

Agricultural Best Management Practices (AgBMP) Committee Meeting

Monday, March 29, 2021, 1:00 p.m.

Go to Meeting (Virtual)

<https://global.gotomeeting.com/join/266190221>

1 (872) 240-3412

Access Code: 266-190-221

Committee Members Present:

Ethan Orr, University of Arizona
(delegate for Jeff Silvertooth)
Rob Boyle, Alfalfa Producer
Michael Sundblom, Pinal County Air Quality
Dr. Jim Walworth, Soil Scientist, University of
Arizona
Rusty VanLeuven, AZ Department of Agriculture
(delegate for Susan Chase)

Harold Payne, Citrus Producer
Paco Ollerton, Grain Producer
Kevin Rogers, Cotton Producer
Keisha Tatem, USDA NRCS
Paul Heiden, Beef Cattle

Committee Members Absent:

Anna Marie Knorr, Vegetable Producer
Jim Boyle Jr., Dairy

Glenn Hickman, Poultry

Other Attendees of Note:

Jothi Beljan, AZ Attorney General's Office
Liz Foster, MC Farm Bureau
Rikki Galka, ASARCO
Daniel Czecholinski, ADEQ
Bas Aja, AZ Cattlemen's Association
Johanna Kuspert, MCAQD
Kimberly Butler, MCAQD
Chelsea McGuire, AZ Farm Bureau
Madeline Greenbaum, ADEQ
Rusty VanLeuven, AZ Department of Agriculture
Shelly Tunis, Yuma Fresh Vegetable Association
Hao Zhou, ADEQ
Sarah Reitmeyer, Pima County DEQ
Amanda McGennis, AZ Chapter Associated General
Contractors of America
Jeremy Gerlach, Veridus LLC
Kevin Hanger, Guymon Law

Lindy Bauer, MAG
Matt Poppen, MAG
Steve Burr, ADEQ
Hether Krause, ADEQ
Paul Ward, YMPO
Glenn Lader, NOAA
Jacob McGill, AZ Auditor
Luke Messer, ADEQ
Phil McNeely, MCAQD
Scott Dibiase, Pinal County Air Quality
Taejoo Shin, MAG
Joe Martini, ADEQ
Phil Bashaw, AZ Farm Bureau
Patrick Bray, AZ Cattle Grower's Association
Cheryl Goar, AZ Nursery Association
Dustin Fitzpatrick, Pima County DEQ
Ana Otto, AZ Farm Bureau

Welcome

At 1:00 p.m., Paco Ollerton called the meeting to order. Chairman Ollerton welcomed everyone and asked all Committee members to introduce themselves.

Nomination of Chair

Kevin Rogers nominated Paco Ollerton and Paul Heiden seconded. The Committee unanimously elected Paco Ollerton as chair.

Arizona Open Meeting Law Presentation

Jothi Beljan from the Arizona Attorney General's Office gave a presentation on Arizona Open Meeting Law. Ms. Beljan referred to a handout everyone had received on excerpts from Arizona Open Meeting Law Statutes, and a second handout regarding the Committee's statutes.

Due to most Committee members being public officers, Ms. Beljan referred to the statute regarding appointment of public officers on page one explaining the process of the Governor nominating a person to serve on this Committee, which requires Arizona Senate confirmation before the Governor may formally appoint the person to the Committee. Each Committee member serves for a term of 6 years. The Arizona public officer statutes direct that even when a Committee member's term expires, the member continues in the position until the Governor nominates a new person for the position. The law is written to prevent vacancies, which helps this Committee, and other public bodies have a quorum in order to do official business. If a nomination for an expired term is made during a legislative session, the incumbent continues during the legislative session until the Senate acts on the nomination or if the Senate does not act, the nominee will replace the incumbent member after the legislative session ends. If a nomination for an expired term is made when the Legislature is not in session, the nominee replaces the incumbent member. A nominee may not continue as a Committee member for longer than one year without Senate action.

Ms. Beljan moved to page 2 to discuss the ten statutes that comprise Arizona Open Meeting Law. The primary substantive content for public bodies is contained in four of the ten statutes.

