



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

Ms. Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency, Region IX
Mail Code ORA-1
75 Hawthorne Street
San Francisco, CA 94105

RE: Arizona State Implementation Plan Revision, Removal of Startup, Shutdown, Malfunction Rule (R18-2-310) from the Arizona State Implementation Plan

Dear Ms. Strauss:

The Arizona Department of Environmental Quality (ADEQ) hereby adopts and submits to the U.S. Environmental Protection Agency (EPA) the below State Implementation Plan (SIP) revision pursuant to the provisions of Arizona Revised Statutes Sections 49-104, 49-106, 49-404, 49-406, and 49-425, and Code of Federal Regulations (CFR) Title 40, Sections 51.102 through 51.104..

- Removal of Arizona's rule related to Startup, Shutdown, Malfunction (SSM) events, R18-2-310, from the Arizona State SIP.

On May 22, 2015, EPA promulgated a final rule finding that 36 states, including Arizona, have SIP provisions related to SSM that are substantially inadequate to meet the requirements of the CAA. Under CAA Section 110(K)(5), EPA issued a SIP call, requiring Arizona to revise the state SIP to bring it in line with the intended enforcement structure of the CAA.

ADEQ requests that EPA remove R18-2-310 from the Arizona SIP and approve this revision. If you have any questions, please contact Timothy Franquist, Director, Air Quality Division, at (602) 771-4684.

Sincerely,

Timothy S. Franquist
Director, Air Quality Division

Enclosures (2)

cc: Matthew Lakin, EPA Region IX
Colleen McKaughan, EPA Region IX



**SIP Revision: Clean Air Act
Section 110(k)(5) - SIP Call for Startup,
Shutdown, and Malfunction.**

*Air Quality Division
November 9, 2016 Final*

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Completeness Criteria (40 C.F.R. Part 51, Appendix V, § 2.0)

Appendix V § 2.1 - Administrative Materials

(a) A formal signed, stamped, and dated letter of submittal from the Governor or his designee, requesting EPA approval of the plan or revision thereof (hereafter “the plan”).

See the cover letter for this SIP submission and Appendix A, Exhibit A-1 for delegation of authority letter from Misael Cabrera, Director of ADEQ, to Timothy Franquist, Director of the ADEQ Air Quality Division, authorizing Mr. Franquist to perform any act the ADEQ Director is authorized to perform under the state air quality statutes, including the submission of SIPs to EPA.

(b) Evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement (hereafter “document”) in final form.

See the cover letter to this document wherein the state adopts and submits this SIP revision. This is the method of Arizona state adoption.

(C) Evidence that the State has the necessary legal authority under State law to adopt and implement the plan.

The Arizona Department of Environmental Quality (ADEQ) has responsibility for air pollution control and abatement, and as such, is required to adopt and “maintain a state implementation plan that provides for implementation, maintenance, and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.”¹ ADEQ also maintains authority to issue and administer rules, adopt county rules, and to submit such rules for approval in the SIP. Copies of Arizona Revised Statutes sections 49-101, 49-104, 49-106, 49-404, and 49-425 are attached in Appendix A, Exhibit A-2.

¹ A.R.S. §49-404(A).

(d) A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan, including indication of the changes made (such as redline/strikethrough) to the existing approved plan, where applicable.

A copy of the official state regulation, signed, stamped, and dated by the appropriate state official, including the effective date, is attached as Appendix C, Exhibit C-1.

Table 2-1 below shows the rules being added and replaced by this SIP Revision.

(e) Evidence that the State followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the plan.

As demonstrated in Sections (b), (c), and (g), ADEQ has complied with all requirements of state law for adoption of this SIP Revision.

(f) Evidence that public notice was given of the proposed change consistent with procedures approved by EPA, including the date of publication of such notice.

Proof that ADEQ gave public notice in accordance with A.R.S. § 49-444 is attached as Appendix B, Exhibit B-1.

(g) Certification that public hearing(s) were held in accordance with the information provided in the public notice and the State's laws and constitution, if applicable and consistent with the public hearing requirements in 40 CFR 51.102.

The certification and other documents related to the public hearing are attached as Appendix B, Exhibits B-1 through B-5.

(h) Compilation of public comments and the State's response thereto.

A compilation of comments received and the State's responses is attached as Appendix B, Exhibit B-6.

Appendix V § 2.2 - Technical Support

(a) Identification of all regulated pollutants affected by the plan.

All regulated pollutants affected by the plan can be identified as the six commonly known “criteria pollutants,” Particle Matter (PM₁₀ and PM_{2.5}), Ground-level Ozone (O₃), Carbon Monoxide (CO), Sulfur Dioxide (SO₂), Nitrogen Dioxide (NO₂), and Lead (Pb).²

(b) Identification of the locations of affected sources including the EPA attainment/ nonattainment designation of the locations and the status of the attainment plan for the affected areas(s).

All permitted sources within the State of Arizona are affected by this plan.

(c) Quantification of the changes in plan allowable emissions from the affected sources; estimates of changes in current actual emissions from affected sources or, where appropriate, quantification of changes in actual emissions from affected sources through calculations of the differences between certain baseline levels and allowable emissions anticipated as a result of the revision.

