

***Five Policy files  
for the calendar entry for  
August 21, 2008  
Enforcement Policy Workshop.***

***Please click on the link in blue underlined text below to jump to each document.***

[1.\) Violation Reporting and Enforcement Policy 8-5-08](#)

[2.\) Notice To Comply policy 8-5-08](#)

[3.\) Self Reporting policy 8-5-08](#)

[4.\) Penalty Policy 1-16-08 Signed](#)

[5.\) Supplemental Environmental Projects Policy](#)

**Violation  
Reporting and  
Enforcement  
Policy**



# Maricopa County

Air Quality Department  
Policies & Procedures

Policies & Procedures:  
PP-2007-05

Title: Air Quality Violation  
Reporting and  
Enforcement

Supersedes:  
Not apply

Effective:  
11-13-2007

Initiator: Steve Fowers, SF

Director: Bob Kard, BK

This policy is intended solely as guidance for Maricopa County Air Quality Department (MCAOD) personnel. It is not intended and may not be used to create rights enforceable by any party. Nothing in this policy is intended to limit the Department's enforcement discretion. Deviation from this policy will not prevent the Department from pursuing an enforcement action that is otherwise appropriate to the violation[A1].

This policy has four sections: Section I - Purpose, Section II - References, Section III - Applicability, and Section IV - Procedures. ~~And this policy has four three addenda: Addendum A - Options of the County Attorney's Office Options, Addendum B - Maricopa County Air Quality Department Enforcement Division Flow Chart, and Addendum C - High Priority Violation (HPV) Determination Checklist, and Addendum D - Compliance Status Notification (CSN) Policy and Procedure.~~

**PURPOSE:** The purpose of this policy is to provide a consistent reasonable process for documenting air quality violations, notifying alleged violators, and initiating enforcement action to ensure violations are addressed in a timely and appropriate manner.

**REFERENCES:**

- ~~Environmental Protection Agency's (EPA's) Supplemental Environmental Projects Policy~~Draft Maricopa County Air Quality Department Supplemental Environmental Projects Policy
- EPA's Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)
- Arizona Revised Statutes (ARS) - Title 41 and Title 49
- Arizona Asbestos NESHAP Civil Penalty Policy and Computation Worksheet
- Maricopa County Air Pollution Control Regulations
- Maricopa County Air Quality Violation Penalty Policy
- Draft Maricopa County Air Quality Department Notice to Comply Policy
- Draft Maricopa County Air Quality Department Self-Reporting Policy

**BACKGROUND:** n/a

**DEFINITIONS:** n/a

**APPLICABILITY:** ~~Air Quality Department MCAOD personnel shall adhere to this policy~~This Policy applies to MCAOD personnel.

**POLICIES:** n/a

**PROCEDURES:**

**A. Inspection/Investigation**

- All inspections shall be conducted in accordance with Arizona Revised Statutes (A.R.S.) 41-1009 ~~and as set out in 41-471.03, except that 41-1009, subsection L, paragraph 1 does not apply.~~
- If consent to entry of a regulated premises for the purpose of conducting an inspection is denied while attempting to follow the procedures specified in A.R.S. 41-1009 and 49-471.03, the inspector shall take appropriate action pursuant to Maricopa County Air Pollution Control Regulation I, Rule 100, Section 105 ~~100[A2]-105,~~ and department personnel shall assist the ~~Control Officer and/or the deputy County Attorney's Office~~ in the preparation of all documents required pursuant to ARS 49-488 to obtain a Special Inspection Warrant.

Policies & Procedures:  
PP-2007-054

Title: Air Quality Violation Reporting and Enforcement Award and Recognition Program

Supersedes:  
Not apply

Effective: 04-24-07

Initiator: Steve Fowers, SF

Director: Bob Kard, BK

3. ~~When a violation is discovered, the investigator-inspector shall issue a Compliance Status Notification~~ Notice to Comply (NTC) ~~[A3](CSN), in accordance with the attached CSN-NTC policy, or a Notice of Violation (NOV), as appropriate. If An NOV or NTC is issued it Notice of Violation (NOV) must be issued shall be issued to and signed by an owner, operator, or responsible official. If the owner, operator or responsible official is not available or refuses to sign the NOV or NTC must be mailed to their attention either by first class mail or registered return receipt mail as appropriate. A follow-up inspection/investigation shall be conducted within 10-ten working days if the violation was not corrected at the time of inspection. The findings of a follow-up inspection/investigation shall be documented. When a follow-up investigation reveals the violation was not corrected, the investigator shall issue an NOV to follow the CSN-NTC or-as a second, follow-up NOV.~~
4. When an NOV is issued, the inspector shall prepare a ~~d~~Department ~~r~~Report that describes where, when, and how the violation occurred. The ~~d~~Department ~~r~~Report shall include the name, title, address, telephone numbers, and any relevant statements made by the violator and witnesses. The ~~d~~Department ~~r~~Report shall include and refer to supporting evidence such as ~~previous Compliance Status Notification(s) (CSN), Notice(s) to Comply (NTCs), and Notice(s) of Violation (NOVs),~~ photographs, videos, compliance inspection reports, correspondence, records, analytical test results, and other appropriate documentation.
5. An inspector shall submit a ~~d~~Department ~~r~~Report and supporting evidence to his or her supervisor and division manager for referral to the Enforcement ~~D~~ivision.

## B. Enforcement

~~The Enforcement division shall review each~~ The Enforcement Division shall review each referral to determine an appropriate course of action and shall maintain a database reflecting the current status of all enforcement actions. When necessary, the Enforcement Division will consult with the Permit Engineering Division, the Air Quality Stationary Source Compliance Division, Dust Compliance Division, and/or the Emissions Inventory ~~Section~~Unit, and others as necessary, as part of the review and enforcement process.

Violations may also be enforceable by the Environmental Protection Agency (EPA).

Arizona Revised Statutes (ARS) authorizes the following enforcement actions for any violation under the jurisdiction of the ~~c~~Control ~~o~~fficer.

### 1. Order of Abatement by Consent

Pursuant to A.R.S. 49-511.E the ~~APCO control officer~~ may enter into an Order of Abatement by Consent. The ~~APCO control officer~~ may agree to accept monetary payments as part of the negotiated terms of an Order of Abatement by Consent. The terms of an Order of Abatement by Consent shall be determined by agreement of the parties. An ~~e~~Enforcement ~~o~~fficer is responsible for negotiating the terms of an Order of Abatement by Consent.

### 2. Order of Abatement

Pursuant to A.R.S. 49-511 an Order of Abatement may be issued to address ongoing violations. An Order of Abatement is prepared by an ~~e~~Enforcement ~~o~~fficer and must be approved and signed by the ~~APCO control officer~~. Copies of an Order of Abatement ~~will~~ may<sup>[A4]</sup> be sent to the ~~Air Quality department director, cCompliance ddivision mmanager, investigator-inspector, E~~enforcement ~~o~~fficer, EPA, ADEQG, the County Attorney's Office, and members of the Air Pollution Control Hearing Board.

When an Order of Abatement recipient requests a hearing before the Air Pollution Control Hearing Board, the Enforcement ~~d~~ivision is responsible for scheduling and publicizing the hearing pursuant to A.R.S. 49-490 and 49-498.

An ~~i~~investigator-~~n~~inspector shall conduct follow-up investigations to determine whether there has been compliance or non-compliance with the provisions of an Order of Abatement. ~~Investigator-The inspector~~ shall send a follow-up investigation report to the designated ~~e~~Enforcement ~~o~~fficer.

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### 3. Civil Complaint

Pursuant to A.R.S. 49-513 the APCO control officer may refer a violation to the County Attorney's Office and request the filing of an action in Superior Court seeking civil penalties. All violation referrals under this subsection will be the responsibility of the Enforcement Division.

### 4. Notice to Appear and Complaint (Criminal Complaint)

A.R.S. 49-502 authorizes the APCO control officer to issue a Notice to Appear and Complaint. This legal remedy requires an enforcement officer to meet with the County Attorney's Office to review evidence and determine a course of action.

When a complaint is filed under this authority, Air Enforcement Division personnel are responsible for assisting the County Attorney's Office in all Justice Court related activities, including arraignments, pre-trial conferences, and meetings with defendants.

### 5. Notice to Appear and Complaint (Civil Complaint)

A.R.S. 11-871 and ARS 11-876 authorize the control officer to issue a Notice to Appear and Complaint. This legal remedy requires an enforcement officer to meet with the County Attorney's Office to review evidence and determine a course of action.

When a complaint is filed under this authority, Enforcement Division personnel are responsible for assisting the County Attorney's Office in all Justice Court related activities, including arraignments, pre-trial conferences, and meetings with defendants.

### 5-6. Injunctive Relief

Pursuant to A.R.S. 49-512 the APCO control officer may refer a violation to the County Attorney's Office and request the filing of an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law.

## C. Violation Reporting

Violations discovered at major sources and synthetic minor sources that meet one or more of the criteria listed in the Department's High Priority Violation (HPV) Determination Checklist (Addendum C) or any site determined by the Department to be a "chronic or recalcitrant violator," as defined in the EPA's Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs), shall be entered and tracked in the EPA Aerometric Information Retrieval System (AIRS) database by the AIRS coordinator. Reporting and enforcement under this subsection shall follow the requirements of the EPA's current edition of the Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs).

## D. Penalty Calculations

Enforcement Division personnel shall utilize the Maricopa County Air Quality Violation Penalty Policy to calculate appropriate settlement penalties for all violations, except those listed below which are specifically covered by statute, ordinance, state or federal policy. In determining an appropriate penalty the Enforcement Division shall consider the facility's compliance history for the preceding 5 years.

- Enforcement Division personnel shall assess asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) violations by following the criteria set forth in the most current EPA document titled: "Asbestos Demolition and Renovation Civil Penalty Policy". Penalties shall be calculated by using the Arizona Asbestos NESHAP Civil Penalty Policy and Computation Worksheet developed by ADEQ and approved by the EPA.

- Unlawful open burning violation penalties shall be assessed pursuant to ARS §49-501.

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- ~~P-25 Vehicle Idling Restriction/Leaf Blower Restriction Ordinance violation penalties shall be assessed pursuant to the Maricopa County Ordinance [A10][A11].~~

- Travel Reduction Program violations shall be assessed pursuant to the procedures established in the Travel Reduction Division's violation guidelines. An NOV shall be issued by the division manager to a major employer that fails to come into compliance. Continuing noncompliance requires that the matter be referred to the Regional Travel Reduction Task Force, the County Attorney's Office and the Board of Supervisors for a penalty which is assessed pursuant to ARS §49-593.

- ~~Residential [A12] Woodburning Restriction Ordinance violation penalties shall be assessed pursuant to the Maricopa County Ordinance [A13][A14].~~

#### **E. Environmental Projects**

When applicable, the ~~"EPA Supplemental Environmental Projects Policy"~~ draft Maricopa County Air Quality Department Supplemental Environmental Projects Policy (dated May 1, 1998 [A15] August 7, 2008) may be utilized in developing settlement agreements to further ~~d~~Department goals to protect and enhance public health and the environment. Supplemental Environment Projects may ~~or may not~~ reduce monetary penalties.

### **Addendum A**

#### **Options of the County Attorney's Office**

**The following are options available to the County Attorney's Office. This outline is not meant to restrict the County Attorney's Office options in any way and in no way limits their authority. It is purely for informational purposes only.**

#### **Options**

Upon submittal of a ~~d~~Department rReport and supporting evidence to the County Attorney's Office, the County Attorney's Office will review, in concert with the Maricopa County Air Quality Department (MCAOD), the referral to determine if there is sufficient evidence to support a complaint. If so, the County Attorney's Office may proceed as follows:

#### **1. Settlement Conference with Violator**

The County Attorney's Office may request a settlement conference with the violator prior to filing a complaint. If an agreement is reached, the parties will enter into a written settlement agreement that may include monetary penalties, reimbursement costs to the Air Quality Department/MCAOD and the County Attorney's Office for investigation and prosecution, violator education, and other appropriate sanctions.

#### **2. Filing of Criminal Complaint**

\_\_\_\_\_ The County Attorney's Office may file a criminal complaint if there is a reasonable likelihood of conviction. The matter may proceed to trial or the parties may enter into an agreement that may include monetary penalties, reimbursement costs for investigation and prosecution, violator education, and other appropriate sanctions.