Arizona law directs, "All meetings of a public body shall be conducted in an open setting and any member of the public who would like to attend and listen may do so." Any legal action and voting by the public body must be conducted in an open session. Ms. Beljan explained that the Attorney General's Office is required by statute to prepare materials for all public officers on Open Meeting Law, and those materials are posted on the Arizona Secretary of State's website. Any new public officer is required to review those materials one day before they take office.

Ms. Beljan explained that the definition of a quorum is a majority of a board and that vacancies are not considered in determining what the majority is. This Committee has 15 members, so the quorum will always be 8 members regardless of any vacancies. Ms. Beljan explained important definitions including advisory committee, executive session, legal action, meeting and public body. The definition of meeting is important – it is the gathering of a quorum of a public body. Any time 8 members of the Committee meet to discuss business that is relevant to the Committee statutory duties, it is a meeting. It is very

important that when replying to emails Committee members do not reply to all, as that may constitute a meeting, for which a notice of a meeting was required. Ms. Beljan pointed out that the public body statutory definition includes any standing, special, advisory committees or subcommittees appointed by the public body. Any workgroup created to review a specific sub-topic, regardless of the name of that workgroup, is a committee or sub-group of the AgBMP Committee and is required to comply with Open Meeting Law. Ms. Beljan noted that if there is a meeting and a quorum is not established, it isn't a meeting by legal definition, but it is still high advisable to administer the meeting in compliance with Open Meeting Law including allowing the public attendance, and preparing meeting minutes to show what activity occurred. The only limitation of not having a quorum is that a vote for legal action cannot occur, and must be postponed until the next meeting in which a quorum is present.

Ms. Beljan explained that posting a notice of the meeting is an important requirement of Open Meeting Law. The notice must be posted on the AgBMP website – which is part of the ADEQ website. The notice must be posted at least 24 hours prior to the meeting. Additionally, an agenda must be posted which states the specific items that will be discussed or on which legal action may be taken. There is no requirement that Committee members discuss every agenda item at the meeting, but the Committee is prohibited from discussing items not listed on the agenda. Therefore, it is advisable for public bodies to list any item on the agenda they may want to discuss.

Ms. Beljan explained what an executive session is, how an executive session should be noticed on the meeting agenda, and the nine statutorily authorized purposes for an executive session. Executive session discussions and minutes are confidential except to Committee members. Legal action may not occur in Executive session and must be taken in the open public session.

Ms. Beljan reviewed the meeting minute requirements. Public bodies must make available within 3 working days after the meeting either a recording of the meeting or written minutes. Ms. Beljan reviewed a call to the public and that the Committee is limited in responding to a public comment if the comment topic is not listed on the meeting agenda. The law does allow a Committee member to respond to criticism or the Committee may place on the topic on a future meeting agenda.

Ms. Beljan explained a few important items in the Committee's statutes including the Committee has 15 members, each Committee member serves a 6-year term, the Committee elects a chairman for a 2-year term, and the Committee is only required to meet at the call of the Chairman or at the request of a majority of the appointed members. The two required Committee activities are adopting by rule an Agricultural General Permit specifying best management practices and developing and commencing an education program.

Ms. Beljan mentioned a 2021 legislative amendment HB 2677 on a Committee statute that was signed by the Governor but because the topic was not on the meeting agenda, it could not be discussed at this meeting and suggested that it be placed on a future agenda. With that, Ms. Beljan concluded her presentation.

Review and Approval July 2017 Meeting Minutes

Kevin Rogers moved to approve the July 2017 meeting minutes, seconded by Rob Boyle. The Committee unanimously approved the minutes.

Swine Representative Vacancy

Chairman Ollerton referred to Kevin Rogers on this topic, who has taken point. Mr. Rogers explained that he called Bruce Lawler at Farmer John in Taylor/Snowflake, the largest commercial swine operation in the State. Marguerite Tan, who was in the position before, no longer works for them. Mr. Rogers asked Mr. Lawler if he could recommend anyone to fill that spot. Mr. Lawler will get back to Mr. Rogers with either a name or some advice on this. Due to this being a Governor appointed position, once we have some names we will submit them for approval.

