



City of Phoenix

To: Addressees

Date: March 16, 2011

From: David Cavazos
City Manager

Subject: DUST REDUCTION TASK FORCE

We are facing the potential loss of billions of dollars of Federal funding for streets and highway projects due to continuing high levels of particulate (dust) air pollutants in the metro Phoenix area. Phoenix plays a critical role in this effort to reduce dust along with Arizona Department of Environmental Quality, Maricopa County Air Quality Department, Maricopa Association of Governments and all other MAG Member Agencies.

To ensure that Phoenix helps meet this pressing challenge, I am creating a Dust Reduction Task Force and requesting your participation on this important team. Each department represented has authority, expertise and resources to minimize particulate emissions from potential sources on City and private properties under our jurisdiction.

The Dust Reduction Task Force is charged with developing and implementing a comprehensive strategy to reduce particulate pollution and improve air quality in the vicinity of the nine monitors located within Phoenix. I am asking Philip McNeely from the Office of Environmental Programs to serve as the chair. **I would like to have your recommendations on a short term action plan by April 15 and the long term action plan by May 15.**

Thank you for agreeing to serve on this critically important Task Force. I look forward to receiving your recommendations.

Addressees:

Carolyn Bristo, Public Works
 Brian Hinrichs, Street Transportation
 Susan Kinkade, Water Services
 Phil McNeely, Office of Environmental Programs
 Patrick Ravenstein, Neighborhood Services
 Sandra T. Renteria, Police
 Larry Tom, Planning and Development
 Karen Williams, Parks and Recreation

C: Executive Team

Department and Function Heads



City of Phoenix

To: David Cavazos
City Manager

Date: May 11, 2011

From: Philip McNeely, Chair *AM*
Dust Reduction Task Force

Subject: LONG TERM RECOMMENDATIONS - DUST REDUCTION TASK FORCE

The Dust Reduction Task Force (Task Force) was formed to develop and implement an integrated and comprehensive strategy to reduce high levels of particulate (dust) air pollutants in the metro Phoenix area. As air pollution in cities can negatively impact health and infrastructure, creating both an environmental and economic problem, the Task Force continues its efforts in support of a healthier and improved quality of life for Phoenix residents. The Task Force was directed to submit its short term action plan by April 15 and its long term action plan by May 15, 2011.

The short term action plan was submitted to the City Manager on April 15th with six recommendations. These recommendations included establishing the Office of Environmental Programs as the city's single point of contact for high risk dust advisories, updating departmental contact lists, developing consistent city-wide procedures for implementation during High Risk Dust Advisories, development of detailed maps of targeted areas, and a dust reduction city code reference guide. In addition, the Task Force recommended taking immediate corrective action when significant violations of city code are identified.

Since the submittal of the short term action plan, the Task Force met on April 19, May 3 and May 10, 2011 to implement the short term recommendations and to develop the long term action plan. Department representatives have continued their active engagement and offered valuable insight into their respective operations and the most productive way for each to contribute to the overall city-wide effort.

The long term recommendations are attached. The Task Force will continue to meet to implement them and to develop a final report by September 30, 2011.

Item	Task Force Recommendations	Completion Date
1	<p>Develop an outreach plan to educate city staff, city contractors and members of the public on the purpose of the High Risk Dust Advisories and how to prepare and respond to the advisories.</p> <ul style="list-style-type: none"> • Internal Strategy: May include the preparation of training video's, training during morning safety meetings, and articles for department newsletters and web sites. • External Strategy: May include the use of external newsletters, web sites, and other media. The strategy will also focus on providing literature and presenting information to stakeholder groups already engaged by departments. These may include Block Watch meetings, Home Owners Associations, Village Planning Committees, Senior Centers and Park and Recreation Centers. 	July 1
2	Develop a city-wide Code Enforcement Strategy that will include all city departments with code enforcement authority to focus on the high risk dust areas and be supported by educational efforts of the outreach plan. This strategy will include a review of existing city dust control codes with recommendations for potential revisions.	August 1
3	For contracts that include dust generating activities, review the contract dust compliance provisions to ensure city-wide consistency and add provisions that contractors must take appropriate action when notified of a High Risk Dust Advisory.	September 2
4	Expand the city's dust training program to include code enforcement staff in the Police, Planning and Developmental Services, and Neighborhood Services Departments. In addition, conduct awareness training for other city field staff not conducting activities under a County permit or involved with code enforcement to increase vigilance on problem areas.	September 2
5	Coordinate with the Arizona Department of Environmental Quality, Maricopa County Air Quality Department, and Maricopa Association of Governments on outreach and enforcement efforts to optimize each agency's authority and resources.	Ongoing
6	Prepare a Final Report documenting the short term and long term recommendations. The report will include an implementation schedule.	September 30
7.	Report Implementation Status to City Manager's Office	Periodic

c: Executive Team
Department and Function Heads
Dust Reduction Task Force



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

April 22, 2011

The Honorable Janice Brewer
Governor of Arizona
1700 W. Washington Street, 9th Floor
Phoenix, Arizona 85007

