

Maricopa County Air Quality Department Substantive Policy Statements

Maricopa County Air Quality Department
1001 N. Central Avenue, Suite 125
Phoenix, AZ 85004-1944

September 24, 2015



Maricopa County



Maricopa County

Air Quality Department
Policies & Procedures

Policies & Procedures:
PP-2006-01

Title: Environmental Justice

Supersedes:
Not apply

Effective: 12-19-06

Initiator: Larry Spivack, LS

Director: Bob Kard, BK

PURPOSE: The purpose of this policy is to formally make Environmental Justice an integral part of all Maricopa County Air Quality Department (MCAQD) activities.

REFERENCE: – not applicable

BACKGROUND:

MCAQD and federal air pollution control programs have made substantial progress towards achieving federal and state air quality standards. These achievements have reduced the exposures of Maricopa County residents to air pollution.

Despite this progress, Maricopa County still exceeds health-based air quality standards for ozone and particulate matter. Attaining the health-based standards for ozone and particulate matter is essential to protect the health of all of the county's residents.

Some communities experience higher exposures than others as a result of the cumulative impacts of air pollution from multiple mobile, commercial, industrial, and other sources. MCAQD shall dedicate resources and work with these communities to develop narrowly tailored remedies to reduce emissions, exposures, and health risks.

Underlying this Policy is a recognition that MCAQD needs to engage community members in a meaningful way as it carries out its activities. Residents should have information about the air they breathe and what is being done to reduce air pollution in their communities.

This Policy is intended to promote the fair treatment of all Maricopa County residents and cover the full spectrum of MCAQD activities. While the primary focus is meeting ambient air quality standards and reducing health risks, additional efforts such as air monitoring and research are needed to better understand the connections between air pollution and health. Effective enforcement of air pollution control requirements in all communities is critical to achieving environmental justice, but education and outreach complete the picture in terms of providing the opportunity for the full participation of all communities. Finally, MCAQD recognizes its obligation to work closely with all stakeholders—communities, environmental and public health organizations, industry, business owners, other agencies, and all other interested parties—to successfully implement its Environmental Justice Policy.

DEFINITIONS:

Environmental justice is defined as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

APPLICABILITY:

- A. This Policy is applicable to all branches, divisions, sections, and personnel within MCAQD.
- B. MCAQD approved this Environmental Justice Policy to establish a framework for incorporating environmental justice into its programs. This Policy applies to all communities in Maricopa County, but recognizes that environmental justice issues have been raised more in the context of low-income and minority communities.
- C. While this Policy focuses on MCAQD as an organization, it also reflects the need for state, local and other County agencies to play their part. MCAQD is committed to working as partners with these

Protecting our most vital, natural resource; air.

www.maricopa.gov/air

Department Directive:
PP-2006-01

Title: Environmental Justice

Supersedes:
Not apply

Effective: 12-19-06

Initiator: Larry Spivack, LS

Director: Bob Kard, BK

agencies to improve the available information that these agencies use to make planning and permitting decisions. MCAQD is also committed to continuing its aggressive program to control emissions leading to the violation of clean air standards. By working together to improve siting and mitigation practices, and further controlling sources within MCAQD jurisdiction, MCAQD can help address environmental justice issues at the community level throughout Maricopa County.

POLICIES:

A. MCAQD will incorporate environmental justice into all of its programs, policies, and regulations. As an organization, MCAQD will make environmental justice considerations a standard practice in the way business is conducted.

B. MCAQD will work to make information related to air-pollution and community health more accessible to those people working and living in Environmental Justice areas so that these people have an opportunity to take a more active role in decisions affecting air pollution in their communities. MCAQD will take into consideration low-income and minority communities when making this information available.

C. MCAQD will work with local agencies to enhance existing complaint resolution processes and as appropriate, work with the community and act upon community concerns to reduce air emissions.

D. MCAQD will work with communities to promote and encourage the deployment of toxic reduction air emission technologies and other air pollution prevention efforts.

PROCEDURES:

A. MCAQD Programs, Policies, and Regulations:

1. Engage in explicit discussions to ensure that proposed programs, policies, and regulations treat fairly people of all races, cultures, geographic areas, and income levels, including people living in low-income and minority communities.
2. Work with stakeholders to address, as appropriate, community concerns about air pollution emissions, exposures, and health risks, including enhanced public outreach.
3. Work with stakeholders to review current MCAQD programs to address potential environmental justice implications and add new or modified elements consistent with these Policies where there are program gaps.
4. Develop and incorporate an environmental justice program element into Departmental employee training curriculum.
5. Conduct special air monitoring studies in communities where environmental justice or other air quality concerns exist, with the goal of assessing public health risks.

B. Outreach and Education Efforts:

1. Hold meetings in communities affected by MCAQD programs, policies, and regulations at times and in places that encourage public participation, such as evenings and weekends, at centrally located community meeting rooms, libraries, and schools.
2. Assess the need for and provide translation services at public meetings.
3. Hold community meetings to update residents on the results of any special air monitoring programs conducted in their neighborhood.
4. Make staff available to attend meetings of community organizations and neighborhood groups to listen to and, where appropriate, act upon community concerns.
5. Establish within MCAQD a specific contact person for environmental justice issues.
6. Increase public awareness actions that protect public health through the K-12 education system and through outreach opportunities at the community level.
7. Make air quality and regulatory information available to communities in an easily understood and useful format, including fact sheets, mailings, brochures, and web pages.
8. Distribute fact sheets regarding the Environmental Justice Policies.

Department Directive:
PP-2006-01

Title: Environmental Justice

Supersedes:
Not apply

Effective: 12-19-06

Initiator: Larry Spivack, IS

Director: Bob Kard, BK

9. Develop and maintain as a part of MCAQD web site an area dedicated to community health that includes neighborhood air monitoring results, pollution prevention, risk reduction, and environmental justice activities.
 10. Develop and maintain a web site that provides access to the best available information about sources of air pollution in neighborhoods. Include on the web site ongoing activities to improve the quality of the information, and note the limitations and uncertainties associated with that information.
 11. Allow, encourage, and promote community access to the best available information in our databases on air quality, emission inventory, and other information archives.
 12. Distribute information on how to contact the Environmental Justice point person and MCAQD Public Information Office to obtain information and assistance regarding the Environmental Justice programs, including how to participate in the public processes.
 13. Create and distribute a simple, easy-to-read, and understandable public participation handbook.
 14. Consistent with Arizona State statutes, minimize, reduce, and, where practicable, eliminate fees for public information and enhance access to that information.
- C. Compliance and Enforcement Activities:
1. With input from stakeholders, prioritize field inspections to address categories of facilities that may have significant localized impacts and make those reports easily accessible to the public.
 2. Develop and incorporate an environmental justice awareness element into MCAQD enforcement training curriculum to promote fair enforcement for all communities.
 3. Support efforts to ensure that when there is a facility in non compliance, the air pollution reduction projects or Supplemental Environmental Projects imposed in lieu of penalties will benefit the air quality of the impacted communities.
 4. Work with the communities to develop enhanced complaint resolution processes for addressing environmental justice issues, including procedures that MCAQD staff will follow when complaints are made.
 5. Improve accessibility of information regarding enforcement activities and actions, including notices of violations, monetary penalties, and other settlements of those violations.
 6. Assist local communities on air quality issues of specific concern.
- D. Control Measures and Pollution Prevention Programs:
1. Develop a plan to assist in the achievement of federal and state ambient air quality standards and to reduce health risks.
 2. As part of MCAQD pollution prevention efforts, promote and encourage the deployment of toxic reduction emission technologies especially in low-income and minority communities.
 3. Work within low-income and minority communities to implement incentive programs for industry.



Maricopa County

Air Quality Department
Policies & Procedures

Policies & Procedures:
PP-2006-02

Title: Delinquent Fees

Supersedes:
Not apply

Effective: 01-03-2007

Initiator: Jo Crumbaker, JC

Director: Bob Kard, BK

PURPOSE:

- A. The purpose of this policy is to provide a consistent reasonable process for collecting unpaid fees charged to owners, operators, applicants, and/or permittees of sources of air pollution subject to the Maricopa County Air Pollution Control Regulations (Regulations).
- B. This policy is intended solely as guidance for Maricopa County Air Quality Department (MCAQD) personnel. It is not intended and may not be used to create rights enforceable by any party. Content of this policy is not 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.

REFERENCE:

- A. Arizona Revised Statutes, Title 41 and Title 49
- B. Maricopa County Air Pollution Control Regulations

BACKGROUND:

Not applicable.

DEFINITIONS:

- A. The Control Officer is defined as the Maricopa County Air Quality Department Director.
- B. A Permit is defined as a Maricopa County Air Quality Permit.
- C. A billable permit action is defined in Rule 280.

APPLICABILITY:

This policy applies to the Control Officer and MCAQD Permit Engineering, Compliance and Enforcement personnel.

POLICIES:

- A. The Finance Division will be responsible for tracking all fee payments.
- B. The Compliance Division will be responsible for initiating enforcement action for permits that are delinquent in fee payments.
- C. Fees For Billable Permit Actions:
 1. The Control Officer will not issue a permit, a permit revision, or a Title V permit renewal until all fees for a billable permit action are paid in full.
 2. The Control Officer may deny a permit, a permit revision, or a Title V permit renewal, if the applicant does not pay fees required by Rule 280-Fees, Section 301.1 and Section 302.1 for billable permit actions.

Department Directive:
PP-2006-02

Title: Delinquent Fees

Supersedes:
Not apply

Effective: 01-03-2007

Initiator: Jo Crumbaker, JC

Director: Bob Kard, BK

3. Any person who receives a final itemized bill for a billable permit action under Rule 280-Fees, Sections 301.1 or Section 302.1 may request an informal review of the permit processing hours billed, but must pay the bill, even if under protest.

PROCEDURES:

A. Annual Fees:

1. If owners, operators, applicants, and/or permittees of sources of air pollution subject to the Maricopa County Air Pollution Control Regulations do not pay their applicable fees by 30-days after the invoice due date, the Permitting Division will notify by mail the owners, operators, applicants, and/or permittees of sources of air pollution subject to the Regulations that they are required to pay their applicable fees and a delinquency fee of \$50.00, in accordance with Rule 280-Fees, Section 313.
2. If owners, operators, applicants, and/or permittees of sources of air pollution subject to the Regulations do not pay their applicable fees (including the delinquency fee) by 60-days after the invoice due date, an additional \$50.00 delinquency fee will be required to be paid.
3. Each month, the Permitting Division will provide the Compliance Division with a list of owners, operators, applicants, and/or permittees of sources of air pollution subject to the Regulations who have failed to pay their applicable fees (including the delinquency fee) by 60-days after the invoice due date.
4. The Compliance Divisions will determine if a permit is still required and will initiate enforcement action, if appropriate. The Compliance Division will follow the procedures for issuing a Notice Of Violation and for preparing and submitting a Department Referral, in accordance with the Maricopa County Air Quality Violation Reporting And Enforcement Policy.
5. The Enforcement Division will review each Department Referral to determine an appropriate course of action. The Enforcement Division will initiate action, in accordance with the Maricopa County Air Quality Violation Reporting and Enforcement Policy, for violations clearly supported by evidence.
 - a. The Enforcement Division will calculate and negotiate an appropriate settlement penalty pursuant to the Maricopa County Air Quality Violation Penalty Policy and will conduct a Settlement Negotiations meeting.
 - b. The Enforcement Division will require that all outstanding applicable fees and delinquency fees be paid in a timely manner.

B. Informal Review of Permit Processing Hours:

1. A request for an informal review of the permit processing hours billed will be made in writing and received by the Control Officer within 30 days of the invoice date. Unless the Control Officer and customer agree otherwise, the informal review will take place within 30 days after the Control Officer's receipt of the request.
2. The Control Officer will arrange the date and location of the informal review with the customer at least 10 business days before the informal review. The Control Officer will review whether the amounts of time billed are correct and reasonable for the tasks involved.
3. The Control Officer will mail his or her decision on the informal review to the person within 10 business days after the informal review date. The Control Officer's decision after the informal review will become final.



VIOLATION PENALTY POLICY

Approval Date: JANUARY 16, 2008

Signature: Robert Kard

Robert Kard, Control Officer

TABLE OF CONTENTS

I) Introduction	2
II) Gravity Component	2
III) Economic Benefit Component	7
IV) Cost Recovery for Enforcement Efforts	8
V) Mitigating Factors	9
VI) Multiple Violations	9
VII) Documentation of Calculations	10
VIII) Settlement Discussions	10

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
---------------------------	-------------------------------	-----------------------	--------------------------------	-------------------------------

2. Toxicity of Pollutant:

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

3. Risk to Environment:

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

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

POTENTIAL FOR HARM	EXTENT OF DEVIATION			
	MAJOR	MODERATE	MINOR	
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 _____ %

_____ X $(1 + \frac{\quad}{\quad})$ = _____
Total Amount Total Adjustments 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 _____

_____ + _____ + _____ - _____ = _____
Gravity Component Economic Benefit Cost Recovery Mitigating Factors Total



Maricopa County
Air Quality Department

Number: PP-2010-001-R

Title: Permitting of Illegal Drug Incineration

Author: Eric Funderburk

Issue Date: August 16, 2010

Revision Date: N/A

Review Date: July 31, 2011

Approved by:

Max Porter, Interim Director

Purpose

Law enforcement agencies typically dispose of illegal drugs through incineration by either burning them onsite in a cyclonic burner or by sending them to a private facility with thermal processes capable of destroying the drugs (such as a cement plant) or a dedicated drug burning facility. The purpose of this memo is to clarify whether this activity is covered under department rules and whether an air permit or permit modification is required.

Applicability

This policy applies to the disposal of illegal drugs by incineration as defined in Rule 313 § 211. This policy does not apply to open outdoor fires or open burning as defined in Rule 314 §209.

Definitions

Illegal drugs are those considered to be controlled substances that are prohibited by state and federal law.

Discussion

The Arizona Department of Environmental Quality (ADEQ) has evaluated small incinerators (e.g., 55 gallon cyclonic barrel burners) used for the purpose of drug burning and determined them to be exempt. ADEQ has determined that facilities that burn drugs on an intermittent basis for police agencies are not subject to the permit revision process. ADEQ has deemed this activity to represent a community service that does not require any notifications, revisions or recordkeeping.

The United States Environmental Protection Agency (EPA) Region 9 has indicated that it is a common practice for law enforcement agencies to take illegal drugs to be incinerated at cement plants since process temperatures are considered to be high enough that no additional emissions or adverse health effects are thought to occur.

Statement of Policy

Incineration of illegal drugs by law enforcement agencies, and at permitted facilities within Maricopa County is considered an exempt activity if the incineration was requested by a government agency and the activity does not otherwise require a modification to an existing air quality permit or a change to the equipment list.

If an air permit is not otherwise required, the department will not require a permit for law enforcement agencies to incinerate illegal drugs when the sole source of emissions is due to the incineration of illegal drugs.

Dedicated businesses who incinerate illegal drugs are subject to the normal permitting requirements under department rules, i.e. an air permit is required if emissions of PM-10 exceed the 3 lb/day permitting threshold under Rule 220, Section 303.3.c(7)(j).

Reference

This document supercedes the previous policy, Incineration of Illegal Drugs, issued on December 3, 2008.



Maricopa County
Air Quality Department

Number: **PP-2010-002**

Title: **Rule 310 and Rule 316 Dust Control Certifications**

Author: *Lucinda Swann*

Issue Date: *August 16, 2010*

Revision Date: *N/A*

Review Date: *July 31, 2011*

Approved by:

Max Porter, Interim Director

Purpose

The department's rules establish several different training certifications for employees working at regulated sites subject to Rule 310 and Rule 316. This document clarifies which certifications are required in each specific case.

