Maricopa County Air Quality Department
Draft Enforcement Policies
October 21, 2013

The Maricopa County Air Quality Department (MCAQD) has scheduled a second workshop on proposed revisions to four enforcement-related policies on Wednesday, October 30, 2013 at 9:30 am, 1001 N. Central Avenue, Phoenix, AZ 85004. All visitors to the MCAQD office located at 1001 N. Central Ave, Phoenix, AZ will need to check-in at the reception area in suite 125 and then proceed to the 9th floor classroom. The four draft policies are:

- Violation Reporting and Enforcement
- Ombudsman Review
- Administrative Hearing Appeal Process
- Opportunity to Correct

Enforcement policies ensure that the department will respond appropriately, consistently, and timely to instances of noncompliance. Following an Enforcement Summit in 2008, the department agreed to implement a number of new processes and policies to make MCAQD's enforcement program more effective and consistent. Since 2008, MCAQD has developed and implemented an Ombudsman review policy, administrative hearing appeal guideline, opportunity to correct notice and policy, violation self-reporting policy and a supplemental environmental projects policy.

For the October 30th workshop, MCAQD is proposing revisions to update the four policies and incorporate statutory changes enacted since the last revision of each policy. The revisions to each policy are summarized below:

Violation Reporting and Enforcement: MCAQD is proposing revisions to the Violation Reporting and Enforcement policy to describe MCAQD's comprehensive guidance for the enforcement process. In addition, the proposed revisions to this policy also incorporate statutory changes enacted since the last revision of this policy. Other minor changes clarify, improve consistency between policies and re-format the policy. Specific revisions include:

- Incorporated and referenced the new policies in the description of the department's enforcement process.
- Added a timeline for providing a timely copy of the inspection report.
- Made revisions to violation identification and referral process to be consistent with statutory changes enacted in HB2665 and more recent legislation.
- Inserted a new section that describes the process for disputing the inspections findings for initial notices of noncompliance.
- Clarified that the timeframe for requesting Ombudsman review runs concurrent with the period for providing a written response identifying how the noncompliance has been corrected.
- Clarified the 10 calendar day period for e-mail and mail notifications.
- Updated the penalties text to include new Maricopa County Ordinances, the new asbestos penalty guidelines and Violation Self-Reporting policy as documents that contain additional specifics regarding penalties.

- Inserted a new section describing the Violation Self-Reporting policy.
- Revised the supplemental environmental projects section to reference the new department Supplemental Environmental Projects policy instead of EPA's policy.
- Inserted a new section describing the further review of Orders of Abatement by Consent or Orders of Abatement referencing the Ombudsman review process and administrative hearing before an administrative law judge in addition to the hearing board.
- Added additional appendices for the inspection rights form and identification of violation and Ombudsman review flow charts.

Ombudsman Review: MCAQD is proposing to streamline the former Ombudsman Services policy guideline by separating the Ombudsman review functions from the small business assistance functions that do not require policy level documentation. The revised policy has been renamed the Ombudsman Review Policy. Other minor changes clarify, improve consistency between policies and re-format the policy. For the second workshop, MCAQD deleted of the scope of authority section and moved its subsections into the following sections as appropriate and added a provision clarifying that the timeframe for requesting Ombudsman review runs concurrent with the period for providing a written response identifying how the noncompliance has been corrected.

Administrative Hearing Appeal Process: MCAQD is proposing revisions to the Administrative Hearing Appeal Process policy to incorporate the Ombudsman review process and timelines into the former guideline and converting the document into a policy. Other minor changes clarify, improve consistency between policies and re-format the document. For the second workshop, MCAQD separated the policy provisions into two tracks. The first track applies to requests for a hearing to dispute inspection findings which are not appealable agency actions and the second track applies to appealable agency actions.

Opportunity to Correct: MCAQD is proposing revisions to the Opportunity to Correct policy to add specific no permit and expired permit examples that may qualify as minor violations and to recognize that minor violations that corrected in the presence of the inspector generally will not result in the issuance of an OTC unless they are repeat violations. Other minor changes clarify and correct typographical errors in the policy.

Maricopa County Air Quality Department	*Number:* *PP-2013-002* *Title:* **Violation Reporting and Enforcement**	
Author:		*Issue Date:* *November XX, 2013* *Revision Date* *Review Date:* *November XX, 2013*
Approved by: _____		**William D. Wiley, Director**

I. Purpose

The purpose of this policy is to establish an appropriate process for documenting air quality violations, notifying alleged violators, and initiating enforcement action to ensure violations are addressed in a timely and appropriate manner. This policy supersedes the Air Quality Violation Reporting and Enforcement Policy (DPPN-10-00-06 ES).

