Maricopa County Air Quality Department

Substantive Policy Statement: SPS-2018-010
Inspection and Inspection Report Policy
Issue Date: August 26, 2019

Approved by:

Philip A McNeely

Philip A. McNeely, Director

A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the county and does not impose additional requirements or penalties on regulated parties or include confidential information or rules or ordinances adopted pursuant to Arizona Revised Statutes (A.R.S.) Title 49 (The Environment), Chapter 3 (Air Quality). [A.R.S. §§ 11-1601(8), 49-471(17)]

If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under A.R.S. § 41-1033 for a review of the statement. [A.R.S. § 41-1033]

An applicant for a license subject to A.R.S. Title 11 (Counties), Chapter 11 (County Regulations), Article 1 (General Provisions) may request a county to clarify its interpretation or application of a statute, ordinance, regulation, delegation agreement or authorized substantive policy statement affecting the procurement of that license by providing the county with a written request that satisfies the requirements of A.R.S. § 11-1609(A). [A.R.S. § 11-1609]

I. Purpose

This substantive policy statement (SPS) describes the framework for conducting inspections and issuing inspection reports.

This SPS complements the compliance assurance program being implemented by the Maricopa County Air Quality Department (MCAQD). The MCAQD pursues a comprehensive, multi-faceted program to protect air quality in Maricopa County, which includes clearly written and enforceable rules and permits together with community outreach and education. However, where these efforts alone do not result in compliance, the MCAQD addresses instances of non-compliance in a manner that is consistent with state statutes and policies established in the U.S. Environmental Protection Agency's (EPA's) "Policy on Civil Penalties".

In addition, it is important to both the MCAQD and the regulated community that the regulated community be afforded an opportunity to call the inspector or enforcement officer at any time to discuss inspection findings, which affords an open and transparent communication platform and exchange of information throughout the process.

II. Applicability

This SPS applies to all inspections conducted and inspection reports issued by the MCAQD.

III. Definitions

A. Business Day/Working Day – For the purposes of this SPS, any day during which the MCAQD is open for business, which is typically Monday through Friday but not on Maricopa County-recognized holidays that fall on any of the days Monday through Friday.

B. Enforcement Action – Order of abatement by consent, order of abatement, injunctive relief, civil or criminal complaint.

C. Inspection – In compliance with A.R.S. § 41-1009, the entry of any premises and/or the review of records of a responsible party for the purpose of assessing a facility's compliance with applicable Code of Federal Regulations, air quality control statutes, rules and/or permit conditions.

D. Inspection Report – Documentation of the compliance status of the facility at the time of the inspection.

E. Pattern of Non-Compliance – At the same facility or at multiple facilities owned or operated by the same responsible party, a violation that is regular, unvarying and repeated or multiple types of violations that indicate a general disregard for permit conditions, administrative or procedural plans or applicable rules.

F. Person – Any individual, public or private corporation, company, partnership, firm, association or society of persons, the Federal Government and any of its departments or agencies, or the State and any of its agencies, departments or political subdivisions, as well as a natural person.

G. Responsible Party – The individual or entity identified by air quality control statutes, rules and/or permits (i.e., the permit holder), who is legally responsible to bind the facility and liable for ensuring compliance.

IV. Discussion

Not applicable

V. Statutory Authority

A. A.R.S. § 41-1009 [Title 41-State Government, Chapter 6-Administrative Procedure, Article 1-General Provisions, Section 1009-Inspections and Audits; Applicability; Exceptions]

B. A.R.S. § 49-471.03 [Title 49-The Environment, Chapter 3-Air Quality, Article 3-County Air Pollution Control, Section 471.03-Inspections]

C. A.R.S. § 49-479(A) [Title 49-The Environment, Chapter 3-Air Quality, Article 3-County Air Pollution Control, Section 479-Rules; Hearing]

D. A.R.S. § 49-490 [Title 49-The Environment, Chapter 3-Air Quality, Article 3-County Air Pollution Control, Section 490-Hearings on Orders of Abatement]

E. A.R.S. § 49-498 [Title 49-The Environment, Chapter 3-Air Quality, Article 3-County Air Pollution Control, Section 498-Notice of Hearing; Publication; Service]

F. A.R.S. § 49-502 [Title 49-The Environment, Chapter 3-Air Quality, Article 3-County Air Pollution Control, Section 502-Violation; Classification]

G. A.R.S. §§ 49-511-49-514 Title 49-The Environment, Chapter 3-Air Quality, Article 3-County Air Pollution Control, Sections 511-Violations; Order of Abatement, 512-Violations; Injunctive Relief, 513-Violations; Civil Penalties, 514-Violation; Classification; Definition]

H. Maricopa County Air Pollution Control Regulations, Rule 100 (General Provisions and Definitions)

VI. Procedures

A. Inspections: Inspections are performed and documented to assess a facility's compliance with applicable Code of Federal Regulations, air quality control statutes, rules and/or permit conditions.

