

# Arizona Case Study in Cooperative Federalism

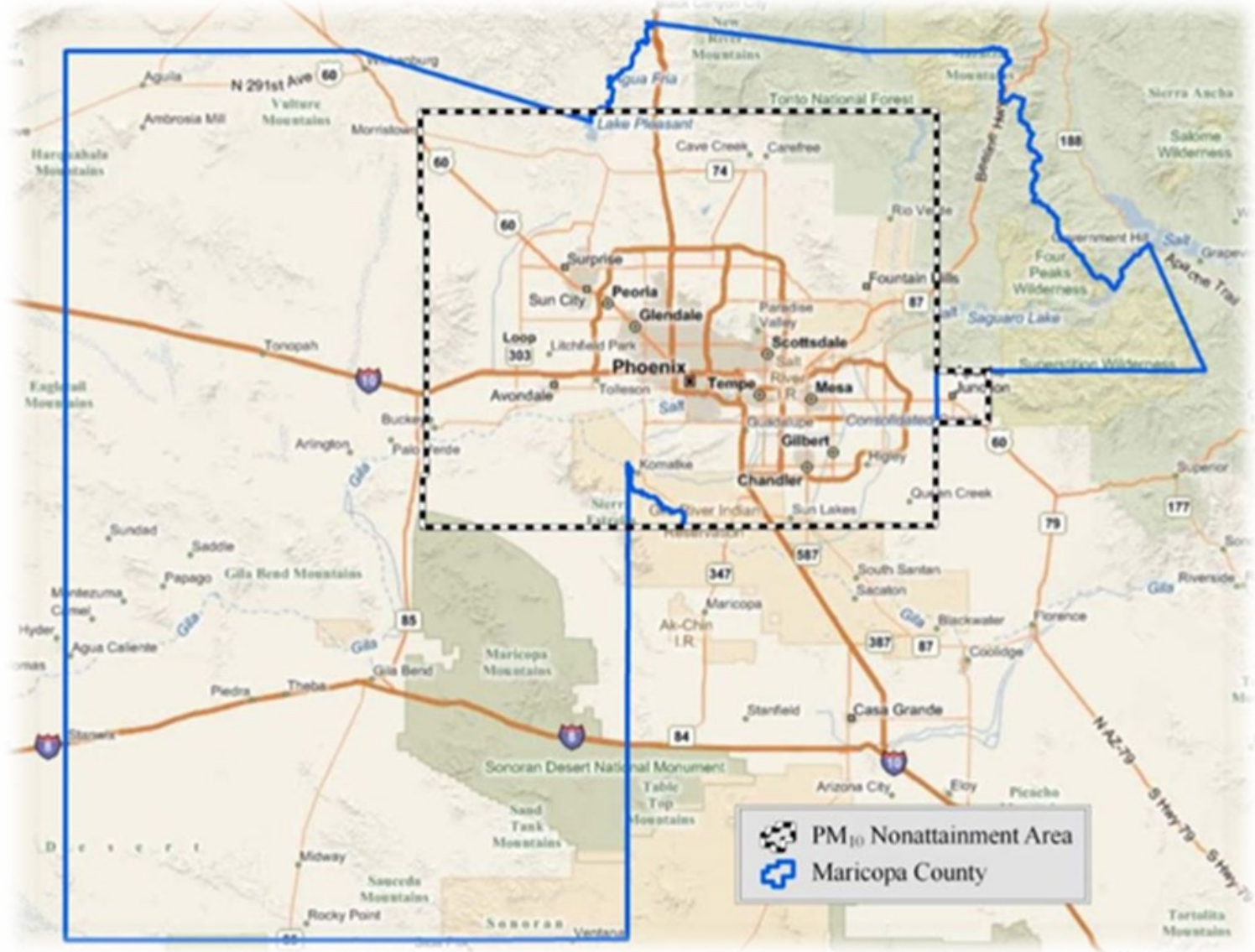
April 30, 2025

# Case Study - Simple Overview of the Situation

In 2010, the EPA proposed to partially approve/disapprove the revised Five Percent SIP for the Maricopa County Nonattainment Area of the PM<sub>10</sub> NAAQS.

Deciding how to respond required weighing all considerations of different scenarios.

Ultimately, the economic implications drove the State to make a dire and unusual decision.



# Background Overview of the Situation

- Clean Air Act Amendments of 1970:
  - Est. the National Ambient Air Quality Standards (NAAQS)
  - Mandates States to develop State Implementation Plans (SIPs) accordingly
- July 27, 1972 (37 FR 15081) →
  - Maricopa County's 1st PM SIP disapproved
- Next 40 years:
  - Redesignation to Serious Nonattainment
  - Conditional approval of new PM<sub>10</sub> SIP, which includes the “most stringent measures and best available control measures”
  - Inability to achieve attainment of NAAQS triggers special requirement for SIP
  - Submit a revised SIP containing even more of the most stringent control measures
  - Partial disapproval of revised SIP

**§ 52.126 Control strategy and regulations: Particulate matter.**

**(a) The requirements of §§ 51.13 and 51.22 of this chapter are not met since the plan does not provide the degree of control necessary to attain and maintain the national standards for particulate matter in the Phoenix-Tucson Intrastate Region. Therefore, Regulation 7-1-3.6 (process industries) of the Arizona Rules and Regulations for Air Pollution Control, Rule 31(E) (process industries) in Regulation III of the Maricopa County Air Pollution Control Rules and Regulations, and Rule 2(B) (process industries) in Regulation II of the Rules and Regulations of the Pima County Air Pollution Control District are disapproved for the Phoenix-Tucson Intrastate Region.**

