off-Site Hauling onto Areas Accessible to the Public: The owner and/or operator of a dust-generating operation that involves off-site hauling shall implement the following control measures:

- a. When cargo compartment is loaded:
 - (1) Load all haul trucks such that the freeboard is not less than three inches;
 - (2) Load all haul trucks such that at no time shall the highest point of the bulk material be higher than the sides, front, and back of a cargo container area;
 - (3) Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate(s); and
 - (4) Cover the cargo compartment with a tarp or other suitable closure.
- b. When cargo compartment is empty:
 - (1) Clean the interior of the cargo compartment; or
 - (2) Cover the cargo compartment with a tarp or other suitable closure.
- c. When off-site hauling, install, maintain, and use a suitable trackout control device that controls and prevents trackout and/or removes particulate matter from tires and the exterior surfaces of haul trucks and/or motor vehicles that traverse the site.

305.2 Bulk Material Hauling/Transporting When On-Site Hauling/Transporting Within the Boundaries of the Work Site but not Crossing an Area Accessible to the Public: The owner and/or operator of a dust-generating operation that involves bulk material hauling/transporting when on-site hauling/transporting

within the boundaries of the work site but not crossing an area accessible to the public shall implement one of the following control measures:

- a. Limit vehicle speed to 15 miles per hour or less while traveling on the work site;
- b. Apply water to the top of the load; or
- c. Cover haul trucks with a tarp or other suitable closure.

305.3 Bulk Material Hauling/Transporting When On-Site Hauling/Transporting Within the Boundaries of the Work Site and Crossing and/or Accessing an Area Accessible to the Public: The owner and/or operator of a dust-generating operation that involves bulk material hauling/transporting when on-site hauling/transporting within the boundaries of the work site and crossing and/or accessing an area accessible to the public shall implement all of the following control measures:

- a. Load all haul trucks such that the freeboard is not less than three inches;
- b. Load all haul trucks such that at no time shall the highest point of the bulk material be higher than the sides, front, and back of a cargo container area;
- c. Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate(s); and
- d. When crossing and/or accessing an area accessible to the public, install, maintain, and use a suitable trackout control device that controls and prevents trackout and/or removes particulate matter from tires and the exterior surfaces of haul trucks and/or motor vehicles that traverse the site.

305.4 Bulk Material Stacking, Loading, and Unloading Operations: The owner and/or operator of a dust-generating operation that involves bulk material stacking, loading, and unloading operations shall implement the following control measures:

- a. Prior to stacking, loading, and unloading:
 - (1) Mix material with water; or
 - (2) Mix material with a dust suppressant other than water.
- b. While stacking, loading, and unloading:
 - (1) Apply water; or

(2) Apply a dust suppressant other than water.

305.5 Open Storage Piles: The owner and/or operator of a dust-generating operation that involves an open storage pile shall implement one of the following control measures, as applicable, when not conducting stacking, loading, and unloading operations:

- a. Cover all open storage piles with a tarp, plastic, or other material to prevent wind from removing the covering(s) such that the covering(s) will not be dislodged by wind; or
- b. Apply water to maintain a soil moisture content at a minimum of 12%, as determined by ASTM Method D2216-05 or other equivalent methods approved by the Control Officer and the Administrator. For areas that have an optimum moisture content for compaction of less than 12%, as determined by ASTM Method D1557-02e1 or other equivalent methods approved by the Control Officer and the Administrator, maintain at least 70% of the optimum soil moisture content; or
- c. Maintain a visible crust; or
- d. Implement the control measure described in Section 305.5(b) or in Section 305.5(c) of this rule and construct and maintain wind barriers, storage silos, or a three-sided enclosure with walls, whose length is no less than equal to the length of the pile, whose distance from the pile is no more than twice the height of the pile, whose height is equal to the pile height, and whose porosity is no more than 50%.

305.6 Unpaved Staging Areas, Unpaved Parking Areas, and Unpaved Material Storage Areas: The owner and/or operator of a dust-generating operation that involves unpaved staging areas, unpaved parking areas, and unpaved material storage areas shall implement one or more of the following control measures:

- a. Apply water so that the surface is visibly moist;
- b. Pave;
- c. Apply and maintain gravel, recycled asphalt, or other suitable material;
- d. Apply and maintain a suitable dust suppressant other than water; or
- e. Limit vehicle trips to no more than 20 per day per road and limit vehicle speeds to no more than 15 miles per hour. If complying with this section, the owner and/or operator shall provide to the Control Officer the maximum number of vehicle trips on the staging areas, parking areas, and/or material storage areas each day (including number of employee vehicles, earthmoving

equipment, haul trucks, and water trucks) and a description of how vehicle speeds will be restricted to no more than 15 miles per hour.

305.7 Unpaved Haul/Access Roads: The owner and/or operator of a dust-generating operation that involves unpaved haul/access roads shall implement one or more of the following control measures:

- a. Apply water so that the surface is visibly moist;
- b. Pave;
- c. Apply and maintain gravel, recycled asphalt, or other suitable material;
- d. Apply and maintain a suitable dust suppressant other than water; or
- e. Limit vehicle trips to no more than 20 per day per road and limit vehicle speeds to no more than 15 miles per hour. If complying with this section of this rule, the owner and/or operator shall provide to the Control Officer the maximum number of vehicle trips on the unpaved haul/access roads each day (including number of employee vehicles, earthmoving equipment, haul trucks, and water trucks) and a description of how vehicle speeds will be restricted to no more than 15 miles per hour.

305.8 Weed Abatement by Discing or Blading: The owner and/or operator of a dust-generating operation that involves weed abatement by discing or blading shall comply with all of the following control measures:

- a. Before weed abatement by discing or blading occurs, apply water;
- b. While weed abatement by discing or blading is occurring, apply water; and
- c. After weed abatement by discing or blading occurs, pave, apply gravel, apply water, apply a suitable dust suppressant other than water, or establish vegetative ground cover.

305.9 Blasting Operations: The owner and/or operator of a dust-generating operation that involves blasting operations shall pre-water and maintain surface soils in a stabilized condition where support equipment and vehicles will operate.

305.10 Demolition Activities: The owner and/or operator of a dust-generating operation that involves demolition activities shall implement all of the following control measures:

- a. Apply water to demolition debris immediately following demolition activity; and

- b. Apply water to all disturbed soils surfaces to establish a visible crust and to prevent wind erosion.

305.11 Disturbed Surface Areas: The owner and/or operator of a dust-generating operation that involves disturbed surface areas shall implement the following control measures, as applicable:

- a. Before disturbed surface areas are created, implement one of the following control measures:

- (1) Pre-water site to depth of cuts, allowing time for penetration; or
- (2) Phase work to reduce the amount of disturbed surface areas at any one time.

- b. While disturbed surface areas are being created, implement one of the following control measures:

- (1) Apply water or other suitable dust suppressant other than water to keep the soil visibly moist throughout the process;
- (2) Apply water to maintain a soil moisture content at a minimum of 12%, as determined by ASTM Method D2216-05 or other equivalent method as approved by the Control Officer and the Administrator. For areas that have an optimum moisture content for compaction of less than 12%, as determined by ASTM Method D1557-02e1 or other equivalent method approved by the Control Officer and the Administrator, maintain at least 70% of the optimum soil moisture content; or
- (3) Implement control measure described in Section 305.11(b)(1) or Section 305.11(b)(2) of this rule and construct fences or three-foot to five-foot high wind barriers with 50% or less porosity adjacent to roadways or urban areas to reduce the amount of wind-blown material leaving a site.

- c. When the dust-generating operation is finished for a period of 30 days or longer: For longer than temporary pauses that occur during a dust-generating operation, the owner and/or operator shall implement one or more of the following control measures within ten days following the completion of such dust-generating operation:

- (1) Pave, apply gravel, or apply a suitable dust suppressant other than water;
- (2) Establish vegetative ground cover;
- (3) Implement control measures described in Section 305.11(c)(1) or Section 305.11(c)(2) of this rule and restrict vehicle access to the area;

- (4) Apply water and prevent access by fences, ditches, vegetation, berms, or other suitable barrier or means sufficient to prevent trespass as approved by the Control Officer; or
- (5) Restore area such that the vegetative ground cover and soil characteristics are similar to adjacent or nearby undisturbed native conditions.

305.12 Easements, Rights-of-Way, and Access Roads for Utilities (Transmission of Electricity, Natural Gas, Oil, Water, and Gas) Associated With Sources That Have a Non-Title V Permit, a Title V Permit, and/or a General Permit Under These Rules:

The owner and/or operator of a dust-generating operation that involves an easement, right-of-way, and access road for utilities (transmission of electricity, natural gas, oil, water, and gas) associated with sources that have a Title V permit, a Non-Title V permit, and/or a General permit under these rules shall implement at least one of the following control measures:

- a. Inside Area A, limit vehicle speed to 15 miles per hour or less and vehicle trips to no more than 20 per day per road;
- b. Outside Area A, limit vehicle trips to no more than 20 per day per road; or
- c. Implement control measures described in Section 305.7 of this rule.

306 TRACKOUT, CARRY-OUT, SPILLAGE, AND/OR EROSION: The owner and/or operator of a dust-generating operation shall prevent and control trackout, carry-out, spillage, and/or erosion.