Not applicable because quantification of allowable emissions or actual emissions is not necessary to support removal of R18-2-310 from Arizona’s SIP in order to address the inadequacies outlined in the EPA’s “SIP Call.”

(d) The State's demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented.

The effect of removing R18-2-310 from the Arizona SIP will be to make civil penalties available in federal court against sources that qualify for the startup, shutdown, or malfunction affirmative defense. This will not impair the SIP’s protection of national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstrations, or visibility.

² 40 C.F.R. §50

(e) Modeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis.

Not applicable because no modeling is required to support removal of R18-2-310 from Arizona's SIP in order to address the inadequacies outlined in the EPA's "SIP Call."

(f) Evidence, where necessary, that emission limitations are based on continuous emission reduction technology.

Not necessary because no new emissions limitations or alterations to existing emission limitations are being implemented.

(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels.

Not necessary because no new emissions limitations or alterations to existing emission limitations are being implemented.

(h) Compliance/enforcement strategies, including how compliance will be determined in practice.

Arizona proposes to address the inadequacies of affirmative defenses as determined by the EPA in the "SIP Call" by removing R18-2-310 from Arizona's SIP, but not from the Arizona Administrative Code. Although the affirmative defenses in R18-2-310 will no longer be available in federal court actions to enforce the Arizona SIP, they will remain available in state court actions.

(i) Special economic and technological justifications required by any applicable EPA policies, or an explanation of why such justifications are not necessary.

Not applicable because there are no special economic or technological justifications required for removal of R18-2-310 from Arizona's SIP.

1 Introduction

1.1 Statement of Purpose

Pursuant to Section 110(k)(5) of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) issued a SIP Call “finding that certain SIP provisions in 36 states [including Arizona] are substantially inadequate to meet CAA requirements.”³ This action triggered a requirement for Arizona to correct the supposititious inadequacies identified in Arizona rule R18-2-310, which is part of Arizona’s State Implementation Plan (SIP), within 18 months (November 22, 2016) of the publication of the finding (May 22, 2015) in order to avoid potential sanctions and a Federal Implementation Plan (FIP).⁴

Under the authority granted by the Governor and the State of Arizona, the Arizona Department of Environmental Quality (ADEQ) is responsible for the preparation and submittal of this SIP revision.⁵ The purpose of this SIP revision is to remove Arizona’s rule R18-2-310 from Arizona’s SIP so it is no longer federally enforceable and would only be applicable to state enforcement actions, thus meeting the requirements of the SIP Call.

1.2 Regulatory Background

The 1970 amendments to the CAA required air agencies to prepare air plans to be approved by the EPA.⁶ At that time it was widely believed that emissions limitations were not required to be met during Startup, Shutdown, and Malfunction (SSM) periods (i.e. exemptions).⁷ It was common for states to include exemptions for excess emissions occurring during these periods.⁸ Many of the original SIPs approved by the EPA from 1971 to 1972 included SSM provisions that were broad and loosely defined.⁹

In 1977 the EPA notified states these exemptions were inconsistent with certain requirements of the CAA and began to be more careful to approve only SIP rules that were consistent with the CAA.¹⁰ The EPA issued several guidance memoranda to help states implement rules that were consistent with the CAA.¹¹

On September 20, 1999 the EPA issued a guidance memorandum that prohibited automatic exemptions and director’s discretion exemptions from state SIPs.¹² The memorandum allowed

³ 80 Fed. Reg. 33840 (June 12, 2015).

⁴ *Id.*

⁵ A.R.S. §49-104

⁶ 78 Fed. Reg. 12460, 12463-64 (February 22, 2013).

⁷ *Id.* at 12464.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² <https://www3.epa.gov/ttn/naaqs/aqmguid/collection/t5/excesem2.pdf>

SIP Revision: Clean Air Act Section 110(k)(5) – SIP Call for Startup, Shutdown, and Malfunction.

affirmative defenses to sources in court proceedings, if sources could provide substantial proof that the violation was unpreventable.¹³

In 2001 the EPA finalized approval of Arizona’s SIP revision of R18-2-310 Affirmative Defenses for Excess Emissions Due to SSM.¹⁴ These rules were narrowly tailored to provide an affirmative defense for certain emissions in excess of an emission standard during SSM periods, so long as the source met specific requirements.¹⁵

In 2011 the Sierra Club filed a petition for rulemaking with the EPA.¹⁶ The Sierra Club argued certain affirmative defense provisions in SIPs providing “an affirmative defense for monetary penalties for excess emissions in judicial proceedings” were contrary to the CAA.¹⁷

In 2013 the EPA issued a Notice of Proposed Rulemaking (NPRM) in response to the petition filed by the Sierra Club.¹⁸ The EPA proposed to grant the petition in part for violations that occurred during periods of startup and shutdown, but deny in part for violations that occurred due to malfunctions.¹⁹

