



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

MAY 11 2017

Timothy Franquist, Director
Air Quality Division
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

Subject: A.R.S. 49-457; A.A.C. R18-2-611, and A.A.C. R18-2-611.03


Dear Mr. Franquist:

We have reviewed Arizona Revised Statutes (A.R.S.) 49-457, Arizona Administrative Code (A.A.C.) R18-2-611, and A.A.C. R18-2-611.03, which were submitted to the EPA on December 21, 2015 as revisions to the Arizona State Implementation Plan (SIP). These provisions relate to Arizona's agricultural general permit and best management practices program (AgBMP program). Although the submitted measures include many additions and improvements to existing provisions in the Arizona SIP, we believe certain aspects of A.R.S. 49-457 and A.A.C. R18-2-611.03 may raise potential SIP-relaxation issues, as explained below.

- The Arizona SIP currently contains a prior version of A.R.S. 49-457. The SIP-approved version of A.R.S. 49-457, section H, states that persons subject to an agricultural general permit are not required to obtain permits issued pursuant to A.R.S. 49-426. At this time, the only aspects of the Arizona AgBMP program in the federally approved Arizona SIP relate to crop operations in the Maricopa and Pinal PM₁₀ nonattainment areas and to roads and canals in certain irrigation districts. The new version of A.R.S. 49-457 submitted to EPA on December 21, 2015, contains the permitting preemption in section H, as well as new provisions (sections P.1.e., and P.5) that expand the definitions of "agricultural general permit" and "regulated agricultural activities" to include animal operations such as dairies, beef cattle feed lots, and poultry and swine facilities. These revised definitions would appear to expand the scope of section H's permitting preemption such that animal operations covered by an agricultural general permit would not be required to obtain stationary source permits. Animal operations that include structures (such as poultry and swine facilities) may generate non-fugitive emissions that should be evaluated in the context of an A.R.S. 49-426 permitting program. ADEQ's submittal did not include an analysis consistent with CAA section 110(l) to demonstrate that regulation of these facilities will be at least as stringent under the AgBMP program as under an A.R.S. 49-426 permitting program.
- Submitted A.R.S. 49-457, section O, preempts regulation of "regulated agricultural activities" by counties, cities and towns. Currently, the Arizona SIP contains county rules, such as those that apply in Maricopa, Pima, and Pinal counties, that regulate

emissions. ADEQ's submittal did not include an analysis consistent with CAA section 110(l) of whether regulation of agricultural activities under ADEQ's SIP would be as stringent as regulation under these county SIP rules.

We have also attached additional recommendations to further clarify and improve these Arizona provisions. Please feel free to call me at 520-498-0118 if you have any questions or would like to discuss this further.

Sincerely,

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

Colleen McKaughan
Associate Director, Air Division

Attachment

Attachment

Additional Recommendations for A.R.S. 49-457

1. Section H: We recommend that Section H be modified as follows: "... including record keeping, ~~and~~ reporting, and monitoring requirements, and test methods needed to determine compliance with the rule, for regulated agricultural activities to reduce PM-10 particulate emissions."
2. Sections I, J, K, and M use the undefined term "director." It is not clear whether the statute is referring to the director of the Department of Environmental Quality (B.1.) or the director of the Arizona Department of Agriculture (B.2.). We recommend that this be clarified.
3. Section J uses the undefined term "department." It is not clear whether the statute is referring to the Arizona Department of Agriculture (B.2.) or the State or local Department of Environmental Quality (B.15). We recommend that this be clarified.
4. Section P.1(a): We recommend changing the term "harvesting" to "ground operations and harvesting" for consistency with the AgBMP rules (R18-2-610.03(B)(2)).
5. Section P.1: We recommend adding the following: "(d) Reduce PM₁₀ emissions from commercial farm roads," (and re-lettering subsequent provisions in P.1) for consistency with the AgBMP rules (R18-2-610.03(B)(4)).
6. Section P.1(e)(ii): The term "Unpaved roads or feed lanes" would suggest that the category allows a choice to control emissions from either unpaved roads or from feed lanes, but not a requirement to control emissions from both. We note that the definition of "Unpaved roads or feed lanes" states that it "means roads and feed lanes that are unpaved..." See R18-2-611(1)(o). For clarity we recommend that the term in statute (and the regulation) be changed from "Unpaved roads or feed lanes" to "Unpaved roads ~~or~~ and feed lanes."
7. Section P.5(a): We recommend that ADEQ clarify the term "commercial farming practices," which is part of the definition of "regulated agricultural activities" but not defined elsewhere.
8. Section P. 6: The statute defines "regulated area" as (a) The Maricopa PM-10 particulate nonattainment area, (b) Any portion of area A that is located in a county with a population of two million or more persons, (c) Any other PM-10 particulate nonattainment area established in this state on or after June 1, 2009. For clarity, we recommend that the list also include the following: "The West Pinal PM-10 particulate nonattainment area."