Dear Governor Brewer:

The Maricopa Association of Governments is taking a proactive leadership approach in cooperation with the Arizona Department of Environmental Quality (ADEQ), Maricopa County Air Quality Department, business, and industry to prevent exceedances of the PM-10 standard at the monitors and throughout the region. If 2011 is a clean year, it may be possible to be relieved of some of the Clean Air Act requirements and avoid further mandates and regulations. We are looking forward to utilizing the ADEQ Air Quality Dust Forecasts required by H.B. 2208 passed by the Arizona Legislature in our endeavors to prevent PM-10 exceedances.

The Environmental Protection Agency (EPA) has indicated informally that 2009 may be a clean year. There were no violations of the PM-10 standard in 2010. The next eight months are critical. If 2011 is clean, the region would have the three years of clean data needed for attainment of the standard. Under the EPA Clean Data Policy, it may be possible for EPA to issue an attainment finding and a Five Percent Plan for PM-10 would not be necessary as long as the area remains in attainment. This represents the best case scenario for the region.

The MAG member agencies have embarked upon a rigorous effort to prevent PM-10 exceedances. The City of Phoenix has established a Dust Reduction Task Force comprised of several city departments. MAG has provided \$90,000 to the Maricopa County Air Quality Department for upgrades that will provide near real time monitor data. Local governments will be able to watch the monitor readings and rapidly respond if high dust generating activities should occur. MAG is also producing a PM-10 Prevention Video to increase awareness that all sectors need to do their part to reduce dust pollution.

Again, we appreciate the provisions of H.B. 2208 that are designed to prevent PM-10 exceedances. We will look forward to working with the air agencies, business, and industry to prevent PM-10 exceedances, improve air quality, and avoid further mandates and regulations. If you have any questions, please do not hesitate to contact me or Lindy Bauer at (602) 254-6300.

Sincerely,

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

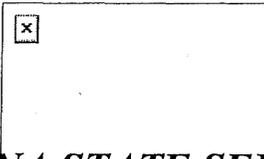
cc: Henry Darwin, ADEQ
Kevin Kinsall, Governor's Office
MAG Regional Council

A Voluntary Association of Local Governments in Maricopa County

City of Apache Junction ▲ City of Avondale ▲ Town of Buckeye ▲ Town of Carefree ▲ Town of Cave Creek ▲ City of Chandler ▲ City of El Mirage ▲ Fort McDowell Yavapai Nation ▲ Town of Fountain Hills ▲ Town of Gila Bend
Gila River Indian Community ▲ Town of Gilbert ▲ City of Glendale ▲ City of Goodyear ▲ Town of Guadalupe ▲ City of Litchfield Park ▲ Maricopa County ▲ City of Mesa ▲ Town of Paradise Valley ▲ City of Peoria ▲ City of Phoenix
Town of Queen Creek ▲ Salt River Pima-Maricopa Indian Community ▲ City of Scottsdale ▲ City of Surprise ▲ City of Tempe ▲ City of Tolleson ▲ Town of Wickenburg ▲ Town of Youngtown ▲ Arizona Department of Transportation

Assigned to NRT

AS PASSED BY THE SENATE



ARIZONA STATE SENATE
Fiftieth Legislature, First Regular Session

AMENDED
FACT SHEET FOR H.B. 2208

~~technical correction; air pollution; orders~~
 (NOW: agricultural best management practices; rules)

Purpose

Authorizes the Arizona Department of Environmental Quality to issue a general permit that outlines best management practices designed to control dust in Maricopa County on days that are forecasted by the department to be high risk for dust generation. Modifies the statutory authority of the Agricultural Best Management Practices Committee to include additional requirements in rules to control dust in areas of PM-10 nonattainment, and exempts those rules from rulemaking requirements.