306.1 Trackout Control Device:

- a. **Criterion for Trackout Control Device:** Install, maintain and use a suitable trackout control device that prevents and controls trackout and/or removes particulate matter from tires and the exterior surfaces of haul trucks and/or motor vehicles that traverse the site at all exits onto areas accessible to the public from both of the following:
 - (1) All work sites with a disturbed surface area of two acres or larger, and
 - (2) All work sites where 100 cubic yards of bulk materials are hauled on-site and/or off-site per day.
- b. **Control Measures:** For those work sites identified in Section 306.1(a) of this rule, prevent trackout, carry-out, spillage, and/or erosion by implementing one of the following control measures:

- (1) At all exits onto areas accessible to the public, install a wheel wash system;
- (2) At all exits onto areas accessible to the public, install a gravel pad to comply with Section 217 of this rule;
- (3) At all exits onto areas accessible to the public, install a grizzly or rumble grate that consists of raised dividers (rails, pipes, or grates) a minimum of three inches tall, six inches apart, and 20 feet long, to allow a vibration to be produced such that dust is shaken off the wheels of a vehicle as the entire circumference of each wheel of the vehicle passes over the grizzly or rumble grate; or
- (4) Pave starting from the point of intersection with an area accessible to the public and extending for a centerline distance of at least 100 feet and a width of at least 20 feet.

306.2 Clean Up of Trackout:

- a. **Criterion for Clean Up of Trackout:** Clean up, trackout, carry-out, spillage, and/or erosion from areas accessible to the public including curbs, gutters, and sidewalks, on the following time-schedule:

- (1) Immediately, when trackout, carry-out, or spillage extends a cumulative distance of 25 linear feet or more; and
- (2) At the end of the workday, for all other trackout, carry-out, spillage, and/or erosion.

- b. **Control Measures:**

- (1) Operate a street sweeper or wet broom with sufficient water, or including but not limited to kick broom, steel bristle broom, Teflon broom, vacuum, at the speed recommended by the manufacturer and at the frequency(ies) described in this section of this rule; or
- (2) Manually sweep up deposits to comply with this section of this rule.

- 307 SOIL MOISTURE:** If water is the chosen control measure in an approved Dust Control Plan, the owner and/or operator of a dust-generating operation shall operate a water application system on-site (e.g., water truck, water hose) while conducting any earth-moving operations on disturbed surface areas 1 acre or larger, unless a visible crust is maintained or the soil is sufficiently damp to prevent loose grains of soil from becoming dislodged.

308 PROJECT INFORMATION SIGN FOR DUST-GENERATING OPERATIONS:

For all sites with a Dust Control permit that are five acres or larger, except for routine maintenance and repair done under a Dust Control Block permit, the owner and/or operator shall erect and maintain a project information sign at the main entrance such that members of the public can easily view and read the sign at all times. Such sign shall have a white background, have black block lettering that is at least four inches high, and shall contain at least all of the following information:

308.1 Project name and permittee's name;

308.2 Current Dust Control permit number;

308.3 Name and local phone number of person(s) responsible for dust control matters;

308.4 Text stating: "Dust complaints? Call Maricopa County Air Quality Department – (Insert the accurate Maricopa County Air Quality Department complaint line telephone number)."

309 DUST CONTROL TRAINING CLASSES FOR DUST-GENERATING OPERATIONS:

309.1 Basic Dust Control Training Class:

- a. At least once every three years, the persons specified in Section 309.1(b) or Section 309.1(c) of this rule shall successfully complete a Basic Dust Control Training Class conducted or approved by the Control Officer.
- b. The following persons present at a site that is subject to a permit issued by the Control Officer requiring control of PM₁₀ emissions from dust-generating operations shall complete a Basic Dust Control Training Class as specified in Section 309.1(a) of this rule:
 - (1) Water truck drivers.
 - (2) Water-pull drivers.
 - (3) The site superintendent or other designated on-site representative of the permit holder, if present at a site that has more than one acre of disturbed surface area.
- c. A Dust Control Block Permit permittee/holder shall have, at a minimum, one individual trained in accordance with the Basic Dust Control Training Class as specified in Section 309.1(a) of this rule, if present at a site that has more than one acre of disturbed surface area.

- d. All persons having successfully completed training during the 2006 and 2007 calendar years shall be deemed to have satisfied the requirement to successfully complete the Basic Dust Control Training Class, if the training that was completed was conducted or approved by the Control Officer. Completion of the Comprehensive Dust Control Training Class, as required in Section 309.2 of this rule, shall satisfy the requirement of this section of this rule.
- e. The Control Officer may suspend or revoke for cause including, but not limited to, inappropriate ethical activities or conduct associated with the dust control program or repeated failure to follow the training requirements, a certification issued to a person having successfully completed a Basic Dust Control Training Class conducted or approved by the Control Officer. The Control Officer will provide written notification to such person regarding such suspension or revocation.

309.2 Comprehensive Dust Control Training Class:

- a. At least once every three years, the Dust Control Coordinator, who meets the requirements of Section 310 of this rule, shall successfully complete the Comprehensive Dust Control Training Class conducted or approved by the Control Officer.
- b. All persons having successfully completed training during the 2006 and 2007 calendar years shall be deemed to have satisfied the requirement to successfully complete the Comprehensive Dust Control Training Class, if the training that was completed was conducted or approved by the Control Officer.
- c. The Control Officer may suspend or revoke for cause including, but not limited to, inappropriate ethical activities or conduct associated with the dust control program or repeated failure to follow the training requirements, a certification issued to a person having successfully completed a Comprehensive Dust Control Training Class conducted or approved by the Control Officer. The Control Officer will provide written notification to such person regarding such suspension or revocation.

310 DUST CONTROL COORDINATOR FOR DUST-GENERATING OPERATIONS:

- 310.1** The permittee for any site of five acres or more of disturbed surface area subject to a permit issued by the Control Officer requiring control of PM₁₀ emissions from dust-generating operations shall have on-site at least one Dust Control Coordinator trained in accordance with Section 309.2 of this rule at all times during primary dust-generating operations related to the purposes for which the Dust Control permit was obtained.
- 310.2** The Dust Control Coordinator shall have full authority to ensure that dust control measures are implemented on-site, including conducting inspections, deployment

of dust suppression resources, and modifications or shut-down of activities as needed to control dust.

310.3 The Dust Control Coordinator shall be responsible for managing dust prevention and dust control on the site.

310.4 At least once every three years, the Dust Control Coordinator shall successfully complete a Comprehensive Dust Control Training Class conducted or approved by the Control Officer.

310.5 The Dust Control Coordinator shall have a valid dust training certification identification card readily accessible on-site while acting as a Dust Control Coordinator.

310.6 The requirement for a Dust Control Coordinator shall lapse when all of the following actions/events/procedures occur:

- a. The area of disturbed surface area becomes less than five acres;
- b. The previously disturbed surface areas have been stabilized in accordance with/in compliance with the standards and/or requirements of this rule; and
- c. The Dust Control permit holder provides notice to the Control Officer of acreage stabilization.

310.7 The Dust Control Block Permit permittee/holder shall have on sites that have more than one acre of disturbed surface area at least one individual, who has been trained in accordance with the requirements of Section 309.1(c) of this rule. One such individual shall be designated by the Dust Control Block Permit permittee/holder as the Dust Control Coordinator. The Dust Control Coordinator shall be present on-site at all times during primary dust-generating activities that are related to the purposes for which the permit was obtained.

SECTION 400 – ADMINISTRATIVE REQUIREMENTS

401 DUST CONTROL PERMIT REQUIREMENTS:

401.1 To apply for a Dust Control permit, an applicant shall complete a permit application in the manner and form prescribed by the Control Officer. At a minimum, such application shall contain the following information:

- a. Applicant information;
- b. Project information, which shall include a project site drawing and, if the site is one acre or larger, soil designations; and

- c. Dust Control Plan, which shall meet the specifications described in Section 402 of this rule.

401.2 A Dust Control permit shall be granted subject to, but not limited to, the following conditions:

- a. The permittee shall be responsible for ensuring that all persons abide by the conditions of the Dust Control permit and these regulations;
- b. The permittee shall be responsible for supplying complete copies of the Dust Control permit including the Dust Control Plan, to all project contractors and subcontractors;
- c. The permittee shall be responsible for all permit conditions, until a Permit Cancellation Request form has been submitted by the owner and/or operator and approved by the Control Officer;
- d. The permittee shall be responsible for providing Dust Control Coordinator's/ Coordinators' name(s) and dust control training certification information/ number(s) to the Control Officer and for keeping such information updated.

401.3 The signature of the permittee on the Dust Control permit application shall constitute agreement to accept responsibility for meeting the conditions of the Dust Control permit and for ensuring that control measures are implemented throughout the project site and during the duration of the project.

402 DUST CONTROL PLAN REQUIREMENTS:

402.1 The owner and/or operator of a dust-generating operation shall submit to the Control Officer a Dust Control Plan with any permit applications that involve dust-generating operations with a disturbed surface area that equals or exceeds 0.10 acre (4,356 square feet) including both of the following situations:

- a. When submitting an application for a Dust Control permit involving dust-generating operations that would equal or exceed 0.10 acre (4,356 square feet), and
- b. Before commencing any routine dust-generating operation at a site that has obtained or must obtain a Title V, Non-Title V, or General permit under Regulation II (Permits and Fees) of these rules.