II. Statement of Policy

The department will respond appropriately, consistently, and timely to instances of noncompliance. The response will be tailored to reflect the nature, scope and origin of the violation and be commensurate with the significance and cause of the violation. Compliance with the rules is essential to the Maricopa County Air Quality Department's mission and to ensuring a level playing field for all.

III. Inspection/Identification/Documentation of Violations

A. Inspections of permitted sources shall be conducted in accordance with Arizona Revised Statutes (A.R.S.) §41-1009 and §49-471.03, except that §41-1009, subsection O, paragraph 1 does not apply.

B. Upon entering a site for inspection purposes, the inspector(s) will identify themselves and present appropriate photo identification. In addition, the inspector(s) will explain the legal authority for conducting the inspection and present a list of inspection rights to the responsible person representing the entity being inspected. See Attachment A for the Notice of Inspection Rights.

C. 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, Rule 100 section 105, and department personnel shall assist the Control Officer and/or Deputy County Attorney in the preparation of all documents required pursuant to A.R.S. §49-488 to obtain a Special Inspection Warrant.

D. A copy of an inspection report will be provided at the time of inspection or within 30 working days in accordance with (A.R.S.) §41-1009(D) and §49-471.03. The inspection report will indicate the compliance status of the site at the time of inspection.

~~D.~~E. When noncompliance is identified, the inspector will issue a warning notice, an Opportunity to Correct (OTC) or a Notice of Violation (NOV), as appropriate, at the time of inspection or later after consultation with his or her supervisor. These notifications are used to put the responsible party on notice that the Department believes a violation has occurred See Attachment B ~~Identification of Violation Chart~~Enforcement Case Flow Diagram.

1. If a warning notice, an NOV or OTC is issued, it must be issued to an owner, operator, responsible official or permit holder.

2. If the owner, operator, responsible official or permit holder is not available or refuses to sign the warning notice, NOV or OTC, the document will be mailed and/or provided electronically.

3. The warning notice, NOV and OTC documents will contain the following:

   a. Information specific to the violator (name, address, location of violation, permit/notification/certification/registration number),

   b. Date of inspection and date of occurrence,

   c. A citation to the specific provisions of the rule, permit condition or statute,

   d. Identification of any documents relied on as the basis for the noncompliance.

   e. An explanation stated with reasonable specificity of the regulatory and factual basis for the noncompliance known to the department at the time of issuance, and

   f. Instructions for obtaining a timely opportunity to discuss the cited noncompliance with the department and/or request Ombudsman review. The 10 business day period runs concurrent with the requirement that anyone receiving notice of noncompliance provide to the department a written response to the notice within 10 business days of receipt identifying how the noncompliant activity has been corrected.

4. A separate disposition inspection will be conducted if the violation is not corrected at the time of the inspection.

5. The findings of a disposition inspection shall be documented. When a disposition inspection reveals the violation was not corrected, the inspector will issue an NOV or issue an additional NOV(s) to document the continuing violation.

~~E.~~F. When an NOV is issued, the inspector shall prepare a referral report that describes the rules and statutes the department believes the party has violated~~ion~~ and includes the name, title, address, telephone numbers and any relevant statements made by the responsible party~~violator~~ and witnesses. The referral report shall also include supporting evidence such as OTCs and NOVs, photographs, videos, compliance inspection reports, correspondence, records, analytical test results and other appropriate documentation.

~~F.~~G. An inspector shall submit the referral report and supporting evidence to his or her supervisor for evaluation and possible referral to the Enforcement Section. The supervisor will determine whether a referral report is sufficiently documented and appropriate for processing by the Enforcement Section.

~~G.~~H. At any time, a warning notice, an OTC or NOV may be rescinded if it is determined that the evidence for the warning notice, OTC or NOV is insufficient, an error has been made in the document, or for any other reason deemed appropriate in the interest of fairness and equity.

~~H.~~I. The department in its discretion may issue an NOV for any documented noncompliance. Generally, NOVs will be issued for noncompliance that does not qualify as a minor violation based on the criteria and considerations provided in Opportunity to Correct Policy, PP-2011-003, or when an OTC has been issued and the noncompliance is not corrected within 24 hours and a written response is not received within 10 business days. Please refer to the Opportunity to Correct Policy, PP-2011-003, for details. If an NOV is issued based on failure to correct noncompliance documented by an OTC, the date of violation shall be considered to begin upon initial discovery of the noncompliance.

