



Maricopa County Air Quality Department
Substantive Policy Statement: SPS-2018-011
Enforcement Program Policy
Issue Date: August 26, 2019

Approved by:

A handwritten signature in blue ink that reads "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 of the Maricopa County Air Quality Department's (MCAQD's) enforcement program.

This SPS complements the compliance assurance program being implemented by the 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".

II. Applicability

This SPS applies to all enforcement actions taken by the MCAQD with the exception of actions taken by the Travel Reduction Program on behalf of the Travel Reduction Program Regional Task Force established under A.R.S. § 49-582.

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. **Enforcement Case** – The inspection report and other documentation used by the MCAQD that supports a decision to issue an inspection report.
- D. **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.
- E. **Inspection Report** – Documentation of the compliance status of the facility at the time of the inspection.
- F. **Order of Abatement** – A legal order issued pursuant to A.R.S. § 49-511 to any person who is violating applicable air quality control statutes, rules and/or permit conditions. The order will notify the person of the act constituting the violation, the provision or rule being violated, the duration of the order, the alleged violator's rights to a hearing, and any conditional orders requiring the person to refrain from any activities.
- G. **Order of Abatement by Consent (OAC)** – A legal agreement between the responsible party and the MCAQD, which includes negotiated terms which may include monetary payments. The OAC may also include possible actions the responsible party must take to achieve compliance and supplemental environmental project (SEP) requirements.
- H. **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.
- I. **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.
- J. **Supplemental Environmental Project (SEP)** – An environmentally beneficial project a responsible party agrees to undertake as part of a settlement of an enforcement action that the responsible party is not otherwise legally required to perform.

IV. Discussion

Not applicable

V. Statutory Authority

- A. A.R.S. § 49-479(A) [Title 49-The Environment, Chapter 3-Air Quality, Article 3-County Air Pollution Control, Section 479-Rules; Hearing]
- B. 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]
- C. 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]
- D. A.R.S. § 49-502 [Title 49-The Environment, Chapter 3-Air Quality, Article 3-County Air Pollution Control, Section 502-Violation; Classification]
- E. 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]
- F. Maricopa County Air Pollution Control Regulations, Rule 100 (General Provisions and Definitions)

VI. Procedures

- A. **Enforcement:** Arizona Revised Statutes authorize the Control Officer to pursue enforcement and recover penalties for violations of applicable air quality control statutes, rules and/or permit conditions.
 - 1. Potential Enforcement Actions:
 - a. Order of Abatement and Order of Abatement by Consent (OAC): Under A.R.S. § 49-511, the Control Officer may issue an order of abatement to address ongoing violations. The order of abatement will be served upon the responsible party either in person or by certified mail. 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 SEPs 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.
 - (1) The MCAQD shall conduct follow-up investigations to determine whether there has been compliance or non-compliance with the provision of an order of abatement and shall document the status of compliance or non-compliance.
 - (2) The MCAQD shall report annually, by December 1, to the Governor, the President of the Senate, the Speaker of the House of Representative and the Director of the Arizona State Library, Archives and Public Records on the sources that are issued an order of abatement.

- (3) The MCAQD shall post on the MCAQD's website a notice that either an order of abatement has been issued or that an order of abatement has been renewed. The notices shall include summary information about the order or the renewal.
 - b. 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.
 - c. Notice to Appear and Criminal Complaint: Under A.R.S. § 49-502, the Control Officer may issue a notice to appear. This legal remedy requires the MCAQD to meet with the County Attorney's office to review evidence and determine a course of action.
 - d. 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.
 - e. Uniform Civil Ticket and Complaint: Under A.R.S. § 11-871 (Ordinance P-26) and A.R.S. § 11-876 (Ordinance P-21), the Control Officer may issue a uniform civil ticket and complaint.
2. Enforceability:
 - a. Certain violations may be enforceable by the Arizona Department of Environmental Quality (ADEQ). The MCAQD may refer cases related to the sources listed in A.R.S. § 49-402 to ADEQ.
 - b. Certain violations may be enforceable by the U.S. Environmental Protection Agency (EPA). The MCAQD may refer cases to the EPA at its discretion or, where the MCAQD does not have the authority to enforce a federally enforceable provision as described in Section VI(A)(1) of this policy.
 - c. If the MCAQD 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 MCAQD may issue a warning notice advising a responsible party of instances of non-compliance with those new or revised portions of the federal rules.
 - d. Regardless of this policy, the MCAQD may, where the seriousness of the alleged violations require immediate action, forward an enforcement matter directly to the Maricopa County Attorney's Office.
3. Penalty Calculations:
 - a. The MCAQD shall utilize SPS-2018-012-Penalty Assessment Policy, computation worksheets and guidelines to calculate appropriate settlement penalties for all violations, except violations which are specifically covered by statute, ordinance, state, federal or MCAQD policy.