# Regulatory Historical Overview (Excerpts)

- **1972** (37 FR 15081, Thursday, July 27, 1972)
  - Maricopa County/Phoenix Area 1st PM SIP disapproved
- **1987** (37 FR 15081, Wednesday, July 1, 1987)
  - USEPA establishes the annual and 240hr PM<sub>10</sub> NAAQS
- **1990, Nov. 15** (56 FR 11101, Friday, March 15, 1991)
  - Maricopa County/Phoenix Area (“Phoenix PM<sub>10</sub> NAA”) designated as nonattainment & classified as Moderate for PM<sub>10</sub> on November 15, 1990, upon the enactment of the Clean Air Act Amendments of 1990.
- **1992, March 4**
  - USEPA finds the Moderate Phoenix PM<sub>10</sub> NAA Plan to be **incomplete** (*it had not had a public hearing as required*) & **unenforceable** (the State *lacked sufficient authority*)
- **1993, August 11**
  - Arizona submits first revision to the Moderate Area PM<sub>10</sub> Plan
- **1994, March 3**
  - Arizona submits the second revision to the Moderate Area PM<sub>10</sub> Plan.
- **1996** (61 FR 21372, Friday, May 10, 1996)
  - USEPA reclassifies Phoenix PM<sub>10</sub> NAA as Serious for PM<sub>10</sub>
- **1998** (63 FR 9423, Wednesday, February 25, 1998)
  - EPA publishes a Finding of Failure for AZ not submitting a Serious Phoenix PM<sub>10</sub> NAA Plan
- **1998, July 8**
  - Arizona submits the Serious Area PM<sub>10</sub> Plan
- **2000, February 23**
  - Arizona submits the revised Serious Area PM<sub>10</sub> Plan
- **2007** (72 FR 31183, Wednesday, June 6, 2007)
  - EPA finds the Phoenix PM<sub>10</sub> NAA has failed to achieve attainment
- **2007, December 21**
  - Arizona submits the Five Percent PM<sub>10</sub> Plan
- **2010** (75 FR 54806, Thursday, September 9, 2010)
  - EPA proposes to disapprove the 2007 Phoenix Five Percent PM<sub>10</sub> Plan



# Catalyst for the Case Study

- **September 9, 2010:** The EPA published its intent to partially disapprove the Maricopa County's PM<sub>10</sub> SIP. (75 FR 54806)

## **EPA requires stronger air quality plan for Phoenix / EPA proposes to disapprove inadequate plan**

Release Date: 09/03/2010

Contact Information: Niloufar Glosson, 415-972-3684, 415-328-1143 (mobile), glosson.niloufar@epa.gov

(09/03/10) SAN FRANCISCO - The U.S. Environmental Protection Agency today proposed to disapprove Maricopa County's air quality plan because it does not adequately control emissions of coarse particulate matter.

"Phoenix has an air quality problem that EPA is committed to solving. Too many residents in our nation's 5th largest city suffer from asthma, chronic lung disease and other breathing disorders resulting from particulate air pollution," said Jared Blumenfeld, EPA Regional Administrator for the Pacific Southwest. "The State's plan does not achieve the emission reductions needed for Maricopa County. While it does take some steps to control pollution, **more aggressive measures are needed to achieve air quality standards.**"

# Arizona's Options

## Option 1: Litigation

- Legally challenge the EPA final action decision.

PROS	CONS
	Expensive
	Unlikely to overturn USEPA's action

## Option 2: USEPA's Partial Disapproval

- Take no action and allow the EPA to proceed to take final action on partial disapproval of the plan on January 28, 2011.

PROS	CONS
USEPA has discretion to set the initial conformity freeze effective date at 90 days; providing MAG an opportunity to add new/make changes to its TIP & RTP	AgBMP deficiencies require legislative action and rules revisions – all of which could take longer than 6 months
	Timeline

## Option 3: Withdrawal of 2007 SIP

- Withdraw the Plan (resulting in the EPA making a “Finding of Failure to Submit”), modify it, address EPA's issues and resubmit it to the USEPA in 2012.

PROS	CONS
Reinstatement of previously approved MVEB with which AZ believed would more easily be able to demonstrate attainment	Conformity freeze go into immediate effect upon USEPA's receipt of withdrawal letter
Long-term sanctions completely avoided upon submittal of an administratively complete plan within 12 months.	Requires legislative action and working with stakeholders to correct the technical concerns with the SIP - unknown legislative remedy and very tough legislature timeframe
The additional timeframe under this option possibly allows the required time for the USEPA to finish revising several key SIP Tools that could benefit AZ in its revisions and resubmittal of SIP.	

# Timelines Under Consideration

Final Action	Partial Disapproval		Withdrawal of 2007 SIP	
	January 28, 2011		February 14, 2011	
Conformity Freeze	30-90 Days	February 28, 2011	Immediate	August 14, 2012
Submittal of SIP Revisions	6 Months	June 28, 2011	18 Months	August 14, 2012
Completeness Finding	12 Months	January 28, 2012	18 Months	August 14, 2012
Sanctions Imposed	18 Months	July 28, 2012	18 Months	February 14, 2013
Transportation Conformity Lapse	24 Months	January 28, 2012	24 Months	February 14, 2013
FIP Implementation	24 Months	January 28, 2012	24 Months	February 14, 2013
<b>Attainment Demonstration Deadline</b>	<b>June 6, 2012</b>		<b>December 31, 2012</b>	