In 2014 a federal court ruled Section 304(a) of the CAA precluded the EPA from creating any “affirmative defense provision applicable to private civil suits.”²⁰ In response the EPA issued a Supplemental Notice of Proposed Rulemaking (SNPRM) to include removal of affirmative defenses for malfunctions during SSM periods.²¹

In 2015 the EPA issued a Notice of Final Rulemaking (NFR) finding certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP Call, which included Arizona.²² Accordingly, the EPA found section R18-2-310 of Arizona’s SIP to be substantially inadequate to meet the requirements of section 113(b) and section 304(a) of the CAA. The final action became effective on May 22, 2015 creating a deadline for Arizona to submit its corrective SIP revision no later than November 22, 2016 or become subject to possible sanctions and FIPs.²³

¹³ *Id.*

¹⁴ 66 Fed. Reg. 48087-88 (September 18, 2001).

¹⁵ A.A.C. R18-2-310

¹⁶ 78 Fed. Reg. 12460, 12463 (February 22, 2013).

¹⁷ *Id.* at 12464

¹⁸ *Id.* at 12460

¹⁹ *Id.* at 12465

²⁰ 79 Fed. Reg. 55920 (September 17, 2014).

²¹ *Id.*

²² 80 Fed. Reg. 33840 (June 12, 2015).

²³ *Id.*

2 Arizona’s Approach to Address the SIP Call

2.1 Removal of R18-2-310 from Arizona’s SIP

Arizona proposes to remove R18-2-310, which does not apply to Sections 111 or 112 of the Clean Air Act, from the SIP so that it is no longer federally enforceable. Sufficiently stringent affirmative defenses would effectively be removed from citizen suits and federal suits.

However, the affirmative defense provision would remain unchanged in the Arizona Administrative Code (AAC) and would remain applicable only for state enforcement actions in state court. This revision meets the requirements of the CAA because it in no way alters the jurisdiction of federal courts to assess penalties in EPA enforcement actions and citizen suits.

Table 2-1 Rules to Be Added to and Removed from the SIP

Change	Reason
Remove R18-2-310 Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown from Arizona’s SIP.	EPA issued a “SIP Call” finding R18-2-310 substantially inadequate to meet certain provisions of the CAA and requiring Arizona to take corrective action and submit a SIP revision.

3 Conclusion

In response to EPA's May 22, 2015 SIP Call, ADEQ formally request removal of rule R18-2-310 from Arizona's SIP. Once removed from the SIP this rule, which allows for stringent affirmative defenses for excess emissions during SSM periods, and does not apply to Sections 111 or 112 of the Clean Air Act, will no longer be federally enforceable, thus meeting the requirements of the SIP Call. Sufficiently stringent affirmative defenses will remain available to permitted sources in state court actions.

Appendix A:

Statutory Authority.

Exhibit A-1: Delegation of Authority.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

April 15, 2016

To: Timothy S. Franquist Jr.
Division Deputy Director
Air Quality Division

Under A.R.S. §49-104 (D) (2), I authorize you, Timothy S. Franquist Jr., Division Deputy Director, Air Quality Division, Arizona Department of Environmental Quality, to perform any act, including execution of any pertinent documents, which I as Director of the Arizona Department of Environmental Quality am authorized or required to do by law with respect to A.R.S. Title 49, chapters 1 and 2 and any other acts relating to air quality including personnel actions.

This authority shall remain in effect until it is revoked or upon your separation from the Arizona Department of Environmental Quality. You may further delegate this authority in the best interest of the agency, however, those delegations must be in writing and you must forward a copy of any further delegations to me.

This delegation is effective as of April 18, 2016 and revokes all earlier delegations. I ratify all acts performed by you as Air Quality Division Deputy Director concerning the duties and functions in this delegation letter.

A handwritten signature in black ink, appearing to read "Misael Cabrera".

Misael Cabrera
Director

Exhibit A-2: Authorizing Statutes.

Arizona Revised Statutes.

49-101. Definitions

In this title, unless the context otherwise requires:

1. "Approximately equal" means, for purposes of fees adopted pursuant to section 49-480, excluding per ton emissions fees, an amount that is not greater than ten per cent more than the fees or costs charged by the state for similar state permits or approvals.
2. "Department" means the department of environmental quality.
3. "Director" means the director of environmental quality who is also the director of the department.

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
 12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
 13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
 14. Assist the department of health services in recruiting and training state, local and district health department personnel.
 15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
 16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
 17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.
 18. Provide administrative and staff support for the oil and gas conservation commission.
- B. The department, through the director, shall:
1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
 2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
 3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
 4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
 5. Contract with other agencies, including laboratories, in furthering any department program.
 6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
 7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection H, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems

be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules shall:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. After July 20, 2011, the department shall establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state

agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

2. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-106. [Statewide application of rules](#)

The rules adopted by the department apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them. This section does not limit the authority of local governing bodies to adopt ordinances and rules within their respective jurisdictions if those ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the department, but this section does not grant local governing bodies any authority not otherwise provided by separate state law.

49-404. [State implementation plan](#)

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

Appendix B:

Documents Related to Public Notice and Comment.