~~I.~~J. If the department has not yet received delegation of authority for any new or revised provision of a federal New Source Performance Standard (40 CFR Part 60) or National Emission Standard for Hazardous Air Pollutants (40 CFR Parts 61 and 63), the department may issue a warning notice advising a regulated person of instances of noncompliance with those new or revised provisions of the federal rules. The department may also issue a warning notice for the first violation of a Maricopa County ordinance.

IV. To Dispute the Inspection Findings for Initial Notices of Noncompliance

A. Each OTC or NOV will state that a formal request for ombudsman review of the notice must be made in writing within 10 business days of receipt. If a respondent does not take the opportunity to request Ombudsman review within the 10 business days provided, a second opportunity to request review will be provided under Section X.A. Please see Attachment B Enforcement Case Flow Diagram and refer to the Ombudsman Review Policy for details. However, requests made after the 10 day period may be considered when circumstances warrant and acceptance for review is at the discretion of the Ombudsman. To be considered timely, 10 business days will be counted as follows:

   i. E-mail—The department assumes same day receipt of an e-mail containing the notice and counts 10 business days, or

   ii. Mail—The department assumes an additional 5 days will account for mail delivery and counts 15 days from the day the letter is mailed.

B. Under A.R.S. §49-1009(G) and §49-471.03, a regulated person not offered an opportunity to correct may also request a written explanation of the reason an opportunity to correct was not allowed.

V. Enforcement

A. An enforcement officer will review each referred NOV to determine an appropriate course of action and shall maintain a database reflecting the current status of all enforcement actions. The department's NOV status database will be available on the department's website.

B. When necessary, the enforcement officer will consult with appropriate staff or the County Attorney, as part of the review and enforcement process. See Attachment ~~C~~B for ~~a Formal~~the Enforcement Case Flow Diagram.

C. Certain violations may be enforceable by the U.S. Environmental Protection Agency (EPA). The department may refer cases to EPA at its discretion or, where the department does not have the authority to enforce a federally enforceable provision as described in Section III. I above, will notify EPA of that discovery.

D. Arizona Revised Statutes authorize the following enforcement actions for any violation under the jurisdiction of the Control Officer:

1. Order of Abatement by Consent (OAC)

   Under A.R.S. §49-511.E, the Control Officer may enter into an Order of Abatement by Consent. The Control Officer may agree to accept monetary payments and may include supplemental environmental projects in lieu of a portion of the monetary payment 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 enforcement officer is responsible for negotiating the terms of an Order of Abatement by Consent.

2. Order of Abatement

   1. Under to A.R.S. §49-511, the Control Officer may issue an Order of Abatement to address ongoing violations. An Order of Abatement is prepared by an enforcement officer and must be approved and signed by the Control Officer. The Order of Abatement will be served upon the respondent either in person or by certified mail. Copies of an Order of Abatement may be sent to the compliance division manager, inspector, enforcement officer, EPA, the Arizona Department of Environmental Quality (ADEQ), the County Attorney's office, and members of the Air Pollution Control Hearing Board.
   2. An inspector shall conduct follow-up investigations to determine whether there has been compliance or noncompliance with the provisions of an Order of Abatement. The inspector shall send a follow-up investigation report to the designated enforcement officer.

3. Civil Complaint

   Under A.R.S. §49-513, the Control Officer may refer a violation to the County Attorney 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 Section.

4. Notice to Appear and Complaint (Criminal Complaint)

   Under A.R.S. §49-502, and A.R.S. §49-514, the Control Officer may 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 Section personnel may assist the County Attorney's office in related activities, including arraignments, pre-trial conferences and meetings with defendants.

5. Notice to Appear and Complaint (Civil Complaint)

   Under A.R.S. §11-871 and A.R.S. §11-876, the Control Officer may 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 may assist the County Attorney's office in related activities, including arraignments, pre-trial conferences and meetings with defendants.

6. Injunctive Relief

   Under A.R.S. §49-512, the Control Officer may refer a violation to the County Attorney 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.

VI. High Priority 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 (Attachment E) 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) are 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).

VII. Penalty Calculations

Enforcement Division personnel shall utilize the Maricopa County Air Quality Violation Penalty Policy, its Appendices (including but not limited to the Asbestos Demolition and Renovation Penalty Guidelines – PP-2012-001), Computation Worksheets and guidelines to calculate appropriate settlement penalties for all violations, except those listed below which are specifically covered by statute, ordinance, state, federal or department policy.

A. Unlawful open burning violation penalties shall be assessed pursuant to A.R.S. §49-501 and Maricopa County Air Quality Department's Violation Penalty Policy.

B. Leaf Blower Restriction Ordinance (P-25) violation penalties shall be assessed pursuant to the Maricopa County Ordinance.