# Additional Considerations

- 40+ years of missing the mark
- 40+ years of accumulated stakeholder experiences (good, bad, & mostly ugly) presenting challenging barriers
  - Federal, State and Local Agencies not sufficiently communicating among one another.
  - Public stakeholders not being appropriately included and/or being isolated from critical discussions.
- Already one of the most stringently regulated areas for PM<sub>10</sub> in the country
  - Extremely limited options, if any, for addressing EPA's concerns
- Timing of EPA's revamping of critical SIP Tools
- History and Time not in our favor
  - Last significant SIP Legislation, SB 1552 (2007), took 143 days total to pass through the legislative process ~*NOT INCLUDING* the months prior to conceive and draft the legislation, as the bill language was largely drafted prior to introduction.
    - Introduced: January 30, 2007
    - Final Passage: June 21, 2007
- Political climate not favorable for passing regulatory legislation



## Technical Challenges

- EPA to review and modify Exceptional Events (EE) Rule throughout 2011
  - High Wind Speed factor – significant to AZ
- EPA revamping AP-42
  - Compilation of Air Pollutant Emission Factors used to calculate fugitive dust emissions.
- EPA replacing MOBILE-6.2 with MOVES in late 2011
- Developing additional control measures
- Regulatory efforts already approved by EPA over the years and implemented in the Nonattainment Area (NAA)
  - Best Available Control Measures (BACM)
  - Best Available Control Technologies (BACT)
  - Most Stringent Measures (MSM)

## Legislative Challenges

- Stakeholder disconnect & animosity
- Legislative process and timeframes.
- State Representative introduces HB 2442.
  - Purpose: restrict EPA's authority in Arizona.

"You can vote yes, or you can stand and face the east in the morning and evening and salute the Environmental Protection Agency, because they own you." – Rep. Ray Barnes, a Republican from Phoenix, speaking in support of H2442 on the House floor Feb. 16. The bill aims to require legislative approval before the Arizona Department of Environmental Quality can enter into a cap-and-trade program to reduce greenhouse gases.

- State Senator introduces SB 1393 & SB 1394, (collectively, "Freedom to Breathe Acts").
  - Purpose: prohibit the EPA from being able to regulate PM<sub>10</sub> & PM<sub>2.5</sub> within Arizona
- Numerous Legislators espoused anti-EPA an anti-regulatory sentiments.
- New and inexperienced State Representative (first time running legislation & a first year Chair of the House Environment Committee) selected to run the legislation and stakeholder process.

# January 25, 2011 – Arizona Withdraws SIP Starting the Legislative Clock

## 40 CFR Part 52

[EPA-R09-OAR-2011-0041; FRL-9264-1]

### Finding of Failure To Submit State Implementation Plan Revisions for Particulate Matter, PM-10, Maricopa County (Phoenix) PM-10 Nonattainment Area, AZ

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to find that Arizona failed to make a state implementation plan (SIP) submittal required under the Clean Air Act (CAA or Act) for the Maricopa County (Phoenix) nonattainment area (Maricopa area) for particulate matter of 10 microns or less (PM-10). The Maricopa area is a serious PM-10 nonattainment area which, having failed to attain the

revisions which provide for attainment of the PM-10 NAAQS, and from the date of such submission until attainment, for an annual reduction of 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 the area.

Arizona submitted a section 189(d) plan for the Maricopa area on December 21, 2007, and EPA proposed action on this plan on September 9, 2010. On January 25, 2011, prior to final action on the plan by EPA, Arizona withdrew the submitted plan from the Agency's consideration. As a result of the withdrawal, EPA is today finding that Arizona failed to make the submittal required for the Maricopa area under section 189(d) of the Act.

This action triggers the 18-month clock for mandatory application of

## 2011 Legislative Session Timeline

- January 10, 2011: 50<sup>th</sup> Legislature Begins
- January 24, 2011: Bill Request Deadline
- February 7, 2011: Bill Introduction Deadline
- February 18, 2011: Last Day Consideration of Bills in Originating Chamber
- March 18, 2011: Last Day Consideration of Bills in Opposite Chamber
- April 23, 2011: Adjournment Sine Die

# Assessing the Issues

## Looking At The USEPA's 2010 Proposed Disapproval

- Baseline Emissions Inventory not accurate
  - The 2005 PEI “and subsequent year inventories that MAG derived from it overestimate the baseline emissions for construction and other sources.” [75 FR 54808, Sept. 9, 2010]
  - ***Resolvable via modeling/technical intervention***
- AgBMPs not sufficiently defined - difficult to enforce & no longer ensures that controls are implemented at a BACM level.
  - “The general permit rule needs to be revised to ensure that the BMPs are enforceable...and are implemented at a BACM level as required by [the CAA].” [75 FR 54813, Sept. 9, 2010].
  - ***Easiest of three to resolve via legislative intervention and rule revision***
- Attainment Demonstration not met
  - 2007 SIP provided sufficient evidence demonstrating:
    - Effective control measures and regulations
    - Compliance with NAAQS under stagnant conditions.
  - Exceedances and violation of NAAQS occur on days experiencing elevated wind speeds (High Wind Events).
    - ***Resolution is unclear; but consensus is that legislative intervention is required***

### ***THEREFORE, the following are additionally not met:***

- 5% Demonstration
- RFP & Milestone Demonstration
- Contingency Measures
- 2010 MVEB

Date	Event	Time passed since AZLEG Day 1 (01/10/11)	Time passed from AZ W/drawal of SIP (01/25/11)
01/10/11	Opening Day of 50 <sup>th</sup> Arizona Legislature	<b>0 Days</b>	-15 Days
01/24/11	Last day to open bill folder	14 Days	-1 Day
01/25/11	AZ Withdraws 2007 5% SIP	15 Days	<b>0 Days</b>
02/07/11	House Bill intro deadline Introduce HB 2208 as striker vehicle for eventual SIP AQ language	28 Days	13 Days
02/08/11	First SIP AgBMP Committee meeting <ul style="list-style-type: none"> <li>Meets as necessary</li> <li>Attendees: AgBMP Cmte Board, ADEQ, EPA, Rep. Reeve, Public</li> </ul>	29 Days	14 Days
02/09/11	First SIP Technical Committee meeting <ul style="list-style-type: none"> <li>Meets every other Wednesday (10am – noon)</li> <li>Attendees: ADEQ, MCAQD, MAG, EPA, Tech Consultant, Rep. Reeve</li> </ul>	30 Days	15 Days
02/17/11	House Environment Committee amends and passes HB 2208	38 Days	23 Days
02/18/11	First SIP General Stakeholder Meeting <ul style="list-style-type: none"> <li>Meets every other Friday (10am-Noon)</li> <li>Attendees: Everyone</li> </ul>	39 Days	24 Days
02/22/11	House ENV Cmte Hearing on PM10 5% SIP	43 Days	28 Days