AIR QUALITY DIVISION
16 OCT -3 PM 3:43

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

The Arizona Republic

9/20/2016
9/21/2016

Angelina Gal

Sworn to before me this
28TH day of
September A.D. 2016


Notary Public

Exhibit B-2: Public Hearing Agenda.



Public Hearing Agenda

**AIR QUALITY DIVISION PUBLIC HEARING ON THE PROPOSED
Arizona SIP Revision – Removal of R18-2-310 Affirmative Defenses for Excess Emissions due to
Startup, Shutdown, and Malfunctions (SSM).**

**Arizona Department of Environmental Quality (ADEQ)
Room # 3175, 1110 W. Washington St., Phoenix, Arizona
2:30pm, October, 21, 2016.**

**Pursuant to 40 CFR § 51.102 notice is hereby given that the above referenced meeting is open
to the public.**

1. Welcome and Introductions
2. Purpose of the Oral Proceedings
3. Procedure for Making Public Comment
4. Brief Overview of the Proposal
5. Adjournment of Oral Proceeding

During the 30 day comment period, the proposed Arizona SIP Revision – Removal of R18-2-310 is available online on the ADEQ Air Quality Planning (SIPs) webpage at <http://www.azdeq.gov/envIRON/air/plan/index.html> in Air Quality Public Notices, Meetings, and Hearings. The proposal is also available at the ADEQ Records Center, 1110 W. Washington St., Phoenix, AZ 85007, (602) 771-4380 or (800) 234-5677 ext. 6027714380. Please call for hours of operation and to schedule an appointment.

Written comments may be mailed, faxed, or emailed to Matt Ivers, Air Quality Division, Improvement Planning Section, Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ 85007, fax (602) 771-2366, email ivers.matthew@azdeq.gov. All comments must state the name and mailing address of the person; be signed by the person, their agent, or attorney; and clearly set forth reasons why the proposed revisions should or should not be finalized. Grounds for comment are limited to whether or not this proposal meets the criteria spelled out in federal air pollution control laws and/or rules.

For additional information regarding the hearing please contact Matt Ivers, ADEQ Air Quality Division, at 602-771-6723.

Exhibit B-3: Public Hearing Sign-In Sheet.



Air Quality Division Sign-In Sheet

Please Sign In

SUBJECT: SSM Public Hearing DATE: 10/21/16

<u>NAME</u>	<u>ORGANIZATION</u>	<u>PHONE</u>	<u>E-MAIL</u> (primary method of contact)
1. JOHANNA M. KUSPERT	MCA&D	602-506-6710	jkuspert@mail.maricopa.gov
2. Michael Denby	APB	602-260-2870	michael.denby@aps.com
3. Marina Mejia	DEQ		
4. Timothy Franquist	DEQ		
5. VIAN TIVERS	DEQ	602-771-6723	IVERS.MATTHEW@AZDEQ.GOV
6. Bruce Friedl	ADEQ	602-771-2259	bjf@azdeg.gov
7.			

Exhibit B-4: Public Hearing Officer Certification.



Air Quality Division

Public Hearing Presiding Officer Certification

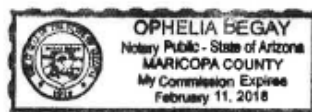
I, Bruce Friedl, the designated Presiding Officer, do hereby certify that the Arizona SIP revision-proposed removal of R18-2-310 public hearing held by the Arizona Department of Environmental Quality was conducted on October 21, 2016, at the Arizona Department of Environmental Quality, Conference Room 3175, 1110 West Washington Street, Phoenix, Arizona, in accordance with public notice requirements by publication in *The Arizona Republic* beginning September 20, 2016. Furthermore, I do hereby certify that the public hearing was recorded from the opening of the public record through concluding remarks and adjournment, and the transcript provided contains a full, true, and correct record of the above-referenced public hearing.

Dated this 21 day of October 2016.

A handwritten signature in black ink, appearing to read "Bruce Friedl", written over a horizontal line.

State of Arizona)
) ss.
County of Maricopa)

Subscribed and sworn to before me on this 21st day of October 2016.

A handwritten signature in black ink, appearing to read "Ophelia Begay", written over a horizontal line.
Notary Public

My commission expires: Feb. 11, 2018

Exhibit B-5: Public Hearing Transcript.

1 **PROPOSED Arizona SIP Revision – Removal of R18-2-310**

2

3

4 Oral Proceeding

5 Transcript

6

7 October 21, 2016

8

9 Bruce Friedl: Thank you for coming. I now open this hearing on the proposed
10 Arizona State Implementation Plan (SIP) Revision – Removal of Arizona
11 Administrative Code R18-2-310.

12

13 This proceeding is being recorded and will be preserved for the record.

14

15 Today is October, 21, 2016, and the time is 2:38 p.m. The location is 3175,
16 Arizona Department of Environmental Quality, 1110 West Washington Street,
17 Phoenix, Arizona, 85007. My name is Bruce Friedl, and I have been appointed by
18 the Director of the Arizona Department of Environmental Quality (ADEQ) to
19 preside at this proceeding.