Additional Recommendations for A.A.C. R18-2-611 and A.A.C. R18-2-611.03

1. We recommend adding stabilization and 20% opacity requirements to R18-2-611.03 for high-traffic unpaved roads and feed lanes, unpaved access connections, and other unpaved traffic areas, with appropriate test methods.
2. R18-2-611.03(E)(1): Research supports a minimum 20-25% manure moisture content in corrals as a means to significantly decrease PM₁₀ emissions from feedlots, and that increasing the frequency of manure harvesting (scraping) is highly recommended,

- particularly in drought conditions.¹ The USDA's Natural Resources Conservation Service (NRCS) has a work practice standard (for funding purposes) of 25% moisture content through frequent manure removal and watering to control feedlot PM emissions.² Please consider requiring increased frequency of manure removal from once every six months to a frequency recommended by the latest research to achieve a 20-25% moisture content.
3. R18-2-611.03: For beef feedlots, consider adding control measures for unpaved equipment staging/storage and other traffic areas.
 4. R18-2-611.03(F)(4), (G)(4), (H)(4), and (I)(4). Unpaved roads or feed lanes: The term "Unpaved roads or feed lanes" would suggest that the category allows a choice to control emissions from either unpaved roads or from feed lanes, but not a requirement to control emissions from both. We note that the definition of "Unpaved roads or feed lanes" states that "Unpaved roads or feed lanes" means roads and feed lanes that are unpaved..." See R18-2-611(1)(o). Consistent with our recommendation for ARS 49-457 (P)(e)(ii), we recommend that the term be changed from "Unpaved roads or feed lanes" to "Unpaved roads ~~or~~ and feed lanes."
 5. R18-2-611.03(H): This section states that BMP Forms must be provided to the Director within two business days of notice. We recommend that the rule require BMP Forms to be provided to an inspector upon request.
 6. R18-2-611.03(I)(7): We recommend that ADEQ resolve an apparent inconsistency in the rule for dairies on dust control forecast days. Section(I)(7) requires dairies and feedlots to acknowledge that water was applied on high risk days, but the requirement to add water applies only to beef feedlots (section C). The requirements applicable to dairies on high risk days (section B) are to control unpaved roads > 20 VMT by applying and maintaining either pavement, aggregate cover, synthetic particulate suppressant, or water.
 7. R18-2-611(2b) and (3d): We recommend that the rule define the term "high-traffic animal areas."
 8. R18-2-611(t): We recommend that the rule define the term "stabilized soil surface."
 9. R18-2-611.03: We recommend that the rule require that records be maintained for five years instead of three.
 10. R18-2-611.03: We recommend that the rule define the term "Director" and "Department."
 11. R18-2-611.03(I)(1) and (I)(2): We recommend replacing the term "farmer" with "animal operator."
 12. Exhibit G-VI: The title of Rule 18-2-611 is inconsistent on pages on GV-8 and GVI-19. Please revise for consistency.

¹ Manure Harvesting Frequency – The Key to Feedyard Dust Control in a Summer Drought, Brent W. Auvermann, David B. Parker and John M. Sweeten, Texas Agricultural Extension Services, The Texas A & M University System, November 2000. Feedyard Dust Control in an Epic Panhandle Drought, 2010-2011, Brent W. Auvermann and Kenneth D. Casey, Texas AgriLife Extension Service/Texas AgriLife Research, 6500 Amarillo Blvd., West Amarillo, TX, July 2011. See also: <http://beefmagazine.com/cowcalfweekly/0909-drought-feedyard-dust-managment>

² Dust Control from Animal Activity on Open Lot Surfaces, Code 375, September 2010.