# Cooperatively Educating – House ENV Cmte Hearing



Director Henry R. Darwin,  
ADEQ



Assoc. Dir. Colleen McKaugh,  
U.S. EPA, Region IX



Director William D. Wiley,  
MCAQD



Env. Dir. Lindy Bauer, MAG



Kevin Biesty (for Dir. John  
Halikowski), ADOT



Sandy Bahr, Director,  
Sierra Club Grand Canyon Ch.



Amanda McGennis, Senior VP,  
Assoc. of General Contractors



Steve Trussell, Exec. Dir.,  
AZ Rocks Products Assoc.



Spencer Kamps, VP,  
Homebuilders Assoc. Central AZ



Philip Bashaw, Gov Rel Mngr,  
Arizona Farm Bureau



Bas Aja, (not scheduled)  
AZ Cattlemen's Assoc.



Director Eric C. Massey,  
ADEQ, Air Quality Division



Date	Event	Time passed since AZLEG Day 1 (01/10/11)	Time passed from AZ W/drawal of SIP (01/25/11)
03/01/11	Senate passes Freedom to Breath Acts legislation (21-8-1)	50 Days	35 Days
03/08/11	SIP AgBMP Cmte presents concepts for language to amend to HB 2208	57 Days	42 Days
03/11/11	Formation of concepts for Dust Action General Permit (DAGP) & Dust Forecast to address Attainment Demonstration issue	60 Days	45 Days
03/14/11	Senate Natural Resources and Transportation (NRT) Committee amends HB 2208 with AgBMP language and passes out of committee	63 Days	48 Days
03/21/11	<p>First draft of DAGP &amp; Forecast Amendment Language proposal shared with all stakeholders for review and comment</p> <ul style="list-style-type: none"> <li>• Next 30 Days: <ul style="list-style-type: none"> <li>• Weekly+ SIP General Stakeholder meetings to draft, revise, and finalize upon consensus, language authorizing ADEQ, in accordance with specified criteria, to: <ul style="list-style-type: none"> <li>• Develop and implement a five-day advance air quality dust forecast (Dust Forecast Notification System)</li> <li>• Develop and enforce a Dust Action General Permit (DAGP)</li> </ul> </li> </ul> </li> </ul>	70 Days	55 Days

# Regulated Permitted Community (Permitted Entities)



## Already Implementing:

- Most Stringent Control Measures
- Best Management Practices
- Best Available Control Technologies
- Voluntary Measures as additional controls

## Consensus of State & County Inspectors:

- Nothing more to regulate.
- Only remaining option = shutting down operations on windy days

# Unpermitted Regulated Community (Regulated Entities)



Regulated, but:

- Not as informed about role in Air Quality compliance
- Not as aware of actions and/or consequences thereof
- Not required to implement Best Available Control Technologies or Best Management Practices, thus not informed or aware of possible mitigation opportunities



# Cooperatively Engaging At All Levels

**From:** Nudd.Gregory  
**Sent:** Thursday, March 24, 2011 10:31 AM  
**To:** Eric C. Massey  
**Cc:** McKaughan.Colleen  
**Subject:** EPA comments on the legislation  
**Attachments:** Proposed ADEQ BMP Amendment HB2208-gn.docx; White Paper-gn.docx

Eric,

Colleen asked me to send you our comments on the proposed legislation. Personally, I think it's a clever idea and should, in reality, be helpful in controlling emissions on days with elevated winds. We do have a couple of comments, though.

I've taken the liberty to suggest a couple of small edits to the legislation and the white paper. The intent is to keep as much flexibility as possible in the development of the general permit(s) and to clarify the scope of the enforcement mitigation consideration.

Please let me know if you have any questions. I plan to listen in on the first 45 minutes or so of the General Permit discussion this afternoon.

Greg Nudd  
Environmental Engineer  
US EPA Region 9, Air Planning Office

Date	Event	Time passed since AZLEG Day 1 (01/10/11)	Time passed from AZ W/drawal of SIP (01/25/11)
04/11/11	DAGP & Forecast consensus language amended to HB 2208 in Senate Committee of the Whole (COW)	91 Days	76 Days
04/19/11	HB 2208, as amended, passes the Senate 30-0	99 Days	84 Days
04/20/11	HB 2208, as amended, passes the House 60-0	100 Days	85 Days
04/23/11	Legislature Adjourns Sine Die	103 Days	88 Days
04/25/11	HB 2208 Signed by Governor Jan Brewer	105 Days	99 Days

### Provisions of HB 2208

#### Session law:

- authorizing rule exempt authority to AgBMP Committee to modify rules with an immediate effective date
  - (House Env Committee Strike Everything Amendment, 02/17/11)

#### ARS§49-457:

- statutory authority to AgBMP Cmte to modify rules to include record keeping and reporting requirements, update definition of Ag General Permit BMP
  - (Senate NRT Committee Amendment, 03/14/11)

#### ARS§49-424:

- est. ADEQ to develop and disseminate air quality dust forecasts
  - (Senate COW Committee Amendment, 04/11/11)