C. Vehicle Idling Restriction Ordinance (P-21) violation penalties shall be assessed pursuant to the Maricopa County Ordinance.

D. Residential Woodburning Restriction Ordinance (P-26) violation penalties shall be assessed pursuant to the Maricopa County Ordinance.

E. Travel Reduction Program violation penalties 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 A.R.S. §49-593.

F. Penalties for self-reported violations are discussed in the Self-Reporting Policy, PP-2012-002.

VIII. Self-Reporting Violations

Under the Violation Self-Reporting Policy, the department may reduce all or a portion of the proposed civil penalties for violations that are voluntarily discovered and promptly disclosed and corrected. Please refer to the Violation Self-Reporting Policy, PP-2012-002, for details.

IX. Supplemental Environmental Projects (SEPs)

A Supplemental Environmental Project may be accepted in lieu of a portion of the monetary payments assessed and incorporated into an Order of Abatement by Consent in accordance with the Supplemental Environmental Projects Policy PP-2012-003. A proposal for a SEP must meet the minimal value identified in the SEP policy.

X. Further Review of Orders of Abatement by Consent or Orders of Abatement

A. Order of Abatement by Consent (OAC)

1. **Respondents that have not requested ombudsman review of specific findings at the time they received the NOV**: Within 10 business days after the receipt of a Final Offer to Settle letter, a respondent may request ombudsman review to dispute the inspection findings for the violations identified in the proposed OAC. Please refer to the Ombudsman Review Policy for details.

2. **Further review before an administrative law judge**: As a prerequisite to requesting a hearing before an administrative law judge to dispute the inspection findings, appellants must utilize MCAQD ombudsman services. Please refer to the Administrative Hearing Policy for details. Depending on when a respondent utilizes MCAQD Ombudsman services, the respondent may request a hearing before an administrative law judge to dispute the inspection findings for the proposed OAC within one of the following two timeframes:

   a. Within 10 business days after receipt of the Ombudsman letter of final decision or recommendation, or

   b. Within 10 business days after receipt of a Final Offer to Settle letter.

B. Order of Abatement

1. Within 30 days of the date of issuance of an Order of Abatement, the respondent may request a hearing for review by the Air Pollution Control Hearing Board. For review by the Air Pollution Control Hearing Board, please refer to Rule 400 for details.

2. When the respondent of an Order of Abatement requests a hearing before the Air Pollution Control Hearing Board, the hearing administrator is responsible for scheduling and publicizing the hearing pursuant to A.R.S. §49-490 and §49-498.

XI. References

Arizona Revised Statutes (A.R.S.) - Title 41 and Title 49

Maricopa County Air Pollution Control Regulations

P-21 Vehicle Idling Restriction Ordinance

P-25 Leaf Blower Restriction Ordinance

P-26 Residential Woodburning Restriction Ordinance

P-27 Vehicle Parking and Use on Unstabilized Vacant Lots Ordinance

P-28 Off-Road Vehicle Use in Unincorporated Areas of Maricopa County Ordinance

Maricopa County Air Quality Violation Penalty Policy

Maricopa County Air Quality Asbestos Demolition and renovation Penalty Guidelines (Violation Penalty Policy Appendix A)

Maricopa County Air Quality Self-Reporting Policy

Maricopa County Air Quality Ombudsman Review Policy

Maricopa County Air Quality Administrative Hearing Policy

Maricopa County Air Quality Supplemental Environmental Projects Policy

EPA's Timely and Appropriate (T&A) Enforcement Response to High Priority Violations (HPVs)

Maricopa County Air Quality Department	*Number:* *PP-2013-004* *Title:* **Ombudsman Review Policy**	
Author: Kenneth Hooker		*Issue Date: November XX, 2013* *Revision Date* *Review Date: November XX, 2015*
Approved by: _____		**William D. Wiley, Director**

XII. Purpose

The purpose of this policy is to establish a protocol to process formal requests for departmental review to dispute inspection findings.

XIII. Statement of Policy

The Ombudsman will handle all formal requests for departmental review to dispute inspection findings by conducting an independent and objective review at one of two points in the enforcement process. Ombudsman review is available either initially upon receipt of an OTC or NOV or later upon receipt of a Final Offer to Settle letter. Notwithstanding this policy, the department may, where the seriousness of the violations discovered require immediate action, opt to forward an enforcement matter directly to the Office of the County Attorney. In such instances, Ombudsman review will not be available.

