



Proposed Action on Phoenix Ag. BMP Rule

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EPA's Proposed Action

- Phoenix** designated non-attainment for PM-10 NAAQS since 1990
 - 5% Plan required because Phoenix did not attain the standard with the previous plan
- Proposed partial approval/partial disapproval of the Phoenix 5% PM-10 Plan
- 2007 Phoenix Ag. BMP Rule submitted with 5% Plan
 - Proposed limited approval/limited disapproval of 2007 Ag. BMP Rule
 - Commenting period ends Oct. 12, 2010; for how to comment, see:
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-09/pdf/2010-22616.pdf>

** Phoenix = Maricopa County Non-attainment Area

Litigation

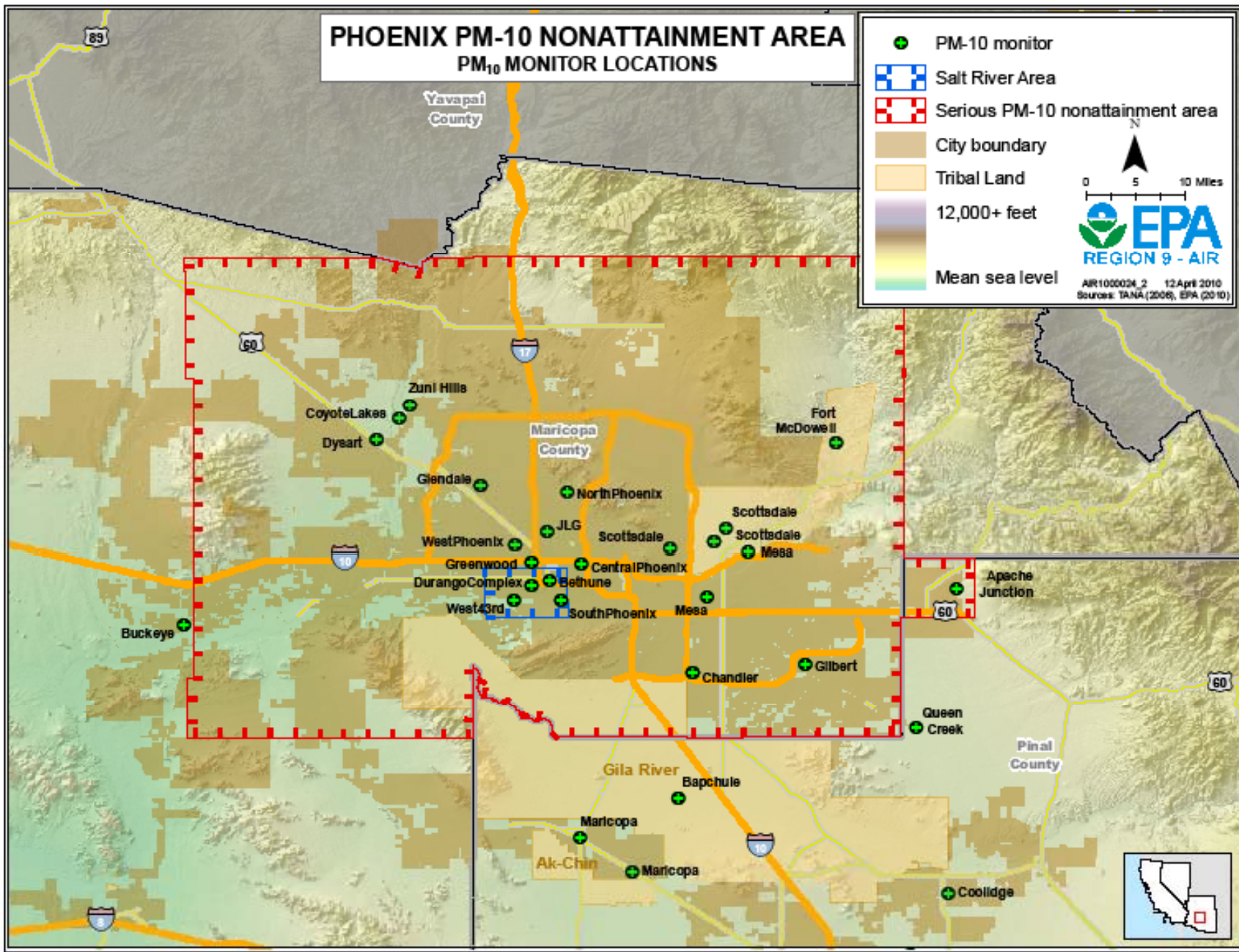
- Arizona Center for the Law in the Public Interest (ACLPI) sued EPA for failure to act on the Plan by the required deadline of June 2009
- Consent decree with ACLPI required proposed action by 9/3/10
- Final action required by 1/28/2011