**23. Filing of Civil Complaint**

The County Attorney's Office may file a civil complaint seeking monetary penalties and/or injunctive relief. The matter may proceed to trial or the parties may enter into an agreement that may include monetary penalties, reimbursement costs for investigation and prosecution, violator education, and other appropriate sanctions.

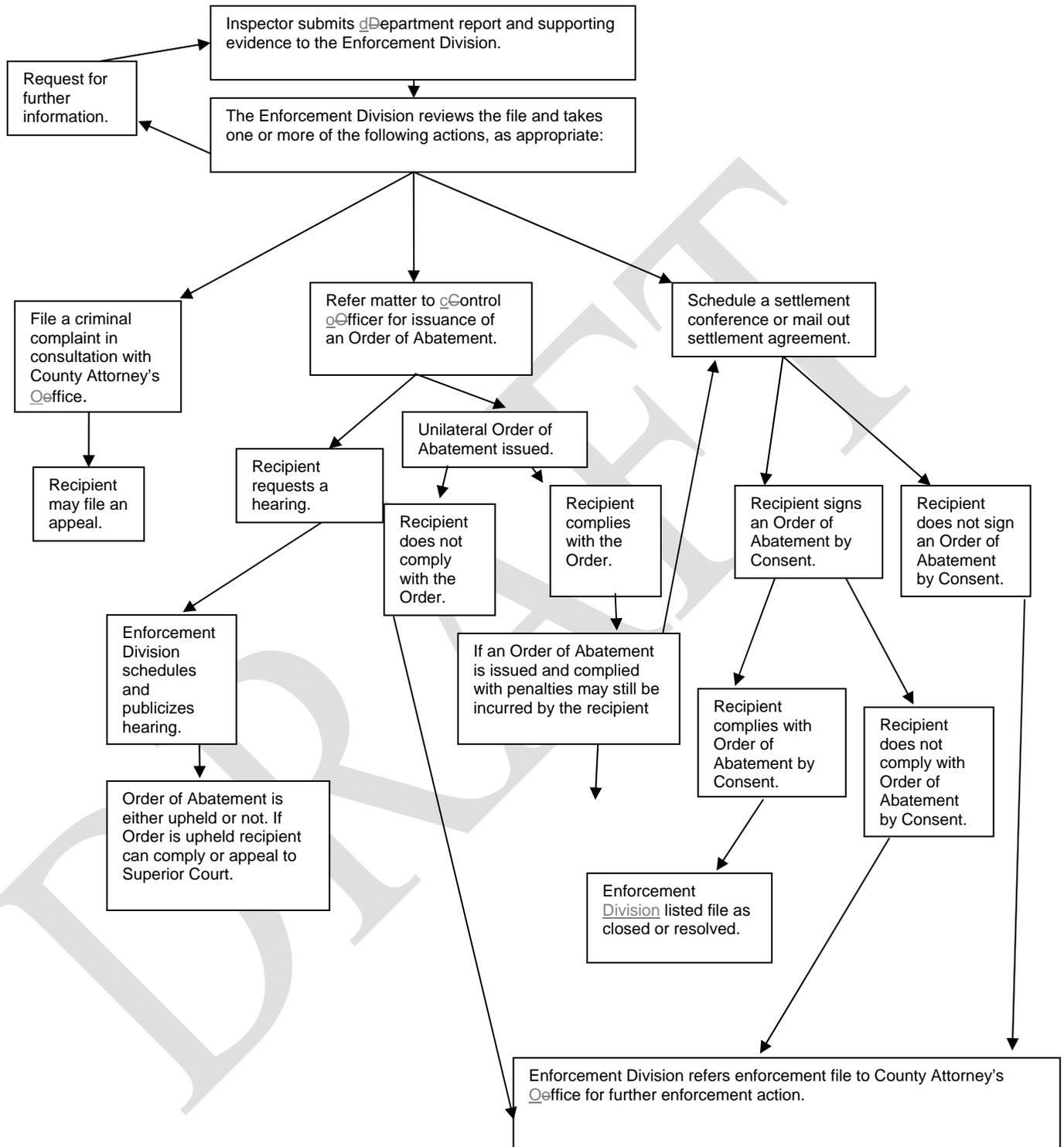
**3. Filing of Criminal Complaint**

The County Attorney's Office may file a criminal complaint if there is a reasonable likelihood of conviction. The matter may proceed to trial or the parties may enter into an agreement that may include monetary penalties, reimbursement costs for investigation and prosecution, violator education, and other appropriate sanctions.

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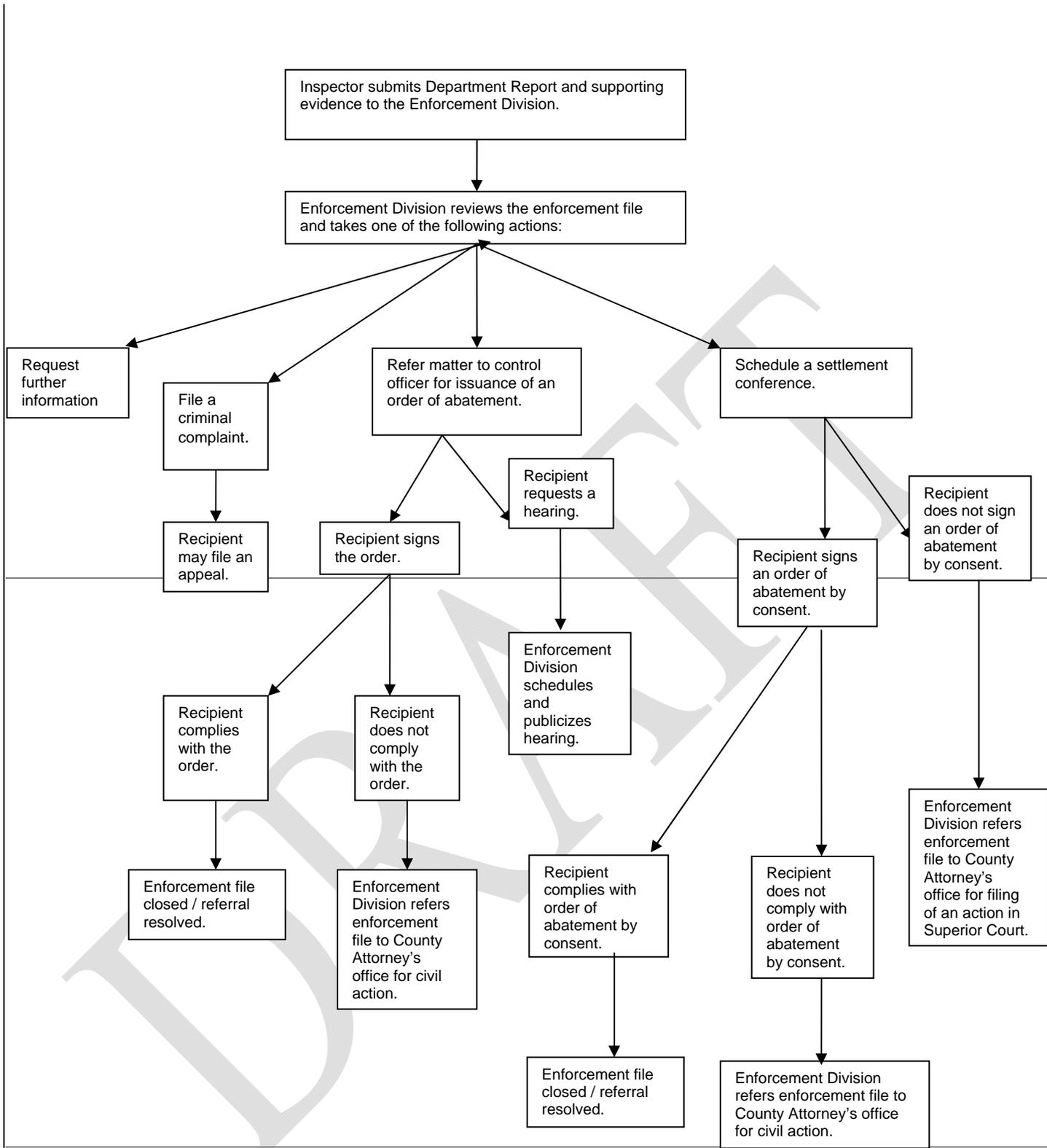
**Maricopa County Air Quality Department - Enforcement Division Flow Chart**

**(DRAFT [A16])**



**Addendum B**

**Maricopa County Air Quality Department Enforcement Division Flowchart**



**Addendum C – High Priority Violation (HPV) Determination Checklist**

The following criteria trigger HPV status. The criteria apply to the pollutant(s) of concern at major sources, (i.e., pollutant for which source is major) except where the criterion itself indicates otherwise (e.g., applies to a synthetic minor source). The determination of what is substantive/substantial shall be part of a case-by-case analysis/discussion by the management of Maricopa County Air Quality Department.

Source: \_\_\_\_\_ Permit #: \_\_\_\_\_ Pollutant of Concern: \_\_\_\_\_ CDS # \_\_\_\_\_

Date(s) of inspection: \_\_\_\_\_

More explanation of general and matrix criteria can be found in EPA document The Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)

Yes No

	General Criteria #1	Failure to obtain a PSD permit (and/or to install BACT), an NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either.
	General Criteria #2	Violation of an air toxics requirement (i.e., NESHAP, MACT) that either results in excess emissions or violates operating parameter restrictions.
	General Criteria #3	Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR or Title V status (i.e., fails to comply with permit restrictions that limit the source's potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source's actual emissions to exceed the NSR/PSD/Title V thresholds.)
	General Criteria #4	Violation of any substantive term of any local, state or federal order, consent decree or administrative order.
	General Criteria #5	Substantial violation of the source's Title V certification obligations, e.g., failure to submit a certification.
	General Criteria #6	Substantial violation of the source's obligation to submit a Title V permit application. (i.e., failure to submit a permit application within sixty (60) days of the applicable deadline)
	General Criteria #7	Violations that involve testing, monitoring, record keeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits.
	General Criteria #8	A violation of an allowable emission limit detected during a reference method stack test. NOTE: A violation of this General Criteria ALSO constitutes a violation of Matrix Criteria #1 "Emission violation detected by stack test_"- Violation Code MC1.
	General Criteria #9	Clean Air Act (CAA) violations by chronic or recalcitrant* violators. NOTE: This refers to a source that may stay below the HPV threshold but continually violates requirements to the extent that it is mutually agreed by the EPA Region IX & MCAQD that the source should be bumped up into HPV status.
	General Criteria #10	Substantial violation of Clean Air Act Section 112(r) requirements (for permitting authorities that are not implementing agencies under Section 112(r) program, limited to source's failure to submit Section 112(r) risk management plan).
	Matrix Criteria #2	Violation of applicable emissions limitation, detected by coating analysis, fuel samples, other process materials sampling, or raw / process materials usage reports.
	Matrix Criteria #3	Violation of parameter limits where parameter is a direct surrogate for an emissions limitation, detected by continuous / periodic parameter monitoring.
	Matrix Criteria #4	Exceedance of applicable non-opacity standard, detected by Continuous Emission Monitoring Systems (CEMS).
	Matrix Criteria #5	Exceedance of applicable opacity standard detected by Continuous Opacity Monitor (COM) or by Visible Emission (VE) observation.
	DIS	Discretionary HPV. For violations that DO NOT fit the General or Matrix criteria, but MCAQD and EPA agree that the violation(s) are severe enough to justify HPV status. (i.e., specific violations may be of limited duration and magnitude but indicate unacceptable, egregious behavior-)

Yes No

		Was the site in violation for any non HPV related issues?
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**HIGH PRIORITY VIOLATORS MUST BE REPORTED TO THE EPA WITHIN 45 DAYS OF DETERMINATION !**

Approve	Disapprove	Date
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>

Inspector Name: \_\_\_\_\_  
 Supervisor Name: \_\_\_\_\_

<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
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AQ Compliance Div Mgr: Steve Deppenbrok

Dust Compliance Div Mgr: Lucinda Swann

Original to Permanent File

Copy to: ~~Eric Raisanen~~ AFS (AIRS Facility Subsystem (AFS)) Coordinator

## Addendum D

### ~~Compliance~~<sup>[A17]</sup> Status Notification (CSN) Policy<sup>[A18]</sup>

#### **OBJECTIVE:**

To establish Department policies and procedures for the use of the Compliance Status Notification (CSN).