Statement of Policy

Rule 316

Maricopa County Rule 316 Section 310.1 requires that the site superintendent or other designated on-site representative of the permit holder, if present at a site that has more than one acre of disturbed surface area that is subject to a permit issued by the Control Officer requiring control of PM10 emissions from dust generating operations, shall successfully complete a Basic Dust Control Training Class conducted or approved by the Control Officer.

Maricopa County Rule 316 Section 310.2 requires that water truck and water-pull drivers successfully complete a Basic Dust Control Training Class conducted or approved by the Control Officer.

Maricopa County Rule 316 Section 309 requires that a facility with a rated or permitted capacity of 25 tons or more of material per hour or with five acres or more of disturbed surface area subject to a permit, whichever is greater, must have in place a Fugitive Dust Control Technician, as described in Sections 309.1-309.6 of the same rule.

Rule 310

Maricopa County Rule 310 Section 309.1 requires that the site superintendent or other designated on-site representative of the permit holder, if present at a site that has more than one acre of disturbed surface area that is subject to a permit issued by the Control Officer requiring control of PM10 emissions from dust-generating operations, shall successfully complete a Basic Dust Control Training Class conducted or approved by the Control Officer.

Maricopa County Rule 310 Section 309.1 requires that water truck and water-pull drivers successfully complete a Basic Dust Control Training Class conducted or approved by the Control Officer.

Maricopa County Rule 310 Section 310.1 requires that any site of five acres or more of disturbed surface area subject to a permit issued by the Control Officer requiring control of PM10 emissions from dust-generating operations shall, at all times during primary dust-generating operations related to the purposes for which the Dust Control permit was obtained, have on-site at least one individual designated by the permit holder as a Dust Control Coordinator, as described in Section 310.2-310.6 of the same rule.

Questions concerning implementation of this policy are to be directed through division managers to the Office of the Director.

The following chart demonstrates which certification(s) are deemed acceptable by Maricopa County, given the specified site and individual:

	Water Truck & Water-Pull Drivers	Site Superintendent or Designated On-site Representative (5 acres < x > 1 acre)	Dust Control Coordinator or Fugitive Dust Control Technician (x ≥ 5 acres) (x ≥ 25 tons material/hour)
Site subject to Rule 310	310 Basic <u>OR</u> 316 Basic*	310 Basic*	310 Comprehensive
Site subject to Rule 316	316 Basic*	316 Basic*	316 Comprehensive
Site subject to both Rule 310 & Rule 316	316 Basic*	316 Basic*	316 Comprehensive

*Individuals subject to a 310 or 316 Basic certification, as per the chart above, shall satisfy such Basic certification requirement when in possession of the corresponding Comprehensive certification (i.e. – the site superintendent, water truck driver, and/or water-pull driver on a site subject to Rule 316 will satisfy the Basic certification requirement by possessing a 316 Basic or a 316 Comprehensive certification).

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.



Maricopa County
Air Quality Department

Number: PP-2011-001

Title: **Gasoline Dispensing Facility Stage I Component Certification Policy**

Author: Cheri Dale

Issue Date: February 1, 2011

Revision Date n/a

Review Date: February 1, 2012

Approved by:

William D. Wiley, Director

Purpose

This document is intended to clarify the requirements within Maricopa County for the installation and use of non-California Air Resource Board (CARB) components in gasoline dispensing facilities (GDF) Stage I vapor recovery systems.

Discussion

On October 2, 1978, Maricopa County Air Pollution Control Regulations Rule 353: Gasoline in Stationary Dispensing Tanks, was amended to require the installation and maintenance of "...an approved Stage I Vapor Recovery System." The 1999 revisions required GDFs to use only CARB certified components after June 16, 1999. There have been no further revisions to the rule.

Since the 1999 rulemaking, the overall capture and control of fugitive petroleum vapors has greatly increased due to the technology advances in vapor recovery control components and systems for GDFs and motor vehicles. In 2001, CARB began implementing an enhanced vapor recovery (EVR) program to further reduce VOC emissions from GDF. As of April 1, 2005, all GDFs in California were required to be equipped with Phase I vapor recovery systems on their underground storage tanks to meet enhanced vapor recovery (EVR) standards. At the same time, all existing non-EVR Phase I systems were de-certified for use by CARB.

Per Rule 353, Section 303.2, all Stage 1 vapor recovery components including, but not limited to, replacement vapor valves, above ground storage tanks and new systems must install CARB certified components. In order to qualify as CARB Certified under Rule 353 components must meet the standards of the "Stationary Source Test Methods, Volume 2" adopted on April 8, 1999, not the EVR standards. The

current Rule 353 does not allow for non-CARB certified equipment to be installed or used for replacement of worn components.

CARB's decertification of non-EVR vapor recovery components did not only create a concern for Maricopa County, but throughout the United States. The local or regional regulating authority was forced to choose between implementing a plan for the GDF to install CARB certified EVR systems or establish a means of certifying systems that would meet the same stringency as the Stage I vapor recovery components originally certified by CARB.

To address the CARB de-certification of Stage I vapor recovery equipment, Arizona Department of Weights and Measures (ADWM) requested the legislature to amend its statutory authority. ADWM requested approval for GDFs to use non-CARB certified components under specific conditions. In 2010, A.R.S. § 41-2132 was revised to include wording that allows the use of non-CARB certified Stage 1 vapor control components approved by a third party that is recognized by the industry and the department.

Statement of Policy

Arizona Revised Statute §41-2132 allows the installation and use of non-CARB certified Stage 1 vapor control components approved by a third party that is recognized by the industry and the department. Maricopa County will utilize the ADWM approved listing of Stage I vapor recovery components. Until the applicable rules are revised, Stage 1 vapor recovery components installed within Maricopa County that are not CARB certified components will be reviewed on a case by case basis. The department will use Control Officer discretion to determine if the non-CARB certified component meets the intent of Rule 353: Gasoline in Stationary Dispensing Tanks.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.



Maricopa County
Air Quality Department

Number: PP-2011-002

Title: **Trackout Control Devices and Rule 310**

Author: Dennis Dickerson

Issue Date: April 15, 2011

Revision Date N/A

Review Date: April 15, 2012

Approved by:

William D. Wiley, Director

Purpose

To provide the department’s interpretation of Rule 310 to resolve an apparent conflict between sections 305.1 and 306.1 concerning the use of a trackout control device. The result is to affirm that the criteria of section 306.1(a) apply in all instances in which a trackout control device is required. Although installation of a trackout control device may not be required below the thresholds listed it is encouraged at all sites hauling bulk materials off-site. The requirement to cleanup trackout when trackout extends 25 cumulative feet or more applies whether or not a trackout control device is required.

Discussion

Rule 310, section 305.1(c) provides:

305.1 Off-Site Hauling onto Areas Accessible to the Public: *The owner and/or operator of a dust-generating operation that involves off-site hauling shall implement the following control measures:*

c. When off-site hauling, install, maintain, and use a suitable trackout control device that controls and prevents trackout and/or removes particulate matter from tires and the exterior surfaces of haul trucks and/or motor vehicles that traverse the site.

This rule establishes no lower acreage limit nor a limit based on the amount of material hauled to have a trackout control device in place at a dust-generating operation when hauling material off-site onto an area accessible to the public. In section 306.1(a) criteria are established to determine when a trackout control device is required.

306.1 Trackout Control Device:

- a. Criterion for Trackout Control Device: Install, maintain and use a suitable trackout control device that prevents and controls trackout and/or removes particulate matter from tires and the exterior surfaces of haul trucks and/or motor vehicles that traverse the site at all exits onto areas accessible to the public from both of the following:*
 - (1) All work sites with a disturbed surface area of two acres or larger, and*
 - (2) All work sites where 100 cubic yards of bulk materials are hauled on-site and/or off-site per day.*

For dust-generating operations at sites smaller than 2 acres where less than 100 cubic yards of bulk materials are hauled on-site and/or off-site in any single day, different conclusions can be reached concerning the need for a trackout control device under sections 305.1 and 306.1.

This apparent conflict in the rule requires clarification.

Statement of Policy

In Rule 310, the intent of the department was to establish a limit beneath which the use of a trackout control device is not required on a site where dust-generating activity takes place. This limit was established through identifying three scenarios, any one of which would trigger the need for a trackout control device. These three scenarios are:

1. If the disturbed area of a property where dust-generating activity is taking place is two or more acres in size.
2. On any sized parcel where dust-generating activity is underway and 100 cubic yards or more of bulk material is hauled from the site on any single day.
3. On any sized parcel where dust-generating activity is underway and 100 cubic yards or more of bulk material is hauled onto the site on any single day.

Any one of the above three scenarios will trigger the need for a trackout control device to be in place.

Rule 310, section 305.1(c) was not intended to eliminate the thresholds related to the area of disturbed acreage as well as those for on and off-site hauling in section 306.1(a)(2). The department will consider the threshold established in section 306.1(a) as being the definitive criteria to determine when a trackout control device is required at a dust-generating operation.

 Maricopa County Air Quality Department	Number: PP-2011-003 Title: Opportunity to Correct
	Issue Date: November 7, 2011 Revision Date: November 22, 2013 Review Date: November 22, 2015
Author: Jo Crumbaker	
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. Violations of Maricopa County ordinances are not covered by this policy 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 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 excluded from being considered minor 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.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

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.
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.
4. Failure to keep a complete valid permit clearly visible and accessible at the site.
5. Failure of subcontractors who are working on job sites that have a Dust Control Permit/Plan to register with the MCAQD.
6. Subcontractor registration expired 30 calendar days or less.
7. Basic Dust Control Training certification expired 30 calendar days or less.
8. Comprehensive Dust Control Training certification expired 30 calendar days or less.
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 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).

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

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

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

- b. The container is covered immediately in the presence of the inspector.

Note: 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.)

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

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.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.



Maricopa County
Air Quality Department

Number: PP-2012-001

Title: Violation Penalty Policy Appendix A—
Asbestos Demolition and Renovation Penalty Guidelines

Author: Jo Crumbaker

Issue Date: May 21, 2012

Revision Date: May 21, 2012

Review Date: May 21, 2014

Approved by:

William D. Wiley, Director

Violation Penalty Policy

Appendix A

Asbestos Demolition and Renovation Penalty Guidelines

Violation Penalty Policy
Appendix A
Asbestos Demolition and Renovation Penalty Guidelines

I. Purpose

This appendix to the Violation Penalty Policy provides guidelines to help department staff calculate penalties for use in settlement negotiations for violation of the department’s asbestos regulations. The calculation approach described below should be used in conjunction with the Violation Penalty Policy when calculating penalties associated with asbestos violations for purposes of initial settlement discussions. Adjustments to penalties can always be made during the negotiation process to reflect case-by-case factors.

II. Calculation Guidelines

When a contractor conducts activities under a signed contract with a fully qualified contractor, the department will issue a single penalty to the contractor as the principal responsible party. Where there is no signed contract, a penalty will be issued to each responsible party. The department will apportion the penalty among the parties responsible for a violation.

This guideline outlines an approach using the gravity component penalty matrix set out below for violations of the department’s asbestos regulations, Rule 370 Section 301.8, and the asbestos NESHAP, 40 CFR Part 61, subpart M. For each violation, this guideline describes how to select the appropriate matrix box in Table 1 to determine the gravity component of a penalty. Each box in the matrix corresponds to the varying degrees (minor, moderate or major) of a violation’s *potential for harm* and *extent of deviation* from a requirement. This guideline also contains guidance specific to asbestos violations on when to assess multi-day or multiple violations and how to determine the economic benefit components of the penalty. The last section of this guideline includes an asbestos penalty worksheet to document penalty calculations including all adjustments, mitigating factors and other costs consistent with the Violation Penalty Policy. This guideline is comprised of six parts:

- A. Gravity Component-Potential for Harm—defines “major”, “moderate” or “minor”.
- B. Gravity Component-Extent of Deviation from Requirement—defines “major”, “moderate” or “minor”.
- C. Multi-day or Multiple Violations—outlines when to assess multi-day and multiple violations.
- D. Economic Benefit—discusses economic benefit considerations.
- E. Penalty Matrix—provides the matrix and discusses how to calculate the penalty.
- F. Asbestos Penalty Worksheet—provides a worksheet specific to asbestos to document penalty calculations.

III. Gravity Component-Potential for Harm—All Asbestos Violations

- A. Major Total amount of asbestos involved greater than 50 units.
- B. Moderate Total amount of asbestos involved greater than 10 units, but less than or equal to 50 units.

- C. Minor Total amount of asbestos involved less than or equal to 10 units, or quantity above the threshold amount cannot be determined.

A "unit" of asbestos is equivalent to 260 linear feet, 160 square feet or 35 cubic feet of asbestos-containing material. If more than one unit type is involved, convert each amount to equivalent units and then add the units to get a total.

IV. Gravity Component-Extent of Deviation from Requirement

The Extent of Deviation from Requirement section is split into three subsets corresponding to the most common types of asbestos violations. Extent of Deviation from Requirements is described separately for notification violations, waste shipment violations, and work practice violations. This is not an exhaustive list. Other violations can be considered.

A. Notification Violations

1. Major

No notification—failure to provide notification prior to ten days before start date of project and compliance with other aspects of the regulation is not demonstrated. 40 CFR 61.145(b)(3)(i); Rule 370, Section 301.8(a)(3).

2. Moderate

a. No notification—failure to provide notification prior to ten days before start date of project and compliance with other aspects of the regulations is demonstrated. 40 CFR 61.145(b)(3)(i); Rule 370, Section 301.8(a)(3).

b. Upon submittal of notification failure to wait ten working days before start of project. 40 CFR 61.145(b)(1); Rule 370, Section 301.8(a)(1)

3. Minor

a. Inaccurate notification—failure to accurately estimate the amount of asbestos-containing material affected by the renovation or demolition. 40 CFR 61.145(b)(4)(vi); Rule 370, Section 301.8(a)(1).

b. Inaccurate notification—failure to update notification as necessary when circumstances change, including, but not limited to, when the amount of asbestos-containing material affected by the renovation or demolition changes by 20 percent or more. 40 CFR 61.145(b)(2); Rule 370, Section 301.8(a)(1).

c. Other notification violations, such as failing to accurately complete the notification, or omitting required information in the notification; Rule 370, Section 301.8(a)(1).

Demonstration of compliance with the other aspects of the asbestos regulations includes, but is not limited to, documentation of the following:

- Regulated asbestos was not present in amounts above the applicable thresholds.
- The removal, handling and disposal requirements of the regulation were followed.
- The only regulation applicable to the renovation or demolition was the notification requirement.

B. Waste Shipment Violations

1. Major

- a. Improper disposal (violations of multiple provisions of 40 CFR 61.150); Rule 370, Section 301.8(b)(2)(d).
- b. Discharge of visible emissions to the outside air during collection, processing, packaging, or transportation any ACWM generated by the source. 40 CFR 61.150(a); Rule 370, Section 301.8(a)(1).
- c. After wetting, failure to contain all RACM in transparent, leak tight containers or leak tight wrapping while wet. 40 CFR 61.150(a)(1)(iii); Rule 370, Section 301.8(b)(2)(d).

2. Moderate

Failure to deposit all ACWM as soon as practical at a landfill not classified for receiving asbestos-containing material. 40 CFR 61.150(b); Rule 370, Section 301.8(a)(1).

3. Minor

- a. Failure to mark waste shipment vehicle during loading and unloading. 40 CFR 61.150(c); Rule 370, Section 301.8(a)(1).
- b. Failure to maintain records, failure to send waste shipment records to the waste generator in a timely manner, improperly labeling bags or other recordkeeping violations. 40 CFR 61.150(d); Rule 370, Sections 301.8(a)(1) and 301.8(b)(2)(d).

C. Work Practice Violations

1. Major

- a. Thorough inspection not performed. 40 CFR 145(a); Rule 370, Section 301.8(a)(2).
- b. Failure to keep asbestos-containing material adequately wet by using amended water. 40 CFR 61.145(c); Rule 370, Section 301.8(b)(2)(c).