Reasons for Proposed Disapprovals Include:

- Several issues with the 5% Plan:
 - Area cannot attain by date in attainment demonstration
 - Emission inventory is inaccurate
 - 5% and Reasonable Further Progress demonstrations are not approvable
 - Contingency Measures are not in excess of reductions needed for attainment
- Ag. BMP Program has BACM and enforceability issues

Approvals

- Control Measures in Senate Bill 1552 passed by Arizona Legislature in 2007
- Limited approval of Ag. BMP Program
 - 2007 amendments require sources to select two BMPs from each category



How PM-10 Ag. Rules Have Been Developed in Federal Non-Attainment Areas

- Technical experts and ag. stakeholders work with state/local air agencies, USDA, and EPA in a public process to develop lists of practices that are both:
 - effective at reducing emissions
 - cost effective
- EPA ensures that regulation with menu of practices meets Clean Air Act (CAA) requirements.

History of BMP/CMP Rules for Controlling PM-10

- 1998: South Coast Rule 403 Agricultural Handbook
- 2000: Phoenix Ag. BMP Program
- 2004: San Joaquin Valley (SJV) CMP Rule
- 2005: Imperial and Great Basin CMP Rules
- 2006 – 2009: Litigation for SJV CMP Rule
- 2007: Revisions to Phoenix Ag. BMP Program

Phoenix Ag. BMP Program

Farmers required to:

- Select 2 BMPs from each of the following categories:
 - Tillage and Harvest
 - Non-Cropland
 - Cropland
- Maintain records but no application submittal and approval process

BACM (Best Available Control Measures)

- CAA requires that serious non-attainment areas have **best** available controls whereas moderate non-attainment areas are only required to have reasonably available controls.
- CAA Section 189 (b)(1)(B): “...each State in which all or part of a Serious Area is located shall submit an implementation plan for such area that includes...Provisions to assure that the **best** available control measures for the control of PM–10 shall be implemented...”
- BACM is the “the **maximum degree** of emissions reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, **economic** and environmental impacts.” (59 FR 42010, Addendum to the General Preamble)

Enforceability

- Clean Air Act Section 110 (a)(2)(A):
 - “Each implementation plan submitted by a State ...shall...include enforceable emission limitations and other control measures, means, or techniques...”
- Both regulatory agencies and sources subject to the rule need to have clarity about the requirements that need to be met to be in compliance.

Proposed BACM and Enforceability Deficiencies

- Example from cropland category: artificial wind barrier
- Definition: physical barrier to the wind
- How effective this BMP is will depend on what the barrier is constructed of, the size of the barrier, the placement of the barrier, etc.

Proposed BACM and Enforceability Deficiencies

- Since rule doesn't specify what kind of barrier is sufficient, cannot ensure that best available controls are being implemented.
- Since farmers are not required to specify in records what type of barrier they're going to construct, it's difficult to confirm they're in compliance.

Need Additional Specificity to Address Deficiencies

- In litigation, EPA argued that the specificity necessary to ensure that the SJV CMP Rule was being implemented at a BACM level of control was provided by the Rule's application submittal and approval process.
- Specificity can be provided by an application submittal and approval process or more specific BMP definitions.

Moving Forward

- EPA will work with ADEQ, Governor's Ag. BMP Committee, USDA, and all interested stakeholders to develop a rule that's:
 - common sense and provides the flexibility needed by growers
 - defensible and meets CAA requirements