There are a number of situations where an educational approach is more effective than an enforcement action in achieving compliance with Department rules and regulations. These situations do not involve emissions violations and usually involve first time violations committed by members of the general public or business who are not fully aware of Department Rules and Regulations. ARS §41-1009 (E) provides criteria whereby minor violations may be issued a CSN in lieu of a Notice of Violation (NOV). This policy lists the most common types of violations that qualify for a Compliance Status Notification and establishes a procedure for issuing CSNs for other violations.

#### **POLICY STATEMENT:**

A CSN may be issued in lieu of a Notice of Violation for any of the specific situations outlined in this policy. Other violations that may qualify for a Compliance Status Notification are described in ARS§ 41-1009 (E). CSNs, must be approved by a supervisor or manager prior to issuance.

**COMPLIANCE STATUS NOTIFICATION:** The Compliance Status Notification (CSN) may be used at any Title V, major, or minor source in lieu of a Notice of Violation (NOV) for the following situations:

#### ***RECORD KEEPING & REPORTS***

- *Inadvertent omissions or deficiencies in reports or record keeping that do not prohibit an overall compliance determination. The weight of evidence should indicate compliance, and the inspector must be able to determine compliance (even with the omissions) before a CSN may be issued.*
- *Records not physically available at the time of inspection provided the records do exist and can be produced in 2 business days.*
- *Reports submitted to the Department beyond the required due date may be eligible for a CSN, except Title V Compliance and Monitoring Reports, and reports required by Emissions Inventory.*

#### ***PERMITS & PERMIT CONDITIONS***

- *Failure to post a Permit to Operate (PTO) or have the PTO<sup>[A19]</sup> readily available on site during an inspection. The inspector shall instruct the source that the PTO must be posted within 2 business days. A follow up inspection will occur within 10 business days.*
- *Failure to file a Transfer of Ownership for a small business as long as the required Permit to Operate is otherwise current. The inspector shall instruct the source that a permit application must be filed with the Department within 5 business days. A follow up inspection will occur within 10 business days.*
- *Equipment that was previously exempt from the permit and there is no reasonable expectation that the source would have had knowledge of the loss of exemption. The inspector shall instruct the source that the appropriate application must be filed with the Department within 15 days of receipt of the CSN. The inspector will conduct a follow up inspection within 10 days following the deadline.*

## **SOLVENT USAGE**

- *Open containers of one gallon or less, or any container with an open access point of four inches or less in diameter, that contain unheated solvent and are located in work areas. Containers should be involved with production activities (i.e. not in storage) and left unattended or unused. CSN is to be issued and violation corrected by the end of inspection*
- *Solvent-laden rags (paper or fabric) that are not in use and left exposed in the work area.*
- *Cold cleaners left uncovered when not in use provided the solvent meets the Department's low volatility requirements.*

## **OPEN BURNING**

- *Use of non conforming warming fires.*
- *Burns that involve material that otherwise would be authorized but is not specifically listed on the burn permit. There must, however, be a burn permit issued for the location where the burn took place.*

## **OTHER BURNING**

*Burning prohibited fuel in a residential fireplace or stove.*

## **COMPLIANCE WITH ARS § 41-1009**

*Other violations not specifically included in this policy may meet the intent of ARS § 41-1009(E) and may qualify for ~~an~~<sup>[A20]</sup> Compliance Status Notification. When an inspector believes that a violation not specifically listed in this policy qualifies for a CSN the inspector shall discuss the violation with a supervisor or manager and receive approval prior to issuance of the CSN.*

*Pursuant to ARS § 41-1009(E), a Compliance Status Notification shall be issued for any minor deficiency that was immediately corrected in the presence of the inspector. Similar violations found at subsequent inspections that are corrected in the presence of the inspector are not eligible for a CSN.*

## **RECORD OF CORRECTIVE ACTION TAKEN**

*All recommendations and deadlines for compliance shall be documented on the Compliance Status Notification. If the source fails to comply with the conditions of the CSN a NOV shall be written for the original violation, and shall include the total time span from the original CSN issuance.*

*The inspector shall issue the pink copy to the responsible party, the inspector shall keep the yellow copy, and the original shall be submitted to the supervisor for review. The original is to be filed in the source or complaint file.*

# **Notice to Comply Policy**



## Policies & Procedures

Policies & Procedures:  
PP-

Title:

Supersedes:

Effective:

Initiator:

Director:

This policy is intended solely as guidance for Department personnel. It is not intended and may not be used to create rights enforceable by any party. Nothing in this policy is intended to limit the Department's enforcement discretion. Deviation from this policy will not prevent the Department from pursuing an enforcement action that is otherwise appropriate to the violation. This policy may be changed at any time without public notice.

**PURPOSE:** The purpose of this policy is to establish consistent guidelines for when a "NOTICE TO COMPLY" (NTC) may be issued by the Maricopa County Air Quality Department (MCAQD). This document will provide the general criteria as well as some commonly observed violations for which an NTC may be issued.

**REFERENCES:**

Arizona Revised Statutes, Title 41 and Title 49, and Maricopa County Air Pollution Control Regulations

**BACKGROUND:** not applicable

**DEFINITIONS:**

See Maricopa County Air Pollution Control Regulations Rule 100-General Provisions and Definitions and other applicable rules for definitions of terms that are used but not specifically defined in this policy. For the purpose of this policy, the following definitions shall apply:

1. **CHRONIC VIOLATION** – A chronic violation shall include, but not be limited to, any violation for which the same or similar violation has been previously issued.
2. **INFORMATION** – Includes, but is not limited to, data, records, photographs, analyses, plans or specifications that will disclose the nature, extent, quantity or degree of air contaminants which are, or may be discharged by the source.
3. **NOTICE TO COMPLY (NTC)** – A written method of alleging a violation that is observed or discovered by the MCAQD that, at a minimum, clearly states the following:
  - a. A description of the alleged violation; and
  - b. Reference to a specific rule and/or permit condition; and
  - c. A statement that the inspected site or facility may be subject to reinspection at any time.
4. **RECALCITRANT VIOLATOR** – A person or facility where there is evidence of a pattern of neglect or disregard with respect to the requirements of the MCAQD Rules and Regulations, permit conditions or other applicable provisions of state or federal law or regulations.

**APPLICABILITY:** This policy applies to all MCAQD personnel.

**POLICIES:** not applicable

**PROCEDURES:**

**REQUIREMENTS**

NTC's may be issued if a noncompliant situation meets specific requirements listed in Procedures Section 1 and the requirements listed in one of the specific cases in Procedures Sections 2 or 3.

Policies & Procedures:

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1. GENERAL CRITERIA FOR ISSUANCE OF AN NTC:

- a. Does not cause or contribute to the violation of any state or federal ambient air quality standard.; and
- b. Does not preclude or hinder the MCAQD ability to determine compliance with other state or federal requirement, the MCAQD rules and regulations, administrative or procedural plan or permit conditions; and
- c. The violation is not knowing, willful or intentional; and
- d. The violation is not chronic; and
- e. The violation is not committed by a recalcitrant violator.

2. CRITERIA FOR ISSUANCE OF AN NTC IN SPECIFIC CASES:

- f. Permits, Registration and Certification
  1. Operation of an existing facility by a new owner without transfer or submittal of a permit application within thirty calendar days of the ownership transfer
  2. Failure to keep a complete valid permit clearly visible and accessible if the permit is accessible at the site.
  3. Failure of subcontractors who are working on job sites that have a Dust Control Permit/Plan to register with the MCAQD.
  4. Basic Dust Control Training certification expired 30 calendar days or less.
  5. Comprehensive Dust Control Training certification expired 30 calendar days or less.
- g. Records  
Failure to submit and/or provide requested or required records by the submittal deadline, but no more than three business days after submittal deadline.
- h. Testing
  1. Failure to submit a test protocol by the submittal deadline, but no more than seven calendar days after the submittal deadline.
  2. Failure to provide notice of a test date by the notification deadline, but no more than seven calendar days after the notification deadline.
  3. Failure to submit a test report by the submittal deadline, but no more than 14 calendar days after submittal deadline.
- i. Gasoline Dispensing Facilities
  1. Non-gasoline liquid in one spill containment receptacle at a gasoline dispensing facility measuring less than one inch in depth provided the owner/operator can demonstrate they conducted an inspection within 24 hours prior to the most recent gasoline delivery.
  2. Dry foreign material in one spill containment receptacle at a gasoline dispensing facility provided the owner/operator can demonstrate they conducted an inspection within 24 hours prior to the most recent gasoline delivery.
- j. VOC Containment
  1. Failure to mark maximum fill capacity on cold solvent cleaners provided they meet the freeboard requirements.
  2. Failure to have proper labeling on a single vapor solvent cleaner, conveyORIZED solvent cleaner and/or cold cleaner at the facility.
  3. Failure to cover a container of VOC containing material if all the following conditions are met:
    - a. The material is not in use at time of discovery; and
    - b. The container capacity is less than one pint; and
    - c. The container is covered immediately in the presence of the inspector.
  4. One solvent laden cloth left exposed in one work area that is removed immediately in the presence of the inspector, into a closed, leak-free container.

Policies & Procedures:

Title: Dress & Personal

Supersedes:

Effective:

Initiator:

Director:

- k. Dust Generating Activities
  1. Implementation of a control measure 60 days to 74 days of initial discovery in an open area and/or vacant lot.
  2. Tile cutting on a pitched roof if the opacity is greater than 20% either when using or not using control measures.
  3. Tile cutting on a pitched roof if the visible emissions cross the property line either when using or not using control measures.
  4. First-time violation to a permittee for not implementing fugitive dust control measures on a job site if the permittee can document trespassers are the source of the surface disturbances and/or fugitive dust emissions.
  5. First-time opacity violation to the owner/operator of any operation not requiring an air quality permit.
  6. First-time violation of visible emissions crossing the property line if dust control measures are being applied to the specific operation generating the dust and appropriate permits have been obtained (if permits are required.)
3. CRITERIA FOR ISSUANCE OF AN NTC FOR OTHER CONDITIONS NOT SPECIFICALLY LISTED

The alleged violation must meet all of the following criteria to qualify as an NTC:

  - l. Meets all the criteria listed in Section 1 of this document; and
  - m. Does not endanger the health, safety or welfare of any person or persons; and
  - n. Does not endanger the environment; and
  - o. Does not cause or contribute to the violation of any state or federal ambient air quality standard.

**DISTRIBUTION:**

DRAFT

# **Self Reporting Policy**



# Maricopa County

Air Quality Department  
Policies & Procedures

Policies & Procedures:  
PP-

Title:

Supersedes:

Effective:

Initiator:

Director:

*This Policy is not final agency action and is intended as guidance. Procedures contained in this document are intended solely for the guidance of Maricopa County Air Quality Department personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, that are enforceable by any person. The Department reserves the right to act at variance with this guidance. Nothing in this guidance is intended to preclude the Department from imposing a penalty using an alternative approach or requires the Department to impose a penalty for a violation. This guidance may be changed at any time without public notice. MCAQD will make publicly available the terms and conditions of any compliance agreement reached under this Policy, including the nature of the violation, the remedy and the schedule for returning to compliance.*

**PURPOSE:** The purpose of this policy is to encourage greater compliance with Maricopa County Air Pollution Control Rules and Regulations. It promotes a higher standard of self-policing by providing mitigation of all or a portion of the gravity-based penalties for violations that are voluntarily discovered and promptly disclosed and corrected.

**REFERENCES:**

- ADEQ Compliance and Enforcement Handbook Chapter 11: Special Penalty Considerations for Small Businesses
- EPA Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy (Audit Policy)

**BACKGROUND:** not applicable

**DEFINITIONS:** not applicable

**APPLICABILITY:**

This policy shall be used for alleged violators who have been issued Notice(s) of Violation by MCAQD due to self reporting and have been referred to the Enforcement Division for enforcement action.

**POLICIES:**

MCAQD may provide the incentives listed below for self-reported violations if they meet the specified criteria under the Procedures Section of this policy.