Overview on West Pinal Nonattainment Area (NAA)

Mr. Daniel Czecholinski gave a PowerPoint presentation on the West Pinal County Nonattainment Area (NAA) overview. Mr. Czecholinski explained the reclassification to Serious PM10 NAA. West Pinal County Moderate PM10 NAA failed to attain the 1987 24-hour NAQQS by the December 31, 2018 deadline and was reclassified as a Serious Area effective July 24, 2020. The area has 18 months to complete a Serious PM10 NAA State Implementation Plan (SIP).

In February of 2021, EPA proposed limited approval/limited disapproval of the AgBMP program submitted as part of the West Pinal County Moderate PM10 SIP. EPA proposed limited approval of amendments to the AgBMP statute, ARS § 49-457, that were adopted after the 1999 SIP approval, as well as of the AgBMP rules for animal operations in West Pinal. EPA noted that the statute and rules needed further amendment before they could be fully approved.

Mr. Czecholinski explained the path forward to cure the Moderate PM10 NAA SIP deficiencies is with the submittal of the Serious PM10 NAA SIP. Maricopa Association of Governments (MAG) hired a contractor to conduct PM10 control measure research. ADEQ will work with MAG to develop a potential list of PM10 control measures to present to the AgBMP Committee. The AgBMP Committee will identify PM10 control measures that are and are not economically and technologically feasible. ADEQ will provide support to the AgBMP Committee throughout this process and will update the AgBMP rule.

MAG is the lead planning organization for the Pinal County PM10 NAA and they put together a draft schedule which shows the timeline to get the elements of the SIP ready to submit by January 24, 2022.

Mr. Bas Aja with Arizona Cattlemen's Association asked that since we just got notice from EPA in February of 2021 of the limited approval/limited disapproval of the SIP, what would the possibility be that EPA would review the SIP in a timely manner. Mr. Czecholinski answered that more communication with EPA will help with timely reviews.

Presentation on Serious PM10 NAA Requirements as they Apply to Agriculture

Mr. Steve Burr gave a presentation on Serious PM10 Nonattainment Area (NAA) Requirements as they apply to agriculture. Mr. Burr explained that he will cover the same topics that Mr. Czecholinski covered, just in a little more depth.

Mr. Burr started his presentation with the Clean Air Act (CAA) requirements for PM10 NAAs. He explained the classification levels. If an area has a lower classification, it means that it has less time to come into compliance with the national ambient air quality standards (NAAQS), but it also has less stringent requirements that have to be met and imposed on sources in the area. A higher classification allows more time to come into attainment, but also has more stringent requirements. If there is failure to attain the NAAQS by the initial deadline, it is bumped up to the next higher classification. Mr. Burr discussed the requirements for Moderate Areas, as well as the requirements for Serious Areas. Once an area is reclassified it gets a new deadline, with an extension of up to 5 years. The extension request must show that attainment by the deadline is impracticable and that the SIP includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area.

Mr. Burr explained that there are some very serious consequences for failing to meet the CAA requirements. The consequences will be imposed if there is failure to submit a SIP altogether or if EPA disapproves any part of the plan. In both of those circumstances there is a sanctions clock that starts. If there is failure to fix the deficiency within 18 months after the sanctions clock starts, the first sanction is triggered – which is 2 for 1 offsets. This is a fairly limited sanction, as it only applies to very large stationary sources of pollution (must be PM10). If the deficiency still isn't fixed within 2 years, the second sanction is triggered – which is the loss of federal highway funds for the nonattainment area. The other impact of failing to submit/EPA disapproval after 2 years is that EPA steps in and takes the State's place. The State Implementation Plan (SIP) becomes a Federal Implementation Plan (FIP), which will address whatever measures EPA disapproved of in the SIP.

Mr. Burr presented a map of the West Pinal County PM10 Nonattainment Area (NAA). The NAA is about 1500 square miles. It includes the communities of Maricopa, Casa Grande, Florence, Coolidge and the San Tan Valley. Industry in the area includes agriculture, construction, retail services, etc.