#### ARS§49-457.05:

- est. authority and provisions of DAGP
  - (Senate COW Committee Amendment, 04/11/11)



Date	Event	Time passed from AZ W/drawal of SIP (01/25/11)
12/30/11	Dust Action General Permit officially executed	~11 Months
01/20/12	Adoption of Final Rules implementing AgBMP provisions of HB 2208	~12 Months
05/25/12	Arizona submits revised SIP to EPA	16 Months

## Dust Action General Permit (DAGP)

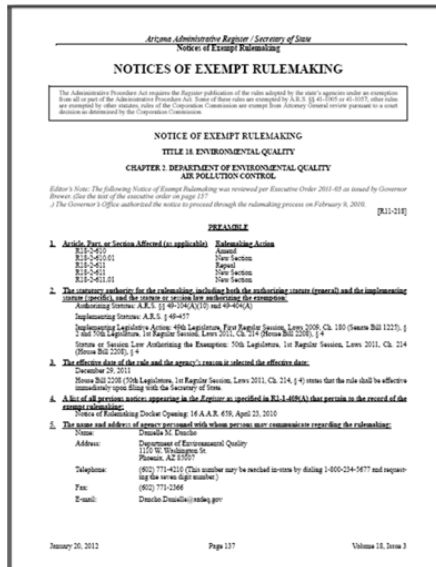


Executed by Director Eric C. Massey, ADEQ AQ Division, December 30, 2011

- Identifies applicability, definitions, record keeping requirements, renting/leasing a regulated activity, BMP requirement, etc.
- Provides BMP examples for certain regulated activity:
  - Open areas and vacant lots
  - Unpaved parking lots, roadways, etc.
  - Livestock special events

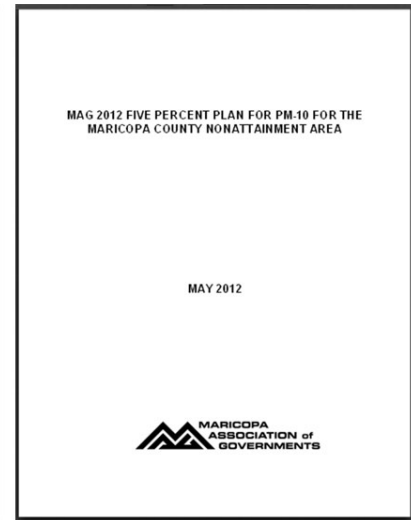
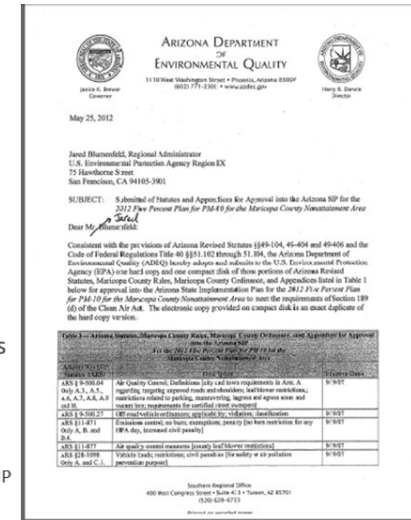
## ADEQ Submits Revised SIP to EPA

## AgBMP Final Rules Implemented



- Final Rules published January 20, 2012

- Clarifies and adds definitions
- To the General Permit for Crop Ops:
  - adds Significant Agricultural Earthmoving Activities as a BMP category and improves recordkeeping requirements
- To the General Permit for Animal Ops:
  - adds new BMPs



# Dust Forecast Notification System



## MARICOPA COUNTY DUST CONTROL FORECAST ISSUED Thursday, May 7, 2015 [Five-day weather outlook.](#)

Winds gusting to over 20 mph yesterday afternoon with breezy conditions expected this afternoon as well. A low pressure system is approaching from the northwest which will help to keep winds elevated and temperatures below normal. The high temperature tomorrow will likely only reach into the mid 70's. After the system moves through, temperatures will trend upwards, returning to near normal temperatures (low 90's) by early next week. Fortunately, the recent rains have stabilized the soils in the area, preventing any noticeable increase in dust with these gusty winds. Our monitors have continued to show relatively low concentrations of dust, and that is expected to continue for now. Therefore, the risk of exceeding the PM-10 health standard in Maricopa County is forecast to remain Low through the forecast period. Check back tomorrow for an updated look at the weather and dust risk. -R.Nicolli

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

	WINDS	STAGNATION	UNHEALTHY PM-10 RISK LEVEL
Day 1: Fri. 5/8/2015	Westerly winds 15-25 mph.	No stagnation due to stronger upper-level winds.	LOW
Day 2: Sat. 5/9/2015	Westerly winds 10-15 mph.	No stagnation due to stronger upper-level winds.	LOW
Day 3: Sun. 5/10/2015	Westerly winds 10-15 mph.	No stagnation due to stronger upper-level winds.	LOW
<b>EXTENDED OUTLOOK</b>			
Day 4: Mon. 5/11/2015	Southerly winds 10-15 mph.	No stagnation due to stronger upper-level winds.	LOW
Day 5: Tue. 5/12/2015	Southwesterly winds 10-15 mph.	No stagnation due to stronger upper-level winds.	LOW

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

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## MARICOPA COUNTY DUST CONTROL FORECAST ISSUED SUNDAY, APRIL 07, 2013 [Five-day weather outlook.](#)

Winds and surface cold front to the north indicate some dust will be blowing during the day. A low pressure system is approaching from the northwest which will help to keep winds elevated and temperatures below normal. The high temperature tomorrow will likely only reach into the mid 70's. After the system moves through, temperatures will trend upwards, returning to near normal temperatures (low 90's) by early next week. Fortunately, the recent rains have stabilized the soils in the area, preventing any noticeable increase in dust with these gusty winds. Our monitors have continued to show relatively low concentrations of dust, and that is expected to continue for now. Therefore, the risk of exceeding the PM-10 health standard in Maricopa County is forecast to remain Low through the forecast period. Check back tomorrow for an updated look at the weather and dust risk. -R.Nicolli