402.2 The owner and/or operator of a dust-generating operation shall submit to the Control Officer a Dust Control Plan with any application for a Dust Control permit. Applicants shall describe, in a Dust Control Plan, all control measures to be implemented before, after, and while conducting any dust-generating operation, including during weekends, after work hours, and on holidays.

402.3 A Dust Control Plan shall, at a minimum, contain all of the following information:

- a.** Name(s), address(es), and phone numbers of person(s) responsible for the submittal and implementation of the Dust Control Plan and responsible for the dust-generating operation.
- b.** A drawing, on 8½” x 11” paper, that shows:
 - (1)** Entire project site/facility boundaries, including boundaries of areas to be disturbed if less than entire project site/facility boundaries,
 - (2)** Acres to be disturbed with linear dimensions or certification by a licensed engineer or surveyor showing the total square footage to be disturbed,
 - (3)** Nearest public roads,
 - (4)** North arrow,
 - (5)** Planned exit locations onto areas accessible to the public, and
 - (6)** Unpaved parking lot(s).
- c.** Appropriate control measures, or a combination thereof, as described in Sections 305 and 306 of this rule, for every actual and potential dust-generating operation.
 - (1)** Control measures must be implemented before, after, and while conducting any dust-generating operation, including during weekends, after work hours, and on holidays.
 - (2)** All required control measures and at least one contingency control measure must be identified for all dust-generating operations.
 - (3)** A control measure that is not listed in Section 305 or in Section 306 of this rule may be chosen provided that such control measure is implemented to comply with the requirements of this rule.
 - (4)** If complying with Section 305.7(e) of this rule, the Dust Control Plan must include the maximum number of vehicle trips on the unpaved haul/access roads each day (including number of employee vehicles, earthmoving equipment, haul trucks, and water trucks).
- d.** Dust suppressants to be applied, including all of the following product specifications or label instructions for approved usage:

- (1) Method, frequency, and intensity of application;
- (2) Type, number, and capacity of application equipment; and
- (3) Information on environmental impacts and approvals or certifications related to appropriate and safe use for ground application.

- e. Specific surface treatment(s) and/or control measures utilized to control material trackout and sedimentation where unpaved roads and/or access points join areas accessible to the public.

402.4 The Control Officer shall approve, disapprove, or conditionally approve the Dust Control Plan, in accordance with the criteria used to approve, disapprove or conditionally approve a permit, as described in Rule 200: Permit Requirements of these rules.

402.5 For construction projects one acre or larger, except for routine maintenance and repair done under a Dust Control Block Permit, a statement disclosing which of the four designated texture(s) of soil described in Appendix F of these rules is naturally present at or will be imported to the dust-generating operation. The measured soil content at a particular site shall take precedence over any mapped soil types, and whenever soils have been tested at a particular site, the test results should be relied on rather than the map in Appendix F of these rules.

402.6 Should any primary control measure(s) prove ineffective, the owner and/or operator shall immediately implement the contingency control measure(s). If the identified contingency control measure is effective to comply with all of the requirements of this rule, the owner and/or operator need not revise the Dust Control Plan.

403 DUST CONTROL PLAN REVISIONS:

403.1 If Required by the Control Officer:

- a. If the Control Officer determines that an approved Dust Control Plan has been followed, yet fugitive dust emissions from any dust-generating operation still exceed the standards of this rule, then the Control Officer shall issue a written notice to the owner and/or operator of the dust-generating operation explaining such determination.
- b. The owner and/or operator of a dust-generating operation shall make written revisions to the Dust Control Plan and shall submit such revised Dust Control Plan to the Control Officer within three working days of receipt of the Control Officer's written notice, unless such time period is extended by the Control Officer, upon request, for good cause. During the time that such owner and/or

operator is preparing revisions to the approved Dust Control Plan, such owner and/or operator must still comply with all requirements of this rule.

403.2 If Requested by the Permittee:

- a. If the acreage of a project changes, the owner and/or operator shall request a Dust Control Plan revision. Such Dust Control Plan revision shall be filed in the manner and form prescribed by the Control Officer.
- b. If the permit holder changes, the owner and/or operator shall request a Dust Control Plan revision. Such Dust Control Plan revision shall be filed in the manner and form prescribed by the Control Officer.
- c. If the name(s), address(es), or phone numbers of person(s) responsible for the submittal and implementation of the Dust Control Plan and responsible for the dust-generating operation change, the owner and/or operator shall request a Dust Control Plan revision. Such Dust Control Plan revision shall be filed in the manner and form prescribed by the Control Officer.
- d. If the activities related to the purposes for which the Dust Control permit was obtained change, the owner and/or operator shall request a Dust Control Plan revision. Such Dust Control Plan revision shall be filed in the manner and form prescribed by the Control Officer.

403.3 If Rule 310 is Revised:

- a. If any changes to a Dust Control Plan are necessary as a result of the most recent revisions of this rule, such changes to the Dust Control Plan shall not be required until the associated Dust Control permit is required to be renewed.
- b. If any changes to a Dust Control Plan associated with a Title V permit or with a Non-Title V permit are necessary as a result of the most recent revisions of this rule, then the owner and/or operator shall submit a revised Dust Control Plan to the Control Officer, according to the minor permit revision procedures described in Rule 210 or in Rule 220 of these rules respectively, no later than six months after the effective date of the most recent revisions to this rule.

404 DUST CONTROL BLOCK PERMIT REQUIREMENTS:

- 404.1** A Dust Control Block Permit application may be submitted to the Control Officer, if one or more of the activities listed in this section of this rule are conducted and if such activities occur at more than one site (i.e., projects that involve multiple small areas scattered throughout Maricopa County including, but not limited to, fiber optic cable installation and natural gas line extension). New construction shall obtain a separate Dust Control permit.

- a. Routine operation (i.e., municipalities, governmental agencies, and utilities that are responsible for the repeat maintenance of infrastructure including, but not limited to, weed control around a prison, canal bank and road grading, and road shoulder grading).
- b. Maintenance (i.e., municipalities, governmental agencies, and utilities that are responsible for the repeat maintenance of infrastructure including, but not limited to, weed control around a prison, canal bank and road grading, and road shoulder grading).
- c. Expansion or extension of utilities, paved roads, unpaved roads, road shoulders, alleys, and public rights-of-way at non-contiguous sites by municipalities, governmental agencies, and utilities.

404.2 When completing and submitting a Dust Control Block Permit application, the owner and/or operator shall comply with the following requirements:

- a. A Dust Control Plan that meets the criteria described in Section 402 of this rule and applies to all sites shall be submitted to the Control Officer with the Dust Control Block Permit application.
- b. A description or map of the owner's and/or operator's service areas and a list of all sites that are 0.10 acre (4,356 square feet) or greater, including the location and size of each site, shall be submitted to the Control Officer with the Dust Control Block Permit application.
- c. For any project that is 0.10 acre (4,356 square feet) or greater and not listed in the Dust Control Block Permit application, the applicant shall notify the Control Officer in writing at least three working days prior to commencing the dust-generating operation. The notice shall include the site location, size, type of activity, and start date.

404.3 The Dust Control Block Permit will cover crews that work for the municipalities, governmental agencies, and utilities, including subcontractors. However, municipalities, governmental agencies, and utilities shall retain overall authority for dust control on the project.

405 APPROVAL OR DENIAL OF PERMIT APPLICATIONS FOR DUST-GENERATING OPERATIONS: The Control Officer shall take final action on a Dust Control permit application, a Dust Control permit revision, or a Dust Control Block Permit within 14 calendar days of the filing of the complete application. The Control Officer shall notify the applicant in writing of his approval or denial.

406 TERMS FOR PERMITS FOR DUST-GENERATING OPERATIONS: A Dust Control permit issued according to this rule shall be issued for a period of one year from the date of issuance. Should the project last longer than one year from the date the permit

was issued, the permittee shall re-apply for a Dust Control Permit at least 14 calendar days prior to the expiration date of the original permit. For the purpose of this section, a permit is considered expired, if a permit renewal is not applied for at least 14 calendar days prior to the expiration date of the original permit.

407 DEFACING, ALTERING, FORGING, COUNTERFEITING, OR FALSIFYING PERMITS FOR DUST-GENERATING OPERATIONS: A person shall not willfully deface, alter, forge, counterfeit, or falsify any Dust Control permit issued under the provisions of this rule.

408 FEES FOR PERMITS FOR DUST-GENERATING OPERATIONS: No Dust Control permit is valid until the applicable Dust Control permit fee has been received and until the Dust Control permit is issued by the Control Officer.

409 POSTING OF PERMITS FOR DUST-GENERATING OPERATIONS: A Dust Control permit and a Dust Control Plan, as approved by the Control Officer, shall be posted in a conspicuous location at the work site, within on-site equipment, or in an on-site vehicle, or shall otherwise be kept available on-site at all times.

410 COMPLIANCE SCHEDULE: The newly amended provisions of this rule become effective upon adoption of this rule. An owner and/or operator of a dust-generating operation subject to this rule shall meet all applicable provisions of this rule upon adoption of the newly amended provisions of this rule and according to the following schedule:

410.1 Basic Dust Control Training Class: No later than December 31, 2008, a site superintendent or other designated on-site representative of the permit holder and water truck and water pull drivers for each site shall have successfully completed the Basic Dust Control Training Class, as described in Section 309.1 of this rule.