20

21 The purpose of this oral proceeding is to provide the public an opportunity to:
22 (1) Hear a summary of the proposed Arizona SIP Revision- Removal of R18-2-
23 310.

24

25 The Department representative for today's hearing is Matt Ivers of the Air Quality
26 Division's Improvement Planning Section, also including Marina Mejia, SIP
27 Section Manager and Tim Franquist, Air Quality Division Director.

1

1

2 Public notice of the comment period and hearing was published in the *Arizona*
3 *Republic* on September 20 & 21, 2016. Copies of the proposal were made available
4 on ADEQ's website and at the ADEQ Phoenix Records Center starting September
5 20, 2016, and will remain available until the close of the comment period, which is
6 5:00 p.m. today.

7

8 If you wish to make a verbal comment, fill out a speaker slip, available at the sign-
9 in table, and give it to the Department representative. You may also submit written
10 comments during today's hearing or refer to the hearing agenda for additional
11 submission details.

12

13 Comments made during the formal comment period are required by law to be
14 considered by the Department when preparing the final submission to the U.S.
15 Environmental Protection Agency. The Department will include a responsiveness
16 summary for written and oral comments received during the formal comment
17 period.

18

19 The agenda for this hearing is as follows:

20

21 First, we will present a brief overview of the proposal.

22

23 Then I will conduct the oral comment period. At that time, I will call speakers in
24 the order that I have received speaker slips.

25

1 Please be aware that any comments at today's hearing that you want the
2 Department to formally consider must be given either in writing or on the record
3 during this oral proceeding.

4

5 At this time, Matt will give a brief overview of the proposal.

6

7 Matt Ivers: Thank you, Bruce.

8

9 On May 22, 2015 the Environmental Protection Agency took final action on a
10 petition for rulemaking filed by the Sierra Club concerning how provisions in EPA
11 approved SIPs treat excess emissions during Start Up, Shutdown and Malfunction
12 (SSM) events. The EPA evaluated existing SIP provisions for consistency with the
13 EPA's interpretation of the Clean Air Act, and in light of recent court decisions
14 addressing the issue, found certain existing SIP provisions inconsistent with the
15 Clean Air Act, including R18-2-310 of the Arizona SIP.

16

17 This action triggered a requirement for Arizona to correct the inadequacies
18 identified in Arizona's SIP, specifically the provisions of rule R18-2-310, within
19 18 months of the publication of the finding in order to avoid potential sanctions
20 and a Federal Implementation Plan.

21

22 The purpose of this State Implementation Plan revision is to remove Arizona's rule
23 R18-2-310 from Arizona's SIP so it is no longer federally enforceable and would
24 only be applicable to state enforcement actions, thus meeting the requirements of
25 the SIP Call.

26

27

* * * * *

3

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4 Mr. Friedl: Thank you, Matt. This concludes the overview portion of this
5 proceeding.

6

7

* * * * *

8

9 I now open this proceeding for oral comments.

10

11 This concludes the oral comment portion of this proceeding.

12

13

* * * * *

14

15 If you have not already submitted written comments, you may submit them at this
16 time. Again, the comment period for this proposal ends today at 5:00 p.m.

17

18 Thank you for attending.

19

20 The time is now 2:43 p.m.. I now close this oral proceeding.

21

22

Exhibit B-6: Compilation of Comments and State Responses.

The oral proceeding on the proposed Arizona SIP revision to remove R18-2-310 Affirmative Defenses for Excess Emissions due to Startup, Shutdown, Malfunctions (SSM) was held on Friday, October 21, 2016, 2:30p.m., at the Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ 85007. The public comment period began on Tuesday, September 20, 2016, and closed on Friday, October 21, 2016, at 5:00 p.m. No oral comments were received during the public hearing. The Arizona Department of Environmental Quality (ADEQ) received one written comment. ADEQ's response to the written comment is below. The comment letter is also attached.

Sierra Club Comment:

The Sierra Club also commented retaining “affirmative defense provisions in state law is not problematic as long as the state law provisions are not worded in such a way to undermine the state’s enforcement authority.”

ADEQ Response to Sierra Club Comment:

Arizona agrees that retaining affirmative defense provisions in state law is not problematic as long as the state law provisions are not worded in such a way to undermine Arizona’s enforcement authority. The affirmative defense provisions of R18-2-310 do not limit Arizona’s own authority to enforce the requirements of the SIP. In assessing penalties state courts must be specific in affirming when a source qualifies for an affirmative defense. Arizona can also seek other forms of relief including an injunction to prevent further events from occurring in the future.



Submitted via email to ivers.matthew@azdeq.gov

October 20, 2016

RE: Sierra Club Comments on Arizona's Proposal to Remove R18-2-310 from Arizona's SIP

I. INTRODUCTION

Sierra Club appreciates the opportunity to provide these comments concerning Arizona's proposal to amend its State Implementation Plan (SIP) in response to EPA's SSM SIP Call.