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~~**XIV. Ombudsman Review—Scope of Authority**~~

~~A. The role of the Ombudsman is to provide an independent and objective review at the formal request of respondents who wish to dispute the inspection findings provided in a Notice of Violation (NOV) or Opportunity to Correct (OTC) or that form the basis for the Order of Abatement by Consent (OAC) Final Offer to Settle letter.~~

~~B. Based on the information provided by the respondent, the Ombudsman will conduct a review, confer with department staff, and then make a recommendation as to whether the NOV, OTC or OAC Final Offer to Settle letter should be modified, withdrawn, rescinded or validated.~~

~~C. Once the determination is made, the Ombudsman will issue a letter to the respondent conveying the department's final decision or recommendation.~~

~~XV.~~XIV. **Initial Notices of Violation (NOV) and Opportunities to Correct (OTC)**

A. Each OTC or NOV will state that a formal written request for departmental review to dispute the inspection findings in the notice must be made in writing within 10 business days of receipt and will be handled by the department's Ombudsman. However, requests made after the 10 day period may be considered when circumstances warrant and acceptance for review is at the

discretion of the Ombudsman. This 10 day period runs concurrent with the requirement that anyone receiving a Notice of Violation provide to the department a written response to the NOV within 10 days of receipt identifying how the noncompliant activity has been corrected.

B. The written request should provide sufficient information to allow the Ombudsman to make an informed and objective assessment and recommendation regarding the issues raised in defense.

C. The Ombudsman will contact the respondent, if practical, to acknowledge receipt of the request, describe the review process and include an opportunity to provide additional information or request a meeting.

D. Any NOV or OTC for which Ombudsman review is requested shall not be forwarded to the department's enforcement office until reviewed by the Ombudsman.

E. Disposition inspections will not be affected by this policy and will be conducted as deemed necessary by respective department staff.

F. The Ombudsman will complete the review within 45 calendar days from the date the request is received by the Ombudsman, unless otherwise authorized by the Director.

G. Ombudsman review of the disputed inspection findings may result in a recommendation to modify or rescind an NOV.

H. Once the determination is made, the Ombudsman will issue a letter to the respondent conveying the final decision.

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~~XVI.~~XV. **Final Offer to Settle through an Order of Abatement by Consent (OAC)**

The Office of the Ombudsman is available to provide an independent and objective review at the formal request of respondents who wish to dispute the inspection findings that~~e~~ form the basis of a OAC final offer to settle an enforcement case with the department following the procedures below:

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A. After the receipt of the final transmittal letter presenting an offer to enter into an OAC, a respondent will have 10 business days to submit a written request for departmental review to the department's Ombudsman.

B. The written request should provide sufficient information to allow the Ombudsman to make an informed and objective review of the issues raised by the respondent.

C. The Ombudsman will contact the respondent, if practical, to acknowledge receipt of the request, describe the review process and include an opportunity to provide additional information or request a meeting.

~~C.~~D. An enforcement action under review will not be forwarded to County Counsel for a period not to exceed 45 calendar days from the date the request is received by the Office of the Ombudsman, unless otherwise extended by the Director.

~~D.~~E. The Ombudsman's review may result in the affirmation of the NOV on which the enforcement action was based, a recommendation that the NOV be modified or rescinded, or a recommendation to modify the ~~penalty~~terms of the final offer~~.~~ to settle.

F. Once the determination is made, the Ombudsman will issue a letter to the respondent conveying the final decision.

~~XVII.~~XVI. References

Violation Enforcement and Reporting Policy

Maricopa County Air Quality Department	*Number:* *PP-2013-003* *Title:* **Administrative Hearing Appeal Process**	
Author: Heather Thrasher		*Issue Date: November XX, 2013* *Revision Date* *Review Date: November XX, 2013*
Approved by: _____		**William D. Wiley, Director**

I. Purpose

This policy establishes a framework for regulated parties to request impartial review of certain agency actions and findings in an administrative hearing before an administrative law judge. This policy supersedes Maricopa County Air Quality Department (MCAQD) Guidance Document for the Enforcement Division Appeal Process (GD-2008-01).

II. Policy

As authorized by A.R.S. §49-471.01, MCAQD provides a process for a person to request an administrative appeal hearing before an administrative law judge. This policy explains the review process for a person requesting review of appealable agency actions or disputing the inspection findings of an NOV or a proposed OAC by an impartial administrative law judge. This policy does not apply to matters that are appealable to the Air Pollution Hearing Board and does not in any way limit the department's right to take authorized actions at any time.

III. Definitions

A. **Administrative Law Judge**: An impartial third party who hears evidence from the appellant and the department before making a recommendation finding to the department's control officer.