410.2 Dust Control Coordinator: No later than June 30, 2008, any site and/or any contiguous site under common control of five acres or more of disturbed surface area subject to a permit shall, at all times during primary dust-generating operations related to the purposes for which the Dust Control permit was obtained, have on-site at least one individual designated by the permit holder as a Dust Control Coordinator, as described in Section 310 of this rule.

SECTION 500 – MONITORING AND RECORDS

501 COMPLIANCE DETERMINATION: To determine compliance with the visible emissions requirements in Section 303 of this rule and with the stabilization requirements in Section 304 of this rule, the following test methods shall be followed:

501.1 Opacity Observations:

- a. **Dust-Generating Operations:** Opacity observations of dust-generating operations shall be conducted in accordance with Appendix C, Section 3 (Visual Opacity Determination of Emissions from Dust-Generating Operations) of these rules.
- b. **Unpaved Parking Lot:** Opacity observations of any unpaved parking lot shall be conducted in accordance with Appendix C, Section 2.1 (Test Methods for Stabilization for Unpaved Roads and Unpaved Parking Lots) of these rules.
- c. **Unpaved Haul/Access Road:** Opacity observations of any unpaved haul/access road (whether at a work site that is under construction or at a work site that is temporarily or permanently inactive) shall be conducted in accordance with Appendix C, Section 2.1 (Test Methods for Stabilization for Unpaved Roads and Unpaved Parking Lots) of these rules.
- d. **Visible Emissions Beyond the Property Line:** Opacity observations of any visible emissions beyond the property line shall be conducted in accordance with EPA Reference Method 22.

501.2 Stabilization Observations:

- a. **Unpaved Parking Lot:** Stabilization observations for unpaved parking lots shall be conducted in accordance with Appendix C, Section 2.1 (Test Methods for Stabilization for Unpaved Roads and Unpaved Parking Lots) of these rules. When more than one test method is permitted for a determination, an exceedance of the limits established in this rule determined by any of the applicable test methods shall constitute a violation of this rule.
- b. **Unpaved Haul/Access Road:** Stabilization observations for unpaved haul/access roads (whether at a work site that is under construction or at a work site that is temporarily or permanently inactive) shall be conducted in accordance with Appendix C, Section 2.1 (Test Methods for Stabilization for Unpaved Roads and Unpaved Parking Lots) of these rules. When more than one test method is permitted for a determination, an exceedance of the limits established in this rule determined by any of the applicable test methods shall constitute a violation of this rule.
- c. **Disturbed Surface Area:** Stabilization observations for any disturbed surface area on which no activity is occurring (whether at a work site that is under construction, at a work site that is temporarily or permanently inactive) shall be conducted in accordance with at least one of the techniques described in Section 501.2(c)(1) through Section 501.2(c)(7) below, as applicable. The owner and/or operator of such inactive disturbed surface area shall be considered in violation of this rule if such inactive disturbed surface area is not maintained in a manner that meets at least one of the standards described in Section 304.3 of this rule, as applicable.

- (1) Appendix C, Section 2.3 (Test Methods for Stabilization: Soil Crust Determination: the Drop Ball Test) of these rules for a soil crust; or
- (2) Appendix C, Section 2.4 (Test Methods for Stabilization: Determination of Threshold Friction Velocity [TFV]: Sieving Field Procedure) of these rules for threshold friction velocity (TFV) corrected for non-erodible elements of 100 cm/second or higher; or
- (3) Appendix C, Section 2.5 (Test Methods for Stabilization: Determination of Flat Vegetative Cover) of these rules for flat vegetation cover (i.e., attached [rooted] vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind) that is equal to at least 50%; or
- (4) Appendix C, Section 2.6 (Test Methods for Stabilization: Determination of Standing Vegetative Cover) of these rules for standing vegetation cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 30%; or
- (5) Appendix C, Section 2.6 (Test Methods for Stabilization: Determination of Standing Vegetative Cover) of these rules for standing vegetation cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 10% and where the threshold friction velocity is equal to or greater than 43 cm/second when corrected for non-erodible elements; or
- (6) Appendix C, Section 2.7 (Test Methods for Stabilization: Rock Test Method) of these rules for a percent cover that is equal to or greater than 10%, for non-erodible elements; or
- (7) An alternative and equivalent test method approved in writing by the Control Officer and the Administrator.

502 RECORDKEEPING:

502.1 Any person who conducts dust-generating operations that require a Dust Control Plan shall keep a written record of self-inspection on each day dust-generating operations are conducted. Self-inspection records shall include daily inspections for crusted or damp soil, trackout conditions and clean-up measures, daily water usage for dust control measures, and dust suppressant application. Such written record shall also include the following information:

- a. Method, frequency, and intensity of application or implementation of the control measures;

- b. Method, frequency, and amount of water application to the site;
- c. Street sweeping frequency;
- d. Types of surface treatments applied to and maintenance of trackout control devices, gravel pads, fences, wind barriers, and tarps;
- e. Types and results of test methods conducted;
- f. If contingency control measures are implemented, actual application or implementation of contingency control measures and why contingency control measures were implemented;
- g. List of subcontractors' names and registration numbers updated when changes are made; and
- h. Names of employee(s) who successfully completed dust control training class(es) required by Section 309 of this rule, date of the class(es) that such employee(s) successfully completed, and name of the agency/representative who conducted such class(es).

502.2 Any person who conducts dust-generating operations that do not require a Dust Control Plan shall compile and retain records (including records on any street sweeping, water applications, and maintenance of trackout control devices, gravel pads, fences, wind barriers, and tarps) that provide evidence of control measure application, by indicating the type of treatment or control measure, extent of coverage, and date applied.

502.3 Upon verbal or written request by the Control Officer, the log or the records and supporting documentation shall be provided as soon as possible but no later than 48 hours, excluding weekends. If the Control Officer is at the site where requested records are kept, records shall be provided without delay.

503 RECORDS RETENTION: Any person who conducts dust-generating operations that require a Dust Control Plan shall retain copies of approved Dust Control Plans, control measures implementation records, and all supporting documentation for at least six months following the termination of the dust-generating operation and for at least two years from the date such records were initiated. If a person has obtained a Title V Permit and is subject to the requirements of this rule, then such person shall retain records required by this rule for at least five years from the date such records are established.

504 TEST METHODS INCORPORATED BY REFERENCE: The test methods listed in this section are incorporated by reference. These incorporations by reference include no future editions or amendments. Copies of the test methods listed in this section are available for review at the Maricopa County Air Quality Department, 1001 North Central Avenue, Phoenix, AZ, 85004.

- 504.1** ASTM Method C136-06 (“Standard Test Method for Sieve Analysis of Fine and Coarse Aggregates”), 2006 edition.
- 504.2** ASTM Method D2216-05 (“Standard Test Method for Laboratory Determination of Water [Moisture] Content of Soil and Rock by Mass”), 2005 edition.
- 504.3** ASTM Method D1557-02e1 (“Test Method for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft³ (2,700 kN-m/m³))), 2002 edition.
- 504.4** EPA Reference Method 22 (“Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares”), 2000 edition.

REGULATION III – CONTROL OF AIR CONTAMINANTS

RULE 310.01

FUGITIVE DUST FROM NON-TRADITIONAL SOURCES OF FUGITIVE DUST

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MARICOPA COUNTY
AIR POLLUTION CONTROL REGULATIONS
REGULATION III – CONTROL OF AIR CONTAMINANTS

RULE 310.01

FUGITIVE DUST FROM NON-TRADITIONAL SOURCES OF FUGITIVE DUST

SECTION 100 – GENERAL

101 PURPOSE: To minimize the amount of fugitive dust entrained into the ambient air from non-traditional sources of fugitive dust by requiring measures to prevent, reduce, or mitigate fugitive dust emissions.

102 APPLICABILITY:

102.1 The provisions of this rule shall apply to non-traditional sources of fugitive dust that are conducted in Maricopa County, except for those dust-generating operations listed in Section 103 of this rule.

102.2 The provisions of this rule shall apply to any open area or vacant lot that is not defined as agricultural land and is not used for agricultural purposes according to Arizona Revised Statutes (A.R.S.) § 42-12151 and A.R.S. § 42-12152.

103 EXEMPTIONS:

103.1 The provisions of this rule shall not apply to normal farm cultural practices according to A.R.S. § 49-457 and A.R.S. § 49-504.4.

103.2 The provisions of this rule shall not apply to dust-generating operations that are subject to the standards and/or requirements described in Rule 310: Fugitive Dust from Dust-Generating Operations of these rules.

103.3 The provisions of this rule shall not apply to emergency activities that may disturb the soil conducted by any utility or government agency in order to prevent public injury or to restore critical utilities to functional status.

103.4 The provisions of this rule do not apply to the establishment of initial landscapes without the use of mechanized equipment, conducting landscape maintenance without the use of mechanized equipment, and playing on or maintaining a field used for non-motorized sports. However, establishing initial landscapes without

the use of mechanized equipment and conducting landscape maintenance without the use of mechanized equipment shall not include grading, or trenching, performed to establish initial landscapes or to redesign existing landscapes.