Power plants and other facilities can emit massive amounts of particulate matter and other pollutants during periods of startup, shutdown, or malfunction. Indeed, as part of its SSM SIP Call rulemaking, EPA recognized the practical consequences of SSM exemptions, noting "one malfunction that was estimated to emit 11,000 pounds of [sulfur dioxide] SO₂ over a 9-hour period when the applicable limit was 3,200 pounds per day." Memorandum dated Feb. 4, 2013, to EPA Docket No. EPA-HQ-OAR-2012-0322 at 23, *available at* https://www3.epa.gov/airquality/urbanair/sipstatus/docs/ssm_memo_021213.pdf. These large SSM pollution exceedances can occur many times each year. After reviewing data from numerous power plants as part of the Mercury and Air Toxics rulemaking, EPA found that the "average" electric generating unit (EGU) had between 9 and 10 startup events per year between 2011 and 2012, and that many EGUs had "over 100 startup events in 2011 and over 80 in 2012." *Assessment of startup period at coal-fired electric generating units – Revised*, at p. 4 (Nov. 2014). Given the huge emissions possible during startup and shutdown, reducing startup and shutdown emissions from fuel-burning sources, including power plants, should be a priority for ADEQ.

II. EPA's SSM SIP CALL

EPA's SSM SIP Call requires 36 states, including Arizona, to remove from their SIPs exemptions and affirmative defenses that allow industrial facilities to pollute the air without consequences when those facilities start up, shut down, or experience malfunctions. 80 Fed. Reg. 33,840 (June 12, 2015). EPA found that SIPs with such provisions—like Arizona's current SIP—are substantially inadequate to meet Clean Air Act requirements. *Id.* In addition to requiring the 36 states whose SIPs contain these exemptions or affirmative defense provisions to remove these provisions from their SIPs, the SIP Call also revises EPA's policy for SIP provisions addressing excess emissions during SSM events. *Id.* The SIP Call allows states 18 months to submit revised SIPs to EPA, which is the maximum time allowable under the statute. *Id.* at 33,848; 42 U.S.C. § 7410(k)(5).

Because facilities subject to the Clean Air Act can emit massive amounts of particulate matter, sulfur dioxide, nitrogen oxide, and other harmful air pollution during periods of start-up, shutdown, and malfunction, it is imperative that Arizona include strong SIP provisions governing emissions during these periods to protect fence-line and other communities. Indeed, EPA expects that “revision of the existing deficient SIP provisions has the potential to decrease emissions significantly in comparison to existing provisions” because these required revisions will “encourage sources to reduce emissions during startup and shutdown and to take steps to avoid malfunctions, ... [and] should provide increased incentive for sources to be properly designed, operated and maintained in order to reduce emissions at *all* times.” *Id.* at 33,955-56 (emphasis added). Importantly, beyond the legal deficiencies in the provisions, “the results of automatic and discretionary exemptions in SIP provisions, and of other provisions that interfere with effective enforcement of SIPs, are real-world consequences that adversely affect public health.” *Id.* at 33,850. Removing SSM exemptions and affirmative defenses, like those in the current Arizona SIP, “has the potential to result in significant emission control and air quality improvement.” *Id.* at 33,850, 33,956.

Excessive pollution during SSM events from large facilities has devastating impacts on surrounding communities, which are often low-income communities and/or communities of color. Indeed, SSM loopholes—whether incorporated in SIP provisions or in operating permits—undermine the emission limits found in SIPs and operating permits, threaten states’ abilities to achieve and maintain compliance with NAAQS, and endanger public health and public welfare. These provisions also undermine other requirements of the Act, including Prevention of Significant Deterioration increments, nonattainment plans, and visibility requirements. In addition, SSM loopholes create a disparity among states, where some states provide facilities with an unfair economic advantage through SSM loopholes as compared to facilities located in states that do not have SSM loopholes. This creates precisely a “race to the bottom” incentive structure that the Clean Air Act is designed to prevent.

III. COMMENTS ON ARIZONA’S PROPOSAL

As ADEQ correctly recognizes, EPA’s SSM SIP Call found that R18-2-310 is substantially inadequate to meet Clean Air Act requirements. 80 Fed. Reg. at 33972-3. The easiest and cleanest way for Arizona to comply with the SIP Call and the Act is to remove the provision from the SIP, as it is proposing to do here. Removing the unlawful provision will ensure that the normal SIP limits that are designed to protect air quality and comply with the Act’s requirements would apply during all times, and that sources would be fully liable under the Act for violations of such limits, including civil penalties. As EPA has made clear, it should be technically feasible for most sources to “meet the same emission limitation” during *both* “steady-state” and startup/shutdown periods. 80 Fed. Reg. at 33,915.

Retaining the affirmative defense provisions in state law is not problematic as long as the state law provisions are not worded in such a way to undermine the state’s enforcement authority. 80 FR at 33855-56. As EPA explained in the SSM SIP Call,

the state could not create affirmative defense provision that in effect undermines its legal authority to enforce SIP requirements. Section 110(a)(2)(C) requires states to have a program that provides for enforcement of the state’s SIP, and enforcement discretion

provisions that unreasonably limit the state's own authority to enforce the requirements of the SIP would be inconsistent with section 110(a)(2)(C). The EPA's obligations with respect to SIPs include determining whether states have adequate enforcement authority.