B. **Control Officer**: The director of the Maricopa County Air Quality Department (MCAQD).

C. **Hearing Administrator**: The designated individual who coordinates the logistics for an administrative hearing that include scheduling an administrative law judge, a court reporter and the meeting room location and set up.

D. **Order of Abatement by Consent (OAC)**: An order of abatement that includes terms determined by the agreement of the parties.

IV. Requesting an Administrative Law Judge Review to Dispute Inspection Findings

A. As a prerequisite to requesting a hearing before an administrative law judge, appellants must utilize MCAQD ombudsman services.

B. Ombudsman services may be requested either within 10 business days after initial receipt of a Notice of Violation or within 10 business days after receipt of the final settlement offer from the enforcement division.

C. Within 10 business days from the date on the Final Determination Letter from the ombudsman, or a written extension to appeal granted by the department, the appellant may file a written request for review by an administrative law judge with the hearing administrator.

D. The written request must identify the appellant, appellant's address, matters being appealed and state the basis for the appeal.

~~**V. Denial of hearing**~~

E. A request for hearing may be denied for the following reasons:

~~i.~~1. If the appellant failed to provide requested information to the department on a timely basis.

~~ii.~~2. If the appellant failed to make a good faith attempt to resolve the matter through the OAC process.

~~iii.~~3. For other reasons determined by the department.

V. Requesting an Administrative Law Judge Review of Appealable Agency Actions

A. Within the timeframe prescribed by statute or rule, or a written extension to appeal granted by the department, the appellant may file a written request for review by an administrative law judge with the hearing administrator.

B. The written request must identify the appellant, appellant's address, matters being appealed and state the basis for the appeal.

~~V.~~VI. Scheduling the Hearing

A. The department will schedule a hearing within 60 ~~30~~ days of a request unless otherwise requested. Arrangements for a hearing include identifying dates when the responsible inspector(s) is available to testify, scheduling the hearing date with the appellant, an administrative law judge ~~hearing officer~~, a court reporter and Maricopa County legal counsel.

B. The department will notify all parties to the proceeding of the hearing date and will post the hearing notice on the department's online website.

VII. Hearing Procedures

At the established date and time of the hearing, the administrative law judge~~hearing officer~~ will conduct a hearing of the contested matter, hear testimony of witnesses, admit evidence and review applicable law. The hearing proceedings will be recorded and preserved as a record of the proceeding. The administrative appeal hearings will be governed by the uniform administrative procedures in A.R.S. 49.471.15 and A.R.S. Title 41, Chapter 6, Article 10 for appeals to an administrative law judge.

VIII. Final Decision

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A. The administrative law judgehearing officer will prepare a written recommendation that includes findings of fact and conclusions of law. The recommendation will be delivered or mailed to the control officer.

B. The control officer may adopt, revise or reject the administrative law judge'shearing officer's recommendation and will then issue the department's decision.

IX. Next steps

The appellant may either agree or disagree with the department's decision.

A. Reviews to Dispute Inspection Findings:

a.1. If the appellant agrees to the department's decision, the department and appellant may enter into an OAC. The OAC may include the appellant taking specified action and/or paying a penalty pursuant to A.R.S. §49-511.

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IX. Next steps

2. If the department does not dismiss the matter or the appellant fails to enter into an OAC, the department may refer the matter to the U.S. Environmental Protection Agency or the County Attorney's Office for further action which may include commencing action in Superior Court.

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B. Review of Appealable Agency Actions: If the appellant agrees to the department's decision, the agency action stands or may be modified according to the department's final decision.

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Maricopa County Air Quality Department	Number: PP-2011-003 Title: **Opportunity to Correct**	
Author: Jo Crumbaker		Issue Date: November 7, 2011 Revision Date November XX, 2013 Review Date: November 7, 2013
Approved by: _____		**William D. Wiley, Director**

I. Purpose

The purpose of the Opportunity to Correct (OTC) is to achieve compliance by uniformly and fairly issuing an enforcement action that is appropriate to the severity of noncompliance. The OTC may be issued instead of a Notice of Violation (NOV) where the noncompliance meets the requirements set forth in this policy. ~~Potential v~~Violations of Maricopa County ordinances are not covered by this policy ~~as~~ if they are otherwise subject to statutory provisions in the Arizona Revised Statutes, provisions contained in a specific ordinance, and/or to an ordinance specific enforcement policy.