- c. Disturbing non-regulated asbestos-containing material—rendering it regulated—and not using proper removal methods. 40 CFR 61.145(c); Rule 370, Section 301.8(a)(1).
2. Moderate
- a. Failure to maintain current AHERA/ASHARA contractor/supervisor certification and be on-site at all times during active asbestos abatement work at or above NESHAP threshold amounts. 40 CFR 61.145(c)(8); Rule 370, Section 301.8(b)(1)(c).
 - b. Disturbing non-regulated asbestos-containing material—rendering it regulated—and subsequent, proper removal methods were used. 40 CFR 61.145(c); Rule 370, Section 301.8(a)(1).
3. Minor
- a. Failure to post evidence of required training. 40 CFR 61.145(c)(8); Rule 370, Section 301.8(b)(1)(d).
 - b. Failure to have on-site and available for inspection at the facility, a copy of the inspection reports and laboratory test results during all demolition and renovation activities. Rule 370 Sec. 301.8b.(1)(b)
 - c. Failure to maintain current AHERA worker certifications for all asbestos workers on-site. Rule 370, Section 301.8(b)(1)(c).
 - d. Failure to have on-site and available for inspection all asbestos contractor/supervisors and workers color photo identification, during asbestos setup, removal, handling, collecting, containerizing, cleanup and dismantling. Rule 370, Sec. 301.8 b.(1)(d)

V. Multi-day or Multiple Violations

A. Multi-day Penalties

Notification violations should not be assessed multi-day penalties. Penalties for multiple violations are appropriate for notification violations if there are several instances of failure to submit or failure to update a required notification (e.g., if there was more than one renovation or demolition project).

Waste shipment violations should not be assessed as multi-day penalties, with the exception of waste shipment vehicle marking. Assess a penalty for each day of the shipment for which the vehicle marking was missing or inadequate.

Most work practice violations can be assessed multi-day penalties, depending on the nature of the renovation or demolition and the specific violation. Failure to perform a thorough inspection should not be assessed as a multi-day penalty. Some work practice violations are more appropriately addressed through one penalty per renovation or demolition project. For more serious work practice violations, penalties per day of improper work practices may be warranted. An example of an improper work practices violation that may warrant multi-day

penalties is a contractor that refuses to stop working under conditions that violate the asbestos regulations.

For multi-day violations, the preferred calculation is to assess the full matrix amount for the first day of noncompliance. Then for each additional day beyond the first for which there is direct evidence that the violation continued, assess the full matrix amount. Days on which a continuing violation can be assumed due to a failure to demonstrate a return to compliance are assessed only at default fraction (10%) of the full matrix amount.

B. Multiple Violations

A penalty should be calculated for every violation that constitutes an independent and substantially distinguishable violation of subsections of the regulation, or when the same person has violated the same requirement in substantially different locations. One activity or omission can result in more than one violation which should be considered separate violations for penalty calculation purposes. For example, a contractor may demolish a building, which could result in violations such as failure to provide notification, no thorough inspection, inappropriate work practices, and disposal violations.

VI. Economic Benefit

For asbestos violations, you should estimate economic benefit by determining the costs saved by not following a department rule, e.g. not performing a thorough inspection, not using proper removal methods, etc. If actual costs are not available, use EPA's computer model for calculating economic benefits (BEN) or another accepted economic method may be used to determine economic benefit. In some cases it may be very difficult to determine the economic benefits of non-compliance, or the amount of the benefits may be insignificant.

VII. Gravity Component Penalty Matrix

The penalty matrix is a three-by-three grid of nine penalty ranges or "boxes" (see Table 1). Each box corresponds to the varying degrees (minor, moderate or major) of a violation's *potential for harm* and *extent of deviation* from a requirement.

Each box in the penalty matrix contains a range of penalty amounts; the default baseline penalty is the midpoint of the range. For knowing, deliberate or chronic violations, penalties should be calculated by using the top of the ranges. The top of the ranges can also be applied to any business or individual for any violation if the seriousness of the violation or history of non-compliance requires a higher penalty to achieve deterrence. The penalty amounts contained in Table 1 are based on a general determination of the relative severity of the violations listed. The department reserves the discretion to calculate penalty amounts different from the amounts listed based on the individual circumstances of a particular violation especially where human exposure has occurred or could have occurred.

Adjustment factors, mitigation factors, and other costs may be applied per violation or applied to the total penalty.

Table 1. Gravity Component Penalty Calculation Matrix for Asbestos Violations

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm	Major	\$8000 - \$10,000 [\$9000]	\$6000 - \$8000 [\$7000]	\$4400 - \$6000 [\$5200]
	Moderate	\$3200 - \$4400 [\$3800]	\$2000 - \$3200 [\$2600]	\$1200 - \$2000 [\$1600]
	Minor	\$500 - \$1200 [\$850]	\$300 - \$700 [\$500]	\$200 - \$500 [\$350]

This appendix is guidance only, the department retains the discretion to use alternate methods of calculating penalties as warranted by specific circumstances. This guidance is for calculating suggested penalties for the purpose of reaching settlement. Higher penalties will be sought if a court action is required to resolve an enforcement case.

**Maricopa County Air Quality Department
Asbestos Penalty Worksheet**

Source Name/Notification/Permit #	NOV#	Violation Citation	Prepared by
-----------------------------------	------	--------------------	-------------

A. Gravity Component (from Table 1)

1. Degree of Potential for Harm _____
2. Extent of Deviation from Requirement _____

Base Amount _____

B. Multi-Day Violations

1. Each additional day on which a continuing violation can be assumed due to a failure to demonstrate a return to compliance: _____ day(s) times (default: +10% of base amount) = _____

And/Or

2. Each additional day beyond the first for which there is direct evidence that the violation continued: _____ day(s) times _____ (+100% of base amount) = _____

Multi-day amount + base amount = **Total Amount** _____

C. Adjustments to Gravity Component

1. **Degree of Willfulness or Negligence** +25% +10% +0%

2. **Degree of Cooperation**

Good Faith Efforts to Comply/Lack of Good Faith before or after the Department Informed the Responsible Party of the Violation -15% -5% 0% +5%

3. **History of Repeat Violation**—previous violations of the same requirement at project locations requiring separate notifications

2nd violation +100%

3rd or greater violation apply the statutory maximum

Total adjustments % _____

_____	X	(1+ _____)	=	_____
Total Amount		Total Adjustments		Gravity Component

D. Mitigation Factors

Ability to Pay _____

Litigation Risk _____

Adjustment Penalty Value _____

E. Economic Benefit Component (optional)

Avoided costs _____

Illegal profits _____

Total Economic Benefit _____

_____	+	_____	+	_____	=	_____
Gravity Component		Mitigating factors		Economic Benefit		Total

Note: For C, D, and E costs and factors attach documentation



Maricopa County
Air Quality Department

Number: PP-2012-002

Title: **Violation Self-Reporting Policy**

Author: Jo Crumbaker

Issue Date: October 1, 2012

Revision Date

Review Date: October 1, 2014

Approved by:

William D. Wiley, Director

I. 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 civil penalties for violations that are voluntarily discovered and promptly disclosed and corrected. Although a comprehensive environmental management system is not required to be in place to be eligible for this policy to apply, the policy provides an incentive for regulated entities to develop a comprehensive environmental management system which will promptly identify excursions from regulatory requirements so that violations may be quickly addressed and corrected.

II. Statement of Policy

In the event a Notice(s) of Violation has been issued by the department and such Notice of Violation was issued on the basis of information voluntarily reported to the department by the facility receiving the Notice of Violation, the department may reduce the proposed civil penalty in accordance with the provisions of this policy.

III. Incentives for Self-reporting a Violation

The department may provide the incentives listed below for violations discovered, reported and remedied that meet the conditions specified in Section IV of this policy.

- A. Sources that meet all conditions may be eligible for 100% mitigation of the non-economic benefit portion of a settlement penalty. Any economic benefit gained from non-compliance may be collected.
- B. Sources that meet conditions B-H may be eligible for 75% mitigation of the non-economic benefit portion of a settlement penalty. Any economic benefit gained from non-compliance may be collected.

IV. Penalty Mitigation Conditions

A. Systematic Discovery

The violation must have been discovered through either:

1. An environmental audit or a compliance management system exhibiting due diligence in preventing, detecting and correcting violations.
2. The source must provide documentation identifying the steps taken to achieve due diligence and describe how the source discovered the violation through an environmental audit or its compliance management system.

B. Voluntary Discovery

The violation must be identified voluntarily and not through a legally mandated monitoring, sampling, or auditing procedure required by statute, regulation, permit, consent agreement, judicial or administrative order. For example, the policy does not apply to violations discovered through due diligence done to prepare for Title V semi-annual compliance certifications or emissions violations detected through required continuous emissions monitoring.

C. Prompt Disclosure

1. The source must disclose the violation to the department within ten business days after discovery. If a statute, regulation or rule requires the source to report the violation in fewer than ten days, disclosure must be made within the time limit established by law. For example, the source must follow the provisions outlined in Maricopa County Air Pollution Control Rule 130 or 140 in the event of an excess emission. The ten-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 the department and let the regulatory agency make the definitive determination.
2. Adequate notice disclosing a violation(s) must be sent to the department by e-mail to selfreport@mail.maricopa.gov within the appropriate time period and followed by a hard copy letter. The notice should include all of the following information:
 - The legal name of the source.
 - An affirmative assertion that a violation(s) or potential violation(s) has been discovered.
 - A description of each violation discovered, including references to relevant statutory, regulatory and permit provisions, where appropriate.
 - The date the violation(s) was discovered.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

- The duration of the violation(s) (start date of violation to completion date of corrective actions)
 - The status, description and schedule of corrective actions to return to compliance.
3. The notice disclosing a violation is not considered to be part of a privileged audit report under ARS §49-1402. The department accepts notices disclosing violations and considers them to be nonprivileged; it does not accept audit reports submitted under claims of confidentiality.

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

The potential violation must be discovered and disclosed to the department before:

1. The department commences an inspection or investigation, or issues a request for information to the facility.
2. A citizen files a notice of intent to sue.
3. A third party files a complaint. Third party complaints cover formal judicial and administrative complaints as well as informal complaints such as a letter from a citizen alerting the department to a potential violation.
4. A whistleblower reports a violation to the department.
5. Discovery of the violation through any other means by the department.

E. Correction and Remediation

1. The source must take immediate corrective action and successfully correct and remediate the violation promptly. 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 identify what measures were taken to return to compliance.
2. In the event a violation cannot be corrected immediately, the source must notify the department in writing within two business days after the date the source first knew or reasonably should have known that a delay in achieving compliance would occur. 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 identify what measures were taken to return to compliance.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

3. 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.
4. The source must take steps to prevent recurrence of the violation. Preventative steps must be submitted in writing to the department.

F. No Repeat Violations

The violation is not considered to be a repeat violation if:

1. The same/similar violation has not occurred within the past five years at the same facility or as part of a pattern of violations at multiple facilities owned or operated by the same entity (a violation is a Notice to Comply, Opportunity to Correct, Notice of Violation, Order of Abatement by Consent or an Order of Abatement).
2. The facility is under new ownership and a previous same/similar violation occurred prior to the acquisition.

G. Other Violations Excluded

The incentives in Section III of this policy are not available for a violation which:

1. Resulted in actual harm to public health and/or the environment.
2. 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).
3. Created a public nuisance.
4. Resulted from knowing, willful, grossly negligent or intentional conduct.

H. Cooperation

1. The source must provide the department with all information needed to determine policy applicability and must provide any records in a timely manner.
2. The source must not hide, destroy or tamper with possible evidence following discovery.

V. Economic Benefit

The department retains full discretion to recover any economic benefit gained as a result of noncompliance to preserve a "level playing field" in which violators do not gain a competitive advantage over regulated entities that comply. The department may forgive the entire penalty for

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

violations that meet conditions A-H in Section IV and, in the department's opinion, do not merit any penalty due to insignificant economic benefit.

VI. References

Compliance and Enforcement Handbook, Chapter 11, Special Penalty Considerations for Small Businesses, Arizona Department of Environmental Quality

Incentives for Self-Policing, Discovery, Disclosure, Correction and Prevention of Violations Policy (Audit Policy), Federal Register, Vol. 65, No. 70, Tuesday, April 11, 2000, United States Environmental Protection Agency

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

SELF-REPORTING VIOLATION PENALTY CALCULATION WORKSHEET

Source Name / Permit # _____

NOV#
Date _____

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
---------------------------	-------------------------------	-----------------------	--------------------------------	-------------------------------

2. Toxicity of Pollutant:

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

3. Risk to Environment:

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

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

POTENTIAL FOR HARM	EXTENT OF DEVIATION			
	MAJOR	MODERATE	MINOR	
	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	

Dollar Amount from within Range _____

Enforcement Officer

Date

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. SELF-REPORTING PENALTY MITIGATION

1. Meets all 8 conditions in Section IV of the Self-Reporting Policy: -100%

OR

2. Meets conditions B-H in Section IV of the Self-Reporting Policy: -75%

$$\frac{\text{Total Amount}}{\text{Total Amount}} \times (1 + \frac{\text{Penalty Mitigation}}{\text{Total Amount}}) = \text{Mitigated Amount}$$

F. ADJUSTMENTS--HISTORY OF NONCOMPLIANCE

1. Most Recent Violation?

+10% Within 1 year +5% ≤ 5 years

2. Number of Prior Violations?

+5% X = %

Total Adjustments _____ %

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

III. ECONOMIC BENEFIT COMPONENT

A. DELAYED COSTS:

$$\frac{\text{Delayed Costs}}{\# \text{ of years}} \times 0.05 = \text{_____}$$

B. AVOIDED COSTS: _____

C. ILLEGAL PROFITS: _____

Total Economic Benefit _____

IV. MITIGATING FACTORS

A. ABILITY TO PAY: _____

B. LITIGATION RISKS: _____

Total Mitigating Factors _____

V. TOTAL PENALTY

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

 Maricopa County Air Quality Department	Number: PP-2012-003 Title: Supplemental Environmental Projects
	Issue Date: October 19, 2012 Revision Date: December 10, 2013 Review Date: October 19, 2012
Author: Ira Domsky	
Approved by: 	
William D. Wiley, Director	

I. Purpose

The purpose of this policy is to establish a framework within which proposals for Supplemental Environmental Projects (SEPs) may be considered and accepted in lieu of penalties assessed through an enforcement action. In addition, proposals for SEPs offered by third parties will be evaluated and may be placed on a listing of pre-approved SEPs. This policy is intended to be fully consistent with Arizona Revised Statutes (A.R.S.) §49-117:

“49-117. Supplemental environmental project; requirements; nexus

A supplemental environmental project that is initiated or accepted by the department shall comply with this section, shall advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and shall have an adequate nexus. A nexus exists only if any of the following apply. The proposed project:

1. Is designed to reduce the likelihood that similar violations will occur in the future.
2. Reduces the adverse impact to public health or the environment to which the violation contributes.
3. Reduces the overall risk to public health or the environment potentially affected by the violation.”

II. Statement of Policy

Maricopa County Air Quality Department (MCAQD) will, where appropriate and feasible, accept SEPs in lieu of fines paid directly to the department. This policy identifies: categories and criteria that projects must meet to be considered for approval as SEPs and the approval process for SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The department’s position is that it is in the public interest for SEPs to be an option in enforcement settlements and that they may be funded, in whole or in part, by respondents. Recognizing the potential cost and effort to develop a SEP concept, the department believes respondents may be more likely to include a SEP in a settlement agreement if they can

choose from a list of pre-approved SEPs. This policy does not alter procedures or other requirements following approval of an enforcement settlement by the director.