Background

The Phoenix metropolitan area has not met the federal Clean Air Act standards for PM-10 emissions since the Act was revised in 1990. There are different levels of nonattainment based on the extent to which the Environmental Protection Agency's (EPA) National Ambient Air Quality Standards are exceeded. On May 10, 1996, the EPA classified the Maricopa area as a serious PM-10 nonattainment area and that designation remains currently. PM-10 emissions refer to particulate matter in the air (e.g. dust) measuring less than ten micrometers.

In 2007, the Maricopa Association of Governments submitted the "MAG 2007 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area" to the EPA. That plan was withdrawn in January 2011 after the EPA indicated its intention to partially disapprove the plan (Federal Register, Vol. 75, No. 174, September 9, 2010). Regulated industries, state agencies, local governments and other stakeholders are currently working to devise a new plan to address PM-10 emissions for submittal to the EPA by January 2012.

Agricultural Best Management Practices Committee

The regulation of dust extends to agricultural operations. Dairy, beef feedlot and poultry and swine activities (i.e. animal agriculture) and commercial farming operations within the regulated areas of the Maricopa County PM-10 nonattainment area and the portion of Maricopa County in Area A are required to implement best management practices (BMPs) into their operations. Animal agriculture and commercial farming activities in these areas are regulated by the 15-member Agricultural Best Management Practices Committee (Committee). The Committee is responsible for adopting an *agricultural general permit*, which outlines BMPs intended to reduce PM-10 emissions.

The Committee adopts by rule a list of BMPs that may vary according to regional or geographical conditions or cropping patterns. Producers are required to implement at least two BMPs from the following applicable categories: a) tillage and harvest; b) non-cropland; c) cropland; and d) beef feedlot, dairy, swine, and poultry operations, including practices relating to unpaved access connections, unpaved roads or feed lanes and animal waste handling and transporting (A.R.S. § 49-457). For example, a BMP for tillage and harvesting would be to apply water to soil before performing planting operations.

Other Dust Regulation in Maricopa County

The Clean Air Act authorizes states to assume primary responsibility for regulating sources of air pollutants and for other regulatory programs developed by the EPA. The Arizona Department of Environmental Quality (ADEQ) assumes this primacy over Clean Air Act regulations and has further delegated air quality authority to Maricopa, Pinal and Pima counties. The Maricopa County Air Quality Department currently establishes limits for PM-10 emissions that are derived from any property, operation or activity that may be a dust source. These traditional sources (e.g. construction sites, nonmetallic mineral processing plants, operations that cause dirt to be tracked onto paved surfaces) must be permitted by the county under its Rule 310 and have an approved dust control plan in place. A dust control permit is required on all job sites that will disturb more than 1/10 acre (4356 sq. ft.) of soil. A dust control plan is a written plan describing all control measures to prevent or minimize the generation, emission, entrainment suspension and/or airborne transport of fugitive dust (Maricopa County, Rule 310 *Fugitive Dust From Dust-Generating Operations* Section 208). Dust control plans are enforced by control officers in Maricopa County.

Non-traditional sources (e.g. open areas, vacant lots, unpaved parking lots and unpaved roadways) are not regulated by Rule 310. However, Rule 310.01 addresses those non-traditional, unpermitted sources, which are responsible for certain stabilization standards and requirements relating to dust control (e.g. gravel, vegetation). Maricopa County also manages the residential woodburning and open burn programs, which are designed to restrict fireplace use and burning activities on high pollution days.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions*Agricultural Best Management Practices Committee*

1. As temporary law, exempts the rules adopted by the Agricultural Best Management Practices Committee from rulemaking requirements in order for the Committee to revise its rules on BMPs for commercial farming and animal agriculture activities in regulated PM-10 nonattainment areas.
2. Requires at least one BMP that is adopted in Committee rules to be used in areas designated as *moderate* PM-10 nonattainment.
3. Modifies the definition of *agricultural general permit* to include an additional category of BMPs relating to significant earthmoving activities for commercial farming.
4. Requires the Committee rules on dust control to include record keeping and reporting requirements.
5. Specifies the exempt rules will have an immediate effective date.
6. Requires the Committee to file a notice of exempt rulemaking with the Secretary of State for publication in the Arizona Administrative Register and the Arizona Administrative Code.