II. Statement of Policy

An OTC may be issued to afford an opportunity to correct those instances of noncompliance that, based on the considerations stated below, meet the criteria for a minor violation. This policy also includes a section that lists specific instances of noncompliance that will, in most cases, meet the department's definition of minor violation and for which an OTC may be issued. An OTC may also be used for any other instance of noncompliance that meets the definition of minor violation, even if the noncompliance is not of a type listed in the specific minor violations section. If a party fails to correct the noncompliant condition within the allowed time period, the party will no longer qualify for an OTC and an NOV will be issued effective on the date of the original observation of noncompliance. Minor violations that are corrected in the presence of the inspector generally will not result in issuance of an OTC unless they are repeated minor violations.

III. Definitions

A. ***Minimal or non-existent risk*** is defined as when there is no reasonable probability of material harm to any person, the public health, safety, welfare or the environment, or there is an inability to make a reasonable determination of the level of harm resulting from the violation.

B. ***Recurring noncompliance*** is defined as a violation, for which either an OTC ~~(formerly Notice to Comply)~~ or an NOV was issued, for a same or similar noncompliant event within the past two years or during the prior inspection if the inspections occur more than two years apart. Where multiple facilities exist within Maricopa County under common ownership or common control, each facility will maintain an independent record of compliance for purposes of this policy

recognizing that generally each facility may be operated under unique conditions and by a separate staff.

IV. Minor Violation

An instance of noncompliance may be classified as a minor violation unless the department determines that the noncompliance meets the criteria and considerations listed in Sections IV.A and IV.B below. Instances of violation not ~~prohibited~~ excluded from being considered minor ~~under~~ by the criteria in Section A will be further evaluated under the considerations listed in Section B.

A. Statutory criteria

The statutory criteria in A.R.S. §49-471.03 and A.R.S. §41-1009 E. will be applied for the initial evaluation to classify an instance of noncompliance. An instance of noncompliance may be classified as a minor violation unless the department determines that the noncompliance is:

1. Committed intentionally.
2. Not correctable within a reasonable period of time as determined by the agency.
3. Evidence of a pattern of noncompliance.
4. A risk to any person, the public health, safety or welfare or the environment.

B. Other Considerations

A further evaluation of those instances of noncompliance, not excluded by the statutory criteria in Section A, will consider the factors listed below.

1. Is not correctable within a period of 24 hours upon discovery if involving emissions that pose a minimal or non-existent risk or within 10 days if the noncompliance is administrative in nature and involves no increased emissions.
2. Causes emissions of hazardous air pollutants in excess of any emission standard, limitation or other state or federal requirement that is applicable to that hazardous air pollutant.
3. Causes or contributes to a violation of any National Ambient Air Quality Standard.
4. Interferes with the department's ability to determine compliance with other state or federal requirements, Maricopa County Air Pollution Control Rules and Regulations, administrative or procedural plans or permit conditions.
5. Interferes with the department's ability to perform an assessment of risk to any person, the public health, safety or welfare or the environment as a result of the violation.
6. Results in an economic benefit by reducing costs, deferring costs or conferring a competitive advantage.
7. Is indicative of a systematic failure to comply at the corporate level, e.g. facilities are not given adequate resources to comply.
8. Is evidence of a pattern of noncompliance because there are multiple instances of non-compliance that indicate a general disregard for permit conditions, administrative or procedural plans or applicable rules.
9. Results in a nuisance.

V. Specific Minor Violations for Which an OTC May Be Issued

The following instances of noncompliance have been determined to be minor violations for which an OTC may be issued provided all the requirements listed in the minor violation section above are met:

A. Permits, Registration and Certification

1. Operation of a source without first obtaining a general or Non-Title V permit if the source has never had a permit.
2. Operation of an existing stationary source by a new owner without transfer or submittal of a permit application within thirty calendar days of the ownership transfer.
~~1.~~3. Operation of an existing stationary source with an expired general or Non-Title V permit that is not delinquent on payment of their fees.
~~2.~~4. Failure to keep a complete valid permit clearly visible and accessible at the site.
~~3.~~5. Failure of subcontractors who are working on job sites that have a Dust Control Permit/Plan to register with the MCAQD.
~~4.~~6. Subcontractor registration expired 30 calendar days or less.
~~5.~~7. Basic Dust Control Training certification expired 30 calendar days or less.
~~6.~~8. Comprehensive Dust Control Training certification expired 30 calendar days or less.
~~7.~~9. Failure of water truck drivers, water pull drivers, site superintendents or other designated on-site representative to complete Basic or Comprehensive Dust Control Training certification.

B. Records

1. Failure to submit and/or provide requested or required records by the submittal deadline, but were submitted no more than three business days after submittal deadline.
2. Inadvertent omissions or deficiencies in recordkeeping, either a missing element on any day or any few missing days, that do not prohibit an overall compliance determination. The weight of evidence should indicate compliance.