III. Definitions

- A. **Nexus:** A clear linkage between two or more ideas or concepts. For the purposes of this policy, it is the linkage between the actual or potential environmental and public health impacts of a violation of law and benefits of a SEP as defined in A.R.S. §49-117.
- B. **Respondent:** The recipient of an enforcement action issued by the department.
- C. **Small Business:** A concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees OR which has gross annual receipts of less than four million dollars in its last fiscal year (A.R.S. § 41-1001(14)).
- D. **Supplemental Environmental Project (SEP):** An environmentally beneficial project a respondent agrees to undertake in settlement of an enforcement action that the respondent is not otherwise legally required to perform.
- E. **Third party SEP Proposal:** A Supplemental Environmental Project that is proposed by a qualified tax-exempt 501(c)(3) non-profit or government organization to be funded by a respondent.

IV. SEP Applicability

The following factors will be considered to determine if a proposed SEP is appropriate and feasible:

- A. Information detailing the respondent's compliance history and demonstrating the capacity to successfully and promptly complete the project. For example, a respondent who is a repeat violator may be a less appropriate candidate for a SEP than a first-time violator, since a repeat violator has already demonstrated difficulty with 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, return phone calls, or respond to emails) may be an inappropriate candidate for a SEP.
- B. Nexus as described in A.R.S. §49-117. The proposed SEP must meet one of the following:
 - 1. Be designed to reduce the likelihood that similar violations will occur in the future;
 - 2. Reduce the adverse impact to public health or the environment to which the violation contributes; or
 - 3. Reduce the overall risk to public health or the environment potentially affected by the violation.
- C. The proposed SEP fits under at least one of the five SEP categories identified in Section V below.

- D. The proposed SEP cannot include any activity or project that the respondent is otherwise legally required to perform.
- E. The proposed SEP will be performed within Maricopa County.
- F. Implementation of the specific proposal has not commenced prior to department review and approval to proceed. The proposal, however, may be a discrete project or part of a phased or ongoing project or program.
- G. The proposed SEP is not designed primarily to satisfy a statutory obligation of the department or that of any other regulatory agency.
- H. State statute does not prohibit the expenditure of county resources on a particular activity. A proposal that appears to circumvent statutory prohibitions will be rejected.
- I. A SEP proposal may not provide funds to support the regulatory operational activities of the department. However, funds may be directed to related programs such as educational outreach products; e.g., development and printing of educational brochures, production of educational videos, etc.

V. Supplemental Environmental Project Categories

A SEP proposal must fall into at least one of the following five SEP categories:

A. Pollution Prevention

A pollution prevention project reduces or eliminates pollution before generation. This includes any practice that reduces the amount of any pollutant being released into the ambient air, prior to pollution control.

Examples: Purchase and install solar panels at schools. Conduct energy audits and weatherize school buildings. Change products being used in unregulated processes, such as replacing traditional solvents, adhesives or cleaning liquids used for general office or for janitorial purposes, with low-or no-VOC alternatives.

B. Pollution Reduction

A pollution reduction project reduces or eliminates pollution after generation through an approach that applies containment techniques or pollution control.

Examples:

1. Reduce dust and particulate matter from unpaved, dirt, or gravel surfaces.
2. Implement a portable gas can replacement program to reduce volatile organic compounds (VOC) emissions.
3. Purchase and install truck stop electrification technology.
4. Replace older diesel buses with alternative fueled or clean-diesel buses.

C. Environmental Compliance Promotion/Research

An environmental compliance promotion/research project helps identify new ways to achieve or maintain compliance with applicable statutory and regulatory requirements, or go beyond current

legal requirements for reducing the generation or release of pollutants. These SEPs should, but are not required to address the same pollutant(s) involved in the violation, and where compliance by other members of the regulated community would be advanced by the proposed project. Categories include:

1. Environmental compliance promotion provides training, outreach, technical support or information to other members of the regulated community.
2. Environmental research collects baseline environmental data to be used in research directed at reducing risks to public health and the environment, or develops new pollution control technologies that could be used to reduce the generation or release of air pollutants beyond legal requirements. Any research that results in the development of an invention or other potential property right (e.g., a patent, or copyrightable materials) will be the sole property of MCAQD and will be made available to the public free of charge.

Examples: Produce a seminar directly related to reducing widespread or prevalent violations within a specific regulated industry. Develop a new coating technology that reduces generation or release of VOC emissions. Develop an informational DVD to inform sources how to prevent common violations within a specific regulated industry.

D. Public Health

A public health project provides diagnostic, preventative or remedial health care related to the actual or potential damage to human health to which the violation may have contributed. Public health SEPs primarily benefit the population that was harmed or put at risk by the violation.

Examples: Collect and analyze epidemiological data, conduct medical examinations of potentially affected persons, perform health screenings.

E. Assessments and Environmental Management Systems

Assessments identify opportunities to significantly reduce emissions and improve environmental performance at a facility. Pollution prevention assessments may be acceptable as SEPs if: they are not otherwise required as injunctive relief; and the respondent agrees to provide the department with a copy of the report documenting the assessment.

1. 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, regardless of whether the pollutants are emitted from, or upstream or downstream of, the source at which the assessment is being conducted. This may include evaluation of equipment, processes and operations, materials substitution, conservation of energy or other resources, and waste reduction. To be eligible for SEPs, such assessments must be conducted using a recognized pollution prevention assessment procedure to reduce the likelihood of future violations.
2. Environmental Management Systems (EMS) are documented procedures for cataloging all applicable environmental requirements and assuring compliance with those requirements. An EMS provides schedules for regular review of operations that compare practices, procedures and documentation against applicable regulatory requirements and alert staff and managers of

regulatory deadlines (e.g., reporting, permit renewal, control requirements). It should also document reporting requirements and provide methods for verifying compliance with those requirements. It may be a manual, computer software, or both. If implemented for the respondent, the EMS must include standards and procedures that address environmental stewardship beyond compliance appropriate for the size and level of sophistication of the respondent. Language describing the EMS development or improvement approach will be incorporated in the settlement agreement.

VI. SEP Proposal and Submittal

A. In General

The respondent should notify the department of any interest in pursuing a SEP early in the settlement negotiation process and submit a completed Respondent SEP application (See Exhibit A) no later than 30 calendar days following issuance of the department's initial settlement offer. All proposed SEPs must provide sufficient information to demonstrate that the project meets all applicable requirements listed in this policy.

A SEP proposal may be submitted by a respondent to an enforcement action (these may be developed by a contractor for the respondent) or by an independent third party government or non-profit organization. A SEP may be developed by a respondent as a unique proposal intended to fulfill the criteria contained in this policy as well as meeting the specific needs or preferences of the proposing entity. A respondent may elect to pursue a SEP proposed by a third party to avoid the costs and time associated with SEP development. The department will maintain a list of pre-approved SEP concepts (as described in Section VI. B below) from which a respondent may opt to select in lieu of developing their own SEP.

A SEP will be restricted to not more than 80% of the agreed upon penalty and a penalty must be at least \$12,500 to be eligible for a SEP. Penalty payment will be for the total of the penalty less estimated cash payments for implementation of the SEP. I.e., no penalty mitigation may be taken for in-kind costs borne by the respondent.

B. Third Party SEP Proposals

Only qualified tax-exempt 501(c)(3) non-profit or government organizations are eligible to propose, receive and administer SEP funds for third party SEPs. A proposing organization must clearly demonstrate in the application that it has the capability to implement and complete the SEP project, if funded. The SEP Idea Library Application form may be found in Exhibit B.

The SEP proposal application must provide basic information about the proposing organization, a description of previous history in administering SEP or grant funds (in any jurisdiction), and contain a project budget and other detailed information about the proposed project. The department may request supplemental information needed to consider the proposal.

Approved third party SEP proposals will be maintained in a "SEP Idea Library," which will be available for public viewing on the department web site. The SEP Library will initially be populated through a

publicized, open solicitation, and refreshed at least biennially through an open solicitation process. New third party SEP proposals, however, may be submitted to the department at any time.

Further, third party SEPs may be structured as phased or modular projects, allowing multiple respondents to fund part or all the SEP.

At least biennially, the department will review all SEPs in the SEP Library for currency and feasibility. The department will consult with SEP offerors with respect to retention of their projects contained in the SEP Library. In conjunction with the biennial review, the department may issue a new call for proposals. Modifications to the SEP Library will be explicitly noted on the SEP Idea Library web page as to which projects have been completed, put on hold, or no longer available for any other reason.

VII. Limitations on Involvement by the Department

- A. Neither the department nor any other division of county government will play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP.
- B. The department will not manage or administer the SEP. However, the department will conduct oversight to ensure that a project is implemented pursuant to the provisions of the Order of Abatement by Consent (OAC) and must have legal recourse if the SEP is not adequately performed.
- C. A SEP may be disapproved where the department determines that the time and resources it must dedicate to project oversight are overly burdensome. The factors that will 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 department oversight.

IX. SEP Review Process

A. Review of Third Party SEPs

Department staff will be assigned to evaluate third party SEP proposals to determine whether the proposals meet the requirements of this policy and make recommendations to the director regarding approval or disapproval of the SEPs for implementation and inclusion on the list of preapproved SEP concepts, as applicable. The recommendations will address the feasibility, environmental benefit and likelihood of successful implementation for each proposal.

Assigned staff may enlist the assistance of external subject matter experts to evaluate the proposals. Areas of expertise that may be needed can include budgeting and finance, environmental benefit estimation, sustainability, public health, emissions control technologies, regulatory compliance management, and public outreach and participation.

B. Review Process and Notification

1. **Completeness review.** After receipt of a SEP application, the department will review the application for completeness and to determine whether the proposed SEP meets all applicable requirements contained in this policy. The department may also request financial or other documentation verifying the applicant's ability to complete the SEP or any other additional information deemed necessary to evaluate the SEP proposal. Complete respondent SEP proposals will be forwarded to the director for consideration by the managers and staff negotiating the settlement agreement in accordance with Section IX. C below.
2. **Third party SEP proposal review.** Department staff will evaluate third party SEP proposals using the criteria described in Section X. of this policy, and prepare written recommendations to the director regarding approval, remand or rejection of third party SEP proposals. The director will act on these recommendations within 15 work days, and the decision of the director will be final.

The department will provide written notification to the offerors of all third party SEPs relative to their acceptance for inclusion in the SEP Library. For SEP proposals that are remanded or rejected, the department will provide written notification to offerors identifying the reasons for remand or rejection (e.g., failed to meet the SEP criteria, inadequate supporting data were provided, etc.). Notification on remanded SEP proposals will explain additional information needed for reconsideration and a deadline for resubmission. The director will provide written notification to offerors of resubmitted third party SEPs with respect to approval or rejection, and, if rejected, reasons for doing so. The decision of the director is final. Approved proposals will be added to the SEP Library.

C. Approval of SEPs for Inclusion in OACs

For SEPs receiving approval for implementation by or on behalf of a respondent, the department will:

1. Notify the applicant of any modifications to the proposed SEP needed prior to inclusion of the SEP in an OAC;
2. Identify the amount of the penalty mitigation that may be granted in consideration of performance of the SEP; and,
3. For SEPs implemented by respondents, identify the provisions required to be included in the OAC for department approval of the SEP (e.g., project milestones, deliverables, reporting requirements, penalties for failure to perform, other compliance provisions, etc.).

In the event a proposed SEP is denied, the department will provide written notification of the SEP denial identifying the reasons for denial (e.g., failed to meet the SEP criteria, inadequate supporting data were provided, etc.) and provide the information necessary for reconsideration, if appropriate. In the event SEP negotiations delay or threaten to delay resolution of the alleged violations through an OAC, the department may deny the proposed SEP. Approval or denial of a proposed SEP is at the sole discretion of the department.

X. Criteria for SEP Approval

Approval of SEP proposals will be based on:

- A. **Strength of the proposal:** The clarity of its objectives, the detail of the project description and work plan, discussion of involvement of stakeholders and participants, technical and economic feasibility, and identification of potential obstacles and how they will be handled.
- B. **Capacity of the implementing organization:** Its experience implementing similar projects and managing grant finances and reporting. Further, the implementing organization needs to demonstrate that they have the available resources to comply with the project schedule and bring it to a successful conclusion.
- C. **Rigor and feasibility of the schedule:** The implementation schedule is sufficiently detailed and provides adequate staging and timing of tasks to be successfully completed as planned.
- D. **Adequacy of funding and detail of the budget:** The projected cost of the project matches its scope and the budget is appropriately itemized. (See Section XII below for details.)
- E. **Rigor of the benefits estimations:** The appropriate metrics for gauging success are identified, calculation methods are documented and reproducible, and both metrics and methods are backed by citations to authoritative sources. Benchmarking with similar projects is encouraged where possible.
- F. **Compliance with A.R.S. §49-117:** The proposal should clearly describe how the proposed project does (for a SEP proposed by a respondent) or has the potential to (for a third party SEP) meet the nexus requirement of the statute.
- G. **Community Input:** SEPs that perform well on this factor will have been developed taking into consideration input received from the affected community. No credit will be given for this factor if the defendant/respondent did not actively solicit and incorporate public input into the SEP proposal. Any SEP proposal that provides services to affected communities (e.g., health assessments, assistance to a small business industry sector) must include a plan for engaging the communities and acquiring input from them.

XI. Third party SEP Selection, Authorization and Implementation

A respondent may propose to fund a third party project as its SEP. The third party project may either be a pre-approved SEP from the SEP Idea Library or one separately proposed by the respondent. If a third party SEP is selected and funded, the implementing agency must enter into a contractual agreement with the respondent wishing to fund the SEP. The agreement will outline, among other things, the terms of the SEP, such as the requirements for separate accounting and reporting, and where and how the project will be performed, including a project plan, schedule and reporting milestones. Upon reaching agreement, the respondent must submit a copy of the signed contract to the department for review and inclusion of description and performance criteria in the settlement agreement as specified in Section XIII. The department will not issue an approval to the parties to initiate implementation of the project until a copy of the signed contract has been received.

In order to maintain transparency in financial transactions, a separate account is required and SEP funds cannot be comingled with other funds. No funds will be provided from Maricopa County. All SEP funds will be paid directly to the SEP provider from the respondent to an enforcement action

issued by the department that elects to participate in a SEP. Administrative costs to perform the SEP are allowed but may not exceed 5% of total project costs. All specific expenditures for the SEP will be itemized in the pre-approved budget contained in the SEP proposal. No variance from the pre-approved SEP proposal budget is allowed.

An organization making application for, or with department approval for a Third party SEP, is not allowed to solicit recipients of department enforcement actions. Contact unsolicited by the enforcement action recipient with the intent to encourage selection of a SEP proposal will result in removal of the SEP proposal from the list of pre-approved SEPs.

Third party administrators of approved SEPs that have been funded and are underway are required to submit progress reports quarterly unless otherwise scheduled when the SEP proposal is funded. Progress reports will provide the information specified in Section XIV Respondent Reporting Requirements below. The performance periods are January–March, with a report due in May; April–June, with a report due in August; July–September, with report due in November; and October–December, with a report due in February.

A final report summarizing the overall conduct of the SEP, deliverables and results achieved is required within 30 calendar days of completion of the SEP. Non-submittal of a final SEP report will render the proposing organization ineligible for future SEPs, and may reduce the amount of the penalty offset allowed for completion of the SEP.

All reports must be submitted to both the respondent and the director.

Onsite visits by the department to verify progress and SEP completion may be performed.

XII. Evaluation of Project Costs

A detailed estimate of project costs will be required as part of the respondent's SEP application. The department will use its discretion in determining the level and type of detail required for a project proposal. It is expected that the greater the complexity of a project and its costs and benefits, the project proposal will contain a commensurately greater amount of description/justification. Only reasonable and necessary expenses to be incurred by the respondent in performing the SEP can be included in the project cost.

A. Costs that may be considered include:

1. Capital costs, e.g., purchase of equipment or 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.

B. Only contracted labor or overtime labor by the respondent's employees will be allowed in project costs.

- C. No credit will be given for volunteer labor, labor by employees during normal work hours or for administrative costs accrued by the respondent.
- D. Costs identified in the application 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.
- E. 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 or credit certification as pollution control facility or pollution control equipment under Arizona tax laws (A.R.S. Title 43, Chapter 10, Article 5 and Chapter 11, Articles 3 and 6).