Dust Action General Permit

7. For the PM-10 nonattainment area in Maricopa County only, requires the ADEQ Director (Director) to issue a five-year Dust Action General Permit (general permit) for regulated activities that specifies BMPs to reduce dust on or before a day that is forecasted to be high risk for dust generation (e.g. high wind events). The general permit will be developed through a public comment and hearing process.
8. Exempts entities that have a dust control permit issued by Maricopa County from the requirement of obtaining a general permit. Those entities, however, must implement the control measures listed in the county's permit related to wind as soon as practicable before and during a high-risk day.
9. Allows the Director to require a general permit for other dust generating operations but only if the Director finds that the generating entity has not implemented applicable BMPs on high-risk days.
10. Prescribes content criteria of the general permit, including the criteria for which Director will determine if a permittee or entity has failed to comply with BMPs.
11. Clarifies that either the Director or the county control officer will enforce failures to implement dust control measures, depending on who issues the permit. Similarly, specifies that a regulated entity cannot be penalized by both the Director and control officer for the same violation.
12. Excludes the following from the definition of *regulated activities* for purposes of a general permit:
 - a) normal farm practices, including those currently regulated by an agricultural BMP general permit;
 - b) emergency activities conducted by a utility or governmental agency to preserve public safety;
 - c) initial landscaping activities that do not require the use of mechanized equipment; and
 - d) certain rooftop operations.
13. Allows the Director or a county control officer to consider voluntary BMPs that are implemented on moderate risk days as a mitigating factor in any action taken against an entity for failing to implement required dust control measures.
14. Allows the Director to reexamine, evaluate and modify the general permit through the public comment and hearing process. Modifications of the general permit must be submitted to the EPA as a revision to the Statewide Implementation Plan, or SIP.
15. Clarifies that BMPs adopted under the general permit do not affect any applicable requirement currently in the SIP.
16. Defines the following terms: *applicable implementation plan, best management practices, control officer, disturbed surface area, dust-generating operation, fugitive dust* and *regulated activity*.

Five-Day Forecasts

17. Requires ADEQ to develop and disseminate five-day dust forecasts for the PM-10 nonattainment area of

Maricopa County. The forecast must be issued by noon each day, posted on the department's website and distributed electronically.

18. Requires ADEQ to consider specified meteorological conditions and existing and historical air pollution concentrations in the county when developing the forecasts.

Legislative Findings and Intent

19. Contains legislative findings. Among the findings, states that there is need to further reduce or prevent PM-10 emissions in Maricopa County, especially during high wind days. Provides information on air quality monitors located in the county.

20. Contains a legislative intent clause that specifies the dust general permit and ADEQ forecast provisions aim to reduce or prevent PM-10 emissions from dust-generating sources by requiring the application of existing dust control measures and establishing BMPs for those entities that do not currently have a dust control plan (i.e. unpermitted by the county). The intent language also provides for the Director's delegation of general permit authority to the county.

21. Becomes effective on the general effective date.

Amendments Adopted by Committee

- Modifies provisions relating to the Agricultural BMP Committee in the following manner:
 - a) Adds the requirement that commercial farmers use at least one BMP in moderate PM-10 nonattainment areas.
 - b) Requires Committee rules to prescribe record keeping and reporting requirements.
 - c) Adds the category of BMPs relating to commercial farming's earthmoving activities.
 - d) Modifies the exempt rule provisions to specify that the Committee must file a notice of exempt rulemaking with the Secretary of State. Requires publication of the exempt rules in the Arizona Administrative Code.

Amendments Adopted by Committee of the Whole

1. Adds the provisions relating to the Dust Action General Permit and five-day forecasts by ADEQ.
2. Adds legislative findings and intent language.

House Action

ENV 2/17/11 DPA/SE 5-0-0-2
 3rd Read 3/1/11

Senate Action

NRT 3/14/11 DPA 5-0-1-0
 3rd Read 4/19/11 30-0-0-0

Prepared by Senate Research
 April 19, 2011
 TD/ly

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2208

AN ACT

AMENDING SECTIONS 49-424 AND 49-457, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 3, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-457.05; RELATING TO AGRICULTURAL BEST MANAGEMENT PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 49-424. Duties of department

5 The department shall:

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

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

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

28 4. Determine the standards for the quality of the ambient air and the
29 limits of air contaminants necessary to protect the public health, and to
30 secure the comfortable enjoyment of life and property by the citizens of the
31 state or in any defined geographical area of the state where the
32 concentration of air pollution sources, the health of the population, or the
33 nature of the economy or nature of land and its uses so require, and develop
34 and transmit to the county boards of supervisors minimum state standards for
35 air pollution control.

