

Scott DiBiase
Interim Air Quality Director



To: Pinal County Board of Supervisors

From: Scott DiBiase
Interim Director, Pinal County Air Quality

Date: January 4, 2023

Re: Concise Explanatory Statement pursuant to §A.R.S. 49-471.07(B)

Proposed Resolution 012523-AQ

Proposed West Pinal BACM/MSM Construction and General Fugitive dust rules for the West Pinal Serious PM10 Nonattainment Area

1. This explanation supports the request that the Pinal County Board of Supervisors approve Resolution No. 012523-AQ, which includes the full text of certain rule revisions and additions.
2. Incorporated in this Concise Explanatory Statement are Environmental Protection Agency (EPA) comments and Pinal County Air Quality responses which resulted in minor revisions to the rulemaking proposal which are described below.

The revision to the originally released rulemaking proposal on November 3, 2023 and what's included in Resolution No. 012523-AQ are described below.

December 13, 2022 Environmental Protection Agency (EPA) comments and PCAQCD responses

Director's Discretion Provisions

Our previous comments noted that several provisions of the rules contain "director's discretion" provisions, which appear to be unapprovable. See, e.g., 80 FR 33917-33918. In response, PCAQCD removed or revised a number of these provisions. However, a few such provisions are still included in Article 3:

- 4-3-170.23. "OPEN STORAGE PILE" ". . .or other equivalent method approved in writing by the Control Officer and the Administrator, that the silt content is less than 5%."
- 4-3-180.J.3.i.g. "an alternative test method, upon obtaining the written approval from the Control Officer and the Administrator."
- 4-3-180.K.1. "or an equivalent test method approved by the Control Officer and the EPA Administrator."

These provisions should be removed or revised to provide for clear and specific criteria, so that we can determine how the exercise of director's discretion could affect compliance with CAA requirements.

PCAQCD response

PCAQCD concurs with the EPA Director's Discretion Provisions comments and has removed the proposed rulemaking language in §4-3-170.23 and §4-3-180.J.3.i.g and added a strikeout to §4-3-180.K.1. See version changes below between what was originally proposed during the public comment period and what's going to the January 25, 2023 Pinal County Board of Supervisors (BOS) Public Hearing. The revisions going to be the BOS will be summarized in a Concise Explanatory Statement (CES) to be included in the BOS Agenda packet.

§4-3-170.23 – Original rulemaking proposal (published on November 3, 2023 – Comment period ended Close of Business December 13, 2023).

23. "OPEN STORAGE PILE" as used in this Article, any accumulation of bulk material with a 5% or greater silt content that has a total surface area of 150 square feet or more and that at any one point attains a height of three feet. Silt content shall be assumed to be 5% or greater unless a person can show, by testing in accordance with ASTM Method C136-06 or other equivalent method approved in writing by the Control Officer and the Administrator, that the silt content is less than 5%.

§4-3-170.23 – Per EPA 12/13/22 comments, revised proposed rulemaking language included in Resolution No. 012523-AQ.

23. "OPEN STORAGE PILE" as used in this Article, any accumulation of bulk material with a 5% or greater silt content that has a total surface area of 150 square feet or more and that at any one point attains a height of three feet. Silt content shall be assumed to be 5% or greater unless a person can show, by testing in accordance with ASTM Method C136-06.

§4-3-180.J.3.i.g - Original rulemaking proposal (published on November 3, 2023 – Comment period ended Close of Business December 13, 2023).

3. Disturbed surface area:

- i. Inactive areas stabilization requirements: The owner and/or operator of any disturbed surface area on which no activity is occurring (whether at a work site that is under construction or a work site that is temporarily or permanently inactive) shall meet at least one of the standards described in Section §4-3-180.J.3.i.a through §4-3-180.J.3.i.g below, as applicable. Should such a disturbed surface area contain more than one type of stabilization characteristic, such as soil, vegetation, or other characteristic, which is visibly distinguishable, then the owner and/or operator shall test each representative surface separately for stability, in an area that represents a random portion of the overall disturbed conditions of the site, in accordance with the appropriate test methods described in Chapter 4, Article 9. The owner and/or operator of such disturbed surface area on which no activity is occurring shall be considered in violation of this rule if the area is not maintained in a manner that meets at least one of the standards listed below, as applicable. An area is considered to be a disturbed surface area until the activity that caused the disturbance has been completed and the disturbed surface area meets the standards described below.