Criteria for receiving incentives for self-reporting a violation:

- Sources that meet all conditions may be eligible for 100% mitigation of any gravity-based penalties. Any economic benefit gained from non-compliance will be collected.
- Sources that meet conditions 2-9 may be eligible for 75% mitigation of any gravity-based penalties. Any economic benefit gained from non-compliance will be collected.
- Sources that meet conditions 2-9, but conditions were met outside of the set timeframes, may be eligible for 50% mitigation of any gravity-based penalties. Any economic benefit gained from non-compliance will be collected.

**PROCEDURES:**

Conditions:

1. Systematic Discovery

The violation must have been discovered through either:

- a. Environmental Audit or a Compliance Management System reflecting due diligence in preventing, detecting and correcting violations.

Policies & Procedures:  
pp-

Title:

Supersedes:

Effective:

Initiator

Director:

- b. The source must provide documentation identifying steps taken to ensure due diligence and how the source discovered the violation through its internal environmental policies and procedures.

2. Voluntary Discovery

The violation must be identified voluntarily, **NOT** through a monitoring, sampling, or auditing procedure required by statute, regulation, permit, consent agreement, judicial or administrative order.

3. Prompt Disclosure

The source must disclose the violation to MCAQD within 21 calendar days after discovery. In the event of an excess emission, the source must follow the provisions outlined in Maricopa County Air Pollution Control Rule 130 or 140. The 21-day disclosure period begins when the source discovers that a violation has or may have occurred or when the source reasonably should have known a violation took place. If the source has doubt as to whether or not a violation has occurred, the source should disclose the potential violation to MCAQD and let the regulatory agency make a definitive determination.

4. Discovery and Disclosure Independent of Government or Third Party Plaintiff

- a. The violation must be discovered and disclosed before a government agency likely would have identified the problem through its own investigative work or from information received from a third party complaint. The source must take initiative to find and disclose violations instead of waiting for an indication of a pending enforcement action or third party complaint. Disclosure of a violation will not be considered independent if MCAQD is already inspecting the facility in question.
- b. Regulated entities must discover and disclose violations before any of their facilities are under inspection.
- c. The violation must be discovered and disclosed before a citizen's group has provided a notice of intent to sue, a third party has already filed a complaint, a whistleblower has reported the potential violation to government authorities, or where discovery by the government was imminent.

5. Correction and Remediation

- a. The source must take immediate corrective action and successfully correct and remediate the violation promptly but no later than 60 calendar days after the date of discovery. The source must certify in writing with an accompanying truth and accuracy statement that the violation has been corrected, that all practicable steps have been taken to remedy any harm caused by the violation and what measures were taken to return to compliance.
- b. If more than 60 days is required for remediation, the source must notify MCAQD in writing within 5 calendar days after the date that the source first knew or reasonably should have known that such circumstances may or will cause a delay or anticipated delay, prior to the conclusion of the 60-day period. Once compliance has been achieved, the source must certify in writing with an accompanying truth and accuracy statement that the violation has been corrected, that all practicable steps have been taken to remedy any harm caused by the violation and what measures were taken to return to compliance.
- c. In the event that a consent agreement, corrective action plan or compliance plan is in effect, specified timelines in these documents shall supersede the timeline mentioned above.

6. Prevent Recurrence

The source must take steps to prevent recurrence of the violation. Preventative steps must be submitted in writing to MCAQD (Compliance Division and Enforcement Division).

Policies & Procedures:  
pp-

Title:

Supersedes:

Effective:

Initiator

Director:

7. No Repeat Violations

- a. The same or closely-related violation must not have occurred at the same facility within the past 3 years. The 3-year period begins upon the facility's discovery date of the current violation. .
- b. The violation has not occurred within the past 5 years as part of a pattern of multiple facilities owned or operated by the same entity.
- c. Notice that a violation has occurred includes a complaint, consent agreement, Notice of Violation, Notice to Comply, receipt of an inspection report, citizen suit and Order of Abatement.
- d. If the facility is under new ownership, the existence of a violation prior to the acquisition does not trigger the Repeat Violations exclusion.

8. Other Exclusions to this Policy

- a. Violations that result in serious actual harm to public health and the environment and/or violations which may have presented an imminent and substantial endangerment to public health or the environment.
- b. The violation was the result of knowing, willful, grossly negligent or intentional conduct.
- c. Violations that resulted in the emissions of any toxic air contaminant(s) that caused or contributed to an exceedance of the National Ambient Air Quality Standards, the Arizona Air Quality Standards, or in excess of the facility's Air Quality Permit emission limit(s).
- d. The violation created a public nuisance.

9. Cooperation

- a. The source must provide MCAQD with all information needed to determine policy applicability and must provide any records upon request in a timely manner.
- b. The source must not hide, destroy or tamper with possible evidence following discovery.

**DISTRIBUTION:**

**Signed  
Violation Penalty  
Policy**



## **VIOLATION PENALTY POLICY**

Approval Date: January 16, 2008

Signature: Robert Kard

Robert Kard, Control Officer

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*Procedures contained in this policy are intended solely for the guidance of Maricopa County Air Quality Department personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, that are enforceable by any person. The Department reserves the right to act at variance with this policy. Nothing in this policy is intended to preclude the Department from imposing a penalty using an alternative approach or requires the Department to impose a penalty for a violation. This policy may be changed at any time without public notice.*

## I. Introduction

The primary goal of this policy is to deter future violations of air quality requirements. Deterrence will be achieved by recovering the economic benefit of noncompliance plus an additional penalty amount beyond the economic benefit to reflect the seriousness of the violation. This policy shall be used for settlement purposes only. In the event that settlement is not possible and litigation is necessary to bring an alleged violator (hereinafter “violator”) into compliance and collect penalties, this policy may no longer be used. In the event of litigation, the Department may seek the statutory maximum for all alleged violations, mitigated only by the considerations set forth in Arizona Revised Statute § 49-513.

Arizona Revised Statute § 49-513 provides authority for the County Attorney to file an action in Superior Court to recover penalties of up to \$10,000.00 per day per violation of air quality requirements set forth in Title 49 of Arizona Revised Statutes and Maricopa County Air Pollution Control Regulations. This policy was established to ensure that penalties are developed in a consistent manner utilizing factors listed in Arizona Revised Statute § 49-513. In addition, this policy is based on the EPA Clean Air Act Civil Penalty Policy.

Penalties are extremely important to the success of the Department’s air quality program. Environmental requirements in statutes, regulations, permits, and orders exist to prevent harm to the environment and public health. Department enforcement action is initiated to correct violations and encourage continuous compliance in the future. Penalties are an essential component of the enforcement process and are intended to encourage compliance; they remove the economic benefit and incentive to operate in violation of requirements. Penalties should recoup any money a violator saved by operating out of compliance and create an additional incentive to comply by adding a gravity-based penalty amount which makes noncompliance cost more than staying in compliance with requirements.

The penalty calculation system contained in this policy consists of the following elements: 1) determining a gravity component dependent on the severity of a violation which may be adjusted based on factors and circumstances unique to each particular case, 2) determining a violator’s economic benefit of noncompliance, 3) determining the Department’s enforcement action costs, and 4) consideration of mitigating factors.

$$\text{Total Penalty} = \text{Gravity Component} + \text{Economic Benefit Component} + \text{Cost Recovery} + \text{Mitigating Factors}$$

## II. Gravity Component

The first step in calculating a penalty is to determine the gravity component. A gravity component is calculated by assessing both a potential for harm posed by the violation and a violator’s extent of deviation from legal requirements. These two factors measure the seriousness of a violation, and are incorporated in the penalty matrix from which an amount of gravity component is selected. This amount may then be adjusted to account for multi-day violations and for unique factors of each case.

$$\text{Gravity Component} = \text{Potential for Harm} + \text{Extent of Deviation} + \text{Multi-day Component} + \text{or - Adjustments}$$

### A. Potential for Harm

Potential for harm relates but is not necessarily limited to: risk of human or environmental exposure to pollutants in the air, water, or soil that may be imposed by a violation; the risk of

harm to natural resources from regulated activities; and the adverse effect a violation may have on statutory or regulatory purpose, intent, or objective.

Each and every requirement in enforceable statutes, regulations, permits, and orders was adopted or imposed in order to prevent, in some manner, harm to human health and the environment. Therefore, noncompliance with any requirement could result in a potential for environmental or human health impacts. It is not appropriate to refer to any violation as just a “paperwork” violation. Even violations of record keeping requirements create a risk of harm through a lack of information necessary to monitor and ensure compliance with more substantive standards.

This section emphasizes a potential for harm. Whether harm actually results from a violation is something over which a violator may have no control. A violator should not be rewarded with lower penalties simply because a violation failed to cause actual harm.

Instructions: On the calculation worksheet, circle a score for each of the five factors contributing to “Potential for Harm”. Add the five scores and enter the total on the line marked “Total Score”. This number will correspond to a degree of potential for harm (major, moderate, or minor) for a violation. Circle the appropriate degree on the worksheet.

1. Level of violation: Potential or actual quantity of the discharge, emission, or waste involved in that portion of an operation to which a violation applies.

0	1	2	3	4
negligible amount	relatively low amount	medium amount	relatively high amount	extremely high amount

2. Toxicity of pollutant: Nature and characteristics of the pollutant or potential or actual discharge, emission, or waste involved in that portion of an operation to which a violation applies, including concentration, toxicity, and fire or explosion hazard from direct contact.

0	1	2	3	4
negligible toxicity	relatively low toxicity	medium toxicity	relatively high toxicity	extremely high toxicity

3. Risk to environment: Potential or actual harm and the character and degree of potential or actual injury to or interference with public trust in the County’s air quality program which is caused or can reasonably be expected to be caused by a violation.

0	1	2	3	4
negligible risk	relatively low risk	medium risk	relatively high risk	extremely high risk

4. Risk to population: Potential or actual harm and the character and degree of potential or actual injury caused by a violation; proximity to areas of population centers, schools, recreational areas, or other areas used by the public; and potential migration pathways from the violation site.

0	1	2	3	4
negligible risk	relatively low risk	medium risk	relatively high risk	extremely high risk

5. Size of the violator: The size and sophistication of the violator including, but not limited to, physical size of the facility, number of employees, net worth, existence of internal environmental compliance personnel, and geographical presence.

0 negligible size	1 relatively small size	2 medium size	3 relatively large size	4 extremely large size
-------------------------	-------------------------------	---------------------	-------------------------------	------------------------------

<u>Total Score</u>	<u>Potential for Harm</u>
14-20	Major
7-13	Moderate
0-6	Minor

**B. Extent of Deviation from the Requirement**

The extent of deviation is the degree to which the violator has deviated from the substance and intent of a requirement. A violator may be substantially in compliance or may have totally disregarded the requirement, or some point in between. The extent of deviation should be determined without regard to any hazards posed by the violation; factors regarding the potential impact on the environment or public health are evaluated when determining potential for harm.

Instructions: On the calculation worksheet, circle the degree of “Extent of Deviation” from a requirement (major, moderate, minor) that most appropriately describes the violation.

1. Major - Failure to comply: The violator deviates from a requirement to such an extent that all or most of the components of the requirement are not met, or are met after serious delay.
2. Moderate - Incomplete or incorrect compliance: The violator deviates from a requirement but some of the important components of the requirement are implemented as intended, or requirements are met after unnecessary delay
3. Minor - Late compliance: The violator deviates somewhat from a requirement but most of the components of the requirement are met, or are met after minimal delay.

**C. Gravity Component Matrix**

Both of the above factors, potential for harm and extent of deviation from the requirement, form an axis in the gravity component matrix. The matrix has nine cells, each containing a penalty range. A specific cell is determined by applying the degree of potential for harm and the degree of extent of deviation.

		EXTENT OF DEVIATION		
		MAJOR	MODERATE	MINOR
POTENTIAL FOR HARM	MAJOR	\$10,000-8,000	\$8,000-6,000	\$6,000-4,400
	MODERATE	\$4,400-3,200	\$3,200-2,000	\$2,000-1,200
	MINOR	\$1,200-600	\$600-200	\$200-0

It may be noted that potential for harm is weighted more heavily than extent of deviation in the penalty matrix. This is because potential for harm is directly related to protecting public health and the environment. Penalties therefore increase more rapidly as potential for harm increases.