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

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

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

44 8. Encourage voluntary cooperation by advising and consulting with
45 persons or affected groups or other states to achieve the purposes of this

1 chapter, including voluntary testing of actual or suspected sources of air
2 pollution.

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

6 10. Compile and publish from time to time reports, data, and
7 statistics with respect to those matters studied and investigated by the
8 department.

9 11. DEVELOP AND DISSEMINATE AIR QUALITY DUST FORECASTS FOR THE MARICOPA
10 COUNTY PM-10 NONATTAINMENT AREA. EACH FORECAST SHALL IDENTIFY A LOW,
11 MODERATE OR HIGH RISK OF DUST GENERATION FOR THE NEXT FIVE CONSECUTIVE DAYS
12 AND SHALL BE ISSUED BY NOON ON EACH DAY THE FORECAST IS GENERATED. AT A
13 MINIMUM, THE FORECASTS SHALL BE POSTED ON THE DEPARTMENT'S WEBSITE AND
14 DISTRIBUTED ELECTRONICALLY. WHEN DEVELOPING THESE FORECASTS, THE DEPARTMENT
15 SHALL CONSIDER ALL OF THE FOLLOWING:

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

18 (i) WIND SPEED AND DIRECTION.

19 (ii) STAGNATION.

20 (iii) RECENT PRECIPITATION.

21 (iv) POTENTIAL FOR PRECIPITATION.

22 (b) EXISTING CONCENTRATIONS OF AIR POLLUTION AT THE TIME OF THE
23 FORECAST.

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

27 Sec. 2. Section 49-457, Arizona Revised Statutes, is amended to read:

28 49-457. Agricultural best management practices committee;

29 members; powers; permits; enforcement; preemption;

30 definitions

31 A. A best management practices committee for regulated agricultural
32 activities is established.

33 B. The committee shall consist of:

34 1. The director of environmental quality or the director's designee.

35 2. The director of the Arizona department of agriculture or the
36 director's designee.

37 3. The dean of the college of agriculture of the university of Arizona
38 or the dean's designee.

39 4. The state director of the United States natural resources
40 conservation service or the director's designee.

41 5. One person actively engaged in the production of citrus.

42 6. One person actively engaged in the production of vegetables.

43 7. One person actively engaged in the production of cotton.

44 8. One person actively engaged in the production of alfalfa.

45 9. One person actively engaged in the production of grain.

1 10. One soil taxonomist from the university of Arizona college of
2 agriculture.

3 11. One person actively engaged in the operation of a beef cattle feed
4 lot.

5 12. One person actively engaged in the operation of a dairy.

6 13. One person actively engaged in the operation of a poultry facility.

7 14. One person actively engaged in the operation of a swine facility.

8 15. One person who is employed by a county air quality department or
9 agency.

10 C. The governor shall appoint the members designated pursuant to
11 subsection B, paragraphs 5 through 15 of this section for a term of six
12 years. Members may be reappointed. Members are not entitled to compensation
13 for their services but are entitled to receive reimbursement of expenses
14 pursuant to title 38, chapter 4, article 2.

15 D. The committee shall elect a chairman from the appointed members to
16 serve a two year term.

17 E. The committee shall meet at the call of the chairman or at the
18 request of a majority of the appointed members.

19 F. The department of environmental quality, the Arizona department of
20 agriculture and the college of agriculture of the university of Arizona shall
21 cooperate with and provide technical assistance and any necessary information
22 to the committee. The department of environmental quality shall provide the
23 necessary staff support and meeting facilities for the committee.

24 G. A person who commences a regulated agricultural activity after
25 December 31, 2000 shall comply with the general permit within eighteen months
26 of commencing the activity.

27 H. The committee shall adopt, by rule, an agricultural general permit
28 specifying best management practices, INCLUDING RECORD KEEPING AND REPORTING
29 REQUIREMENTS, for regulated agricultural activities to reduce PM-10
30 particulate emissions. A person who is subject to an agricultural general
31 permit pursuant to this section is not subject to a permit issued pursuant to
32 section 49-426 except as provided in subsection K of this section. The
33 committee shall adopt by rule a list of best management practices, at least
34 ONE OF WHICH SHALL BE USED IN AREAS DESIGNATED AS MODERATE NONATTAINMENT FOR
35 PM-10 PARTICULATE MATTER AND AT LEAST two of which shall be used IN AREAS
36 DESIGNATED AS SERIOUS NONATTAINMENT FOR PM-10 PARTICULATE MATTER, to
37 demonstrate compliance with applicable provisions of the general
38 permit. Best management practices may vary within the regulated area,
39 according to regional or geographical conditions or cropping patterns.

