Article 7 Construction Sites in Nonattainment Areas—Fugitive Dust

4-7-222 Owner and/or Operator Liability

A. Onset. Compliance with the requirements of this Article shall commence on or before the date when Development Activity begins on the Site.

B. Duration and Termination. Obligations continue until all of the following occur:

1. Development Activity has ceased.

2. All disturbed portions of the Site have been stabilized as required under §4-7-226.

3. The Control Officer approves closure of the construction permit.

C. Obligations. With respect to any Site, an Owner and/or Operator shall:

1. Obtain, or cause to be obtained, and be liable for any failure to obtain, a Permit pursuant to §§4-7-238 or 4-7-242 for any Site with a disturbed area exceeding 0.1 acres.

2. Until termination as provided in this section, comply with or cause compliance with, and be liable for any person's violating or failing to comply with, any of:

a. The applicable objective site standards of §4-7-226.

b. The applicable obligatory site work practice standards of §4-7-230.

c. The requirement that a Site Permit be approved prior to any person engaging in earthmoving that will cause more than 0.1 acre of disturbed area.

d. The provisions of any Site Permit for the Site approved pursuant to §§4-7-238 or 4-7-242, including the requirements of the Dust Management Plan included within that permit.

D. Affirmative Defense for Wind-Driven Opacity Violations

An Owner and/or Operator shall have an affirmative defense to any enforcement action for opacity violations resulting solely from wind acting upon a stabilized surface, provided that:

1. The Owner and/or Operator can show that the prevailing wind speed exceeded 25 m.p.h. when averaged over one hour, as measured by:

a. A Pinal County Air Quality monitoring station in the affected area;

b. Any other certified meteorological station in the affected area; or

c. A wind-speed instrument calibrated to the manufacturer's standards and operated on-site.

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2. Until termination as provided in this section, comply with or cause compliance with, and be liable for any person's violating or failing to comply with, any of:

a. The applicable objective site standards of §4-7-226.

b. The applicable obligatory site work practice standards of §4-7-230.

c. The requirement that a Site Permit be approved prior to any person engaging in earthmoving that will cause more than 0.1 acre of disturbed area.

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2. The Owner and/or Operator can show through written records or otherwise that:

a. The requirements of the Site dust control plan were being met; and

b. The offending areas of the Site were maintained in a condition adequate to meet relevant stabilization requirements under §§4-7-226.C and 4-7-226.D.

3. The Owner and/or Operator can show that for any areas subject to any Development Activity that continues during windy conditions, including but not limited to earthmoving, equipment movement or site traffic, in addition to any other required control measures one or more of the following measures were applied and maintained:

a. All Development Activity, other than continued application of water for dust suppression and site stabilization purposes, has ceased;

b. Apply water or other suitable dust suppressant at least twice per hour to affected areas;

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c. For areas that are shown to have an optimum moisture content of less than 12%, as determined by ASTM Method D1557-02el or other equivalent methods approved by the Control Officer and the Administrator, maintain at least 70% of the optimum soil moisture content, as determined by ASTM Method D2216-05 or other equivalent methods approved by the Control Officer and the Administrator;

d. For areas where the optimum moisture content has not been shown to be less than 12%, maintain soil moisture content at a minimum of 12%, as determined by ASTM Method D2216-05 or other equivalent methods approved by the Control Officer and the Administrator.

4. The Owner and/or Operator can show that for temporary disturbed surfaces, including but not limited to, after work hours, weekends and holidays, in addition to any other required control measures, the following measures were applied as appropriate:

a. For open storage piles, either:

i. Apply water on all open storage piles at least twice per hour; or

ii. Cover open storage piles with tarps, plastic, or other material such that the wind will not remove the covering(s).

b. For other temporary disturbed surfaces, either:

i. Uniformly apply and maintain surface gravel or dust suppressants; or

ii. Apply water to disturbed surface areas at least three times per day, but if disturbed surface areas continue to show evidence of wind-blown dust, increase watering frequency to four times per day.