SECTION 200 – DEFINITIONS: For the purpose of this rule, the following definitions apply, in addition to those definitions found in Rule 100: General Provisions and Definitions of these rules. In the event of any inconsistency between any of the Maricopa County air pollution control rules, the definitions in this rule take precedence.

201 ANIMAL WASTE – Any animal excretions and mixtures containing animal excretions.

202 AREA A – As defined in A.R.S. § 49-541(1), the area in Maricopa County delineated as follows:

Township 8 North, Range 2 East and Range 3 East
Township 7 North, Range 2 West through Range 5 East
Township 6 North, Range 5 West through Range 6 East
Township 5 North, Range 5 West through Range 7 East
Township 4 North, Range 5 West through Range 8 East
Township 3 North, Range 5 West through Range 8 East
Township 2 North, Range 5 West through Range 8 East
Township 1 North, Range 5 West through Range 7 East
Township 1 South, Range 5 West through Range 7 East
Township 2 South, Range 5 West through Range 7 East
Township 3 South, Range 5 West through Range 1 East
Township 4 South, Range 5 West through Range 1 East

203 AREA ACCESSIBLE TO THE PUBLIC – Any paved parking lot or paved roadway that can be entered or used for public travel primarily for purposes unrelated to the dust-generating operation.

204 BULK MATERIAL – Any material, including, but not limited to, the following materials that are capable of producing fugitive dust:

- 204.1** Earth.
- 204.2** Rock.
- 204.3** Silt.
- 204.4** Sediment.
- 204.5** Sand.
- 204.6** Gravel.
- 204.7** Soil.
- 204.8** Fill.
- 204.9** Aggregate less than 2 inches in length or diameter (i.e., aggregate base course [ABC]).
- 204.10** Dirt.
- 204.11** Mud.

- 204.12 Demolition debris.
 - 204.13 Cotton.
 - 204.14 Trash.
 - 204.15 Cinders.
 - 204.16 Pumice.
 - 204.17 Saw dust.
 - 204.18 Feeds.
 - 204.19 Grains.
 - 204.20 Fertilizers.
 - 204.21 Fluff from shredders.
 - 204.22 Dry concrete.
- 205 **CHEMICAL/ORGANIC STABILIZER** – Any non-toxic chemical or organic dust suppressant, other than water, which meets any specifications, criteria, or tests required by any federal, state, or local water agency and is not prohibited for use by any applicable law, rule, or regulation.
- 206 **CONTROL MEASURE** – A technique, practice, or procedure used to prevent or minimize the generation, emission, entrainment, suspension, and/or airborne transport of fugitive dust.
- 207 **DISTURBED SURFACE AREA** – A portion of the earth's surface or material placed on the earth's surface that has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed native condition if the potential for the emission of fugitive dust is increased by the movement, destabilization, or modification.
- 208 **DUST-GENERATING OPERATION** – Any activity capable of generating fugitive dust, including but not limited to, the following activities:
- 208.1 Land clearing, maintenance, and land cleanup using mechanized equipment.
 - 208.2 Earthmoving.
 - 208.3 Weed abatement by discing or blading.
 - 208.4 Excavating.
 - 208.5 Construction.
 - 208.6 Demolition.
 - 208.7 Bulk material handling (e.g., bulk material hauling and/or transporting, bulk material stacking, loading, and unloading operations).
 - 208.8 Storage and/or transporting operations (e.g., open storage piles).
 - 208.9 Operation of any outdoor equipment.
 - 208.10 Operation of motorized machinery.
 - 208.11 Establishing and/or using staging areas, parking areas, material storage areas, or access routes to and from a site.
 - 208.12 Establishing and/or using unpaved haul/access roads to, from, and within a site.
 - 208.13 Disturbed surface areas associated with a site.
 - 208.14 Installing initial landscapes using mechanized equipment.

- 209 DUST SUPPRESSANT** – Water, hygroscopic material, solution of water and chemical surfactant, foam, non-toxic chemical stabilizer, or any other dust palliative, which is not prohibited for ground surface application by the Environmental Protection Agency (EPA) or the Arizona Department of Environmental Quality (ADEQ), or any applicable law, rule, or regulation, as a treatment material for reducing fugitive dust emissions.
- 210 EMERGENCY** – A situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a limitation in this rule, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include any noncompliance due to improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- 211 EMERGENCY ACTIVITY** – Repairs that are a result of an emergency which prevents or hinders the provision of electricity, the distribution/collection of water, and the availability of other utilities due to unforeseen circumstances that are beyond the routine maintenance and repair due to normal wear conducted by a utility or municipality.
- 212 FEED LANE ACCESS AREAS** – Roads providing access from the feed preparation areas to and including feed lane areas at a livestock activity. These access roads are typically used to distribute feed from feed trucks to the animals.
- 213 FUGITIVE DUST** – The particulate matter not collected by a capture system, that is entrained in the ambient air and is caused from human and/or natural activities, such as, but not limited to, movement of soil, vehicles, equipment, blasting, and wind. For the purpose of this rule, fugitive dust does not include particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering, or welding equipment, and from piledrivers, and does not include emissions from process and combustion sources that are subject to other rules in Regulation III (Control of Air Contaminants) of these rules.
- 214 GRAVEL PAD** – A layer of washed gravel, rock, or crushed rock that is at least one inch or larger in diameter, that is maintained at the point of intersection of an area accessible to the public and a site exit to dislodge mud, dirt, and/or debris from the tires of motor vehicles, prior to leaving the site. Minimum dimensions must be 30 feet wide by 3 inches deep and 50 feet long or the length of the longest motor vehicle, whichever is greater. If an unpaved surface exit does not have adequate width to install a 30-foot wide gravel pad, then the width of the gravel pad must cover the full width of the unpaved surface exit and such shorter width shall be adequate to prevent trackout.
- 215 GRIZZLY** – A device (i.e., rails, pipes, or grates) used to dislodge mud, dirt, and/or debris from the tires and undercarriage of motor vehicles prior to leaving the work site.
- 216 LIVESTOCK ACTIVITIES** – Any activity directly related to feeding animals, displaying animals, racing animals, exercising animals, and/or for any other such activity

including, but not limited to, livestock arenas, horse arenas, feed lots, and residential activities related to feeding or raising animals.

- 217 MOTOR VEHICLE** – A self-propelled vehicle for use on the public roads and highways of the State of Arizona and required to be registered under the Arizona State Uniform Motor Vehicle Act, including any non-motorized attachments, such as but not limited to, trailers or other conveyances which are connected to or propelled by the actual motorized portion of the vehicle.
- 218 NON-TRADITIONAL SOURCE OF FUGITIVE DUST** – A source of fugitive dust that is located at a source that does not require any permit under these rules. The following non-traditional sources of fugitive dust are subject to the standards and/or requirements described in Rule 310.01: Fugitive Dust from Non-Traditional Sources of Fugitive Dust of these rules:
- 218.1** Vehicle use in open areas and vacant lots.
 - 218.2** Open areas and vacant lots.
 - 218.3** Unpaved parking lots.
 - 218.4** Unpaved roadways (including alleys).
 - 218.5** Livestock activities.
 - 218.6** Erosion-caused deposition of bulk materials onto paved surfaces.
 - 218.7** Easements, rights-of-way, and access roads for utilities (electricity, natural gas, oil, water, and gas transmission).
- 219 NORMAL FARM CULTURAL PRACTICE** – All activities by the owner, lessee, agent, independent contractor, and/or supplier conducted on any facility for the production of crops and/or nursery plants. Disturbances of the field surface caused by turning under stalks, tilling, leveling, planting, fertilizing, or harvesting are included in this definition.
- 220 OFF-ROAD VEHICLE** – Any self-propelled conveyance specifically designed for off-road use, including, but not limited to, off-road or all-terrain equipment, trucks, cars, motorcycles, motorbikes, or motorbuggies.
- 221 OPEN AREAS AND VACANT LOTS** – Any of the following described in Sections 221.1 through 221.3 of this rule. For the purpose of this rule, vacant portions of residential or commercial lots that are immediately adjacent and owned and/or operated by the same individual or entity are considered one vacant open area or vacant lot.
- 221.1** An unsubdivided or undeveloped tract of land adjoining a developed or a partially developed residential, industrial, institutional, governmental, or commercial area.
 - 221.2** A subdivided residential, industrial, institutional, governmental, or commercial lot that contains no approved or permitted buildings or structures of a temporary or permanent nature.