40 I. If the director determines that a person who is engaged in a
41 regulated activity is not in compliance with the general permit, and that
42 person has not previously been subject to a compliance order issued pursuant
43 to this section, the director may serve on the person by certified mail an
44 order requiring compliance with the general permit and notifying the person
45 of the opportunity for a hearing pursuant to title 41, chapter 6, article 10.

1 The order shall state with reasonable particularity the nature of the
2 noncompliance and shall specify that the person has a period that the
3 director determines is reasonable, but is not less than sixty days, to submit
4 a plan to the supervisors of the natural resource conservation district in
5 which the person engages in the regulated activity that specifies the best
6 management practices from among those adopted in rule pursuant to subsection
7 H of this section that the person will use to comply with the general permit.

8 J. If the director determines that a person who is engaged in a
9 regulated activity is not in compliance with the general permit, and that
10 person has previously submitted a plan pursuant to subsection I of this
11 section, the director may serve on the person by certified mail an order
12 requiring compliance with the general permit and notifying the person of the
13 opportunity for a hearing pursuant to title 41, chapter 6, article 10. The
14 order shall state with reasonable particularity the nature of the
15 noncompliance and shall specify that the person has a period that the
16 director determines is reasonable, but is not less than sixty days, to submit
17 a plan to the department that specifies the best management practices from
18 among those adopted in rule pursuant to subsection H of this section that the
19 person will use to comply with the general permit.

20 K. If a person fails to comply with the plan submitted pursuant to
21 subsection J of this section, the director may revoke the agricultural
22 general permit for that person and require that the person obtain an
23 individual permit pursuant to section 49-426. A revocation becomes effective
24 after the director has provided the person with notice and an opportunity for
25 a hearing pursuant to title 41, chapter 6, article 10.

26 L. The committee may periodically reexamine, evaluate and modify best
27 management practices. Any approved modifications shall be submitted to the
28 United States environmental protection agency as a revision to the applicable
29 implementation plan.

30 M. The committee shall develop and commence an education program. The
31 education program shall be conducted by the director or the director's
32 designee or designees.

33 N. A best management practice adopted pursuant to this section does
34 not affect any applicable requirements in an applicable implementation plan
35 or any other applicable requirements of the clean air act, including section
36 110(1) of the act (42 United States Code section 7410(1)).

37 O. The regulation of PM-10 particulate emissions produced by regulated
38 agricultural activities is a matter of statewide concern. Accordingly, this
39 section preempts further regulation of regulated agricultural activities by a
40 county, city, town or other political subdivision of this state.

41 P. For the purposes of this section, unless the context otherwise
42 requires:

43 1. "Agricultural general permit" means best management practices that:

44 (a) Reduce PM-10 particulate emissions from tillage practices and from
45 harvesting on a commercial farm.

1 (b) Reduce PM-10 particulate emissions from those areas of a
2 commercial farm that are not normally in crop production.

3 (c) Reduce PM-10 particulate emissions from those areas of a
4 commercial farm that are normally in crop production including prior to plant
5 emergence and when the land is not in crop production.

6 (d) REDUCES PM-10 PARTICULATE EMISSIONS FROM THOSE AREAS OF A
7 COMMERCIAL FARM UNDERGOING SIGNIFICANT AGRICULTURAL EARTHMOVING ACTIVITIES.

8 ~~(d)~~ (e) Reduce PM-10 particulate emissions from the activities of a
9 dairy, a beef cattle feed lot, a poultry facility or a swine facility,
10 including practices relating to the following:

11 (i) Unpaved access connections.

12 (ii) Unpaved roads or feed lanes.

13 (iii) Animal waste handling and transporting.

14 (iv) Arenas, corrals and pens.

15 ~~(e)~~ (f) Only in those regulated areas that are established after June
16 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection,
17 reduce PM-10 particulate emissions from the activities of an irrigation
18 district governed by title 48, chapter 19 and affecting those lands and
19 facilities that are under the jurisdiction and control of the district,
20 including practices relating to the following:

21 (i) Unpaved operation and maintenance roads.

22 (ii) Canals.

23 (iii) Unpaved utility access roads.

24 2. "Applicable implementation plan" means that term as defined in 42
25 United States Code section 7601(q).