   If mass emissions, usage, VOC content, mix ratios, etc., can be estimated for the period of missing records using available data and the typical historical information (mix ratios, VOC contents, etc.,), and the estimate does not show an exceedance~~s~~ of a limit, an OTC may be issued.

   The inspector must be able to determine compliance, even with the omissions in recordkeeping, in order to issue an OTC. If compliance with the regulation cannot be determined, the inspector should issue a Notice of Violation (NOV).

   Note: If other sources of information indicate that production was abnormally high during the period, or that mix ratios, and/or VOC content varied significantly, then the violation should be issued under the standard procedures for an NOV.

3. Failure to maintain an updated list of all trades and subcontractor registration numbers.

C. Testing

1. Failure to submit a test protocol by the submittal deadline, but submitted no more than seven calendar days after the submittal deadline.
2. Failure to provide notice of a test date by the notification deadline, but submitted no more than seven calendar days after the notification deadline.
3. Failure to submit a test report by the submittal deadline, but submitted no more than ~~14~~ seven calendar days after submittal deadline.

D. Gasoline Dispensing Facilities

1. Non-gasoline liquid in fill pipe spill containment receptacles 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.
2. Dry foreign material in fill pipe spill containment receptacles 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.
3. Less than 1 inch of organic liquid, including gasoline, in a fill pipe spill containment receptacle, provided the sump is below ground and covered.

   Note: Equal to or greater than 1 inch of organic liquid is subject to an NOV.

4. Submerged fill tubes on underground and aboveground storage tanks that are greater than 6 inches and less than 8 inches from the tank bottom.

E. 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 container capacity is less than one gallon; and
   b. The container is covered immediately in the presence of the inspector.

   <u>Note:</u> The volume of liquid in all containers should not be added for the purposes of comparison with the less than one-gallon criteria. Containers that are not sealed or airtight, but are covered are not considered "open". A floating lid covering a container, through which tubing passes extracting the contents and delivering the contents to the process equipment is considered covered. A limited number of open bung holes or funnel attachments which allow solvent to be poured into the container are acceptable. Discretion must be used to determine that a good-faith effort has been made on the part of the operator to prevent emission of VOCs into the atmosphere. Open containers located in storage areas are subject to an NOV, not an OTC.

4. An insignificant number of solvent laden cloths, brushes, or stir sticks left exposed in one work area that are removed immediately in the presence of the inspector, into a closed,

leak-free container. In contrast a barrel or drum full of solvent-laden cloths would not qualify for an OTC.

Note: Cloths laden with nonvolatile oils or greases should not be considered a violation; neither an OTC nor an NOV should be issued.

5. Batch loaded, non-boiling solvent cleaners left uncovered when not in use, provided the solvent is a low volatility solvent that has an initial boiling point greater than 120°C (248°F).

F. 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 subject to Rule 310.01.
2. Failure to comply with the project information sign requirements (Rule 310) or the facility information sign requirements (Rule 316).
3. 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.
4. First-time opacity violation to the owner/operator of any operation not requiring an air quality permit.
5. First-time violations for failure to stabilize or implement controls to the owner/operator of an unpaved parking lot and unpaved road at 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.)

G. Asbestos

1. The only documented violation at the facility is a failure to thoroughly inspect the facility for the presence of asbestos, including Category 1 and Category 2 materials (as defined in the federal regulations), within 12 months of the commencement of demolition or renovation activity, and the facility complies with the following:

    a. All materials disturbed by the demolition or renovation activities remain secured onsite to be properly sampled;
    b. A prompt (conducted within seven calendar days of the initial inspection by Maricopa County Air Quality inspectors and discovery of the violation) and thorough inspection of all suspect materials either disturbed or to be disturbed is conducted by a currently certified AHERA (Asbestos Hazardous Emergency Response Act) Building Inspector (as defined in Maricopa County regulations);
    c. Upon completion of the inspection for the presence of asbestos, the report is submitted to Maricopa County for review and no Asbestos Containing Materials (ACM's) are identified including Category 1 or Category 2 materials.
    d. No prior documented violations of the federal Asbestos NESHAP regulations or Maricopa County regulations Rule 370, Section 301.8 have been issued within 5 years of date of discovery to any/all of the applicable parties (owner/operator as defined in the federal

regulations). If prior violations have been issued to any of the aforementioned parties the issuance of an OTC shall not be applicable.

2. Failure to make available worker color photo identification issued by an EPA accredited training provider on-site provided the company complies with the following:

    a. The color photo identification is made available to the inspector by the close of normal business hours the same day as the inspection; and
    b. The color photo identification is on-site and available for inspection for the duration of the job.