1. All inspections shall be performed and inspection reports provided to the responsible party in accordance with A.R.S. § 41-1009(D) and § 49-471.03, except that § 41-1009, subsection P, paragraph 1 does not apply.

2. Upon entering a site for inspection purposes:

   a. The inspector(s) will identify themselves, present appropriate photo identification and explain the legal authority for conducting the inspection.

   b. The inspector(s) will present a list of inspection rights to the responsible party representing the entity being inspected.

   c. If the responsible party denies entry to the premises for the purposes of conducting an inspection, the Control Officer may request that a magistrate issue a special inspection warrant pursuant to A.R.S. § 49-488.

3. Upon completing the inspection, the inspector will notify the responsible party:

   a. That either no violations were observed or that violations were observed and

   b. That, after the facility's records are reviewed, an inspection report will be given to the responsible party within 30 business days/working days after the inspection.

B. Inspection Report:

1. **No Violations Were Observed:** If no violations were observed during an inspection, the inspection report will be given to the responsible party within 30 business days/working days after the inspection.

2. **Violations Were Observed:** If violations were observed during an inspection, the inspection report will be given to the responsible party within 30 business days/working days after the inspection and will include the information in Section VI(B)(2)(a) and the information in either Sections VI(B)(2)(b) or (c):

   a. The alleged violation(s) of applicable Code of Federal Regulations, air quality control statutes, rules and/or permit conditions and all of the following information:

      (1) Identification of any documents relied on as a basis for the alleged violation(s).

      (2) An explanation stated with reasonable specificity of the regulatory or factual basis for the alleged violation(s).

      (3) Instructions for obtaining a timely opportunity to discuss the alleged violation(s) with the MCAQD.

   b. **If an Opportunity to Correct Cannot Be Provided:** Upon the request of the responsible party, a detailed explanation of the reason that an opportunity to correct cannot be provided, including but not limited to, because the alleged violation(s) are:

      (1) Committed intentionally.

      (2) Not correctable within a reasonable period of time as determined by the MCAQD.

      (3) Evidence of a pattern of non-compliance.

      (4) A risk to any person, the public health, safety or welfare or the environment.

   c. **If an Opportunity to Correct Is Being Provided:** An explanation that an opportunity to correct is being provided because the alleged violation(s) do not meet the criteria of Section VI(B)(2)(b)(1)-(4).

      (1) The responsible party shall notify the MCAQD when the alleged violation(s) have been corrected.

      (2) Within 30 business days/working days after receipt of the notification by the responsible party that the alleged violation(s) have been corrected, the MCAQD will determine if the responsible party is in substantial compliance and notify the responsible party whether or not the regulated party is in substantial compliance.

      (3) If the regulated party fails to correct the alleged violation(s) or the MCAQD determines the alleged violation(s) have not been corrected within a reasonable period of time, the MCAQD may take any enforcement action authorized by law for the alleged violation(s).

C. Recipient of an Inspection Report: The responsible party is typically the recipient of an inspection report. However, alleged violation(s) of applicable Code of Federal Regulations, air quality control statutes, rules and/or permit conditions may occur as a result of the actions of subcontractors working on behalf of the responsible party, or by persons not associated with the responsible party. An inspection report may be issued to a person other than the responsible party where:

1. The MCAQD is able to readily and clearly identify the subcontractors or other persons involved and;
2. The MCAQD is able to determine that the responsible party is not causing or directing the subcontractor or other person to create the alleged violation; and
3. The MCAQD is able to determine that the subcontractor actively avoided or frustrated any control measures or procedures put into place by the responsible party for the purpose of complying with the MCAQD's rules; and
4. The MCAQD is able to determine that the violation is not the result of prevailing site-wide or facility-wide conditions.

VII. Divisions Affected

A. Compliance and Enforcement

VIII. References

A. Maricopa County Air Pollution Control Regulations, Rule 100 (General Provisions and Definitions)

B. Arizona Revised Statutes Title 41 [State Government] and Title 49 [The Environment]

IX. Revision History

Version	Date	Description
1.	08-26-2019	Initial version; combines and supersedes the following policies: PP-2011-003 (Opportunity to Correct Policy) and PP-2013-002 (Violation Reporting and Enforcement Policy)
2.		