XIII. Documentation of SEPs in OACs

The type and scope of each project must be explicitly described in the signed OAC, and the approved SEP proposal referenced in and attached to the OAC. The SEP description must include:

- A paragraph describing the purpose, methods and expected results of the SEP;
- Start and end dates;
- Deliverables;
- Name, title and contact information for the representative of the respondent responsible for managing and reporting on the SEP;
- Name, title and contact information for the MCAQD contact for receiving reports and all other matters related to the SEP and its implementation; and
- Other terms of agreement and performance standards.

The OAC will:

- 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.
- Contain a requirement that the respondent submit periodic progress reports and a final report to department.
- 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.
- Explicitly describe stipulated penalties and the conditions under which those penalties will be assessed (e.g., failure to perform, report, or meet deadlines).

XIV. Respondent Reporting Requirements

An approved SEP must contain timely and defined milestones for implementing the project and deliverables. To ensure that the respondent meets project milestones and submits deliverables, written progress and final reports are required to be submitted to the department.

A. Progress Reports

Progress reports will provide the status of project milestones and deliverables and itemize all costs with supporting documentation such as receipts and photographs. Progress reports may be monthly or quarterly and the schedule of reporting will be determined at the time the SEP is formally incorporated within an OAC.

B. Final Report

No later than 30 calendar days after completion of the SEP (as defined in the SEP schedule), the respondent must submit a final report to the department documenting completion of project milestones and deliverables. The report must include the following:

1. A detailed description of actual expenses incurred by the respondent in performing the SEP. Documentation required may include, but is not limited to, invoices, contracts, contract proposals or 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 using the same methods employed in the SEP proposal; or, if alternative methods are used, providing a discussion of why those methods were employed and citing authoritative sources for them.
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.

XV. SEP Compliance

The respondent maintains full responsibility for completing the SEP regardless of the role of the third party. The department, in its sole discretion, will determine whether the SEP has been satisfactorily completed (i.e., pursuant to the terms contained in the OAC) and whether the respondent has made good faith, and timely efforts to implement the SEP.

If the respondent fails to expend all the SEP costs as described in the approved SEP proposal attached to the OAC, the remaining balance must be paid to the department as a penalty amount.

If the respondent does not comply satisfactorily with the terms of the SEP, the respondent will be liable for stipulated penalties. Stipulated penalties will be:

- A. Identified for both failure to complete the project and for missed deadlines to ensure the SEP is performed as required and in a timely manner;
- B. Due within 30 calendar days upon request in writing from department; and
- C. Established as follows:
 - a. If the SEP is not completed to the satisfaction of the department for any reason other than a force majeure event, a stipulated penalty between 75 and 150 percent of the amount by which the penalty was mitigated on account of the SEP will be required.
 - b. Penalties for missed deadlines, including submittal of required reports, will be assessed at an amount less than or equal to \$100 per day for each day beyond the approved completion date until the requirement is met.

XVI. Department Discretion; Limitations

Whether the department decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP, is at the discretion of the department. Regardless of whether a project appears to satisfy all of the provisions of this policy, the department may decide for one or more reasons that a SEP or specific SEP proposal is not appropriate (e.g., the cost for the department to review a SEP proposal or oversee SEP implementation is excessive, the respondent may not have the ability or reliability to complete the proposed SEP, or the deterrent value of the higher penalty amount outweighs the estimated benefit of the proposed SEP).

This policy is intended solely for guidance of department personnel. It is not intended and cannot be relied upon to create rights, substantive or procedural, that are enforceable by any person. The approval of any SEP will not be considered a precedent for any subsequent SEP or SEP proposal.

The department reserves the right to act at variance with all or part of this policy in the event that its application is deemed inappropriate by the director.

XVII. References

Issuance of Final Supplemental Environmental Projects (SEPs) Policy, April 10, 1998, United States Environmental Protection Agency www.epa.gov/compliance/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf

Interim Guidance for Community Involvement in Supplemental Environmental Projects, June 17, 2003, United States Environmental Protection Agency www.epa.gov/compliance/resources/policies/civil/seps/sepcomm2003-intrm.pdf

Final Agency-Wide Supplemental Environmental Projects Policy, May 9, 2008, Colorado Department of Public Health and Environment www.cdphe.state.co.us/oeis/sep/docs/CDPHESEPPolicy.pdf

Policy on Supplemental Environmental Projects, February 21, 2007, Massachusetts Department of Environmental Protection www.mass.gov/dep/service/seppol07.pdf

Supplemental Environmental Projects (SEPs): Putting Fines to Work Closer to Home (Guidance Document), March 2009, Texas Commission on Environmental Quality www.tceq.texas.gov/publications/gi/gi-352.html

Supplemental Environmental Projects Web pages, www.tceq.texas.gov/legal/sep/

Exhibit A

Application for Approval of a Supplemental Environmental Project Completed by a Respondent



Maricopa County

Air Quality Department

Return completed form to:
MCAQD Policy Office
1001 N Central Ave, Suite 125, Phoenix, AZ 85004
Phone (602) 506-6702 Fax (602) 506-6179
SEPinfo@mail.maricopa.gov

RESPONDENT CUSTOM SEP APPLICATION FORM

Documents may be submitted in person at:
Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

RESPONDENT INFORMATION

Name of Respondent (Full legal name):		Application Date:	
Business Address:	City:	State:	Zip:
Mailing Address (if different from business address):	City:	State:	Zip:
Contact Person:		Contact Person Title:	
Phone Number:	Fax Number:	Email	

Previous SEP performance history or grant and funds management experience. List all applicable previous experience managing funds and performing projects. If a contractor will be implementing a significant portion of the project, provide information describing their experience and qualifications.

Does your organization carry comprehensive general liability insurance? Yes No

Type of Organization: For-profit Not-for-profit* Government *If not-for-profit, attach a copy of you 501c(3) exemption

Is your organization willing to establish and maintain a separate bank account for SEP funds? Yes No

RESPONDENT COMPLIANCE HISTORY

Provide a three-year chronology of all notices of opportunities to correct (NOCs or OTCs) and notices of violation (NOVs) issued under any provisions of A.R.S. Title 49.

Date Issued	Applicable statute and description of NOC/OTC or NOV	Current Status or Date Resolved		
			Add Another Row	Delete This Row

Additional information regarding the list, above:

NATURE OF ENFORCEMENT ACTION

Provide a summary of the enforcement action being taken against the respondent (include NOV number and date of issuance).

Penalty Amount:	Proposed SEP Amount:
-----------------	----------------------



Maricopa County

Air Quality Department

Return completed form to:
MCAQD Policy Office
1001 N Central Ave, Suite 125, Phoenix, AZ 85004
Phone (602) 506-6702 Fax (602) 506-6179
SEPinfo@mail.maricopa.gov

RESPONDENT CUSTOM SEP APPLICATION FORM

Documents may be submitted in person at:
Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

DESCRIPTION OF THE PROPOSED SEP

Project Name:

Estimated Total Project Cost:

Project Category (See Section V of SEP Policy, #PP-2012-0003):

- Pollution Prevention Pollution Reduction Compliance Promotion/Research Public Health
- Assessments/Environmental Management Systems

DETAILED DESCRIPTION OF THE PROPOSED SEP

a. General Description Provide a brief general description of the SEP and its purpose, similar projects that have been implemented by your organization or others, why it is needed, and how it complies with the nexus requirements of [A.R.S. §49-117](#) (See Appendix). Include photographs, if applicable.

1. Description:

2. Insert photographs, maps or diagrams below (or include as separate attachments):

Insert Another Diagram, Map, Photo, etc.

Remove Diagram, Map, Photo, etc.

3. Nexus and compliance with A.R.S. §49-117:

b. Project Implementation Describe how the project will be implemented, including: project planning; specific technology, operation or process changes, if applicable; and target population(s) and how they will be engaged.

Specific location of SEP (Please provide a detailed description, including maps, if available):

Insert map

Insert another map

Remove map



Maricopa County

Air Quality Department

Return completed form to:
MCAQD Policy Office
1001 N Central Ave, Suite 125, Phoenix, AZ 85004
Phone (602) 506-6702 Fax (602) 506-6179
SEPinfo@mail.maricopa.gov

RESPONDENT CUSTOM SEP APPLICATION FORM

Documents may be submitted in person at:
Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

Property Owner, if applicable:

Does the proposed SEP involve correction of a violation(s) that was caused by or for which respondent is responsible for correcting?
 Yes No If yes, how?

Will the project use applicant's personnel for labor or contract labor? Yes No If yes, specify how:

Will the applicant be willing to complete all portions of the SEP, regardless of whether the SEP costs more than anticipated?
 Yes No Explanation:

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 quantified environmental benefits, provide a citation(s) to the source(s) used for the calculation method (e.g., AP-42, EPA publication, ASTM, etc.) For all other types of projects, quantify project deliverables (e.g. the number of participants, programs offered, etc.)

[Empty response box for Expected Environmental Benefit]



Maricopa County

Air Quality Department

Return completed form to:
 MCAQD Policy Office
 1001 N Central Ave, Suite 125, Phoenix, AZ 85004
 Phone (602) 506-6702 Fax (602) 506-6179
 SEPinfo@mail.maricopa.gov

RESPONDENT CUSTOM SEP APPLICATION FORM

Documents may be submitted in person at:
 Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

PROJECT SCHEDULE

Projected Start and End Dates or Duration:

Project tasks and schedule, or time frames if there are no specified starting and ending dates. Identify which tasks need to be completed prior to commencing any subsequent tasks, any overlapping tasks, and any close-out activities for completing the project.

	Task name and description	Start date	End date	Duration (days)
Remove This Row*	1.			0
	*Please note: If rows are deleted, the rows may not be renumbered until the form is saved and reopened.			Total Duration: 0
Add New Row				

PROJECT COSTS (Use FEMA rates for equipment and labor)

Only contracted labor or overtime labor by the applicant'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.shtml> for FEMA schedule of equipment rates.

Use the 'Add Another Row' button to add more rows.
 Use the 'Remove This Row' button to remove a row. (Note that there must be at least one row. This button will not work if there is only one row in the table.)
 Total costs for each item and the total project cost will be calculated by the table.
 A sample table is provided following the actual project cost table.

Remove Row	Description	Qty	Unit	Unit Cost	Total Cost for this Item
Remove This Row					
Add Another Row				Total Cost	

SAMPLE TABLE. The information in this table is solely for illustration only.

Remove Row	Description	Qty	Unit	Unit Cost	Total Cost for this Item
Remove This Row	Rent 2 tractors for 4 hours each @ \$35.00/hour, for hauling loads	8	hour	\$35.00	\$280.00
Remove This Row	Rent chipper for 1 day @ \$87.00/day, for mulching limbs	1	day	\$87.00	\$87.00
Remove This Row	Employ 2 laborers for 6 hours each at overtime rate of \$20.00/hour	12	hour	\$20.00	\$240.00
Remove This Row	Employ 1 supervisor for 6 hours at overtime rate of \$40.00/hour	6	hour	\$40.00	\$240.00
Remove This Row	Rent 2 roll-off bins (includes disposal fees) @ \$3,000.00/day	2	day	\$3,000.00	\$6,000.00
Remove This Row	4 signs for on-site signage	4	each	\$50.00	\$200.00
Remove This Row	Place event public notices in 2 newspapers	2	newspaper notices	\$150.00	\$300.00
Remove This Row	Fees for 2 drivers for 6 hours each @ \$50.00/hour	12	hour	\$50.00	\$600.00
	Add Another Row			Total Cost	\$7,947.00



Maricopa County

Air Quality Department

Return completed form to:
MCAQD Policy Office
1001 N Central Ave, Suite 125, Phoenix, AZ 85004
Phone (602) 506-6702 Fax (602) 506-6179
SEPinfo@mail.maricopa.gov

RESPONDENT CUSTOM SEP APPLICATION FORM

Documents may be submitted in person at:
Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

CERTIFICATION

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. Will fund or be the party undertaking the proposed project.
3. Has not previously budgeted or acquired funding for the project prior to its approval by MCAQD, and
4. Will not receive duplicative funding by grants or donations from any source for this project.

Further, I certify that the information contained in this document is true and correct and that the SEP is being undertaken solely as part of the settlement of the enforcement action.

Signature of Authorized Representative	Printed Name
Date	Title

SEP Application Appendix

A.R.S. §49-117. Supplemental environmental project; requirements; nexus

A supplemental environmental project that is initiated or accepted by the department shall comply with this section, shall advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and shall have an adequate nexus. A nexus exists only if any of the following apply. The proposed project:

1. Is designed to reduce the likelihood that similar violations will occur in the future.
2. Reduces the adverse impact to public health or the environment to which the violation contributes.
3. Reduces the overall risk to public health or the environment potentially affected by the violation.

OFFICE USE ONLY

			Disposition:
Received by MCAQD	Reviewed by	Date Reviewed	<input type="checkbox"/> Complete <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved

Exhibit B

**Application for Pre-approval of a Supplemental
Environmental Project to be Completed by a
Third Party (Not-for-Profit Organization or
Governmental Entity) into the
SEP Idea Library**



Maricopa County

Air Quality Department

Return completed form to:
SEP Idea Library
1001 N Central Ave, Suite 125, Phoenix, AZ 85004
Phone (602) 506-6702 Fax (602) 506-6179
SEPinfo@mail.maricopa.gov

SEP IDEA LIBRARY APPLICATION

Documents may be submitted in person at:
Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

GUIDELINES TO SUBMIT PROJECT PROPOSALS FOR INCLUSION IN THE SUPPLEMENTAL ENVIRONMENTAL PROJECTS IDEA LIBRARY

The Maricopa County Air Quality Department (MCAQD) is developing a list of “ready to go” projects to be conducted by qualified tax exempt 501(c)(3) non-profit and government organizations for its Supplemental Environmental Projects (SEP) Idea Library. The SEP Idea Library is an online resource listing environmentally beneficial projects that may be voluntarily added by businesses as part of settlements of enforcement actions related to alleged air quality violations.

The MCAQD's goal is to ensure federal clean air standards are achieved and maintained for all Maricopa County residents; thus any SEPs should further this goal. SEPs are designed to protect and improve the environment and public health above and beyond compliance with applicable laws.

Projects approved for inclusion in the SEP Idea Library will be made available on MCAQD's website for consideration in future enforcement cases. Projects will remain in the SEP Idea Library for a minimum of two years from the date of submission.

The determination as to what type of SEP would be appropriate depends upon the particular enforcement action and it meeting the requirements of [A.R.S. §49-117](#). Submission of a project idea to the MCAQD does not guarantee the project will be included as a SEP in an enforcement settlement.

When evaluating a proposed project for inclusion as a SEP in an enforcement settlement, MCAQD considers many factors as outlined in the SEP policy. The most important factors are the air quality or public health 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, geographic location of the proposed project, type of project, estimated cost, and length of time estimated for the project.

Five categories of projects have been identified for SEPs: pollution prevention; pollution reduction; environmental compliance promotion or research; public health; and assessments and environmental management systems.

See the SEP Policy, #PP-2012-003, for more details on the policy, the proposal review process and evaluation criteria, available at www.maricopa.gov/aq/divisions/planning_analysis/Policies.aspx.