26 3. "Best management practices" means techniques that are verified by
27 scientific research and that on a case by case basis are practical,
28 economically feasible and effective in reducing PM-10 particulate emissions
29 from a regulated agricultural activity.

30 4. "Maricopa PM-10 particulate nonattainment area" means the Phoenix
31 planning area as set forth in 40 Code of Federal Regulations section 81.303.

32 5. "Regulated agricultural activities" means:

33 (a) Commercial farming practices that may produce PM-10 particulate
34 emissions within the regulated area, including activities of a dairy, a beef
35 cattle feed lot, a poultry facility and a swine facility.

36 (b) Only in those regulated areas that are established after June 1,
37 2009, as prescribed in paragraph 6, subdivision (c) of this subsection,
38 activities of an irrigation district that is governed by title 48,
39 chapter 19.

40 6. "Regulated area" means any of the following:

41 (a) The Maricopa PM-10 particulate nonattainment area.

42 (b) Any portion of area A that is located in a county with a
43 population of two million or more persons.

44 (c) Any other PM-10 particulate nonattainment area established in this
45 state on or after June 1, 2009.

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

3 49-457.05. Dust action general permit; best management
4 practices; applicability; definitions

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

9 B. THE DIRECTOR SHALL ISSUE A DUST ACTION GENERAL PERMIT FOR REGULATED
10 ACTIVITIES, WHICH SHALL SPECIFY THE BEST MANAGEMENT PRACTICES NECESSARY TO
11 REDUCE OR TO PREVENT PM-10 PARTICULATE EMISSIONS AS SOON AS PRACTICABLE
12 BEFORE AND DURING A DAY THAT IS FORECAST TO BE AT HIGH RISK OF DUST
13 GENERATION UNDER A FORECAST ISSUED BY THE DEPARTMENT PURSUANT TO SECTION
14 49-424.

15 C. A PERSON THAT HAS A PERMIT ISSUED BY THE DIRECTOR OR A CONTROL
16 OFFICER FOR THE CONTROL OF FUGITIVE DUST FROM DUST-GENERATING OPERATIONS IS
17 NOT REQUIRED TO OBTAIN A DUST ACTION GENERAL PERMIT UNDER SUBSECTION D OF
18 THIS SECTION, EXCEPT THAT THE PERSON SHALL IMPLEMENT THE CONTROL MEASURES
19 REQUIRED IN THE PERMIT ISSUED BY THE DIRECTOR OR CONTROL OFFICER, INCLUDING
20 THOSE MEASURES RELATED TO WIND, TO REDUCE OR TO PREVENT PM-10 PARTICULATE
21 EMISSIONS AS SOON AS PRACTICABLE BEFORE AND DURING A DAY THAT IS FORECAST TO
22 BE AT HIGH RISK OF DUST GENERATION UNDER A FORECAST ISSUED BY THE DEPARTMENT
23 PURSUANT TO SECTION 49-424. FAILURE TO IMPLEMENT A CONTROL MEASURE UNDER
24 THIS SUBSECTION SHALL ONLY BE ENFORCED BY THE DIRECTOR OR CONTROL OFFICER
25 THAT ISSUED THE PERMIT. THE DIRECTOR OR CONTROL OFFICER SHALL NOT RECOVER
26 PENALTIES FOR VIOLATIONS OF BOTH THIS SUBSECTION AND THE PERMIT BASED ON THE
27 SAME ACT OR OMISSION.

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

33 E. THE DUST ACTION GENERAL PERMIT SHALL:

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

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

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

40 4. SPECIFY THE PROCESS BY WHICH THE DIRECTOR WILL DETERMINE THAT A
41 PERSON HAS FAILED TO CHOOSE AND IMPLEMENT AN APPLICABLE BEST MANAGEMENT
42 PRACTICE AND IS THEREFORE SUBJECT TO A PERMIT PRESCRIBED BY SUBSECTION D OF
43 THIS SECTION. THE PROCESS SHALL INCLUDE A MEANS OF PROVIDING NOTICE TO THE
44 PERSON OF THE PERSON'S FAILURE AND A MEANS BY WHICH THE PERSON MAY CHALLENGE
45 THE DETERMINATION.