- 221.3** A partially developed residential, industrial, institutional, governmental, or commercial lot.
- 222** **OWNER AND/OR OPERATOR** – Any person who owns, leases, operates, controls, or supervises a fugitive dust source subject to the requirements of this rule.
- 223** **PAVE** – To apply and maintain asphalt, concrete, or other similar material to a roadway surface (i.e., asphaltic concrete, concrete pavement, chip seal, or rubberized asphalt).
- 224** **PM₁₀ NONATTAINMENT AREA** – An area designated by the EPA as exceeding National Ambient Air Quality Standards based upon data collected through air quality monitoring. The geographical boundary of Maricopa County's PM₁₀ nonattainment area is defined as the rectangle determined by and including the following townships and ranges: T6N, R3W; T6N, R7E; T2S, R3W; T2S, R7E; and T1N, R8E. Maricopa County's PM₁₀ nonattainment area includes the following cities: Surprise, Peoria, Glendale, Phoenix, Scottsdale, Tempe, Mesa, Gilbert, Chandler, Avondale, Buckeye, and Goodyear.
- 225** **PROPERTY LINE** – The boundaries of an area in which either a person causing the emission or a person allowing the emission has the legal use or possession of the property. Where such property is divided into one or more sub-tenancies, the property line(s) shall refer to the boundaries dividing the areas of all sub-tenancies.
- 226** **PUBLIC ROADWAYS** – Any roadways that are open to public travel.
- 227** **TRACKOUT/CARRYOUT** – Any and all bulk materials that adhere to and agglomerate on the surfaces of motor vehicles, haul trucks, and/or equipment (including tires) and that have fallen or been deposited onto an area accessible to the public.
- 228** **TRACKOUT CONTROL DEVICE** – A gravel pad, grizzly, wheel wash system, or a paved area, located at the point of intersection of an unpaved area and an area accessible to the public that controls or prevents vehicular trackout.
- 229** **UNPAVED ACCESS CONNECTIONS** – Any unpaved road connection with a paved public road.
- 230** **UNPAVED PARKING LOT** – Any area that is not paved and that is used for parking, maneuvering, material handling, or storing motor vehicles and equipment. An unpaved parking lot includes, but is not limited to, automobile impound yards, wrecking yards, automobile dismantling yards, salvage yards, material handling yards, and storage yards. For the purpose of this rule, maneuvering shall not include military maneuvers or exercises conducted on federal facilities.
- 231** **UNPAVED ROADWAY (INCLUDING ALLEYS)** – A road that is not paved and that is owned by federal, state, county, municipal, or other governmental or quasi-governmental agencies. For the purpose of this rule, an unpaved roadway (including

alleys) is not a horse trail, hiking path, bicycle path, or other similar path used exclusively for purposes other than travel by motor vehicles. An unpaved roadway (including alleys) includes designated or opened trail systems and service roads regardless of surface composition.

- 232 VACANT LOT** – The definition of vacant lot is included in Section 221: Definition of Open Areas and Vacant Lots of this rule.

SECTION 300 – STANDARDS

301 GENERAL REQUIREMENTS FOR NON-TRADITIONAL SOURCES OF FUGITIVE DUST:

- 301.1** An owner and/or operator of a non-traditional source of fugitive dust shall be subject to the standards and/or requirements described in this rule. Failure to comply with any such standards and/or requirements is deemed a violation of this rule.
- 301.2** When an owner and/or operator of a non-traditional source of fugitive dust fails to stabilize disturbed surfaces of vacant lots as required in Sections 302.4 and 302.5 of this rule, the Control Officer shall commence enforcement of those rule provisions regarding the stabilization of disturbed surfaces of vacant lots that include the following:
- a.** Reasonable written notice to the owner or the owner’s authorized agent or the owner’s statutory agent that the unpaved disturbed surface of a vacant lot is required to be stabilized. The notice shall be given not less than 30 days before the day set for compliance and shall include a legal description of the property and the estimated cost to the county for the stabilization if the owner does not comply. The notice shall be either personally served or mailed by certified mail to the owner’s statutory agent, to the owner at the owner’s last known address or to the address to which the tax bill for the property was last mailed.
 - b.** Authority to enter upon any said land/property where such non-traditional source of fugitive dust exists/where such disturbed surface area exists and to take remedial and/or corrective action as may be deemed appropriate to cope with and relieve, reduce, remedy, and/or stabilize such non-traditional source of fugitive dust/such disturbed surface area. Any cost incurred in connection with any such remedial or corrective action by the Maricopa County Air Quality Department or any person acting for the Maricopa County Air Quality Department shall be reimbursed by the owner and/or operator of such non-traditional source of fugitive dust.

302 CONTROL MEASURES FOR NON-TRADITIONAL SOURCES OF FUGITIVE DUST:

- 302.1** When engaged in the activities described in Sections 302.4 through 302.10 of this rule, the owner and/or operator of a non-traditional source of fugitive dust shall implement control measures as described in Sections 302.4 through 302.10 of this rule, as applicable.
- 302.2** Control measures shall be implemented to meet the visible emissions requirements and stabilization requirements, as required for each activity, and to achieve the compliance determination in Section 501 of this rule.
- 302.3** Failure to implement control measures as required by this rule, as applicable, and/or failure to maintain stabilization of a non-traditional source of fugitive dust with adequate surface crusting to prevent wind erosion as measured by the requirements in this rule shall be deemed a violation of this rule.
- 302.4 Vehicle Use in Open Areas and Vacant Lots:** The owner and/or operator of a non-traditional source of fugitive dust that involves vehicle use in open areas and vacant lots shall be subject to the requirements described in Section 302.4(a) of this rule and, unless otherwise specified and/or required, shall comply with the control measures described in Section 302.4(b) of this rule and the additional requirements described in Section 302.4(c) of this rule.

a. Visible Emissions Requirements and Stabilization Requirements:

- (1) The owner and/or operator of a non-traditional source of fugitive dust that involves vehicle use in open areas and vacant lots shall not cause or allow visible emissions of particulate matter, including fugitive dust, beyond the property line within which the emissions are generated.
- (2) The owner and/or operator of a non-traditional source of fugitive dust that involves vehicle use in open areas and vacant lots shall stabilize the open areas and vacant lots on which vehicles are used to meet one of the following stabilization limitations:
 - (a) A soil crust; or
 - (b) A threshold friction velocity (TFV) corrected for non-erodible elements of 100 cm/second or higher; or
 - (c) Flat vegetative cover (i.e., attached [rooted] vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind) that is equal to at least 50%; or

- (d) Standing vegetative cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 30%; or
- (e) Standing vegetative cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 10% and where the threshold friction velocity is equal to or greater than 43 cm/second when corrected for non-erodible elements; or
- (f) A percent cover that is equal to or greater than 10% for non-erodible elements; or
- (g) An alternative test method approved in writing by the Control Officer and the Administrator.

b. Control Measures:

- (1) Prevent motor vehicle and/or off-road vehicle trespassing, parking, and/or access by installing barriers, curbs, fences, gates, posts, shrubs, trees, or other effective control measures;
- (2) Prevent motor vehicle and/or off-road vehicle trespassing, parking, and/or access by posting that consists of one of the following:
 - (a) A sign written in compliance with ordinance(s) of local, County, State, or Federal sign standards.
 - (b) An order of a government land management agency.
 - (c) Most current maps approved by a government land management agency.
 - (d) Virtual posting a government land management agency.
- (3) Uniformly apply and maintain surface gravel or chemical/organic stabilizers to all areas disturbed by motor vehicles and/or off-road vehicles; or
- (4) Apply and maintain an alternative control measure approved in writing by the Control Officer and the Administrator.

c. Additional Requirements:

- (1) If open areas and vacant lots are 0.10 acre (4,356 square feet) or larger and have a cumulative of 500 square feet or more that are disturbed by

being driven over and/or used by motor vehicles, by off-road vehicles, or for material dumping, then the owner and/or operator shall implement one or more of the control measures described in Section 302.4(b) of this rule within 60 calendar days following the initial discovery by the Control Officer of disturbance or vehicle use on open areas and vacant lots.

- (2) Within 30 calendar days following the initial discovery by the Control Officer of disturbance or vehicle use on open areas and vacant lots, the owner and/or operator shall provide in writing to the Control Officer a description and date of the control measure(s) to be implemented to prevent such disturbance or vehicle use on open areas and vacant lots.
- (3) The owner and/or operator shall implement all control measures necessary to limit the disturbance or vehicle use on open areas and vacant lots in accordance with the requirements of this rule. Control measure(s) shall be considered effectively implemented when the open areas and vacant lots meet the requirements described in Section 302.4(a) of this rule.
- (4) Once a control measure in Section 302.4(b) of this rule has been effectively implemented, then such open area or vacant lot is subject to the requirements of Section 302.5: Open Areas and Vacant Lots of this rule.
- (5) Use of or parking on open areas and vacant lots by the owner and/or operator of such open areas and vacant lots shall not be considered vehicle use in open areas and vacant lots and shall not be subject to the requirements of Section 302.4(b) and sections 302.4(c)(1) through 302.4(c)(4) of this rule. Such open areas and vacant lots shall still meet the requirements described in Section 302.5 of this rule.
- (6) Establishing initial landscapes without the use of mechanized equipment or conducting landscape maintenance without the use of mechanized equipment shall not be considered vehicle use in open areas and vacant lots and shall not be subject to the requirements of Section 302.4(b) and Sections 302.4(c)(1) through 302.4(c)(4) of this rule. Such open areas and vacant lots shall still meet the requirements described in Section 302.5 of this rule.