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

	WINDS	STAGNATION	UNHEALTHY PM-10 RISK LEVEL
Day 1: Mon 04/08/2013	Winds to southwesterly 10-20 mph morning hours becoming southwest to westerly 25-35 mph with gusts near 45 mph possible during the afternoon.	Little if any stagnation expected.	HIGH
Day 2: Tue 04/09/2013	West to northwesterly 10-20 mph.	Little if any stagnation expected.	MODERATE
Day 3: Wed 04/10/2013	Northeasterly 10-20 mph morning hours becoming northwesterly during the afternoon.	Little if any stagnation expected.	LOW
<b>EXTENDED OUTLOOK</b>			
Day 4: Thu 04/11/2013	West to southwesterly 10-20 mph.	Little if any stagnation expected.	LOW
Day 5: Fri 04/12/2013	Mainly <10 mph.	Little if any stagnation expected.	LOW

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

	WINDS	STAGNATION	UNHEALTHY PM-10 RISK LEVEL
Day 1: Mon 04/08/2013	South to southwesterly 10-20 mph morning hours becoming southwest to westerly 25-35 mph with gusts near 45 mph possible during the afternoon.	Little if any stagnation expected.	HIGH
Day 2: Tue 04/09/2013	West to northwesterly 10-20 mph.	Little if any stagnation expected.	MODERATE
Day 3: Wed 04/10/2013	Northeasterly 10-20 mph morning hours becoming northwesterly during the afternoon.	Little if any stagnation expected.	LOW

# Exceptional Events Undergoes A Revamp

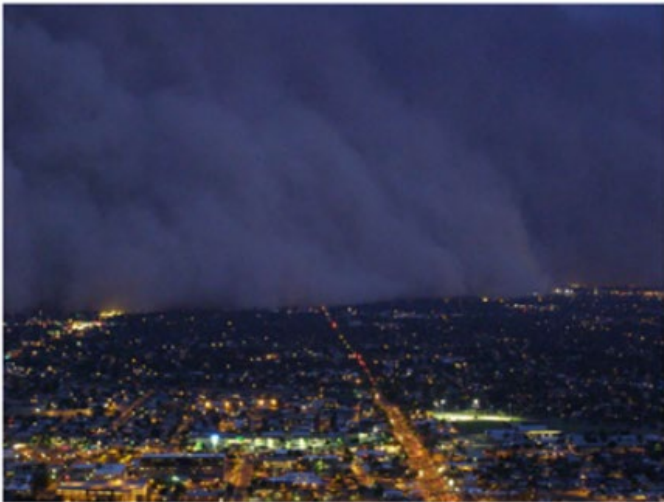




State of Arizona Exceptional Event Documentation for the Events of July 2<sup>nd</sup> through July 8<sup>th</sup> 2011, for the Phoenix PM<sub>10</sub> Nonattainment Area

Produced by:  
Arizona Department of Environmental Quality  
Maricopa County Air Quality Department  
Maricopa Association of Governments

Final Report  
March 8, 2012



**Report = 214 pages**

Expense associated with report preparation:

- 615 total staff hours (ADEQ, MCAQD, & MAG)
  - Contractor hours not included
- \$100,000 estimated overall cost
  - \$31,000 est. staff cost
  - \$75,000 est. contractor costs