Instructions: Within the “Penalty Matrix” section of the calculation worksheet, circle the cell indicated by the selected degrees for “Potential for Harm” and “Extent of Deviation”.

Within each cell exists a range of values for the gravity-based penalty component. Determine a specific value within a selected cell based on the total score calculated for potential for harm. For example, if the total score for potential for harm is 13 (Moderate Degree), select the highest value within the cell; or if the total score for potential for harm is 7 (also Moderate Degree), select

the lowest value within the cell. For scores between 7 and 13, pro-rate the values. This methodology for determining a gravity-based penalty amount will consistently reflect a violation's degree of seriousness within a Major, Moderate, or Minor potential for harm rating.

Instructions: Using the paragraph above as a guide, determine the specific dollar amount from the cell selected and enter the amount on the worksheet line marked "Dollar amount from within range".

#### D. Multi-day Violations

Multi-day component of gravity-based portion of a penalty applies to a violation which continued for more than one day. Arizona Revised Statutes provide penalties for each day that a violation continued. Determination of the duration of a violation can be based on any credible evidence including but not limited to observations by a Department representative of a violation over a number of days, violator or violator's representative admitting a multi-day violation occurred, and information contained in records maintained by a violator or other parties.

A discount factor may be applied to the Gravity Component for each violation day except the first day.

Day(s)	Discount
0-1	0%
2-15	15%
16-30	30%
>30	50%

Instructions: Under the "Multi-day violations" section of the calculation worksheet enter the number of days that a violation occurred in the "# of Days" column for each range specified. For example, a violation that continued for 10 days will have one (1) day in the first range, nine (9) days in the 2-15 range, and zero for the last 2 ranges. Next multiply the dollar amount from the "Penalty Matrix" by the "Rate" and "# of Days" for each range and enter the product in the "Subtotal" column for each of the 4 ranges. Total these products and enter it on the line marked "Total".

Penalties are calculated prior to a settlement negotiation. Therefore, it is important that both the Department and the County Attorney are aware that the penalty calculation must be updated during negotiations to account for any continuation of the violation. The violator should be aware that the penalty amount will increase for any continuing violations.

#### E. Adjustments

Any system for calculating penalties must have flexibility to allow adjustments for case-by-case differences. Adjustments are made only within the Gravity Component of a penalty. The adjustment factors can increase, decrease, or have no effect on the penalty amount. After all adjustment factors have been applied, the resulting penalty cannot exceed the maximum penalty per day provided by statute. The following factors are evaluated to determine appropriate adjustments.

1. Degree of Willfulness or Negligence A case that involves knowing, willful, or negligent behavior warrants an increase in the penalty. The degree of willfulness and/or negligence both prior to and after discovery of the violation should be considered in determining the appropriate penalty. The following factors should be considered as well as any others deemed appropriate: (1) how much control the violator had over the events constituting the violation; (2) whether the

events constituting the violation were foreseeable; (3) whether reasonable precautions were taken to prevent the events which caused the violation; and (4) whether the violator knew or should have known about the events which caused the violation. It is also appropriate to consider whether the violator knew or should have known of the requirement or standard which was violated. This factor, however, should never be used as a basis to reduce the penalty because to do so would encourage ignorance of the law. While ignorance of the law is never a basis for downward adjustment, knowledge of the law is a basis for increasing a penalty.

Instructions: From the three statements that follow, choose the one that best fits the violator's degree of willfulness and/or negligence and circle the corresponding percentage adjustment on the calculation worksheet under "Degree of willfulness or negligence".

- a. The source knowingly violated an avoidable situation = + 25%.
- b. The source unknowingly violated an avoidable situation = + 10%.
- c. The source violated an unavoidable situation = 0%.

2. Degree of Cooperation In calculating a penalty, consider whether a violator followed all feasible and reasonable procedures to comply with or correct the violation. The presence or absence of cooperation may be used as a basis for either increasing or decreasing the penalty. No downward adjustment should be made if the efforts to comply primarily consist of coming into compliance, or if the violator lacks knowledge concerning either applicable requirements or the violations. Failure to take reasonable and prompt measures to come into compliance is cause for upward adjustment for lack of cooperation. The degree of cooperation or lack thereof is considered for the periods both before and after discovery of the violation.

a. Before Discovery

Instructions: From the four statements that follow, choose the one that best fits the violator's degree of cooperation before discovery of the violation and circle its corresponding percentage adjustment on the calculation worksheet under "Degree of cooperation before discovery".

- (1) The source promptly reported its noncompliance when there was no legal obligation to report a problem = - 15%.
- (2) The source reported its noncompliance when there was no legal obligation to do so, but there was an unnecessary delay in reporting = - 5%.
- (3) Noncompliance was documented prior to any report from the source, or the source had a legal obligation to report noncompliance = 0%.
- (4) The source exhibited a lack of cooperation, or did not make efforts to come into compliance = + 5%

b. After Discovery

Instructions: From the four statements that follow, choose the one that best fits the violator's degree of cooperation after discovery of the violation and circle the corresponding percentage adjustment on the calculation worksheet under "Degree of cooperation after discovery".

- (1) The source makes extraordinary voluntary efforts to successfully achieve compliance after learning of a violation, (such efforts may include paying for extra work shifts, or paying a premium on a contract to have control equipment installed sooner) = - 15%.
- (2) The source makes immediate voluntary efforts to successfully come into compliance after learning of a violation = - 5%.
- (3) The source makes voluntary efforts which fail to bring them into compliance = 0%.
- (4) The source exhibited a lack of cooperation, did not make efforts to come into compliance, or negotiated with the Department in bad faith = + 5%

3. History of Noncompliance Prior violations of statutes, regulations, orders, or permits will increase a penalty during the adjustment phase of penalty calculation. Every person has the obligation to comply with requirements and continuous compliance is expected, therefore, a penalty will not be decreased if the violator has no history of noncompliance.

In determining whether a violator has a history of noncompliance, consider the compliance history of the violator in all aspects of the air quality program. In addition, if a violator is a business which has undergone a merger, consolidation, transfer of assets, or other business change, the compliance history of the old business may be attributable to the new business. Where an individual, corporation or other entity owns several facilities in Maricopa County, all such facilities should be considered in determining a violator's history of noncompliance. The compliance history of any parent or subsidiary corporation should also be considered. Take into account the extent and degree to which the facility in violation and these other facilities and entities are controlled by the same management team. If the extent of control is unknown, assume that there is an overlap of control until the violator satisfactorily demonstrates otherwise.

The following factors are considered when increasing the penalty for a history of noncompliance: (1) the similarity of the violation in question to the prior violation(s); (2) the time elapsed since the prior violation(s); (3) the number of prior violations; and (4) the violator's response to the prior violation(s) with regard to correcting the previous problem and attempts to avoid future violations.

Instructions: For each of the following considerations, choose the situation that best fits the violator and circle the corresponding percentage adjustment on the calculation worksheet under "History of Noncompliance". (For c., multiply the number of previous violations by 5% and enter the product on the line marked percentage.)

a. Was one or more of the prior violations the same as or very similar to the current violation?

- (1) Yes = +5%
- (2) No = 0%

b. The most recent prior violation was:

- (1) Within the last year = + 10%
- (2) Within one to 5 years = + 5%
- (3) Over 5 years ago = 0%

c. The number of prior violations = + 5% for each violation.

d. The violator's response to prior violations can best be described as:

- (1) The source immediately remedied the problem = 0%.
- (2) The source remedied the problem after a delay = + 5%.
- (3) The source remedied the problem after a long delay or not at all = + 10%.

Instructions: Add all of the adjustment percentages together and enter the total on the line marked "Total Adjustments". Complete the equation on the penalty calculation worksheet and enter the result on the line marked "Gravity Component".

### III. Economic Benefit Component

The economic benefit component should be calculated and included in the penalty when a violator has realized savings or profits in the form of delayed costs, avoided costs, or illegal profits through its failure to comply. The economic benefit should not be adjusted downward and therefore a penalty will never be less than the amount a violator saved and/or gained through noncompliance. This eliminates any economic incentive for noncompliance by ensuring a violator does not profit from violating the law. Furthermore, an economic benefit penalty is essential to prevent situations in which violators of the law are at a competitive advantage.

$$\text{Economic Benefit} = \text{Delayed Costs} + \text{Avoided Costs} + \text{Illegal Profits}$$

#### A. Delayed Costs

Delayed costs are expenditures deferred by the violator's failure to comply with the requirements. The violator eventually will have to spend the money in order to achieve compliance. The economic benefit for delayed costs consists of the amount of interest earned on money the violator reasonably could have saved or deferred during the period of noncompliance. The "rule of thumb" for calculating the economic benefit of delayed compliance is: 5% per year of the delayed one-time only capital cost for the period from the date the violation began until the date compliance was or is expected to be achieved. A more detailed analysis may be appropriate to defend or support the agency's position. EPA's BEN Model is an option available to determine a violator's economic savings from delaying and/or avoiding pollution control expenditures.

Instructions: Enter the dollar amount for all costs which were delayed by noncompliance on the calculation worksheet under "Delayed Costs". Multiply this number by .05 and then by the number of years to determine the violator's economic benefit of delayed costs.

#### B. Avoided Costs

Avoided costs are expenditures nullified by the violator's failure to comply. These costs will never be incurred. By avoiding these expenditures permanently, the violator has accrued an economic benefit.

Instructions: Enter the dollar amount for all costs which were avoided by the violator for noncompliance on the calculation worksheet on the line for "Avoided Costs".

#### C. Illegal Profits

Profits from illegal activities are also an economic benefit to the violator. The present value of these illegal profits should be added to the delayed and avoided costs to calculate the total economic benefit. Care must be taken to ensure that any calculation of profits from illegal activities does not include profits attributable to lawful operations at a facility.

Instructions: Enter the dollar amount for all illegal profits earned by the violator during the noncompliance period on the line for "Illegal Profits". Total the three types of economic benefits and enter amount on the line marked "Total Economic Benefit".

### IV. Cost Recovery for Enforcement Efforts

Pursuit of an enforcement action involves the expenditure of varying amounts of staff time and frequently requires collection of special data or information. A penalty will be increased to include all special costs incurred that are unique to a particular enforcement action. These costs may

include special sampling and analysis costs, research time, and other costs associated with above average staff time for gathering evidence and pursuing settlement of the violation.

Instructions: Enter the total cost of enforcement efforts on the calculation worksheet on the line marked "Cost Recovery".

## **V. Mitigating Factors**

### **A. Ability to Pay**

This factor will be considered after commencement of settlement negotiations, only if raised by a violator and only if the violator provides all necessary financial information to evaluate the claim. The burden to demonstrate inability to pay rests solely on the violator.

When it is determined that a violator cannot afford the penalty, or that payment of all or a portion of the penalty will preclude the violator from achieving compliance or from carrying out remedial measures which are more important than the deterrence effect of the penalty, the following options may be considered: 1) a delayed payment schedule; 2) an installment payment plan with interest; or 3) straight penalty reductions only as a last recourse. EPA's ABEL Model is an option available to determine a violator's ability to pay.

Instructions: Please note the above conditions which must be met or considered before using this factor to mitigate the penalty. Enter the dollar amount on the calculation worksheet on the line for "Ability to Pay".

### **B. Litigation Risks**

The penalty amount may also be mitigated in appropriate circumstances based on litigation risk. Cases raising legal issues of first impression must be carefully selected in order to present the issue fairly in a factual context. Adverse legal precedent and strength of the overall case, including the evidence and the available witnesses, the strength of the violator's evidence, and any adverse indications from the court must be considered.

Instructions: Enter the dollar amount by which to reduce the penalty for litigation risks on the calculation worksheet on the line for "Litigation risks". Add the amounts for "Ability to pay" and "Litigation risks" and enter the total on the line marked "Total Mitigating Factors".

To complete the calculation worksheet, carry down the totals for each of the four components, and enter them on the corresponding lines within the final equation. Add together the "Gravity Component," the "Economic Benefit" and the "Cost Recovery" figures and subtract the "Mitigating Factors" figure. This is the penalty that should be sought in proceedings against the violator.