- Project proposals may be solicited by MCAQD biennially, but will be accepted any time. All projects will be reviewed by an external review committee, which will make recommendations to the director for inclusion in the SEP Idea Library. (See sections VI.B. and IX. of the SEP Policy)



Maricopa County

Air Quality Department

Return completed form to:
SEP Idea Library
1001 N Central Ave, Suite 125, Phoenix, AZ 85004
Phone (602) 506-6702 Fax (602) 506-6179
SEPinfo@mail.maricopa.gov

SEP IDEA LIBRARY APPLICATION

Documents may be submitted in person at:
Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

SUPPLEMENTAL ENVIRONMENTAL PROJECT IDEA LIBRARY PROJECT PROPOSAL APPLICATION

RESPONDENT INFORMATION			
Name of Respondent (Full legal name):		Application Date:	
Business Address:		City:	State: Zip:
Mailing Address (if different from business address):		City:	State: Zip:
Contact Person:		Contact Person Title:	
Phone Number:	Fax Number:	Email:	
Previous SEP performance history or grant and funds management experience. List all applicable previous experience managing funds and performing projects. If a contractor will be implementing a significant portion of the project, provide information describing their experience and qualifications.			
Does your organization carry comprehensive general liability insurance? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Type of Organization: <input type="checkbox"/> For-profit <input type="checkbox"/> Not-for-profit* <input type="checkbox"/> Government *If not-for-profit, attach a copy of you 501c(3) exemption			
Is your organization willing to establish and maintain a separate bank account for SEP funds? Yes <input type="checkbox"/> No <input type="checkbox"/>			
DESCRIPTION OF THE PROPOSED SEP			
Project Name:			
Estimated Total Project Cost:		Minimum amount of contribution your organization will accept:	
Project Category (See Section V of SEP Policy, #PP-2012-0003):			
<input type="checkbox"/> Pollution Prevention <input type="checkbox"/> Pollution Reduction <input type="checkbox"/> Compliance Promotion/Research <input type="checkbox"/> Public Health <input type="checkbox"/> Assessments/Environmental Management Systems			
DETAILED DESCRIPTION OF THE PROPOSED SEP			
a. <u>General Description</u> Provide a brief general description of the SEP and its purpose, similar projects that have been implemented by your organization or others, why it is needed, and how it complies with the nexus requirements of A.R.S. §49-117 (See Appendix). Include photographs, maps or diagrams, if applicable (either in the field below or as separate attachments).			
1. Description:			
2. Insert photographs, maps or diagrams below (or include as separate attachments):			
Insert Another Diagram, Map, Photo, etc.			
Remove Diagram, Map, Photo, etc.			



Maricopa County

Air Quality Department

Return completed form to:
SEP Idea Library
1001 N Central Ave, Suite 125, Phoenix, AZ 85004
Phone (602) 506-6702 Fax (602) 506-6179
SEPinfo@mail.maricopa.gov

SEP IDEA LIBRARY APPLICATION

Documents may be submitted in person at:
Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

3. Nexus and compliance with A.R.S. §49-117:

b. **Project Implementation** Describe how the project will be implemented, including: project planning; specific technology, operation or process changes, if applicable; and target population(s) and how they will be engaged.

Specific location of SEP (Please provide a detailed description, including maps [inserted below or attached separately], if available):

Insert map

Insert another map

Remove map

Property Owner, if applicable:

Will the project use applicant's personnel for labor or contract labor? Yes No If yes, specify how:

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

Yes No Explanation:

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 quantified environmental benefits, provide a citation(s) to the source(s) used for the calculation method (e.g., AP-42, EPA publication, ASTM, etc.) For all other types of projects, quantify project deliverables (e.g. the number of participants, programs offered, etc.)



Maricopa County

Air Quality Department

Return completed form to:
 SEP Idea Library
 1001 N Central Ave, Suite 125, Phoenix, AZ 85004
 Phone (602) 506-6702 Fax (602) 506-6179
 SEPinfo@mail.maricopa.gov

SEP IDEA LIBRARY APPLICATION

Documents may be submitted in person at:
 Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

PROJECT SCHEDULE

Projected Start and End Dates or Duration:

Project tasks and schedule, or time frames if there are no specified starting and ending dates. Identify which tasks need to be completed prior to commencing any subsequent tasks, any overlapping tasks, and any close-out activities for completing the project.

	Task name and description	Start date	End date	Duration (days)
Remove This Row	1.			
			Total Duration:	
<input type="button" value="Add New Row"/>				

PROJECT COSTS (Use FEMA rates for equipment and labor)

See <http://www.fema.gov/government/grant/pa/eqrates.shtm> for FEMA schedule of equipment rates.

SAMPLE TABLE. *The information in this table is for illustration only.*

Remove Row	Description	Qty	Unit	Unit Cost	Total Cost for this Item
Remove This Row	Rent 2 tractors for 4 hours each @ \$35.00/hour, for hauling loads	8	hour	\$35.00	\$280.00
Remove This Row	Rent chipper for 1 day @ \$87.00/day, for mulching limbs	1	day	\$87.00	\$87.00
Remove This Row	Employ 2 laborers for 6 hours each at overtime rate of \$20.00/hour	12	hour	\$20.00	\$240.00
Remove This Row	Employ 1 supervisor for 6 hours at overtime rate of \$40.00/hour	6	hour	\$40.00	\$240.00
Remove This Row	Rent 2 roll-off bins (includes disposal fees) @ \$3,000.00/day	2	day	\$3,000.00	\$6,000.00
Remove This Row	4 signs for on-site signage	4	each	\$50.00	\$200.00
Remove This Row	Place event public notices in 2 newspapers	2	newspaper notices	\$150.00	\$300.00
Remove This Row	Fees for 2 drivers for 6 hours each @ \$50.00/hour	12	hour	\$50.00	\$600.00
	<input type="button" value="Add Another Row"/>			Total Cost	\$7,947.00



Maricopa County

Air Quality Department

Return completed form to:
 SEP Idea Library
 1001 N Central Ave, Suite 125, Phoenix, AZ 85004
 Phone (602) 506-6702 Fax (602) 506-6179
 SEPinfo@mail.maricopa.gov

SEP IDEA LIBRARY APPLICATION

Documents may be submitted in person at:
 Maricopa County Air Quality Department 1001 N. Central Ave. Suite 125, Phoenix, AZ 85004

Project Cost Table Instructions

Use the 'Add Another Row' button to add more rows.
 Use the 'Remove This Row' button to remove a row. (Note that there must be at least one row. This button will not work if there is only one row in the table.)
 A sample table is provided above.

Remove Row	Description	Qty	Unit	Unit Cost	Total Cost for this Item
Remove This Row					
	Add Another Row			Total Cost	

CERTIFICATION

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. Will fund or be the party undertaking the proposed project.
3. Has not previously budgeted or acquired funding for the project prior to its approval by MCAQD. and
4. Will not receive duplicative funding by grants or donations from any source for this project.

Further, I certify that the information contained in this document is true and correct and that the SEP is being undertaken solely as part of the settlement of the enforcement action.

Signature of Authorized Representative	Printed Name
Date	Title

SEP Application Appendix

A.R.S. §49-117. Supplemental environmental project; requirements; nexus

A supplemental environmental project that is initiated or accepted by the department shall comply with this section, shall advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and shall have an adequate nexus. A nexus exists only if any of the following apply. The proposed project:

1. Is designed to reduce the likelihood that similar violations will occur in the future.
2. Reduces the adverse impact to public health or the environment to which the violation contributes.
3. Reduces the overall risk to public health or the environment potentially affected by the violation.

OFFICE USE ONLY

Received by MCAQD	Reviewed by	Date Reviewed	Disposition: <input type="checkbox"/> Complete <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved
-------------------	-------------	---------------	--

 Maricopa County Air Quality Department	Number: PP-2012-004 Title: Enhanced Regulatory Outreach Program Policy			
	Author: Johanna Kuspert	<table border="1"> <tr> <td>Issue Date: October 19, 2012</td> </tr> <tr> <td>Revision Date: March 21, 2013</td> </tr> <tr> <td>Effective Date: March 25, 2013</td> </tr> </table>	Issue Date: October 19, 2012	Revision Date: March 21, 2013
Issue Date: October 19, 2012				
Revision Date: March 21, 2013				
Effective Date: March 25, 2013				
Approved by: 				
William D. Wiley, Director				

I. Purpose

The purpose of this policy is to implement Maricopa County's Enhanced Regulatory Outreach Program for all regulatory adoptions or amendments initiated by the Air Quality Department. The program will be operational by January 9, 2013.

II. Statutory Authority

Arizona Revised Statutes (A.R.S.) §§ 49-112, 49-471, 49-471.01, 49-471.02, 49-471.04, 49-471.05, 49-471.06, 49-471.07, 49-471.08, 49-471.09, 49-471.10, 49-471.11, 49-471.12, 49-479, 49-498, 11-251.05, and 11-251.08

III. Statement of Policy

Regulatory amendments shall be processed in a consistent manner to ensure opportunity for public input. This includes fee amendments related to permits, as defined in A.R.S. § 49-480 issued by Maricopa County. No rule, regulation or ordinance can be enforced without substantial compliance with this policy, except those that were approved by the Board of Supervisors (BOS) before January 9, 2013.

IV. Procedure

A web site will be created and accessible from the County main web page, with a distinct URL, that can be found on the web pages of all departments and districts engaged in regulation adoption or amendment. This site will serve as a central place for interested parties to participate in all County regulatory changes. At a minimum, the new site will contain the following information:

- A. Calendar – A calendar notifying the public of all major milestones and opportunities for public input on all current regulatory adoptions and amendments.
- B. Information about where comments can be submitted electronically or in writing.
- C. Staff Reports – Staff reports on all regulatory changes will be prepared and linked to the web site at least one week prior to any public meeting or hearing (citizens' advisory board,

commission or BOS). This does not apply to informal public workshops. These staff reports will include:

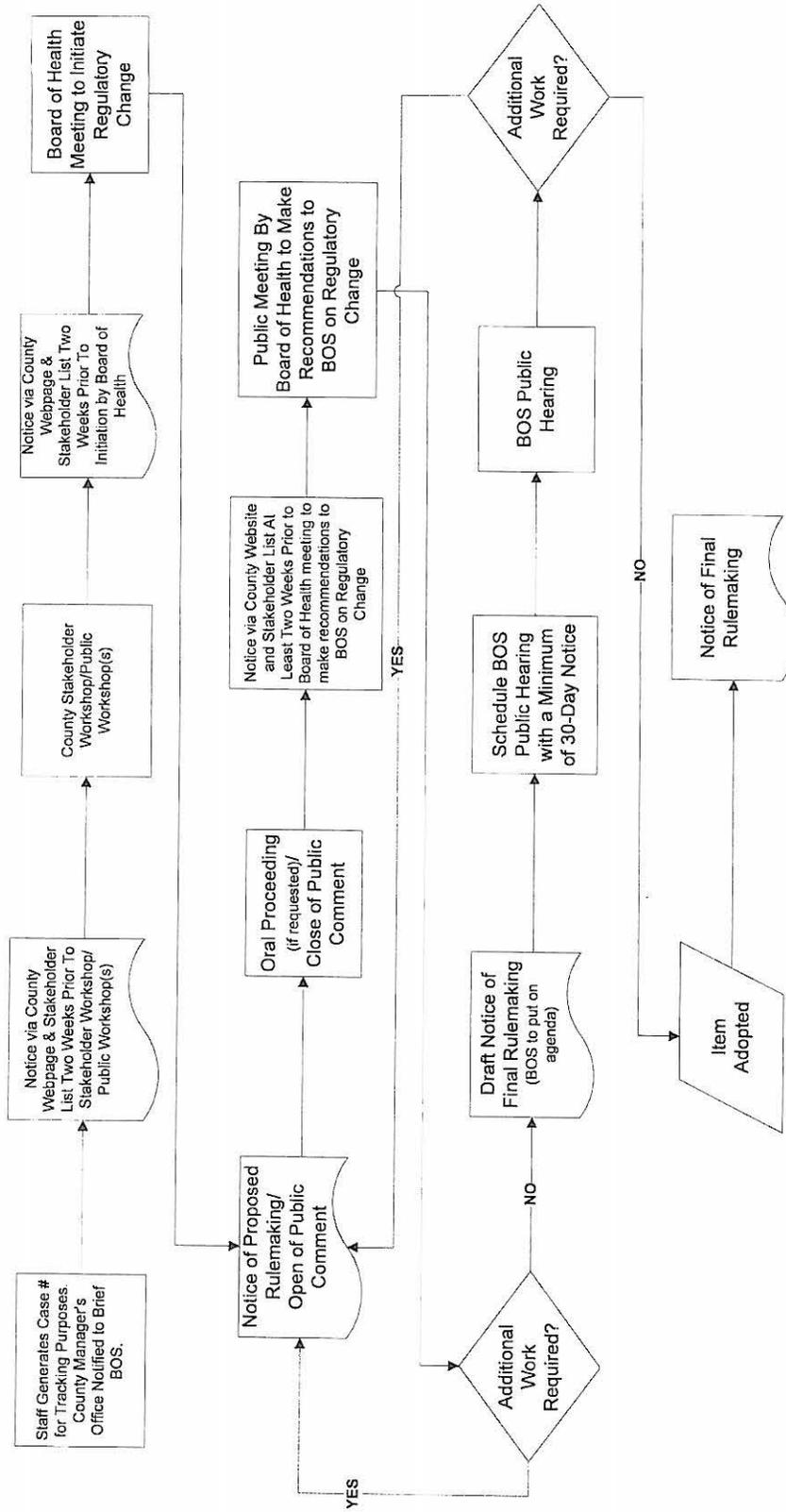
1. A summary of the proposed regulatory change;
2. An analysis of the input received during the process and how that input was responded to;
3. Language of any proposed regulatory change or amendment;
4. Preamble required by A.R.S. § 49-471.05;
5. Minutes from all formal public meetings; and
6. Copies of all written and electronic stakeholder input.

In addition to the required staff report, an executive summary of the report including an overview of stakeholder input and staff responses will be provided to the BOS at least one week prior to any BOS public hearing.