302.5 Open Areas and Vacant Lots: The owner and/or operator of a non-traditional source of fugitive dust that involves open areas and vacant lots shall be subject to the requirements described in Section 302.5(a) of this rule and, unless otherwise specified and/or required, shall comply with the control measures described in Section 302.5(b) of this rule and the additional requirements described in Section 302.5(c) of this rule.

a. Visible Emissions Requirements and Stabilization Requirements:

- (1) The owner and/or operator of a non-traditional source of fugitive dust that involves open areas and vacant lots shall not cause or allow visible emissions of particulate matter, including fugitive dust, beyond the property line within which the emissions are generated.
- (2) The owner and/or operator of a non-traditional source of fugitive dust that involves open areas and vacant lots shall stabilize the open areas and vacant lots to meet one of the following stabilization limitations:
 - (a) A soil crust; or
 - (b) A threshold friction velocity (TFV) corrected for non-erodible elements of 100 cm/second or higher; or
 - (c) Flat vegetative cover (i.e., attached [rooted] vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind) that is equal to at least 50%; or
 - (d) Standing vegetative cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 30%; or
 - (e) Standing vegetative cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 10% and where the threshold friction velocity is equal to or greater than 43 cm/second when corrected for non-erodible elements; or
 - (f) A percent cover that is equal to or greater than 10% for non-erodible elements; or
 - (g) An alternative test method approved in writing by the Control Officer and the Administrator.

b. Control Measures:

- (1) Establish vegetative ground cover on all disturbed surface areas. Such control measure(s) must be maintained and reapplied, if necessary. Stabilization shall be achieved, per this control measure, within eight months after the control measure has been implemented; or
- (2) Apply a dust suppressant to all disturbed surface areas; or

- (3) Restore all disturbed surface areas within 60 calendar days following the initial discovery by the Control Officer of the disturbance, such that the vegetative ground cover and soil characteristics are similar to adjacent or nearby undisturbed native conditions. Such control measure(s) must be maintained and reapplied, if necessary. Stabilization shall be achieved, per such control measure, within eight months after such control measure has been implemented; or
- (4) Uniformly apply and maintain surface gravel; or
- (5) Apply and maintain an alternative control measure approved in writing by the Control Officer and the Administrator.

c. Additional Requirements:

- (1) If open areas and vacant lots are 0.10 acre (4,356 square feet) or larger and have a cumulative of 500 square feet or more that are disturbed and if such disturbed area remains unoccupied, unused, vacant, or undeveloped for more than 15 days, then the owner and/or operator shall implement one or more of the control measures described in Section 302.5(b) of this rule within 60 calendar days following the initial discovery by the Control Officer of the disturbance on the open areas and vacant lots.
- (2) Within 30 calendar days following the initial discovery by the Control Officer of the disturbance on the open areas and vacant lots, the owner and/or operator shall provide in writing to the Control Officer a description and date of the control measure(s) to be implemented.
- (3) Control measure(s) shall be considered effectively implemented when the disturbance on the open areas and vacant lots meets the requirements described in Section 302.5(a) of this rule.

302.6 Unpaved Parking Lots: The owner and/or operator of a non-traditional source of fugitive dust that involves unpaved parking lots shall be subject to the requirements described in Section 302.6(a) of this rule and, unless otherwise specified and/or required, shall comply with one of the control measures described in Section 302.6(b) of this rule and the additional requirements described in Section 302.6(c) of this rule.

a. Visible Emissions Requirements and Stabilization Requirements:

- (1) The owner and/or operator of a non-traditional source of fugitive dust that involves unpaved parking lots shall not cause or allow visible

emissions of particulate matter, including fugitive dust, beyond the property line within which the emissions are generated.

- (2) The owner and/or operator of a non-traditional source of fugitive dust that involves unpaved parking lots shall not cause or allow visible fugitive dust emissions to exceed 20% opacity and shall not allow silt loading equal to or greater than 0.33 oz/ft². However, if silt loading is equal to or greater than 0.33 oz/ft², then the owner and/or operator shall not allow the silt content to exceed 8%.

b. Control Measures:

- (1) For parking, maneuvering, ingress, and egress areas at developments other than residential buildings with four or fewer units that are utilized for more than 35 days during the calendar year:
 - (a) Install and maintain pavement; or
 - (b) Apply dust suppressant other than water and install, maintain, and use a suitable trackout control device that controls and prevents trackout and/or removes particulate matter from tires and the exterior surfaces of motor vehicles that traverse the site; or
 - (c) Uniformly apply and maintain surface gravel.
- (2) For parking, maneuvering, ingress, and egress areas at developments other than residential buildings with four or fewer units that are utilized for 35 days or less during the calendar year:
 - (a) Install and maintain one of the control measures listed in Section 302.6(b)(1) of this rule; or
 - (b) Apply water and install, maintain, and use a suitable trackout control device that controls and prevents trackout and/or removes particulate matter from tires and the exterior surfaces of motor vehicles that traverse the site.
- (3) For parking, maneuvering, ingress, and egress areas 3,000 square feet or more in size at residential buildings with four or fewer units install and maintain a paving or stabilization method authorized by the city, town, or county by code, ordinance, or permit.

c. Additional Requirements:

- (1) Control measure(s) shall be considered effectively implemented when the unpaved parking lot meets the requirements described in Section 302.6(a) of this rule.
- (2) If trackout occurs, the owner and/or operator shall repair and/or replace the control measure(s) and shall clean-up immediately such trackout from areas accessible to the public including curbs, gutters, and sidewalks when trackout extends a cumulative distance of 25 linear feet or more and at the end of the day for all other trackout.

302.7 Unpaved Roadways (Including Alleys): The owner and/or operator of unpaved roadways (including alleys) that are used by 150 vehicle trips or more per day in the PM₁₀ nonattainment area shall be subject to the requirements described in Section 302.7(a) of this rule and, unless otherwise specified and/or required, shall comply with one of the control measures described in Section 302.7(b) of this rule and the additional requirements described in Section 302.7(c) of this rule.

a. Visible Emissions Requirements and Stabilization Requirements: The owner and/or operator of unpaved roadways (including alleys) shall not cause or allow visible fugitive dust emissions to exceed 20% opacity and shall not allow silt loading equal to or greater than 0.33 oz/ft². However, if silt loading is equal to or greater than 0.33 oz/ft², then the owner and/or operator shall not allow the silt content to exceed 6%.

b. Control Measures:

- (1) Pave;
- (2) Apply dust suppressants other than water; or
- (3) Uniformly apply and maintain surface gravel.

c. Additional Requirements:

- (1) If a person allows 150 vehicle trips or more per day on an unpaved roadway (including an alley) in the PM₁₀ nonattainment area, then such person shall first implement one of the control measures described in Section 302.7(b) of this rule.
- (2) A person, who allows 150 vehicle trips or more per day on an unpaved roadway (including an alley) in the PM₁₀ nonattainment area, shall be responsible for conducting vehicle counts/traffic counts to determine if 150 vehicle trips or more per day occur on an unpaved roadway (including an alley). A traffic count shall measure vehicular traffic over a 48-hour period, which may consist of two non-consecutive 24-hour periods. Vehicular traffic shall be measured continuously during each

24-hour period. The average vehicle counts/traffic counts on the highest trafficked days shall be recorded and provided to the Control Officer in writing within 60 days of verbal or written request by the Control Officer.

- (3) Control measure(s) shall be considered effectively implemented under the following conditions:
 - (a) When the unpaved roadway (including an alley) meets the requirements described in Section 302.7(a) of this rule.
 - (b) When one of the control measures described in Section 302.7(b) of this rule is implemented on 5 miles of unpaved roadways (including alleys) having vehicle traffic of 150 vehicle trips or more per day within one calendar year beginning in calendar year of 2008. If the control measure described in Section 302.7(b)(2) of this rule is implemented, the unpaved roadways (including alleys) must be maintained so as to comply with Appendix C of these rules.

302.8 Livestock Activities: The owner and/or operator of a non-traditional source of fugitive dust that involves livestock activities shall be subject to the requirements described in Section 302.8(a) of this rule and, unless otherwise specified and/or required, shall comply with the control measures described in Section 302.8(b) of this rule and the additional requirements described in Section 302.8(c) of this rule.

a. Visible Emissions Requirements:

- (1) For unpaved access connections and unpaved feed lane access areas, the owner and/or operator shall not cause or allow visible fugitive dust emissions to exceed 20% opacity.
- (2) For corrals, pens, and arenas, the owner and/or operator shall not cause or allow visible fugitive dust emissions to exceed 20% opacity for a period aggregating more than three minutes in any 60-minute period.
- (3) The owner and/or operator shall not cause or allow visible emissions of particulate matter, including fugitive dust, beyond the property line within which the emissions are generated.

b. Control Measures: The owner and/or operator of a non-traditional source of fugitive dust that involves livestock activities shall implement the control measures described in this section of this rule. When selecting a control measure, the owner and/or operator may consider site-specific logistics of the livestock activities. When doing so, some control measures may be more reasonable to implement than others. Any control measure that is implemented must achieve the applicable standards and requirements

described in Sections 302.8(a) and (c) of this rule, as determined by the corresponding test methods, as applicable, and must achieve other applicable standards set forth in this rule. The owner and/or operator may submit a request to the Control Officer and the Administrator for the use of alternative control measure(s). The owner and/or operator may implement the alternative control measure only after the Control Officer and the Administrator have granted the petition.