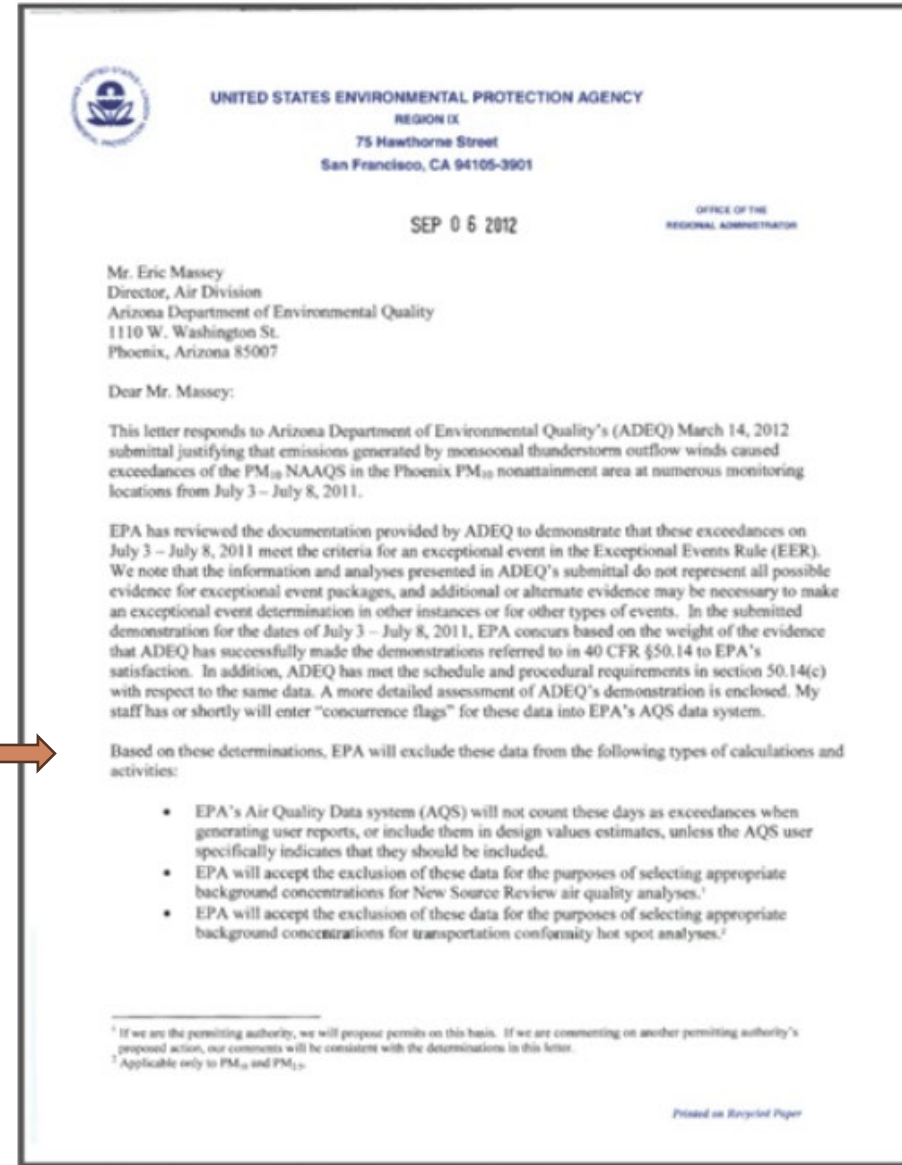
March 14, 2012

- ADEQ submits to EPA the EE demonstration package it prepared with EPA's involvement on the EE of July 2-8, 2011

**176 days after  
EPA receives  
EE submittal**

September 6, 2012

- EPA approves the event as being Exceptional



# ADEQ 2013 EE Revamp Update



EPA’s involvement has been critical to the success of Arizona’s Exceptional Event Documentation:

- EPA Region IX has had early and frequent involvement during development of AZ demonstrations;
- EPA has changed the Exceptional Events Guidance based upon comments;
- Note: ADEQ and EPA have only been working on the easiest demonstrations (“low hanging fruit”);
- EPA has worked with Arizona to streamline the documentation for the “easy” demonstrations:

Phoenix Event	Total Staff Hours/Event	Staff Cost Estimate/Event	Contractor Cost Estimate/Event	Subtotal Cost Estimate
July 2-8, 2011	615	\$31,000	\$75,000	\$100,000
17 Additional Events	175	\$8,800	\$25,000	\$575,000
<b>Total Estimated Costs for Phoenix Exceptional Events To Date</b>				<b>\$675,000</b>

Note: “Total staff hours/event” include time estimates from ADEQ, MCAQD and MAG

Source: ADEQ 2013 Fact Sheet prepared for U.S. Senator Flake

EE demo pkg submittal date	# EE reported in pkg	Total staff hours	Total est. cost	Date of EPA Approval	Total # days btwn submittal & approval
March 14, 2012	1 event	615 hours	\$100,000	Sept. 6, 2012	176 days (176 days per each event)
January 1, 2013	9 events	Collectively: 175 hours (~10.3 hrs per each event)	Collectively: \$575,000 (~\$34,000 per each event)	May 6, 2013	108 days (~12 days per each event)
February 13, 2013	8 events			July 1, 2013	138 days (~17 days per each event)



Date	Event	Time passed from AZ W/drawal of SIP (01/25/11)
08/09/12	EPA finds revised SIP complete – turning off sanctions clock	~18 Months
04/19/13	EPA Proposes to approve revised SIP	~27 Months
07/11/13	EPA notifies Arizona of clean air data finding	~ 2 Years
06/10/14	EPA approves revised SIP	~ 3.4 Years

Final Action	Partial Disapproval		Withdrawal of 2007 SIP	
	January 28, 2011		February 14, 2011	
Conformity Freeze	30-90 Days	February 28, 2011	Immediate	August 14, 2012
Submittal of SIP Revisions	6 Months	June 28, 2011	18 Months	<b>May 25, 2012</b>
Completeness Finding	12 Months	January 28, 2012	18 Months	August 14, 2012 ✓
Sanctions Imposed	18 Months	July 28, 2011	18 Months	February 14, 2013 ✗
Transportation Conformity Lapse	24 Months	January 28, 2012	24 Months	February 14, 2013 ✗
FIP Implementation	24 Months	January 28, 2012	24 Months	February 14, 2013 ✗
<b>Attainment Demonstration Deadline</b>	<b>June 6, 2012</b>		<b>December 31, 2012</b> ✓	

Date	Event	Time passed from AZ W/drawal of SIP (01/25/11)
07/29/14	Petition for Review filed challenging the following portions of EPA’s approval of the 2012 SIP: <ul style="list-style-type: none"> <li>• Attainment Demonstration</li> <li>• 5% Demonstration</li> <li>• Contingency Measures</li> </ul>	~ 3.5 Years
09/12/16	9 <sup>th</sup> Cir Ct largely upholds EPA decision to approve SIP	~5.5 Years

## 9<sup>th</sup> Circuit Court Decision On Petition

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

<p>SANDRA L. BAHR; DAVID MATUSOW, <i>Petitioners,</i></p> <p>v.</p> <p>U.S. ENVIRONMENTAL PROTECTION AGENCY; GINA MCCARTHY, Administrator, United States Environmental Protection Agency; JARED BLUMENFELD, Regional Administrator, EPA Region IX, <i>Respondents,</i></p> <p>STATE OF ARIZONA, <i>Respondent-Intervenor.</i></p>
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No. 14-72327