EPA designated West Pinal County as a NAA in July 2012 and the area was initially classified as moderate. At the time EPA noted that there were widespread, frequent and in some instances severe violations of the PM10 standard. The initial attainment deadline for West Pinal County PM10 NAA was December 31, 2018. Upon EPA designation in 2012, the West Pinal County PM10 NAA automatically became subject to the AgBMP program (ARS 49-457(O)(6)(c)). On July 2, 2015 the Committee adopted an AgBMP General Permit for West Pinal County. Mr. Burr explained the rules that went along with that AgBMP General Permit. In addition, Mr. Burr explained how the rules were incorporated into the Moderate Area SIP which was submitted December 21, 2015 by ADEQ. Over the course of several years, EPA took several actions on the SIP. EPA is supposed to take final action on the SIP by July 30, 2021. ADEQ intends to withdraw the SIP in its entirety and rely on the Serious Area plan to cure the problems that were identified with it.

In June of 2020, EPA made its finding that the nonattainment area had not attained the standard by the 2018 deadline, which led to the area automatically being reclassified as Serious, and a new deadline of December 31, 2022 was established. MAG has now taken over as the lead planning agency (since 2016). MAG intends to seek a 5-year extension of the deadline. Mr. Burr went over the requirements for Serious Area, and what Agencies are responsible for what actions. Mr. Burr explained some of the history of EPA action on serious area plan, using the example of Maricopa County. He also discussed some definitions and language used by EPA.

In Mr. Burr's review, he has identified some possible changes to the AgBMP program based on the EPA interpretation of Best Available Control Measures (BACM). Mr. Burr stated that he thinks some of these changes would almost certainly be needed to get EPA approval.

Mr. Burr opened up the floor for questions and answered some questions from Mr. Aja and Ms. Tatem.

Update on the 2022 Serious Area Particulate Plan for Pm10 for the West Pinal County NAA

Mr. Matt Poppen gave an update on the 2022 Serious Area particulate plan for PM10 for the West Pinal County NAA via PowerPoint presentation. Mr. Poppen gave a brief background on the West Pinal County PM10 Nonattainment Area. Mr. Poppen highlighted who is involved in the preparation of the State Implementation Plan.

Mr. Poppen's main focus was the technical work that is being done to show attainment. One of the requirements to show attainment is to select design days. Design days are specific PM10 exceedance days that are representative of the conditions that currently cause exceedances to occur within the West Pinal County nonattainment area. Currently West Pinal County has 8 monitors, and all monitors are being looked at to see if they would be a good design day candidate or not. MAG is looking at the period of 2016-2018, as that is the period that EPA used to determine that the standard was not met. The data from 2017 was prioritized as this was the base year that was chosen for the PM10 emissions inventory per EPA guidance. Mr. Poppen explained the 3 conditions under which PM10 exceedances occur. Of the 8 monitors, there are only 3 violating the standard.

Mr. Poppen showed the locations of the 8 monitors and then provided the number of PM10 exceedances at each monitor.

Mr. Poppen gave an emissions inventory update. EPA recommended selecting a base year between 2016-2018 for the West Pinal County Serious Area PM10 Plan. 2017 was selected as the base year. Work is on-going to develop the base year emissions inventory. Based on the information received so far a preliminary draft inventory has been put together. Mr. Poppen discussed the preliminary draft inventory pie chart that was put together for the entire NAA.

Possible Changes to Agricultural Best Management Practices (AgBMP) Committee Rules

Chairman Ollerton suggested that this topic be passed.

How to Proceed with Committee Rule Changes

Chairman Ollerton asked for clarification on what was meant by Committee rule changes. Mr. Burr explained that the word “committee” should have been left out – it is how the Committee wants to proceed in terms of adopting rule changes. Mr. Burr suggested this topic be discussed at the next meeting.

Review and Consider Future Agenda Items

Chairman Ollerton suggested there be discussion around vacant Committee positions.

Call to the Public

Mr. Paul Ward asked that if there was anyone from the Yuma region participating on the call, if they would give him an email as he is picking up on the air quality aspect at YMPO.

Adjournment

Mr. Rogers moved to adjourn the meeting, seconded by Mr. Harold Payne. The meeting adjourned at 3:49 p.m.