- (1)** For unpaved access connections and unpaved feed lane access areas:
 - (a)** Apply water and install, maintain, and use a suitable trackout control device that controls and prevents trackout and/or removes particulate matter from tires and the exterior surfaces of motor vehicles that traverse the site;
 - (b)** Apply and maintain pavement, gravel (maintained to a depth of four inches), or asphaltic roadbase;
 - (c)** Apply and maintain dust suppressants other than water; or
 - (d)** Limit vehicle trips to no more than 20 per day per road, limit vehicle speeds to no more than 15 miles per hour, and restrict public access to private roads by installing barriers, curbs, fences, gates, posts, or signs written in compliance with ordinance(s) of local, County, State, or Federal sign standards.
- (2)** For bulk material hauling, including animal waste, off-site and crossing and/or accessing an area accessible to the public:
 - (a)** Load all vehicles used to haul bulk material, including animal waste, such that the freeboard is not less than three inches;
 - (b)** Prevent spillage or loss of bulk material, including animal waste, from holes or other openings in the cargo compartment's floor, sides, and/or tailgate(s);
 - (c)** Cover cargo compartment with a tarp or other suitable closure; and
 - (d)** Install, maintain, and use a suitable trackout control device that controls and prevents trackout and/or removes particulate matter from tires and the exterior surfaces of motor vehicles that traverse the site.
- (3)** For corrals, pens, and arenas:
 - (a)** Apply water;

- (b) Install shrubs and/or trees within 50 feet to 100 feet of corrals, pens, and arenas;
- (c) Scrape and/or remove manure;
- (d) Apply a fibrous layer (i.e., wood chips) in working areas;
- (e) Provide shaded areas; or
- (f) Apply and maintain an alternative control measure approved in writing by the Control Officer and the Administrator.

c. Additional Requirements:

- (1) The owner and/or operator of livestock activities shall implement at least one of the control measures from each of the following three sections of this rule, as applicable: Section 302.8(b)(1), Section 302.8(b)(2), and Section 302.8(b)(3). In lieu of implementing at least one control measure from each of the following three sections of this rule, as applicable: Section 302.8(b)(1), Section 302.8(b)(2), and Section 302.8(b)(3), the owner and/or operator of livestock activities shall implement an alternative control measure approved in writing by the Control Officer and the Administrator.
- (2) Control measure(s) shall be considered effectively implemented when the livestock activities meet the requirements described in Section 302.8(a) of this rule.
- (3) If trackout occurs, the owner and/or operator shall repair and/or replace the control measure(s) and shall clean up immediately such trackout from areas accessible to the public including curbs, gutters, and sidewalks when trackout extends a cumulative distance of 25 linear feet or more and at the end of the day for all other trackout.

302.9 Erosion-Caused Deposition of Bulk Materials Onto Paved Surfaces: The owner and/or operator of a non-traditional source of fugitive dust that involves erosion-caused deposition of bulk materials onto paved surfaces shall comply with the control measures described in Section 302.9(a) of this rule and the additional requirements described in Section 302.9(b) of this rule.

a. Control Measures:

- (1) Remove any and all such deposits by utilizing the appropriate control measures within 24 hours of the deposits' identification or prior to the

resumption of traffic on pavement, where the pavement area has been closed to traffic; and

- (2) Dispose of deposits in such a manner so as not to cause another source of fugitive dust.

b. Additional Requirements:

- (1) In the event that erosion-caused deposition of bulk materials or other materials occurs on any adjacent paved roadway, paved parking lot, curb, gutter, or sidewalk, the owner and/or operator of the property from which the deposition eroded shall implement both of the control measures described in Section 302.9(a) of this rule.
- (2) Failure to comply with both of the control measures described in Section 302.9(a) of this rule shall constitute a violation of this rule.

302.10 Easements, Rights-of-Way, and Access Roads for Utilities (Transmission of Electricity, Natural Gas, Oil, Water, and Gas): The owner and/or operator of a non-traditional source of fugitive dust that involves easements, rights-of-way, and access roads for utilities (transmission of electricity, natural gas, oil, water, and gas) that are used by 150 vehicle trips or more per day in the PM₁₀ nonattainment area shall be subject to the requirements described in Section 302.10(a) of this rule and unless otherwise specified and/or required, comply with one of the control measures described in Section 302.10(b) of this rule and the additional requirements described in Section 302.10(c) of this rule.

a. Visible Emissions Requirements and Stabilization Requirements: The owner and/or operator of a non-traditional source of fugitive dust that involves easements, rights-of-way, and access roads for utilities (transmission of electricity, natural gas, oil, water, and gas) shall not cause or allow visible fugitive dust emissions to exceed 20% opacity and shall not allow silt loading equal to or greater than 0.33 oz/ft². However, if silt loading is equal to or greater than 0.33 oz/ft², then the owner and/or operator shall not allow the silt content to exceed 6%.

b. Control Measures:

- (1) Pave;
- (2) Apply dust suppressants other than water;
- (3) Uniformly apply and maintain surface gravel; or
- (4) Install locked gates at each entry point.

c. Additional Requirements:

- (1) If an owner and/or operator allows 150 vehicle trips or more per day to use an easement, right-of-way, and access road for utilities (transmission of electricity, natural gas, oil, water, and gas) in the PM₁₀ nonattainment area, then such owner and/or operator shall first implement one of the control measures described in Section 302.10(b) of this rule.
- (2) A person, who allows 150 vehicle trips or more per day to use an easement, right-of-way, and access road for utilities (transmission of electricity, natural gas, oil, water, and gas) in the PM₁₀ nonattainment area, shall be responsible for conducting vehicle counts/traffic counts to determine if 150 vehicle trips or more per day occur on an easement, right-of-way, and access road for utilities (transmission of electricity, natural gas, oil, water, and gas). A traffic count shall measure vehicular traffic over a 48-hour period, which may consist of two non-consecutive 24-hour periods. Vehicular traffic shall be measured continuously during each 24-hour period. The average vehicle counts/traffic counts on the highest trafficked days shall be recorded and provided to the Control Officer in writing within 60 days of verbal or written request by the Control Officer.
- (3) Control measure(s) shall be considered effectively implemented when the easement, right-of-way, and access road for utilities (transmission of electricity, natural gas, oil, water, and gas) meets the requirements described in Section 302.10(a) of this rule.

SECTION 400 – ADMINISTRATIVE REQUIREMENTS (NOT APPLICABLE)

SECTION 500 – MONITORING AND RECORDS

501 COMPLIANCE DETERMINATION: To determine compliance with this rule, the following test methods shall be followed:

501.1 Opacity Observations:

- a. Opacity observations to measure visible emissions shall be conducted in accordance with the techniques specified in EPA Reference Method 203B (Visual Determination of Opacity of Emissions from Stationary Sources for Time-Exception Regulations). Emissions shall not exceed the applicable opacity standards of this rule for a period aggregating more than three minutes in any 60-minute period.
- b. Opacity observations to determine compliance with Sections 302.6, 302.7, 302.8(a)(1), 302.8(a)(2), and 302.10 of this rule shall be conducted in

accordance with the techniques specified in Appendix C (Fugitive Dust Test Methods) of these rules.

501.2 Stabilization observations for unpaved parking lots and/or unpaved roadways (including alleys) shall be conducted in accordance with Appendix C, Section 2.1 (Test Methods for Stabilization for Unpaved Roads and Unpaved Parking Lots) of these rules.

501.3 Stabilization observations for vehicle use in open areas and vacant lots and/or open areas and vacant lots shall be conducted in accordance with the following:

- a. Appendix C, Section 2.3 (Test Methods for Stabilization: Soil Crust Determination: The Drop Ball Test) of these rules; or
- b. Appendix C, Section 2.4 (Test Methods for Stabilization: Determination of Threshold Friction Velocity [TFV]: Sieving Field Procedure) of these rules, where the threshold friction velocity (TFV) for disturbed surface areas corrected for non-erodible elements is 100 cm/second or higher; or
- c. Appendix C, Section 2.5 (Test Methods for Stabilization: Determination of Flat Vegetative Cover) of these rules, where flat vegetation cover (i.e., attached [rooted] vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind) is equal to at least 50%; or
- d. Appendix C, Section 2.6 (Test Methods for Stabilization: Determination of Standing Vegetative Cover) of these rules, where standing vegetation cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) is equal to or greater than 30%; or
- e. Appendix C, Section 2.6 (Test Methods for Stabilization: Determination of Standing Vegetative Cover) of these rules, where the standing vegetation cover (i.e., vegetation that is attached [rooted] with a predominant vertical orientation) is equal to or greater than 10% and where the threshold friction velocity, corrected for non-erodible elements, is equal to or greater than 43 cm/second; or
- f. Appendix C, Section 2.7 (Test Methods for Stabilization: Rock Test Method) of these rules where a percent cover is equal to or greater than 10% for non-erodible elements.
- g. An alternative test method approved in writing by the Control Officer and the Administrator.

502 RECORDKEEPING: Any person subject to the requirements of this rule shall compile and retain records that provide evidence of control measure application (i.e., receipts

and/or purchase records). Such person shall describe, in the records, the type of treatment or control measure, extent of coverage, and date applied. Upon verbal or written request by the Control Officer, such person shall provide the records and supporting documentation as soon as possible but no later than 48 hours, excluding weekends. If the Control Officer is at the site where requested records are kept, such person shall provide the records without delay.

503 RECORDS RETENTION: Copies of the records required by Section 502 (Recordkeeping) of this rule shall be retained for at least two years.