- b. Civil penalties may be proposed by the MCAQD to resolve violations of applicable air quality control statutes, rules and/or permit conditions.
4. High Priority Violation Reporting: Violations discovered at major sources and synthetic minor sources that meet one or more of the criteria listed in the MCAQD's High Priority Violation (HPV) Determination Checklist or any site determined by the MCAQD to be a "chronic or recalcitrant violator", as defined in the EPA's Timely and Appropriate (T&A) Enforcement Response to High Priority Violations, are entered and tracked in the EPA Aerometric Information Retrieval System (AIRS) database by the AIRS coordinator. Reporting and enforcement of high priority violations shall follow the requirements of the EPA's current edition of the T&A Enforcement Response to HPVs.

B. Enforcement Case Review: A responsible party may request that the MCAQD Business Assistance Coordinator (BAC) conduct an independent and objective review of the enforcement case used to support the MCAQD decision to issue an inspection report.

1. Request shall be in writing and must:
 - a. Be received by the BAC within 10 business days/working days after receipt of the inspection report or
 - b. Be received by the BAC within 10 business days/working days after receipt of a final offer to settle letter; and
 - c. Provide sufficient information to allow the BAC to make an independent and objective assessment of the enforcement case in dispute.
2. Upon the receipt of a written request for review, the BAC shall contact the responsible party to:
 - a. Acknowledge receipt of the request for review;
 - b. Describe the business assistance review process; and
 - c. Present the opportunity for the responsible party to provide additional information or to request a meeting.
3. Enforcement case reviews will be completed within 45 business days/working days of receipt, unless otherwise authorized by the Control Officer. Pending the outcome of the BAC review, MCAQD actions regarding the inspection report shall be suspended, except for follow-up inspections conducted by the MCAQD as deemed necessary.
4. The BAC will consult with appropriate staff as part of the enforcement case review process.
5. At the conclusion of the enforcement case review, the BAC will recommend that the case be affirmed, modified or rescinded.
6. Responsible parties will be notified in writing of the enforcement case review results.

7. The responsible party 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/working days after receipt of the BAC letter of final decision or recommendation; or
 - b. Within 10 business days/working days after receipt of a final offer to settle letter.
8. Order of Abatement:
 - a. Within 30 business days/working days of the date of issuance of an order of abatement, the responsible party may request a hearing for review by the Air Pollution Control Hearing Board. For details regarding the Air Pollution Control Hearing Board, see Maricopa County Air Pollution Control Regulations, Rule 400 (Procedure before the Hearing Board).
 - b. When the responsible party 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.

VII. Divisions Affected

- A. Compliance and Enforcement
- B. Travel Reduction Program and Outreach

VIII. References

- A. Maricopa County Air Pollution Control Regulations, Rule 100 (General Provisions and Definitions)
- B. Maricopa County Air Pollution Control Regulations, Rule 110 (Violations)
- C. Maricopa County Air Pollution Control Regulations, Rule 130 (Emergency Provisions)
- D. Maricopa County Air Pollution Control Regulations, Rule 140 (Excess Emissions)
- E. Maricopa County Air Pollution Control Regulations, Rule 400 (Procedure Before the Hearing Board)

IX. Revision History

| Version | Date | Description |
|---------|------------|---|
| 1. | 08-26-2019 | Initial version; combines and supersedes the following policies: PP-2012-002 (Violation Self-Reporting Policy), PP-2013-002 (Violation Reporting and Enforcement Policy), PP-2013-003 (Administrative Hearing Appeals Process), PP-2013-004 (Enforcement Review Policy) |
| 2. | | |