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

3 F. THE DIRECTOR MAY PERIODICALLY REEXAMINE, EVALUATE AND MODIFY THE
4 DUST ACTION GENERAL PERMIT AS PRESCRIBED IN SECTION 49-426, SUBSECTION H,
5 PARAGRAPHS 2 THROUGH 6. AFTER APPROVAL BY THE DIRECTOR, ANY MODIFICATIONS TO
6 THE DUST ACTION GENERAL PERMIT SHALL BE PROVIDED TO THE CONTROL OFFICER AND
7 SHALL BE SUBMITTED TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AS A
8 REVISION TO THE APPLICABLE IMPLEMENTATION PLAN.

9 G. A BEST MANAGEMENT PRACTICE ADOPTED PURSUANT TO THIS SECTION DOES
10 NOT AFFECT ANY APPLICABLE REQUIREMENT IN AN APPLICABLE IMPLEMENTATION PLAN OR
11 ANY OTHER APPLICABLE REQUIREMENTS OF THE CLEAN AIR ACT, INCLUDING SECTION
12 110(1) OF THE ACT (42 UNITED STATES CODE SECTION 7410(1)).

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

20 I. FOR THE PURPOSES OF THIS SECTION:

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

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

27 3. "CONTROL OFFICER" HAS THE SAME MEANING PRESCRIBED IN SECTION
28 49-471.

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

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

39 (a) LAND CLEARING, MAINTENANCE AND LAND CLEAN-UP USING MECHANIZED
40 EQUIPMENT.

41 (b) EARTHMOVING.

42 (c) WEED ABATEMENT BY DISCING OR BLADING.

43 (d) EXCAVATING.

44 (e) CONSTRUCTION.

45 (f) DEMOLITION.

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

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

4 (i) OPERATION OF OUTDOOR EQUIPMENT.

5 (j) OPERATION OF MOTORIZED MACHINERY.

6 (k) ESTABLISHING OR USING STAGING AREAS, PARKING AREAS, MATERIAL
7 STORAGE AREAS OR ACCESS ROUTES.

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

9 (m) INSTALLING INITIAL LANDSCAPES USING MECHANIZED EQUIPMENT.

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

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

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

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

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

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

32 Sec. 4. Agricultural best management practices committee;
33 exempt rule making; publication

34 Notwithstanding title 41, chapter 6, article 3, Arizona Revised
35 Statutes, the best management practices committee for regulated agricultural
36 activities established under section 49-457, Arizona Revised Statutes, may
37 adopt revisions to the rules required by section 49-457, Arizona Revised
38 Statutes, as exempt rules with an immediate effective date in compliance with
39 section 41-1032, Arizona Revised Statutes. The rules shall have an immediate
40 effective date. Exempt rules are exempt from the provisions in title 41,
41 chapter 6, article 3, Arizona Revised Statutes, except that the committee
42 shall file a notice of exempt rulemaking with the secretary of state who
43 shall publish the rules in the Arizona administrative register and the
44 Arizona administrative code.

1 Sec. 5. Legislative findings; intent

2 A. The legislature finds the following:

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

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

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

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

22 5. In 2009, there were seven exceedances of the national air quality
23 standard for PM-10 at the monitor near 43rd Avenue and Broadway Road, in
24 Phoenix, Arizona. All seven of these events were related to meteorological
25 conditions. Meteorological conditions that may lead to a risk of dust
26 generation include wind speed and direction, stagnation, recent precipitation
27 and potential for precipitation.

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

32 7. To date in 2011, there has been one exceedance of the national air
33 quality standard for PM-10 recorded by a separate monitor in Maricopa county,
34 but there have been zero exceedances of that standard at the monitor near
35 43rd Avenue and Broadway Road, in Phoenix, Arizona.

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

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

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

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

- 1 3. Require the establishment of best management practices for those
2 sources that are not already subject to dust prevention requirements during
3 high wind events. When establishing the best management practices, those
4 control measures that apply to dust-generating operations in county
5 ordinances or permits issued by the control officer shall be considered.
- 6 4. Require application of the existing control measures required in
7 county permits and the applicable best management practices adopted pursuant
8 to this act to reduce or to prevent dust emissions as soon as practicable
9 before and during a day that the department of environmental quality predicts
10 to be at high risk of dust generation.
- 11 5. Require the department of environmental quality, the Maricopa
12 county air quality department and other governmental entities to develop and
13 implement a communications plan to educate unpermitted sources regarding
14 their new obligations.
- 15 6. Require the director of the department of environment quality to
16 delegate the authority under section 49-457.05, subsection D, Arizona Revised
17 Statutes, as added by this act, to the appropriate control officer.