## **VI. Multiple violations**

In certain situations, several violations may have been documented. Separate rule violations may be grouped for the purpose of applying this policy. A separate worksheet should be completed for each violation or group of violations. In general, each violation or group of violations should be considered as a separate violation for the purpose of calculating a penalty if they result from independent acts, compliance problems, or if they are distinguishable from any other rule violation. The total penalty amount in an enforcement case may include penalties for several violations or groups of violations, each calculated to be consistent with this policy.

## **VII. Documentation of Calculations**

Complete an Air Quality Violation Penalty Calculation Worksheet for each violation by carefully following the instructions located in each section of this policy. Provide a brief description next to each factor on the worksheet indicating how each factor of the penalty was developed.

This Penalty Policy is a public record which will not be kept confidential. However, any documentation which contains or supports a penalty calculation for a particular case will generally be held confidential. Therefore, Air Quality Penalty Violation Calculation Worksheets are classified as confidential documents and will not be released unless the Department Director determines it is in the public's best interest to make the record available.

## **VIII. Settlement Discussions**

When settlement negotiations commence, always mention to a violator that the use of this guidance is limited to pre-trial settlement and is not meant to control a penalty amount requested when a case goes to trial. If discussions fail to produce an out-of-court settlement, prosecutors may find it relevant and helpful to introduce a penalty calculated under this policy as a point of reference during their demand for a court imposed penalty.

Issues that may be raised by violators include their belief that specific circumstances justify mitigation of the penalty, or that they are not responsible for the violation and payment of a penalty. The burden of proof to justify any mitigation of a penalty is invariably a violator's responsibility. Therefore, require violators to provide detailed documentation that supports their claims. Any penalty relief resulting from the submittal of new information by a violator shall follow the guidelines in the adjustment factors section of this policy.

# AIR QUALITY VIOLATION PENALTY CALCULATION WORKSHEET

Source Name/Permit # \_\_\_\_\_

NOV# \_\_\_\_\_

Description \_\_\_\_\_

## II. GRAVITY COMPONENT

### A. POTENTIAL FOR HARM

1. Level of Violation:

0 negligible amount	1 relatively low amount	2 medium amount	3 relatively high amount	4 extremely high amount
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2. Toxicity of Pollutant:

0 negligible amount	1 relatively low amount	2 medium amount	3 relatively high amount	4 extremely high amount
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3. Risk to Environment:

0 negligible amount	1 relatively low amount	2 medium amount	3 relatively high amount	4 extremely high amount
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4. Risk to Population:

0 negligible amount	1 relatively low amount	2 medium amount	3 relatively high amount	4 extremely high amount
---------------------------	-------------------------------	-----------------------	--------------------------------	-------------------------------

5. Size of the Violator:

0 negligible amount	1 relatively low amount	2 medium amount	3 relatively high amount	4 extremely high amount
---------------------------	-------------------------------	-----------------------	--------------------------------	-------------------------------

Total Score \_\_\_\_\_

14-20  
MAJOR

7-13  
MODERATE

0-6  
MINOR

### B. EXTENT OF DEVIATION

MAJOR  
failure to  
comply

MODERATE  
incomplete or  
incorrect compliance

MINOR  
late  
compliance

### C. GRAVITY COMPONENT MATRIX

		EXTENT OF DEVIATION		
		MAJOR	MODERATE	MINOR
POTENTIAL FOR HARM	MAJOR	\$10,000-8,000	\$8,000-6,000	\$6,000-4,400
	MODERATE	\$4,400-3,200	\$3,200-2,000	\$2,000-1,200
	MINOR	\$1,200-600	\$600-200	\$200-0

Dollar Amount from within Range \_\_\_\_\_

\_\_\_\_\_  
Enforcement Officer

\_\_\_\_\_  
Date

**CONFIDENTIAL WHEN COMPLETED**

**D. MULTI-DAY VIOLATIONS**

DAY	DISCOUNT	RATE	# of DAYS	SUBTOTAL
0-1	0%	1.00		
2-15	15%	0.85		
16-30	30%	0.70		
>30	50%	0.50		

Total Amount \_\_\_\_\_

**E. ADJUSTMENTS**

1. Degree of Willfulness or Negligence:
 

	+25%	+10%	+0%	
--	------	------	-----	--
  
2. Degree of Cooperation:
  - a. Before Discovery?
 

	-15%	-5%	-0%	+5%
--	------	-----	-----	-----
  
  - b. After Discovery?
 

	-15%	-5%	-0%	+5%
--	------	-----	-----	-----
  
3. History of Non-compliance:
  - a. Similar Violations?
 

	+5%	+0%		
	yes	no		
  
  - b. Most Recent Violation?
 

	+10%	+5%		
	1 year	> 5 year		
  
  - c. Number of Prior Violations?
 

	+5%	X _____	= _____	%
--	-----	---------	---------	---
  
  - d. Response to Prior Violations?
 

	+0%	+5%	+10%	
	immediate	short delay	long delay	

Total Adjustments \_\_\_\_\_ %

$$\frac{\text{Total Amount}}{\text{Total Adjustments}} \times (1 + \frac{\text{Total Adjustments}}{100}) = \text{Gravity Component}$$

**III. ECONOMIC BENEFIT COMPONENT**

- A. DELAYED COSTS:
 

	X _____	X 0.05	= _____	
	# of years			
  
  - B. AVOIDED COSTS: \_\_\_\_\_
  
  - C. ILLEGAL PROFITS: \_\_\_\_\_
- Total Economic Benefit \_\_\_\_\_

**III. COST RECOVERY FOR ENFORCEMENT EFFORTS**

Total Cost Recovery \_\_\_\_\_

**V. MITIGATING FACTORS**

- A. ABILITY TO PAY: \_\_\_\_\_
  
  - B. LITIGATION RISKS: \_\_\_\_\_
- Total Mitigating Factors \_\_\_\_\_

$$\frac{\text{Gravity Component}}{\text{Gravity Component}} + \frac{\text{Economic Benefit}}{\text{Economic Benefit}} + \frac{\text{Cost Recovery}}{\text{Cost Recovery}} - \frac{\text{Mitigating Factors}}{\text{Mitigating Factors}} = \text{Total}$$

# **SEP**

# **Policy**

# Maricopa County Air Quality Department Supplemental Environmental Project Policy

## **PURPOSE:**

The purpose of this policy is to provide a consistent, reasonable process for evaluating a proposed project to determine if it qualifies as a supplemental environmental project (SEP) and then determining how much penalty mitigation is appropriate. This policy sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP and the terms and conditions under which they may become part of a settlement.

## **APPLICABILITY:**

This policy applies to the Control Officer and the Maricopa County Air Quality Department (MCAQD) Enforcement personnel.

## **REFERENCE:**

Arizona Department of Environmental Quality (ADEQ), Supplemental Environmental Projects, ADEQ Compliance & Enforcement Handbook - Version: December 1, 2003.

Maricopa County Air Quality Department, Violation Penalty Policy, January 16, 2008.

U.S. Environmental Protection Agency, Issuance of Final Supplemental Environmental Projects Policy, from Steven A. Herman Assistant Administrator to Regional Administrators, April 10, 1998.

U.S. Environmental Protection Agency, PROJECT Model, <http://www.epa.gov/compliance/civil/econmodels/index.html>

U.S. Office of Budget and Management, Circular A-87 - Cost Principles for State, Local, and Indian Tribal Governments, published at 60 FR 26484 (dated May 4, 1995, published May 17, 1995), as further amended at 62 FR 45934 (August 29, 1997), <http://www.whitehouse.gov/omb/circulars/a087/a087-all.html>

## **DEFINITIONS:**

**Administrative Costs** – Those indirect management costs that are associated with the general management or oversight of an organization rather than those direct costs that are a part of performing a specific project. Examples of administrative costs include executive compensation, general accounting, secretarial, public relations, utilities, insurance, interest, taxes, legal expenses, salaries of office personnel, and similar costs involved in the overall, general administration of the organization as a whole.

**Control Officer** – The Maricopa County Air Quality Department Director.

**Documentation** – Records that verify SEP costs and their appropriateness.

**Immediate Geographic Area** – The area within a 50 mile radius of the site on which the violation occurred.

**Nexus** – The link between the violation being enforced and the proposed SEP. Nexus exists only if the proposed project addresses air quality issues and meets at least one of the following criteria:

- a. The project is designed to reduce the likelihood that similar violations will occur in the future; or
- b. The project reduces the adverse impact to the public health or the environment to which the violation at issue contributes; or
- c. The project reduces the overall risk to public health or the environment potentially affected by the violation at issue.

**Order of Abatement by Consent (OAC)** – A legal agreement between the respondent and the MCAQD which outlines the penalty amount resolving the included notice(s) of violation (NOV). The OAC may also include possible injunctive relief, actions the respondent must take to achieve compliance and SEP requirements.

**Otherwise Legally Required To Perform** – The proposed SEP cannot include actions that the respondent is likely to be required to perform: (a) as injunctive relief in the current case; (b) as injunctive relief in another legal action brought or

which could be brought against the respondent by another local, state, or federal agency; (c) as part of an existing settlement order in another legal action; or (d) by a local, state, or federal law or regulation.

**Penalty Mitigation** – The extent to which a SEP may be substituted for a portion of the agreed-upon penalty. Penalty mitigation includes determining the minimum amount of the calculated penalty that must be paid to the MCAQD and the amount each dollar spent on the SEP will mitigate the penalty. The amount each dollar spent on the SEP will mitigate the penalty is determined by the SEP category the project fits within and the type of the respondent's organization (see Section G this policy).

**Reasonable Costs** – A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration shall be given to:

1. Whether the cost is of a type generally recognized as ordinary and necessary for the performance of the project.
2. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the OAC and this policy.
3. Market prices for comparable goods or services.
4. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the MCAQD and the public at large.
5. Significant deviations from established practices which may unjustifiably increase the SEP cost.

**Respondent** – The company, business, person, municipality, government, or entity that enters into an OAC with the MCAQD.

**SEP Idea Bank** – A list of pre-evaluated and conceptually approved projects available for consideration in enforcement cases in which a SEP is being considered as part of settlement discussions. A SEP Idea Bank allows respondents to choose a project that has already been vetted by the agency.

**Small Business** - Owned or operated by a person that employs 100 or fewer individuals.

**Supplemental Environmental Project** – An environmentally beneficial project which a respondent agrees to undertake in settlement of an enforcement action, but which the respondent is not otherwise legally required to perform.

**Timely** - Completing the project and interim goals/milestones on time and in accordance with the schedule outlined in the OAC.

## **PROCEDURES:**

### **A. Criteria for an Acceptable SEP**

1. All SEPs must have a strict air quality nexus but can address a pollutant other than the pollutant for which the NOV was issued.
2. The MCAQD may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. MCAQD may not manage or administer the SEP. MCAQD may perform oversight to ensure that a project is implemented pursuant to the provisions of the OAC and must have legal recourse if the SEP is not adequately performed.
3. A SEP may be disapproved where the MCAQD determines that the time and resources which it must dedicate to project oversight are overly burdensome. The factors that shall be considered in determining whether a SEP is overly burdensome are: time required, staff workload, length of the proposed project, technical complexity of the project, and the complexity of MCAQD oversight.
4. The type and scope of each project must be explicitly defined in the signed OAC. The OAC shall describe the specific actions to be performed by the respondent and provide for a reliable and objective means to verify that the respondent has completed the project in a timely manner. This will require the respondent to submit periodic reports to MCAQD as outlined in the "Reporting Requirements" section of this policy.
5. The proposed SEP cannot include any activity or project that the respondent is otherwise legally required to perform.
6. Implementation of the project shall not have commenced prior to MCAQD review and approval of the project and signing of the OAC.
7. The OAC will stipulate that whenever the respondent publicizes a SEP or the results of a SEP, it will state in a legible and prominent manner that the project is being undertaken as part of the settlement of an enforcement action.

8. A project cannot be used to satisfy MCAQD's statutory obligation or another regulatory agency's obligation to perform a particular activity. Furthermore, if a state statute prohibits the expenditure of county resources on a particular activity, MCAQD cannot consider projects that would appear to circumvent that prohibition.
9. A project must not provide additional resources to support specific activities performed by MCAQD employees or MCAQD contractors.