Id.

Thank you for the opportunity to submit these comments. Please do not hesitate to contact me with any questions or to discuss the matters raised in these comments.

Sincerely,
/s/Andrea Issod
Andrea Issod
Sierra Club Environmental Law Program
2101 Webster St., Suite 1300
Oakland, CA 94612
andrea.issod@sierraclub.org
415-977-5544

Appendix C:

Reference Documents Related to EPA SSM SIP Call.

Exhibit C-1: Certified Copy of R18-2-310
to Be Removed from the Arizona SIP.



STATE OF ARIZONA

UNITED STATES OF AMERICA)
) SS.
STATE OF ARIZONA)

I, MICHELE REAGAN, SECRETARY OF STATE, DO HEREBY CERTIFY THAT THE ATTACHED IS A COMPLETE, TRUE, AND CORRECT COPY OF THE FOLLOWING RULE AS PUBLISHED IN THE ARIZONA ADMINISTRATIVE CODE, 13-3 SUPPLEMENT: SECTION R18-2-310.

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed the
Great Seal of the State of Arizona.
Done this 7th day of September,
2016.

Michelle Reagan

MICHELE REAGAN
Secretary of State

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Article 1 consisting of Section R9-3-101 renumbered as Article 1, Section R18-2-101 (Supp. 87-3).

Section

- R18-2-101. Definitions
- R18-2-102. Incorporated Materials
- R18-2-103. Applicable Implementation Plan; Savings

**ARTICLE 2. AMBIENT AIR QUALITY STANDARDS;
 AREA DESIGNATIONS; CLASSIFICATIONS**

Article 2, consisting of Sections R18-2-201 through R18-2-290, adopted effective August 8, 1991 (Supp. 91-3).

Article 2, consisting of Sections R18-2-201 through R18-2-220, repealed effective August 8, 1991 (Supp. 91-3).

Article 2 consisting of Sections R9-3-201, R9-3-202, R9-3-204 through R9-3-207, and R9-3-215 through R9-3-219 renumbered as Article 2, Sections R18-2-201, R18-2-202, R18-2-204 through R18-2-207, and R18-2-215 through R18-2-219 (Supp. 87-3).

Section

- R18-2-201. Particulate Matter: PM₁₀ and PM_{2.5}
- R18-2-202. Sulfur Oxide (Sulfur Dioxide)
- R18-2-203. Ozone: One-hour Standard and Eight-hour Average Standard
- R18-2-204. Carbon monoxide
- R18-2-205. Nitrogen Oxides (Nitrogen Dioxide)
- R18-2-206. Lead
- R18-2-207. Renumbered
- R18-2-208. Reserved
- R18-2-209. Reserved
- R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations
- R18-2-211. Reserved
- R18-2-212. Reserved
- R18-2-213. Reserved
- R18-2-214. Reserved
- R18-2-215. Ambient air quality monitoring methods and procedures
- R18-2-216. Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data
- R18-2-217. Designation and Classification of Attainment Areas
- R18-2-218. Limitation of Pollutants in Classified Attainment Areas
- R18-2-219. Repealed
- R18-2-220. Air pollution emergency episodes

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Article 3, consisting of Sections R9-3-301 through R9-3-332, adopted effective November 15, 1993 (Supp. 93-4).

Article 3, consisting of Sections R9-3-301 through R9-3-319, and R9-3-321 through R9-3-323 repealed effective November 15, 1993 (Supp. 93-4).

Article 3 consisting of Sections R9-3-301 through R9-3-319 and R9-3-321 through R9-3-323 renumbered as Article 3, Sections R18-2-301 through R18-2-319 and R18-2-321 through R18-2-323 (Supp. 87-3).

Section

- R18-2-301. Definitions
- R18-2-302. Applicability; Registration; Classes of Permits
- R18-2-302.01. Source Registration Requirements

- R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition
- R18-2-304. Permit Application Processing Procedures
- R18-2-305. Public Records; Confidentiality
- R18-2-306. Permit Contents
- R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards
- R18-2-306.02. Establishment of an Emissions Cap
- R18-2-307. Permit Review by the EPA and Affected States
- R18-2-308. Emission Standards and Limitations
- R18-2-309. Compliance Plan; Certification
- R18-2-310. Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown
- R18-2-310.01. Reporting Requirements
- R18-2-311. Test Methods and Procedures
- R18-2-312. Performance Tests
- R18-2-313. Existing Source Emission Monitoring
- R18-2-314. Quality Assurance
- R18-2-315. Posting of Permit
- R18-2-316. Notice by Building Permit Agencies
- R18-2-317. Facility Changes Allowed Without Permit Revisions - Class I
- R18-2-317.01. Facility Changes that Require a Permit Revision - Class II
- R18-2-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision - Class II
- R18-2-318. Administrative Permit Amendments
- R18-2-318.01. Annual Summary Permit Amendments for Class II Permits
- R18-2-319. Minor Permit Revisions
- R18-2-320. Significant Permit Revisions
- R18-2-321. Permit Reopenings; Revocation and Reissuance; Termination
- R18-2-322. Permit Renewal and Expiration
- R18-2-323. Permit Transfers
- R18-2-324. Portable Sources
- R18-2-325. Permit Shields
- R18-2-326. Fees Related to Individual Permits
- R18-2-326.01. Emissions-Based Fee Increase Related to Individual Permits for Fiscal Year 2011
- R18-2-327. Annual Emissions Inventory Questionnaire
- R18-2-328. Conditional Orders
- R18-2-329. Permits Containing the Terms and Conditions of Federal Delayed Compliance Orders (DCO) or Consent Decrees
- R18-2-330. Public Participation
- R18-2-331. Material Permit Conditions
- R18-2-332. Stack Height Limitation
- R18-2-333. Acid Rain
- R18-2-334. Minor New Source Review