- a. Maintain a soil crust;
- b. Maintain a threshold friction velocity (TFV) for disturbed surface areas corrected for non-erodible elements of 100 cms/second or higher;
- c. Maintain a flat vegetative cover (i.e. attached [rooted] vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind) that is equal to at least 50%;
- d. Maintain a standing vegetative cover (i.e. vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 30%;
- e. Maintain a standing vegetative cover (i.e. vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 10% and where the threshold friction velocity is equal to or greater than 43 cm/second when corrected for non-erodible elements;
- f. Maintain a percent cover that is equal to or greater than 10% for non-erodible elements; or
- g. Comply with a standard of an alternative test method, upon obtaining the written approval from the Control Officer and the Administrator.

§4-3-180.J.3.i.g - Per EPA 12/13/22 comments, revised proposed rulemaking language included in Resolution No. 012523-AQ.

3. Disturbed surface area:

- i. Inactive areas stabilization requirements: The owner and/or operator of any disturbed surface area on which no activity is occurring (whether at a work site that is under construction or a work site that is temporarily or permanently inactive) shall meet at least one of the standards described in Section §4-3-180.J.3.i.a through §4-3-180.J.3.i.g below, as applicable. Should such a disturbed surface area contain more than one type of stabilization characteristic, such as soil, vegetation, or other characteristic, which is visibly distinguishable, then the owner and/or operator shall test each representative surface separately for stability, in an area that represents a random portion of the overall disturbed conditions of the site, in accordance with the appropriate test methods described in Chapter 4, Article 9. The owner and/or operator of such disturbed surface area on which no activity is occurring shall be considered in violation of this rule if the area is not maintained in a manner that meets at least one of the standards listed below, as applicable. An area is considered to be a disturbed

surface area until the activity that caused the disturbance has been completed and the disturbed surface area meets the standards described below.

- a. Maintain a soil crust;
- b. Maintain a threshold friction velocity (TFV) for disturbed surface areas corrected for non-erodible elements of 100 cms/second or higher;
- c. Maintain a flat vegetative cover (i.e. attached [rooted] vegetation or unattached vegetative debris lying on the surface with a predominant horizontal orientation that is not subject to movement by wind) that is equal to at least 50%;
- d. Maintain a standing vegetative cover (i.e. vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 30%;
- e. Maintain a standing vegetative cover (i.e. vegetation that is attached [rooted] with a predominant vertical orientation) that is equal to or greater than 10% and where the threshold friction velocity is equal to or greater than 43 cm/second when corrected for non-erodible elements;
- f. Maintain a percent cover that is equal to or greater than 10% for non-erodible elements; or

§4-3-180.K.1 - Original rulemaking proposal (published on November 3, 2023 – Comment period ended Close of Business December 13, 2023).

4K. VISIBLE EMISSIONS REQUIREMENTS FOR DUST-GENERATING OPERATIONS:

- 1. The owner and/or operator Shall not conduct or allow dust generating operations that result in opacity of the dust on the property to exceed twenty percent (20%) as measured using an opacity method, as determined by the applicable test method in §4-9-340 or an equivalent test method approved by the Control Officer and the EPA Administrator.

§4-3-180.K.1 - Per EPA 12/13/22 comments, revised proposed rulemaking language included in Resolution No. 012523-AQ.

4K. VISIBLE EMISSIONS REQUIREMENTS FOR DUST-GENERATING OPERATIONS:

1. The owner and/or operator Shall not conduct or allow dust generating operations that result in opacity of the dust on the property to exceed twenty percent (20%) as measured using an opacity method, as determined by the applicable test method in §4-9-340 ~~or an equivalent test method approved by the Control Officer and the EPA Administrator.~~