#### **B. Department Discretion**

The MCAQD, in its sole discretion, may deny any SEP proposal at any time during the negotiations process for any reason. Procedures contained in this policy are intended solely for the guidance of the MCAQD personnel. They are not intended and cannot be relied upon to create rights, substantive or procedural, that are enforceable by any person. The MCAQD reserves the right to act at variance with this policy. The approval of any SEP shall not be considered a precedent for any subsequent SEP.

#### **C. Respondent's Suitability for a SEP**

The respondent's compliance history and capacity to successfully and promptly complete the project must be examined during evaluation of a proposed SEP. A respondent who is a repeat offender may be a less appropriate candidate for a SEP than a first-time offender, since a repeat offender has already demonstrated an inability or unwillingness to meet environmental requirements. In addition, a respondent who exhibits a lack of cooperation, fails to make efforts to come into compliance, misses deadlines during the negotiation process, or is unresponsive (e.g. fails to respond to requests for information, fails to return phone calls, fails to respond to emails, etc.) may be an inappropriate candidate for a SEP.

#### **D. SEP Submittal Process**

The respondent should notify the MCAQD of any interest in pursuing a SEP early in the settlement negotiation process and a SEP proposal shall be submitted no later than twenty-one (21) days following the MCAQD settlement offer. All proposed SEPs must provide sufficient information to demonstrate that the proposal meets all applicable requirements listed in this policy. Proposed projects shall be submitted for the MCAQD review using the SEP Application Form contained in Appendix A of this policy.

#### **E. SEP Review Process**

After receipt of a complete SEP proposal, the MCAQD will review the proposal to determine whether the proposed SEP meets all applicable requirements listed in this policy. The MCAQD may also require financial information verifying the respondent's ability to complete the SEP or any other additional information. In the event the MCAQD determines that the proposed SEP meets all the applicable requirements listed in this policy and is acceptable to the MCAQD, the MCAQD will determine the amount of penalty mitigation to be granted to the respondent in consideration of the performance of the SEP. Upon completion of the MCAQD review, the MCAQD will notify the respondent of any modifications to the proposed SEP required for MCAQD approval, the amount of the penalty mitigation to be granted in consideration of performance of the SEP, and the provisions (e.g., implementation schedules, reporting requirements, penalties for failure to perform, other compliance provisions, etc.) required to be included in the OAC for MCAQD approval of the SEP.

In the event a SEP proposal is denied, the MCAQD will provide notification of the SEP denial identifying the reasons for denial (e.g., proposal failed to meet the SEP criteria, inadequate financial data was provided, etc.) and provide the information necessary for MCAQD reconsideration, if appropriate. In the event SEP negotiations delay or threaten to delay resolution of the alleged violations through an OAC, the MCAQD may deny the SEP. The MCAQD, in its sole discretion, may deny any SEP proposal at any time during the negotiations process for any reason.

#### **F. Project Costs**

A detailed estimate of project costs shall be required as part of the proposal. The MCAQD will use its discretion in determining the level and type of detail required for a given project. This will depend largely upon the complexity of a project and its costs and benefits.

1. Only reasonable, necessary, and actual expenses incurred by the respondent in performing the SEP shall be included in the project cost.
2. Costs that may be considered include: (1) capital costs, e.g., equipment and buildings; (2) one-time non-depreciable costs, e.g., purchasing new portable gas cans for a replacement program or developing a compliance promotion seminar; and, (3) annual operation costs minus annual savings, e.g., labor, water, raw materials, and power.
3. Only contracted labor or overtime labor by the respondent's employees will be allowed in project costs. No credit will be given for volunteer labor, labor by employees during normal work hours or for administrative costs.

4. Costs identified in the proposal and in the progress reports must be adequately documented. Documentation required may include, but is not limited to, invoices, contracts, proposals/bids, mileage records, billing records, telephone bills and other documentation that verifies the expenditure amount and appropriateness to the SEP.
5. In cases where the respondent will likely gain an economic benefit from the SEP, the value of the SEP shall be reduced to reflect the economic benefit. In making this determination, the MCAQD may use the US EPA PROJECT 3.5 computer model.
6. When a SEP calls for appreciable future costs, the value of the SEP shall be adjusted to reflect the net present value. In making this determination, the MCAQD may use the US EPA PROJECT 3.5 computer model.
7. The net present cost of a SEP may require certification by an independent Certified Public Accountant where appreciable future costs and benefits exist.
8. Out-of-pocket expenses incurred by the respondent in performing the SEP may not be used as a deduction or business expense on any form of tax return. Equipment installations are not eligible for tax exemption certification as pollution control facility or pollution control equipment.

### **G. Penalty Mitigation**

Penalties are an important part of any settlement for legal and policy reasons. Penalties seek to deter future air quality violations and level the playing field with compliant companies. A SEP may mitigate only a portion of the calculated penalty. A percentage of the agreed-upon penalty shall be reserved as a monetary penalty and may not be included in the SEP cost.

There are two steps in determining the extent to which a SEP can mitigate a penalty. The first step is to calculate the minimum amount of the calculated penalty that must be paid to the MCAQD (the penalty is calculated according to the MCAQD's Violation Penalty Policy). This amount must equal or exceed either: a) the economic benefit of noncompliance plus 10 percent of the gravity component; or b) 25 percent of the gravity component only; whichever is greater.

The second step is to determine the amount each dollar spent on the SEP will mitigate that portion of the penalty which is subject to mitigation. This amount will be determined by the SEP category the project fits within and the nature of the respondent's organization. The allowable penalty mitigation percentages are shown in the table below. Section H of this policy describes the categories of projects which may qualify as SEPs.

<b>Allowable Penalty Mitigation Percentages</b>		
<b>SEP Category</b>	<b>For-Profit</b>	<b>Governments and Not-For-Profit Organizations</b>
Pollution Prevention; Pollution Reduction	80%	100%
Environmental Compliance Promotion/Research	65%	80%
Public Health; Assessments & Audits	50%	65%

The example below shows how to determine the SEP amount (at each allowable penalty mitigation percentage) needed to mitigate the balance of the penalty amount assuming a for-profit facility has a calculated penalty amount of \$10,000 (the gravity component of the penalty is \$10,000).

<b>Example</b>	<b>80% Penalty Mitigation</b>	<b>65% Penalty Mitigation</b>	<b>50% Penalty Mitigation</b>
Calculated penalty (gravity component is \$10,000)	\$10,000	\$10,000	\$10,000
Minimum penalty amount to be paid (25% of the gravity component)	\$2,500	\$2,500	\$2,500
Remaining unpaid balance of the penalty	\$7,500	\$7,500	\$7,500
SEP amount needed to mitigate the balance of the penalty	$\$7,500 / 80\% = \$9,375$	$\$7,500 / 65\% = \$11,539$	$\$7,500 / 50\% = \$15,000$

## **H. Categories of Supplemental Environmental Projects**

MCAQD has identified five specific categories of projects which may qualify as SEPs. In order for a proposed project to be accepted as a SEP, it must satisfy the requirements of at least one category.

1. **Pollution Prevention** - A pollution prevention project is one which reduces the generation of pollution through “source reduction”, including any practice which reduces the amount of any pollutant being released into the ambient air, prior to treatment. Pollution prevention includes projects that increase efficiency in the use of energy or other materials. In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount of pollution released to the ambient air. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy or other materials.  
*Examples:* Purchasing and installing solar panels at schools. Conducting energy audits and weatherizing school buildings. Replace older diesel buses with alternative fueled or clean diesel buses.
2. **Pollution Reduction** - A pollution reduction project is one which results in a decrease in the amount of any pollutant being released into the ambient air by a means which does not qualify as “pollution prevention.”  
*Examples:* Reducing dust and particulate matter from unpaved, dirt, or gravel surfaces. Implementing a portable gas can replacement program to reduce volatile organic compounds (VOC) emissions. Purchasing and installing truck stop electrification technology.
3. **Environmental Compliance Promotion/Research** - An environmental compliance promotion project is one which provides training, outreach, technical support, or information to other members of the regulated community to identify, achieve or maintain compliance with applicable statutory and regulatory requirements, or go beyond compliance by reducing the generation or release of pollutants beyond legal requirements. An environmental research project is one which collects baseline environmental data to be used in research to improve, protect or reduce risks to public health and the environment and/or develops new treatment technologies that could be used to reduce the generation or release of air pollutants beyond legal requirements. Environmental compliance promotion and environmental research SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program requirements which were violated and where MCAQD has reason to believe that compliance in the sector would be significantly advanced by the proposed project.  
*Examples:* Producing a seminar directly related to correcting widespread or prevalent violations within the responsible party’s economic sector within the nonattainment area. Developing a new coating technology that reduces generation or release of VOC emissions.
4. **Public Health** - A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation. Public health SEPs are acceptable only where the primary benefit of the project is the population that was harmed or put at risk by the violations.  
*Examples:* Epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment and rehabilitation therapy.
5. **Assessments and Audits** - Identifies opportunities to reduce emissions and improve environmental performance facility-wide. The assessments and audits described below are potential SEPs under this category if they are not otherwise required as injunctive relief and the respondent agrees to provide MCAQD with a copy of the report documenting the assessment or audit.
  - Pollution prevention assessments are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the generation of air pollutants being released into the ambient air, prior to treatment. To be eligible for SEPs, such assessments must be conducted using a recognized pollution prevention assessment procedure to reduce the likelihood of future violations.
  - Environmental compliance audits are independent evaluations of the respondent's compliance status with environmental requirements. Credit is only given for the costs associated with conducting the audit. While the SEP shall require all violations discovered by the audit to be promptly corrected, no credit is given for remedying the violation. Compliance audits are acceptable as SEPs only when the respondent is a small business.

## **I. Reporting Requirements**

A SEP must contain timely and defined goals and milestones for implementing the project. To ensure that the respondent meets prescribed milestones, the following progress and final reports are required to be submitted to the MCAQD.

## **1. Progress Reports**

Monthly - For SEPs lasting 90 days or fewer, the respondent shall submit monthly progress reports on the status of the project.

Quarterly - For SEPs lasting more than 90 days, the respondent shall submit quarterly progress reports on the status of the project.

Progress reports shall itemize all costs and provide the status of the project with supporting documentation such as receipts and photographs.

## **2. Final Report**

No later than thirty (30) days after completion of the SEP, the respondent shall submit a final report documenting completion of the project. The report shall include the following:

1. A detailed description of actual out-of-pocket expenses incurred by the respondent in performing the SEP. Documentation required may include, but is not limited to, invoices, contracts, contract proposals/bids, mileage records, billing records, telephone bills and other documentation that verifies the expenditure amount and appropriateness to the SEP
2. Actual quantified benefits to the environment achieved from the project.
3. A written certification of completion of the SEP demonstrating that all SEP activities specified in the OAC have been completed in accordance with the terms and conditions of the OAC. The certification must be signed by the respondent's highest ranking local official.

On-site visits by the MCAQD to verify SEP completion may be performed for selected projects.

## **J. SEP Compliance**

1. The cost of the SEP shall be outlined in the OAC. If the respondent fails to expend all the costs outlined in the OAC, the remaining balance shall be paid to the MCAQD as a penalty amount.
2. If the respondent does not comply satisfactorily with the terms of the SEP as outlined in the OAC, the respondent shall be liable for stipulated penalties. Stipulated penalties shall be outlined in the OAC for both failure to complete the project and for missed deadlines to ensure the SEP is performed as required and in a timely manner. Stipulated penalties will be due within 30 calendar days upon request in writing from MCAQD. Stipulated penalties shall be established as follows:
  - If the SEP is not completed satisfactorily, a stipulated penalty between 75 and 150 percent of the amount by which the penalty was mitigated on account of the SEP shall be required.
  - Penalties for missed deadlines shall be assessed at an amount less than or equal to \$100 per day for each day beyond the required completion date until the requirement is met.
3. The MCAQD, in its sole discretion, shall determine whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the respondent has made good faith, timely effort to implement the SEP.
4. A respondent is responsible and liable for ensuring that a SEP is completed satisfactorily. A respondent may not transfer liability to a third party, including a contractor or consultant retained to implement a SEP.