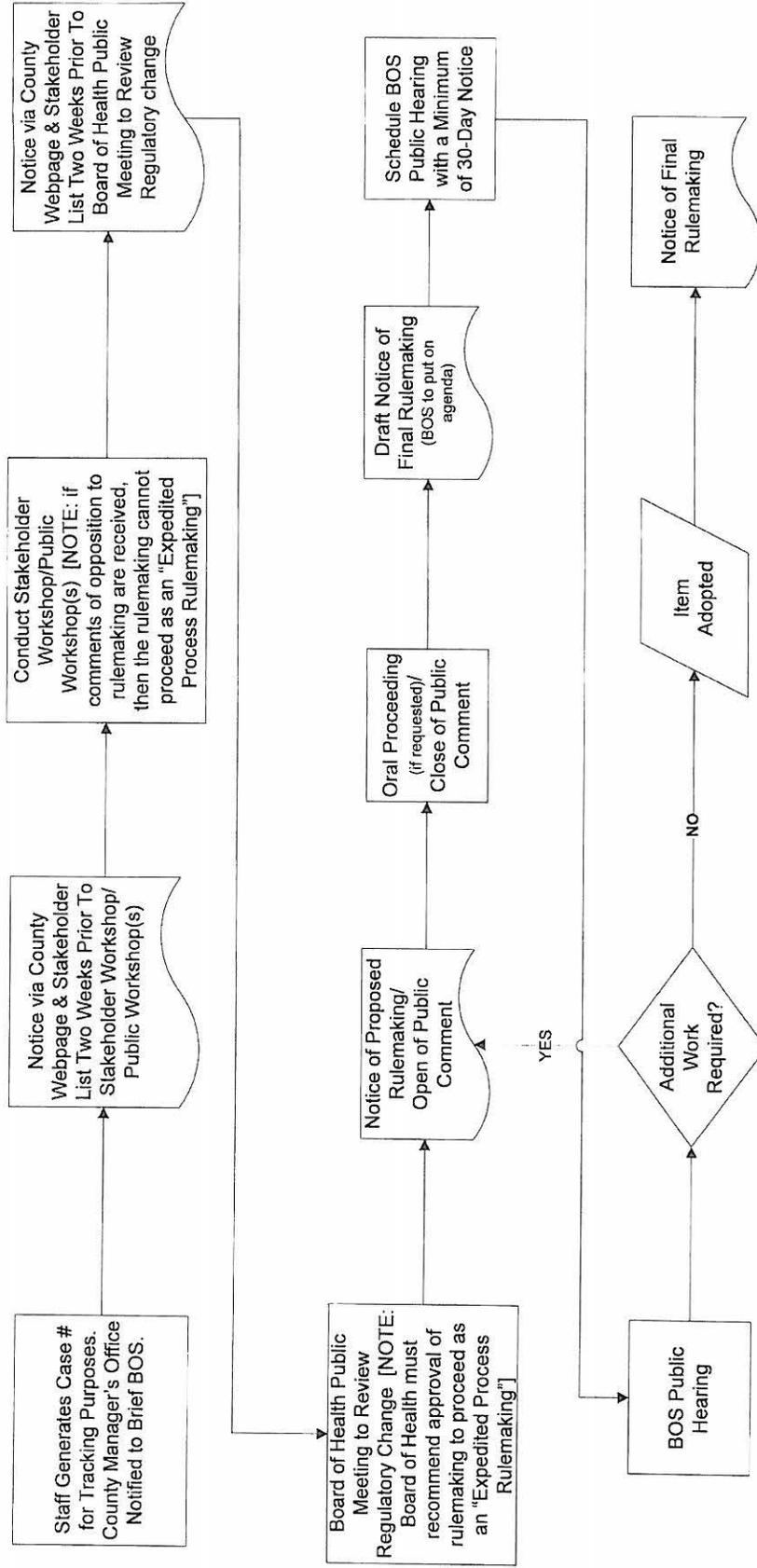
- D. Process Flow Chart – A flow chart depicting the rule adoption or regulatory amendment process. A department flow chart is attached.
- E. Expedited Process Flow Chart – A flow chart depicting the expedited rule adoption or regulatory amendment process. A department flow chart is attached. This expedited process may only be used if the following criteria have been met:
 1. The proposed amendment has been the subject of at least one Stakeholder Workshop (posted on the County's web site at least two weeks in advance) and one Citizens' Board or Commission meeting;
 2. A draft of the regulatory change was available on the Enhanced Regulatory Outreach Program web site at least two weeks prior to the Citizens' Board or Commission meeting and was forwarded to the Board/Commission at least one week in advance of their review meeting;
 3. No comments of opposition to the amendment have been received from the public;
 4. The Citizens' Board or Commission reviewing the amendment recommends approval.
- F. Incorporation By Reference Flow Chart – A flow chart depicting the incorporation by reference rule adoption process. A department flow chart is attached. This process may only be used in the following circumstances:
 1. The rule merely changes the date of incorporation of a federal rule or statute when there has been no change in the rule since its last incorporation.

2. An update of a previous Code of Federal Regulations incorporation by reference where there have been changes since the last date of incorporation of the federal regulations, but the Clean Air Act or other legal requirements compel the County/State adoption of the revised federal rule if the County or State is to retain its jurisdiction.
- G. Stakeholder Notification Sign-Up – The Enhanced Regulatory Outreach site will include an opportunity for any interested person to sign-up to receive notices of all proposed regulatory changes, including opportunities to participate in the process. Citizens will have the option of receiving notices regarding all regulation changes or only those involving specific departments.
 - H. Index of Current Regulations – Organized by implementing department or district, the index will list all County regulations and a link to each.
 - I. Index of Substantive Policy Statements – As required by A.R.S. § 49-471.11, an index, organized by department or district, listing all departmental substantive policy statements and a link to each.
 - J. A standardized County definition of the terms Regulations and Substantive Policy Statements along with an index, organized by department or district, listing all documents that meet these definitions with a link to each.
 - K. Process for Review of Complaints Regarding Failure to Observe Adoption Procedure – If an affected person has a complaint concerning a failure to observe the requirements of this policy, it shall be submitted to the department initiating or recommending the regulation or ordinance. The complaint shall contain, at a minimum, the name of the department initiating or recommending the rule; the specific rule being initiated or recommended; and an explanation specifying the failure of a process or procedure of this policy that lead to the complaint. Within fifteen business days after the date of submission, the department shall, in writing, respond to the complaint and recommend action. The affected person may appeal the decision by filing with the Clerk of the Board within thirty days after the date of the written decision of the department, a written appeal of the BOS. The BOS shall place the complaint on its agenda within thirty days and provide a response to the complaint at the meeting. In the event of an appeal, the appealed portion of the regulation or ordinance will not be enforced until the BOS rules on the appeal.
 - L. Emergency Adoption of Regulations or Ordinances – The BOS may adopt regulations or ordinances without complying with the procedures of this policy if it makes a finding of an emergency requiring the adoption of the regulation or ordinance and records the nature of the emergency and the reason for the adoption in its minutes. Not later than sixty (60) days after the adoption of an emergency measure according to this policy, the regulation or ordinance shall be reviewed by the BOS to determine if it should continue or be terminated.

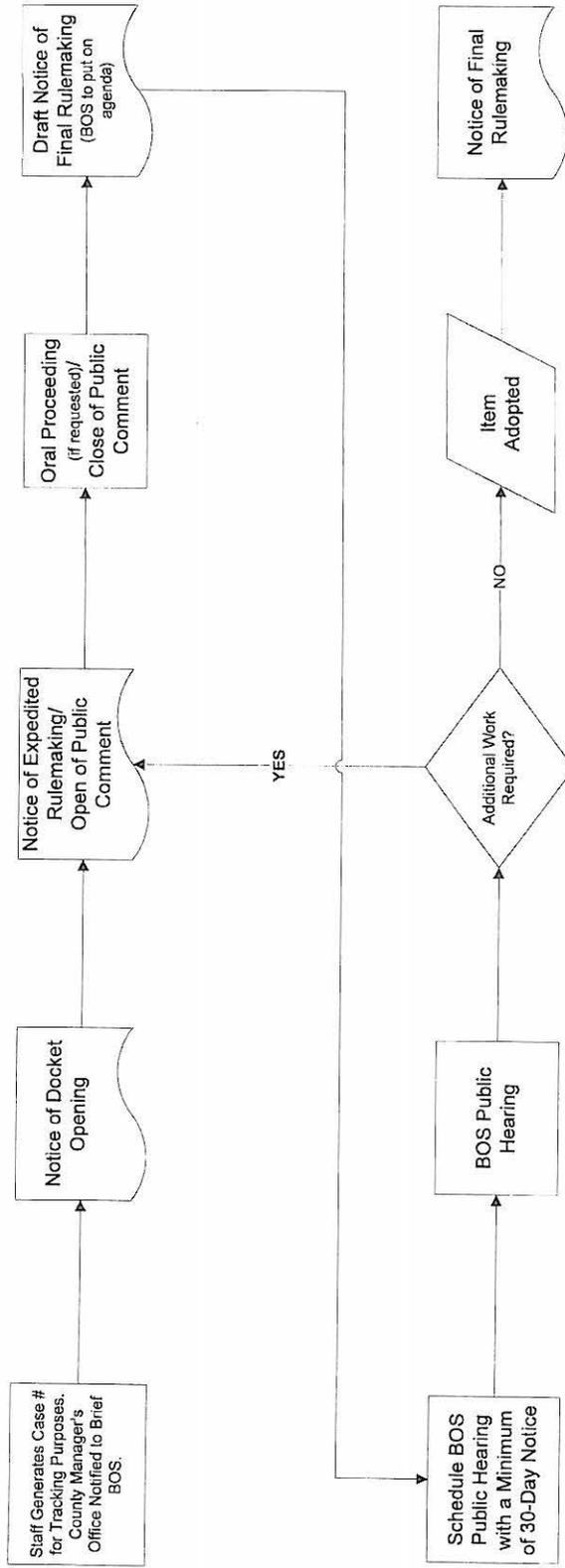
Maricopa County Air Quality Department Rulemaking Process



Maricopa County Air Quality Department Rulemaking Process EXPEDITED PROCESS



Maricopa County Air Quality Department Rulemaking Process INCORPORATION BY REFERENCE PROCESS



 Maricopa County Air Quality Department	Number: PP-2013-002 Title: Violation Reporting and Enforcement
	Issue Date: November 22, 2013 Revision Date Review Date: November 22, 2015
Author:	
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.
- 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 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.
- 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 and includes the name, title, address,

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

telephone numbers and any relevant statements made by the responsible party and witnesses. The referral report shall also include supporting evidence such as OTCs and NOV, photographs, videos, compliance inspection reports, correspondence, records, analytical test results and other appropriate documentation.

- 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.
- 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.
- I. The department in its discretion may issue an NOV for any documented noncompliance. Generally, NOV, s 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.
- 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, the department assumes an additional 5 days will account for mail delivery or e-mail receipt 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.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

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 B for 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

- a. 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.
- b. 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.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

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 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) 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

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

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.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

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. Attachments

Attachment A—Notice of Inspection Rights

Attachment B—Enforcement Case Flow Diagram

Attachment C—High Priority Violation (HPV) Determination Checklist

XII. 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

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

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)

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.



Maricopa County
Air Quality Department

Maricopa County Air Quality Department
1001 N. Central Avenue
Phoenix, AZ 85004
Phone: (602) 506-6010
Fax: (602) 506-2537

NOTICE OF INSPECTION RIGHTS

Company/Permit/ Notification Holder: _____	Permit Number: _____
Date: _____	Time: _____
Inspector: _____	Phone: _____
If you have any questions, you may contact the inspector's supervisor: _____ at phone number: 602.506.6734	

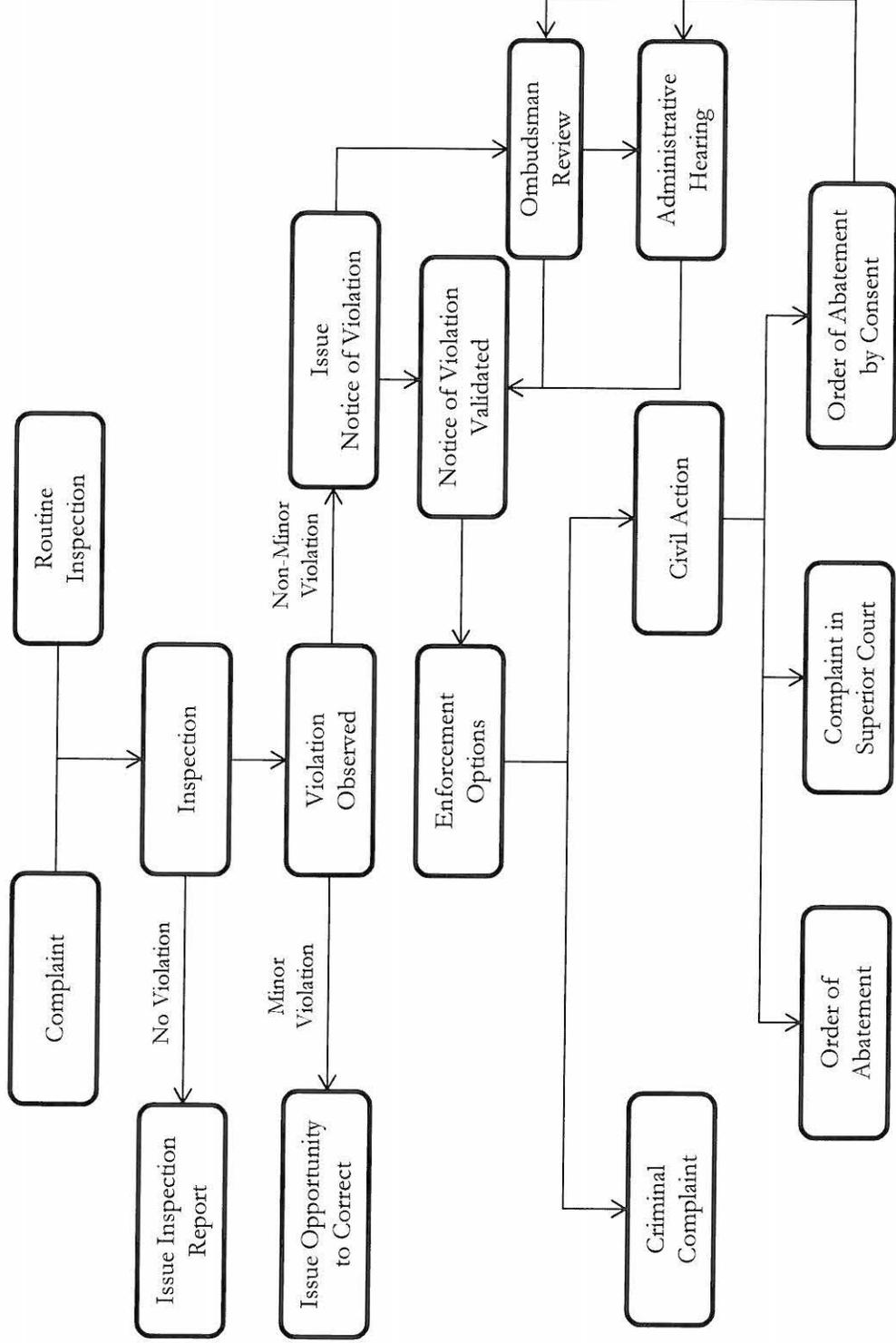
1. The Maricopa County Air Quality Department (hereinafter "department") representative(s) identified above was/were present at the above regulated site at the above listed date and time. Upon entry to the premises, the department representative(s) met with me, presented photo identification indicating that they are a department employee(s) and explained that:
 - The purpose of this inspection is:
 - To determine compliance with Arizona Revised Statutes (A.R.S. Title 49, Chapter 3, Article 3) and/or Maricopa County Air Pollution Control Regulations.
 - To determine compliance with an Air Quality Permit issued pursuant to A.R.S. § 49-480, and Maricopa County Regulations Rule 100, Section 105.
 - To determine compliance with an administrative or judicial order issued pursuant A.R.S. § 49-491, § 49-511, § 49-512.
 - This inspection is being conducted pursuant to A.R.S. § 49-473, § 49-474, § 49-488, and/or the inspection and entry provisions in an Air Quality Permit or conditional order. There are no direct fees for this inspection.
2. I understand that I may accompany the department representative(s) on the premises, except during confidential interviews.
3. I understand that I have the right to copies of any original document(s) taken during the inspection, and that the department will provide copies of those documents at the department's expense.
4. I understand that I have the right to request copies of any documents that will be relied upon to determine compliance with licensure or regulatory requirements, if the agency is permitted by law to release such documents. Instructions for requesting records are available at www.maricopa.gov/airq/contact_us/public_records/Default.aspx.
5. I understand that I have a right to a split of any sample(s) taken during the inspection, if the split of the sample(s) would not prohibit an analysis from being conducted or render an analysis inconclusive.
6. I understand that I have the right to copies of any analysis performed on sample(s) taken during the inspection and that the department would provide copies of this analysis at the department's expense.
7. I understand that each person interviewed during the inspection will be informed that their statements may be included in the inspection report.
8. I understand that each person whose conversation will be tape-recorded during the inspection will be informed that the conversation is being tape-recorded.
9. I understand that if an administrative order is issued or a permit decision is made based on the results of the inspection, I have the right to appeal that administrative order or permit decision. I understand that my administrative hearing rights are set forth in A.R.S. § 49-482, § 49-498 et seq. and Maricopa County Air Pollution Control Regulation IV, Rule 400. If I have any questions concerning my rights to appeal an administrative order or permit decision, I may contact the department Ombudsman at 602-506-1813.
10. I understand that the issuance of an Opportunity to Correct or a Notice of Violation is not appealable. I understand that if I have any questions or concerns about this inspection, or I wish to dispute the inspection findings, I may contact the department Ombudsman at 602-506-1813.
11. If a Notice of Violation is issued, I understand that I may check its status at www.maricopa.gov/airq/divisions/enforcement/nov/nov_status.aspx.
12. I understand that audit reports may be subject to privilege under A.R.S. 49-1402. The department may refuse to accept reports for which privilege is claimed.
13. Your feedback is essential in helping us achieve outstanding customer service, so please take a moment to tell us what we do well and what needs improvement by completing a Feedback Form located at www.maricopa.gov/airq under "Contact Us".
14. While I have the right to decline to sign this form, the department representative(s) may still proceed with the inspection/investigation.

