

## **EPA Comments on Pinal County Proposed Serious Area Fugitive Dust Rules**

Thank you for the opportunity to comment on Pinal County Air Quality Control District's (PQAQCD) proposed fugitive dust rules for the West Pinal Serious PM<sub>10</sub> nonattainment area. We appreciate PQAQCD's work developing these revisions and its commitment to implement and enforce the revised rules. We also appreciate that PQAQCD has updated several provisions of the proposed rules in response to our prior comments on a preliminary draft.

Overall, the proposed revisions would substantially strengthen PQAQCD's existing rules and we strongly support their adoption. However, based on a preliminary review, it appears that certain provisions of the proposed rules do not fully meet the Clean Air Act requirements for enforceability.

### *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, PQAQCD 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.

### *Additional Comments:*

#### Article 1:

- 4-1-010.2. "The rules in this Article will become effective on ~~January 1, 2016~~ June 1, 2023."
  - We recommend clarifying that the existing rules will remain in effect until the revisions take effect.
- 4-1-050. "Copies of the records required by §4-1-040 (Recordkeeping) and §4-1-045 (reporting) of this rule shall be retained for at least two years."
  - We recommend a five-year record retention period.

#### Article 3:

- 4-3-160.2. "The rules in this Article will become effective on ~~January 1, 2016~~ June 1, 2023."
  - We recommend clarifying that the existing rules will remain in effect until the revisions take effect.
- 4-3-160.A.5.g. "The provisions of this rule shall not apply to rooftop operations for cutting, drilling, grinding, or coring roofing tile when such activity is occurring on a pitched roof."

- We recommend that you remove or provide a rationale for this exemption, as Maricopa County did for their analogous exemption. See:  
<https://www.regulations.gov/document/EPA-R09-OAR-2010-0521-0016>
- 4-3-180.C.4. “The Control Officer shall approve, disapprove, or conditionally approve the Dust Control Plan, in accordance with the criteria used to approve, disapprove or conditionally approve a permit, as described in §4-3-180.A.”
  - We recommend clarifying the criteria for approving, disapproving or conditionally approving a permit. We understand that this provision is modeled on MCAQD Rule 200 section 402.4, which provides that:  
The Control Officer shall approve, disapprove, or conditionally approve the Dust Control Plan, in accordance with the criteria used to approve, disapprove or conditionally approve a permit, as described in MCAQD Rule 200: Permit Requirements of these rules.  
  
We suggest that PCAQCD reference its permitting rule analogous to MCAQD Rule 200 rather than 4-3-180.A.
- 4-3-180.C.3.d.iii. “A control measure that is not listed in §4-3-180.I of this rule may be chosen provided that such control measure is implemented to comply with the requirements of this rule.”
  - We recommend removing this provision or specifying what standards apply to an alternative control measure to ensure that it is effective.
- 4-3-180.D.5. “Any person who conducts dust-generating operations that require a Dust Control Plan shall retain copies of approved Dust Control Plans, control measures implementation records, and all supporting documentation for at least six months following the termination of the dust-generating operation and for at least two years from the date such records were initiated. If a person has obtained a Title V permit and is subject to the requirements of this rule, then such person shall retain records required by this rule for at least five years from the date such records are established.”
  - We recommend a five-year record retention period for all operators.