**APPENDIX A: SEP APPLICATION FORM**  
**MARICOPA COUNTY AIR QUALITY DEPARTMENT**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT APPLICATION**

<b>RESPONDENT INFORMATION</b>		
Order of Abatement by Consent No.	Date:	Permit Number(s) (if applicable)
Name of Applicant: <i>Legal Name of Applicant or Organization</i>		
Name of the Facility:		
Mailing Address:		
City/State:	ZIP Code:	
Contact Person:	MCAQD Enforcement Officer:	
Phone Number:		
E-Mail Address:		
<b>NATURE OF VIOLATION</b>		
Provide a summary of the enforcement action being taken against the facility:		
Total Calculated Penalty Amount: \$		SEP Amount: \$
<b>DESCRIPTION OF THE PROPOSED SEP</b>		
Project Name:		
Description of the SEP, including photographs, if available:		
Project Coordinator: <i>(Name and contact information for person responsible for oversight of project and providing progress and final reports to the MCAQD. If the project coordinator changes, the respondent must provide written notice of the change to the MCAQD):</i>		
How the Project Will Be Implemented <i>(For example, the need for the project, the availability of other similar services or projects in the area, and project implementation tasks such as technology or installation requirements):</i>		
<b>DESCRIPTION OF THE PROPOSED SEP (continued)</b>		
Geographical Area to Benefit: <i>Identify specific areas, cities, and/or nonattainment areas that would be affected by the project.</i>		
Location of SEP Project: <i>(address and include map)</i>		

**MARICOPA COUNTY AIR QUALITY DEPARTMENT  
SUPPLEMENTAL ENVIRONMENTAL PROJECT APPLICATION**

Ownership of Property:

How Does the proposed SEP relate to the violation?

Will the project use respondent's personnel for labor or contract labor? *Please specify how:*

If using contract labor, specify the companies to be used and the nature of the labor:

Will the respondent be willing to complete **all** portions of the SEP, regardless of whether the SEP costs more than anticipated? Y/N

Project Schedule: *Provide a proposed project schedule that addresses project implementation and the submittal of progress reports to the MCAQD*  
**NOTE: Project implementation must not commence until after the MCAQD has signed the Order of Abatement by Consent that includes this SEP.**

Name of Project

Projected Start Date

Interim Dates

Milestone 1:

Milestone 2:

Milestone 3:

Completion Date/End of Project:

Reporting and Frequency: *All SEPs require a final report be submitted to the MCAQD no later than thirty (30) days after completion of the SEP documenting completion of the project. In addition, SEPs lasting 90 days or fewer require monthly progress report and SEPs lasting more than 90 days require quarterly reports.*

Progress Report Dates:

Final Report Date:

**PROPOSED BUDGET DETAILS** *(Use FEMA Rates for Equipment and Labor)*

Only contracted labor or overtime labor by the respondent's employees will be considered in calculating costs. No credit will be given for volunteer labor, labor by employees during normal work hours or for administrative costs. See <http://www.fema.gov/government/grant/pa/eqrates.shtm> for FEMA schedule of equipment rates.

**Double click on the table to overwrite the sample data**

**MARICOPA COUNTY AIR QUALITY DEPARTMENT  
SUPPLEMENTAL ENVIRONMENTAL PROJECT APPLICATION**

Costs	How many?	Cost of Each	Per hr, day, etc.)		No. of	Units	Total for this item
Tractors, for hauling loads	2	\$ 35.00	hour	for	4	hours	\$ 280.00
Chipper, for mulching limbs	1	\$ 87.00	day	for	8	hours	\$ 696.00
Laborers, overtime rate	2	\$ 20.00	hour	for	6	hours	\$ 240.00
Supervisor, overtime rate	1	\$ 40.00	hour	for	6	hours	\$ 240.00
Roll-off bins (includes disposal fees)	2	\$ 3,000.00	day	for	1	day	\$ 6,000.00
On-site signage	4	\$ 50.00	each				\$ 200.00
Public notification of event	1	\$ 150.00	paper	for	2	papers	\$ 300.00
Driver fees	2	\$ 50.00	hour	for	6	hours	\$ 600.00
							\$ -
							\$ -
							\$ -
							\$ -
							\$ -
<b>Total anticipated budget</b>							<b>\$ 8,556.00</b>

**EXPECTED ENVIRONMENTAL BENEFIT**

*Explain in as much detail as possible the expected environmental benefits of this project and quantify the environmental benefits to the extent practical. Even if the benefits seem obvious (e.g. reducing pollution) you still must clearly state how the implementation of the SEP project will result in measurable environmental benefits.*

For pollution prevention or reduction projects - *Quantify the amount of each pollutant that is expected to be reduced beyond the level required for environmental compliance.*

For all other types of projects - *Quantify the number of participants, programs offered, educational materials provided, energy audits performed, etc.*

**PREVIOUS COMMITMENT CERTIFICATION** (No Separate Requirement or Private Commitments):

**MARICOPA COUNTY AIR QUALITY DEPARTMENT  
SUPPLEMENTAL ENVIRONMENTAL PROJECT APPLICATION**

I certify on behalf of the Respondent that the Respondent has not previously committed to perform this project including a previous obligation to complete the proposed SEP:

1. under any applicable local, state, or federal regulations, consent agreement, or administrative order that would require implementation of this project or any part of this project; and
2. as a part of the U.S. Environmental Protection Agency's Project XL or any other incentive or regulatory flexibility program.

**Certification statement:** Please accept this implementation plan for the SEP as a certification that the information is true and correct and that the proposed project is being undertaken solely as part of the settlement of the enforcement action.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**FUNDING CERTIFICATION** *(No Prior Monetary Commitments or Separate Funding):*

Provide the following separate certification that no funding has been budgeted to the project prior to the approval of the SEP, nor will the SEP portion of the proposed project be funded by grants, donations, low interest loans, or other sources of funding attributable to the respondent's normal budgetary process without prior notice to the MCAQD.

**Certification statement:** Please accept this implementation plan for the SEP as a certification that no funding has been previously budgeted to the project prior to its approval by the MCAQD, and that the project will not receive duplicative funding by grants or donations from any source.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**APPENDIX B:  
GUIDELINES TO SUBMIT PROJECT IDEAS  
FOR INCLUSION IN THE MCAQD SEP IDEA BANK**

The MCAQD will collect project ideas for inclusion in a SEP Idea Bank.

Projects can be submitted for possible inclusion in the SEP Idea Bank by submitting a detailed description of the proposed project using the MCAQD Supplemental Environmental Project Idea Bank Application provided in this appendix.

A review committee established by the MCAQD will evaluate projects submitted for inclusion in the MCAQD's SEP Idea Bank. Ideas approved for inclusion in the SEP Idea Bank will be made available on MCAQD's website for consideration in future enforcement cases. Project ideas will remain in the SEP Idea Bank for a minimum of two years from the date of submission.

When evaluating a proposed project for inclusion as a SEP in an OAC, the MCAQD considers many factors. A SEP must improve, protect, or reduce risks to public health, or the environment at large. The most important factors are the public health or environmental benefits expected from the project, and the relationship of the project to the underlying violation in the enforcement action. Other factors include such things as the pollutant of concern, immediate geographic area of the proposed project, impact on sensitive human populations, impact on sensitive ecosystems, type of project, estimated cost, and the length of time estimated for the project to be implemented or completed.

If you would like to submit a project idea for the SEP Idea Bank, please submit a completed MCAQD Supplemental Environmental Project Idea Bank Application to:

SEP Idea Bank  
Attention: Enforcement Division  
Address: Maricopa County Air Quality Department, 1001 N. Central Avenue, Suite 600, Phoenix, AZ 85004

<b>MARICOPA COUNTY AIR QUALITY DEPARTMENT SUPPLEMENTAL ENVIRONMENTAL PROJECT IDEA BANK APPLICATION</b>	
<b>1. APPLICANT INFORMATION</b>	
Name of Organization/Applicant: (Full legal name)	Date:
Business Address:	City, State, and Zip Code
Mailing Address (if different from street address)	City, State, and Zip Code
Contact Person and phone no.: (Name of person to call for questions)	Fax Number:  E-Mail Address:
Previous SEP performance history or funds management experience: Please tell us about any applicable previous experience managing funds or performing projects.	

**MARICOPA COUNTY AIR QUALITY DEPARTMENT  
SUPPLEMENTAL ENVIRONMENTAL PROJECT IDEA BANK APPLICATION**

Does your organization carry comprehensive general liability insurance? Yes _____ No _____  Type of organization: For-profit _____ Non-profit* _____ Government _____  *If non-profit, please provide a copy of your 501c(3) exemption	Is your organization willing to maintain a separate bank account for SEP funds? Yes _____ No _____
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**2. NAME OF PROPOSED PROJECT**

Please provide a project name:

Estimated Total Project Cost:	\$ _____	Minimum amount of contribution your organization will accept:	\$ _____
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**3. PROJECT DESCRIPTION**

**a. General Description:** Provide a brief general description of the SEP, including photographs, if available.

**b. Project Implementation:** Describe how the project will be implemented, including: the need for the project, the availability of other similar services or projects in the area, and project implementation tasks such as technology, operation or process changes.

i. How project is to be implemented (technology, operation, or process changes):

ii. Need for the project:

iii. Availability of other similar projects in the area:

iv. Project implementation tasks:

Specific Location of SEP Project: Please provide a detailed description, including maps, if available:

**3. PROJECT DESCRIPTION (continued)**

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Ownership of SEP project site:

Does the proposed SEP involve correction of a violation that was caused by or for which applicant is responsible for correcting? Y/N If so, how?

Will the project use applicant's personnel for labor or contract labor? *Please specify how:*

Will the applicant be willing to complete **all** portions of the SEP, regardless of whether the SEP costs more than anticipated? Y/N

**4. EXPECTED ENVIRONMENTAL BENEFIT**

Explain in as much detail as possible the expected environmental benefits of this project and quantify the environmental benefits to the extent practical. Even if the benefits seem obvious (e.g. reducing pollution) you still must clearly state how the implementation of the SEP project will result in measurable environmental benefits.

For pollution prevention or reduction projects - Quantify the amount of each pollutant that is expected to be reduced beyond the level required for environmental compliance.

For all other types of projects - Quantify the number of participants, programs offered, etc.

**5. PROPOSED PROJECT SCHEDULE**

**Project**

Name of Project

Projected Start Date

Interim Dates

Phase 1:

Phase 2:

Completion Date/End of Project:

**6. PROPOSED BUDGET DETAILS:** Only contracted labor or applicant's labor at a reasonable and customary rate will be given credit in the budget. No credit will be given for volunteer labor or non-direct expenses.

**Double click on the table to overwrite the sample data**

**MARICOPA COUNTY AIR QUALITY DEPARTMENT  
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Costs	How many?	Cost of Each	Per hr, day, etc.)	No. of	Units	Total for this item
Tractors, for hauling loads	2	\$ 35.00	hour	for	4 hours	\$ 280.00
Chipper, for mulching limbs	1	\$ 87.00	day	for	8 hours	\$ 696.00
Laborers, overtime rate	2	\$ 20.00	hour	for	6 hours	\$ 240.00
Supervisor, overtime rate	1	\$ 40.00	hour	for	6 hours	\$ 240.00
Roll-off bins (includes disposal fees)	2	\$ 3,000.00	day	for	1 day	\$ 6,000.00
On-site signage	4	\$ 50.00	each			\$ 200.00
Public notification of event	1	\$ 150.00	paper	for	2 papers	\$ 300.00
Driver fees	2	\$ 50.00	hour	for	6 hours	\$ 600.00
						\$ -
<b>Total anticipated budget</b>						<b>\$ 8,556.00</b>

**7. NO PREVIOUS COMMITMENT, NO SEPARATE REQUIREMENTS, NO DUPLICATIVE FUNDING**

I certify on behalf of the Applicant that the Applicant:

1. has not previously committed to perform this project including a previous obligation to complete the proposed SEP:
  - a. under any applicable local, state, or federal regulations, consent agreement, or administrative order that would require implementation of this project or any part of this project; and
  - b. as a part of the U.S. environmental Protection Agency's Project XL or any other incentive or regulatory flexibility program.
2. is undertaking the proposed project.
3. has not previously budgeted funding for the project prior to its approval by the MCAQD, and
4. will not receive duplicative funding by grants or donations from any source for the project.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title