OPINION

### Nonattainment Demonstration

- Upholds EPA’s determination
- Agrees that the 135 exceedances were EE

### 5% Demonstration

- Upholds EPA’s determination
- Agrees that Control Measures need not be updated

### Contingency Measures

- Remands to EPA the contingency measures portion for further consideration

On Petition for Review of an Order of the  
Environmental Protection Agency

Argued and Submitted June 17, 2016  
San Francisco, California

Filed September 12, 2016

# A Model Process

- ▶ Very collaborative effort – model for future SIP actions

## EPA Air Quality Activities in Arizona 2012 – 2014

Colleen McKaughan  
Associate Director, Air Division  
November 6, 2013

## Phoenix 5% PM-10 Plan

- ▶ Found Phoenix 5% Plan complete by 8/9/12; turned off sanctions clock.
- ▶ Reviewed and approved 131 exceptional events claims paving the way for action on the 5% Plan
- ▶ EPA will propose action on the 5% plan by Jan. 14, 2014 – consent decree deadline
- ▶ EPA also acting on rules associated with the 5% Plan
- ▶ Final Action by May 14, 2014 – consent decree deadline
- ▶ Very collaborative effort – model for future SIP actions

# Parting Thoughts

## **Cooperative Federalism enabled the following to be miraculously achieved:**

- 38 days total – to conceive, develop, and pass key legislative language
- Legislature anti-EPA sentiment diffused
  - Anti-EPA legislation (HB 2442, SB 1393, & SB 1394) defeated
  - Bipartisan & Unanimous final passage of HB 2208
  - EPA testified at Arizona Legislature (believe to be first and only time)
- Development of innovative measures
- Streamlined the Exceptional Events Demonstration process
- After 43 years of attempts, finally received an approval on SIP
- Revised SIP & EPA's approval decision succeed against legal challenges

## JANUARY

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	1	10	11	12	13	14
16	17	18	19	20	21	22
23	2	24	3	25	26	27
30	31					

### Date Description

**1** 01/10/11 50th Legislature Opening Day

**2** 01/24/11 House Bill Request Deadline

**3** 01/25/11 AZ Withdraws 5% SIP

**01/28/11 USEPA's initial deadline to take final action on 2007 5% Plan**

01/31/11 SB1393 & SB1394 First Read (collectively "Freedom to Breath Act")

## FEBRUARY

S	M	T	W	T	F	S
		1	2	3	4	5
6	4	7	8	9	10	11
13	7	14	8	15	16	9
20	21	11	22	23	24	25
27	28					

<b>4</b>	02/07/11	House Bill Introduction Deadline
		Introduction of HB2208
<b>5</b>	02/08/11	Administrative Planning Team Mtg
	02/09/11	Technical Workgroup Mtg
<b>6</b>	02/11/11	Stakeholder Mtg Invitation sent to Stakeholders
<b>7</b>	02/14/11	USEPA publishes its Final Action to Find AZ's Failure to Submit the SIP
		18-month sanctions clock triggered
		2-year FIP clock triggered
<b>8</b>	02/15/11	HB2208 First Read
<b>9</b>	02/17/11	HB2208 House ENV DPA/SE
<b>10</b>	02/18/11	Last Day Consideration of Bill in Originating Chamber
		First Stakeholder Meeting held
<b>11</b>	02/22/11	House ENV Cmte Hearing re PM-10 5% SIP



### MARCH

S	M	T	W	T	F	S
		12 1	2 2	3 3	4 4	5 5
6 6	7 7	13 8	9 9	10 10	14 11	12 12
13 13	15 14	15 15	16 16	17 17	16 18	19 19
20 20	17 21	22 22	23 23	18 24	19 25	26 26
27 27	28 28	29 29	30 30	20 31		

#### Date Description

12	03/01/11	Senate Passes SB1393 & SB1394
	03/02/11	Freedom to Breathe Act transmitted to House and held by Speaker
13	03/08/11	AgBMP Cmte WrkGrp presents language for HB2208 ("AgBMP Amendment")
14	03/11/11	Formation of DAGP & Forecast Concepts
15	03/14/11	Senate NRT Cmte - AgBMP Amendment
16	03/18/11	Last Day Consideration of Bill in Other Chamber DAGP & Forecast concepts shared with Stakeholders
17	03/21/11	First Draft of DAGP & Forecast Amendment language sent to SH for review
18	03/24/11	Comments received from SH re First Draft re DAGP & Forecast Amendment
19	03/25/11	Second Draft of DAGP & Forecast Amendment language sent to SH
20	03/31/11	Third Draft of DAGP & Forecast Amendment language sent to SH

### APRIL

S	M	T	W	T	F	S
					1 1	2 2
3 3	4 4	5 5	21 6	7 7	8 8	9 9
10 10	22 11	12 12	13 13	14 14	15 15	16 16
17 17	18 18	23 19	24 20	21 21	22 22	25 23
24 24	26 25	26 26	27 27	28 28	29 29	30 30

21	04/06/11	Final Draft of DAGP & Forecast Amendment language sent to SH
22	04/11/11	DAGP & Forecast language amended to HB2208 via Senate COW
23	04/19/11	HB2208 as amended passes the Senate 30-0
24	04/20/11	HB2208 as amended passes the House 60-0
25	04/23/11	Legislature Adjourns Sine Die
26	04/25/11	HB2208 Signed by Gov. Brewer

# Bio

## Amanda A. Reeve

**Environmental & Regulatory Policy Advisor, Snell & Wilmer**



Amanda provides public policy services to clients through stakeholder identification and organization; the regulatory and legislative processes and reforms; and research, analysis and strategic planning. She is well known for her ability to develop public policy and craft bipartisan support to advance bills of significant importance to Arizona. She has received numerous accolades recognizing her leadership and work on significant policy measures, environmental issues and community projects. Amanda received her Bachelor of Arts in Communication Studies, Public Relations at California State University, Sacramento; and her Master of Science Technology in Environmental Management from the Ira A. Fulton Schools of Engineering at Arizona State University.

# Thank you!

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