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

Article 4, consisting of Sections R18-2-401 through R18-2-411, adopted effective November 15, 1993 (Supp. 93-4).

Article 4, consisting of Sections R18-2-401 through R18-2-410, renumbered as Article 6, Sections R18-2-601 through R18-2-610 (Supp. 93-4).

- e. Additional requirements specified in sections 114(a)(3) and 504(b) of the Act or pursuant to R18-2-306.01.
 3. A requirement for any document required to be submitted by a permittee, including reports, to contain a certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
 4. Inspection and entry provisions that require that upon presentation of proper credentials, the permittee shall allow the Director to:
 - a. Enter upon the permittee's premises where a source is located, emissions-related activity is conducted, or records are required to be kept under the conditions of the permit;
 - b. Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
 - c. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
 - d. Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and
 - e. Record any inspection by use of written, electronic, magnetic, or photographic media.
 5. A compliance plan that contains all the following:
 - a. A description of the compliance status of the source with respect to all applicable requirements;
 - b. A description as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and
 - iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
 - c. A compliance schedule as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;
 - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirement for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. The schedule of compliance shall supplement, and shall not sanction noncompliance with, the applicable requirements on which it is based.
 - d. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation. The progress reports shall contain:
 - i. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
 - ii. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
 6. The compliance plan content requirements specified in subsection (5) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, and incorporated under R18-2-333 with regard to the schedule and each method the source will use to achieve compliance with the acid rain emissions limitations.
 7. If there is a Federal Implementation Plan (FIP) applicable to the source, a provision that compliance with the FIP is required.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amendment filed September 18, 1979, effective following the adoption of Article 7. Nonferrous Smelter Orders. Amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Amendment filed September 18, 1979 effective January 8, 1980 (Supp. 80-2). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-309 renumbered without change as R18-2-309 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2833, effective June 17, 2004 (Supp. 04-2).

R18-2-310. Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown

- A. Applicability.**

This rule establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for standards or limitations:

 1. Promulgated pursuant to Sections 111 or 112 of the Act,
 2. Promulgated pursuant to Titles IV or VI of the Clean Air Act,
 3. Contained in any Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permit issued by the U.S. E.P.A.,

SIP Revision: Clean Air Act Section 110(k)(5) – SIP Call for Startup, Shutdown, and Malfunction.

4. Contained in R18-2-715(F), or
 5. Included in a permit to meet the requirements of R18-2-406(A)(5).
- B. Affirmative Defense for Malfunctions.**
Emissions in excess of an applicable emission limitation due to malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:
1. The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;
 2. The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
 3. If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to ensure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;
 4. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
 5. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
 6. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
 7. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
 8. The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;
 9. All emissions monitoring systems were kept in operation if at all practicable; and
 10. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.
- C. Affirmative Defense for Startup and Shutdown.**
1. Except as provided in subsection (C)(2), and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:
 - a. The excess emissions could not have been prevented through careful and prudent planning and design;
 - b. If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;
 - c. The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
 - d. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
 - e. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
 - f. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
 - g. All emissions monitoring systems were kept in operation if at all practicable; and
 - h. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.
 2. If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to subsection (B).
- D. Affirmative Defense for Malfunctions During Scheduled Maintenance.**
If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to subsection (B).
- E. Demonstration of Reasonable and Practicable Measures.**
For an affirmative defense under subsection (B) or (C), the owner or operator of the source shall demonstrate, through submission of the data and information required by this Section and R18-2-310.01, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective June 19, 1981 (Supp. 81-3). Amended Arizona Testing Manual for Air Pollutant Emissions, effective September 22, 1983 (Supp. 83-5). Amended Arizona Testing Manual for Air Pollutant Emissions, as of September 15, 1984, effective August 9, 1985 (Supp. 85-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-310 renumbered without change as R18-2-310 (Supp. 87-3). Amended effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

R18-2-310.01. Reporting Requirements

- A.** The owner or operator of any source shall report to the Director any emissions in excess of the limits established by this Chapter or the applicable permit. The owner or operator of any registered source may report excess emissions in accordance with this Section in order to qualify for the affirmative defense established in R18-2-310. The report shall be in two parts as specified below:
1. Notification by telephone or facsimile within 24 hours of the time the owner or operator first learned of the occur-