Site Contact: _____ Title: _____

SIGN HERE: _____

- Declined to Sign
 Not on Site

Maricopa County Air Quality Department Enforcement Case Flow Diagram



**MARICOPA COUNTY AIR QUALITY DEPARTMENT (MCAQD) - COMPLIANCE
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 (TBA) 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 #1	Violation of applicable emissions limitation, detected by coating analysis, fuel samples, other process materials sampling, or raw / process materials usage reports.
	Matrix Criteria #2	Violation of parameter limits where parameter is a direct surrogate for an emissions limitation, detected by continuous / periodic parameter monitoring.
	Matrix Criteria #3	Exceedance of applicable non-opacity standard, detected by Continuous Emission Monitoring Systems (CEMS).
	Matrix Criteria #4	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?
--	--	---

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: _____

Division Manager Name: _____

Original to Permanent File
Copy to: Eric Raisanen - AFS (AIRS Facility Subsystem) Coordinator



Maricopa County
Air Quality Department

Number: PP-2013-003

Title: **Administrative Hearing Appeal Process**

Author: Heather Thrasher

Issue Date: November 22, 2013

Revision Date

Review Date: November 22, 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.
- E. A request for hearing may be denied for the following reasons:
 - 1. If the appellant failed to provide requested information to the department on a timely basis.
 - 2. If the appellant failed to make a good faith attempt to resolve the matter through the OAC process.
 - 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.

VI. Scheduling the Hearing

- A. The department will schedule a hearing within 60 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, 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 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.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.

VIII. Final Decision

- A. The administrative law judge 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'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:
 - 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.
 - 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.
- 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.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.



Maricopa County
Air Quality Department

Number: PP-2013-004

Title: Enforcement Review Policy

Author: Jo Crumbaker

Issue Date: November 22, 2013

Revision Date: November 3, 2014

Review Date: November 3, 2016

Approved by:

Philip A. McNeely, Director

I. Purpose

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

II. Statement of Policy

Upon a timely request, the business assistance coordinator will review inspection findings by conducting an independent and objective review at one of two points in the enforcement process. 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, review of an enforcement action will not be available.

III. 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. However, requests made after the 10 day period may be considered when circumstances warrant and acceptance for review is at the discretion of the department. 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 department to make an informed and objective assessment and recommendation regarding the issues raised in defense.
- C. The business assistance coordinator 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 review is requested shall not be forwarded to the department's enforcement office until a review has been completed and the violation affirmed.

- E. Disposition inspections will not be affected by this policy and will be conducted as deemed necessary by respective department staff.
- F. The business assistance coordinator will conduct an independent and objective review and will complete the review within 45 calendar days from the date the request is received, unless otherwise authorized by the Director.
- G. Review of the disputed inspection findings may result in a recommendation to modify or rescind an NOV.
- H. Once the determination is made, a letter will be sent to the respondent conveying the final decision.

IV. Final Offer to Settle through an Order of Abatement by Consent (OAC)

The business assistance coordinator will conduct an independent and objective review at the formal request of respondents who wish to dispute the inspection findings that form the basis of a final offer to settle an enforcement case with the department following the procedures below:

- 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 review.
- B. The written request should provide sufficient information to allow an informed and objective review of the issues raised by the respondent.
- C. The business assistance coordinator 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. 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 department, unless otherwise extended by the Director.
- E. The business assistance coordinator'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 terms of the final offer to settle.
- F. Once the determination is made, the business assistance coordinator will issue a letter to the respondent conveying the final decision.

V. References

Violation Enforcement and Reporting Policy

***DISCLAIMER:** The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.*



Maricopa County
Air Quality Department

Number: PP-2014-001

Title: **Trip Reduction Program
Travel Reduction Program Regional Task Force
Enforcement Policy**

Author: Brad Hartssock

Issue Date: January 2002

Revision Date: March 2005, March 2010,
March 2013, March 2014

Review Date: March 4, 2014

Approved by:

**Jerry Geering, Chairman
Travel Reduction Program Regional Task Force**

I. Purpose

The purpose of this policy is to provide a consistent process for documenting Travel Reduction Program (TRP) violations, notifying alleged violators and initiating enforcement action in a timely and consistent manner.

II. Divisions Affected

Trip Reduction Program and Voluntary Vehicle Repair and Retrofit Program

III. Definitions

- A. **Alternative Mode** – Means any mode of commute transportation other than the single-occupancy vehicle.
- B. **Approvable Travel Reduction Program** – Means a plan meeting the requirements of County Ordinance P-7, Section 7 (C).
- C. **Board** – Means Maricopa County Board of Supervisors
- D. **County** – Means Maricopa County
- E. **Documentation** – Means copies of promotions, receipts, registration forms/lists, reports or other information an employer must supply to support the approval/implementation of a plan or annual survey.
- F. **Employer** – Means a sole proprietor, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district, or other individual or entity, public or private, which employs 50 or more employees working at, or reporting to a single work site. It

also includes school districts, community college, trade school, university, or other educational institution having 50 or more employees or students working at, or reporting to a single school site.

- G. Highest Ranking Local Official (HRLO)** – Means the individual that is identified by the employer as being authorized to approve and oversee the funding/implementation of that employer’s Plan.
- H. Notice of Violation (NOV)** – Means a written notification that outlines deficiencies and provides a deadline to correct before the matter is sent to the Task Force for enforcement consideration.
- I. Plan** – Means (see) Approvable Travel Reduction Program
- J. Request for Documentation (RFD)** – Means a form issued to an employer that outlines documentation that wasn’t initially available but is required to complete the audit.
- K. Staff** – Means County TRP employees (support, supervisory and management) that are assigned to administer the program and support the Task Force.
- L. Task Force** – Means the Travel Reduction Regional Task Force, designated by the Board as the responsible agency to implement and enforce this ordinance, and established in the County by Title 49, Chapter 3, Article 8, Arizona Revised Statutes.
- M. Transportation Coordinator** – Means a person designated by a major employer or school to serve as the lead person in developing and implementing a Travel Reduction Program.
- N. Travel (Trip) Reduction Program (TRP)** – Means a program that implements a travel reduction plan by an employer or school and is designed to achieve target reductions in the rate of single-occupancy vehicle trips and/or in the rate of single-occupancy vehicle miles traveled. Reductions can occur through the implementation of various trip reduction measures and/or equivalent emissions reduction measures.

IV. Procedure

A. Initial Notification

1. TRP Support Staff and/or Section Supervisors will initially notify an employer of a delinquency and offer the employer an opportunity to resolve the matter. At this stage, the notice may be provided via fax, U.S. Mail, a documented phone call and/or email.
2. The amount of additional time offered (if requested) will vary depending on the complexity/volume of work involved, employer’s history of compliance or current circumstances. Typically, no more than 14 additional days would be offered to submit a plan, audit documentation or survey-related forms.
3. Employers that request more than a 14-day extension will be asked to submit their request in writing (email or fax) and include adequate justification or supporting documentation. Written requests will be reviewed by Section Supervisors and forwarded to the Program Manager for a final review/ruling.

B. Second Notification (Task Force Review)

1. Employers that fail to resolve a delinquency after staff completes the "Initial Notification" process should be scheduled on the Task Force agenda for discussion/action. Staff will provide written notice to the TC and HRLO that references the NOV, confirms the meeting date/time/location and purpose of the Task Force review. This notice will indicate the employer may attend the meeting and that staff will request the matter be withdrawn if the violation is resolved prior to the meeting. This notice will be sent via fax (or email) and certified mail.
2. Staff will provide the Task Force with documentation needed to discuss/review the matter. Documentation may include a copy of the Notice of Violation (NOV), a "sequence of events", a formal staff recommendation, copies of submitted plans, Requests for Documentation (RFD's) and/or correspondence submitted by the employer.
3. The employer will be provided an opportunity to address the Task Force during the formal meeting. The Task Force will vote to accept, reject or modify staff's recommendation for enforcement or postpone the request to a future meeting. The Task Force may also request additional information from staff or the employer before voting to take enforcement action.
4. Sections 4D & 4E of County Ordinance P-7 outline 10 working days would be offered to an employer to resolve plan development or survey deficiencies. Section 4F of Ordinance P-7 does not specify a minimum number of days to be offered for "plan implementation" deficiencies, but staff has generally recommended 7 calendar days be offered. The complexity and volume of information needed may cause the Task Force and/or staff to recommend additional time be offered to the employer.
5. All Task Force decisions will be documented in the formal meeting minutes.

C. Third Notification (Task Force Notice)

1. The Task Force Chairman or Assistant Chairman will provide a written notice to the employer to confirm the ruling made during the formal meeting. This notice will detail what actions are necessary to correct the deficiency, identify a deadline and state the employer may be referred for enforcement action if the deadline is not met. This notice will be sent to the employer's TC and HRLO via fax (or email) and certified mail.

D. Request for Additional Time and Review

1. Employers that request additional time or consideration from the Task Force (regarding the requirements outlined in the Task Force Notice) will be directed to communicate with the Assistant Chairman of the Task Force (TRP Program manager). The Assistant Chairman will determine if the employer's request should be denied or if it warrants further discussion by the Task Force before the matter would be forwarded to the County Attorney's Office.

E. Referral to County Attorney

1. If the Task Force Notice deadline has expired and the employer has failed to comply with all parts of the Task Force Notice, the Assistant Chairman will determine if the matter should be forwarded to the County Attorney or held until the Task Force can review new

developments. The Task Force or the Assistant Chairman of the Task Force may delay this referral if the employer is actively demonstrating a “good faith effort” to resolve all deficiencies.

2. Before an employer’s case is forwarded to the County Attorney, staff will prepare a packet that includes copies of all correspondence, the “Notice of Violation” (NOV), “Request for Documentation”, meeting agendas/minutes, approved plans, audit reports and a current “sequence of events” to clarify the timelines. That package will be sent to the County Attorney for review and possible “appropriate legal action” (A.R.S. 49-593). The County Attorney will review all supporting evidence and determine if the Task Force has complied with this policy and properly documented the case. Any deficiencies in the process or paperwork will be directed back to the Assistant Chairman of the Task Force for corrective action.
3. Staff, the Assistant Chairman and the County Attorney (when appropriate) will provide updates on each pending enforcement action during formal Task Force meetings.

F. Enforcement Actions

1. The County Attorney may receive authorization from the Board to take appropriate legal action (A.R.S. 49-593), which may include working with the Task Force to arrive at a negotiated settlement with the employer
2. Previous enforcement actions have been successfully resolved through written and verbal communications between the County Attorney and the employers. To expedite compliance and settlement communications, the Task Force has asked the County Attorney to use the NOV issuance date as “violation day one” when calculating the total potential (maximum) fine. A court ruling, revised opinion from the County Attorney or direction from the Board may require the Task Force to revise the penalty calculation.
3. Should the Board authorize legal action; the County Attorney will determine if a settlement offer or formal legal action will require any additional notifications from the Task Force (i.e. “Right to Appeal to the Board” per A.R.S. 49-592).

G. Civil Penalties

1. The Task Force has requested the County Attorney review any proposed settlement with the Task Force in an Executive Session and may vote to provide a recommendation to the County Attorney and the Board to resolve the matter.
2. All settlement funds should be submitted directly to the Maricopa County Air Quality Department and must be deposited in the County’s General Fund [A.R.S. 49-593 (D)].



Maricopa County
Air Quality Department

Number: PP-2014-002

Title: **Trip Reduction Program
Travel Reduction Program Regional Task Force
Survey Response Rate Policy**

Author: Phil Cummings

Issue Date: June 24, 2014

Revision Date:

Review Date: June 24, 2014

Approved by:

Jerry Geering, Chairman
Travel Reduction Program Regional Task Force

I. Purpose

The purpose of this policy is to establish a minimum survey response rate for organizations that administer the annual Trip Reduction Program (TRP) commute questionnaire.

II. Policy

The Task Force directs staff to process and evaluate valid TRP questionnaires following the procedures and criteria identified in this policy. Obtaining complete and accurate responses from a sufficient number of employees is vital to generating useful results that organizations can use to develop their annual TRP plan. A minimum response rate also ensures an organization cannot selectively survey a handful of alternative mode users to obtain a single occupant vehicle rate that exempts it from having to initiate/continue ordinance measures.

III. Definitions

- A. Alternative Mode User (AMU) – a commuter who uses any mode of transportation other than a single occupancy motor vehicle.
- B. Employee – an employee who works at or reports to a single work site during any twenty-four hour period for at least three days per week during at least six months of the year (as defined in A.R.S. 49-581).
- C. Confidence Level – the percentage of all possible samples that can be expected to include the true population parameters. The confidence interval can take any number of probabilities, with the most common being 95% or 99%. A 95% confidence level implies that 95% of the confidence intervals would include the true population parameter.

- D. Margin of Error – the maximum expected difference between the true population and a sample estimate of that parameter. An allowance for slight error or miscalculation or changing circumstances.
- E. Ordinance Measures – a highly-effective measures/incentives as outlined in Ordinance P-7, Section 7C.
- F. Organization – a major employer as defined in A.R.S. 49-581.
- G. Single Occupant Vehicle (SOV) – a drive alone commuter.
- H. Staff – Maricopa County TRP staff.
- I. Statistical Penalty – an arithmetical factor applied to the summary analysis SOV/MT rates for sites that do not meet the required response rate. All non-respondents for a site are recorded as an SOV commuter when calculating the analysis.
- J. Task Force – the Travel Reduction Regional Task Force, designated by the Maricopa County Board of Supervisors as the responsible agency to implement and enforce this ordinance, and established in the County by Title 49, Chapter 3, Article 8, Arizona Revised Statutes.
- K. Transportation Coordinator (TC) – a person designated by a major employer or school to serve as the lead person in developing and implementing a Trip Reduction Program.
- L. Valid questionnaire – a TRP survey form that was completed solely by the employee with all questions filled-in with valid answers.

IV. Procedure

- A. Processing and Calculating
 - 1. Organizations are asked to distribute the TRP questionnaire to every employee and instructed to have each commuter complete their own form. Once the Transportation Coordinator (TC) collects and returns the survey forms, staff will:
 - a. Extract any blank (unused) forms.
 - b. Count the completed forms to assess the initial response rate.
 - c. Adjust the organization's count (if the TC reports a different employee count than originally provided).
 - d. Process the completed forms through the scanner or electronically.
 - 2. Once the data is processed, program software automatically calculates the response rate and determines whether a statistical penalty should be applied (i.e. valid returned questionnaires divided by employee count, originally reported by TC).
- B. Establishing and communicating the Minimum Response Rate
 - 1. The average organization (non-school) participating in the TRP has approximately 500 employees. Using a 5% margin of error and 99% confidence level would require each

organization to return approximately 60% of questionnaires. For consistency, staff will continue to use the 60% return rate to determine if the statistical penalty should be applied to the results.

2. All survey related training and outreach materials provided to an organization will encourage 100% participation in the survey process, as well as, communicate the 60% minimum survey response rate and statistical penalty that will be applied if an organization fails to achieve a 60% response rate.

C. Requests to Conduct a Resurvey

Requests to conduct a resurvey (to avoid the statistical penalty) will be reviewed on a case-by-case basis by the Program Manager. E.g., TC has to go on emergency leave; new TC is assigned in the middle of the survey process; surveys are misplaced or similar circumstance.

References:

- A. <http://www.raosoft.com/samplesize.html>
This web link leads to an online survey sample size calculator provided by Raosoft, Inc. Raosoft, Inc. is a developer of database software with statistical capacities for evaluation and interpretation of survey data.
- B. <http://stattrek.com/>
This web link leads to the website of Stat Trek. The Stat Trek site offers analytical information and training tools on statistics, probability and survey sampling.