ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Douglas A. Ducey
Governor

Misael Cabrera
Director

May 15, 2017

The Honorable E. Scott Pruitt

Administrator

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., N.W.

Washington, DC 20460

Submitted electronically via Regulations.gov

Re: Arizona Department of Environmental Quality Response to the Environmental Protection Agency's request for comment on regulations that may be appropriate for repeal, replacement, or modification, Docket No. EPA-HQ-OA-2017-0190.

Dear Administrator Pruitt:

I want to start by thanking you for undertaking this important regulatory review and for seeking input from those impacted by EPA regulation. Starting in 2015, the Arizona Department of Environmental Quality (ADEQ) undertook a similar effort to identify and eliminate unnecessarily burdensome regulations, pursuant to Governor Ducey's Executive Order 2015-01. To date, ADEQ has eliminated or modified35 rules and five statutes, thus simplifying the regulatory structure for businesses without diminishing our ability to protect public health and the environment in Arizona. I believe the review you have initiated will result in similar improved outcomes at a federal level.

I respectfully submit the attached preliminary list of regulations for your consideration. The list includes a description of why the regulation creates unnecessary regulatory burden for businesses and this State. In creating this list, ADEQ engaged in an abbreviated process to seek input from our customers, those businesses and individuals in Arizona that receive a direct product or service from ADEQ. During this process, several overarching concepts emerged that ADEQ recommends be considered during all future EPA regulatory development processes:

1) Emerging regulations should be crafted in easily understood and clear language to assist businesses in complying with them.

2) If the goal of any enforcement action is first, and most importantly, to achieve compliance, EPA should consider a regulatory structure that allows for issuance of a "notice of opportunity to correct" (NOC) instead of immediate issuance of a notice of violation. Arizona and other states have very successfully utilized this tool to compel compliance for certain types of violations that don't pose an immediate threat to public health or the environment. Utilizing the least administratively burdensome tool to achieve compliance has allowed ADEQ to divert important inspections and compliance resources to higher risk cases, without compromise to public health or the environment. The NOC structure also incentivizes swift return to compliance because it provides documentation to secure corporate support for compliance actions, but is often not considered a "formal" enforcement action within a corporate structures, so does not have to be disclosed on externally facing performance reports.

3) Long delays in issuing permits can be a significant financial burden to businesses, both by delaying possible revenue streams and by increasing the contracting, legal and infrastructure costs associated with permit development. Lengthy delays can also disincentivize compliance with the requirement to obtain a permit, thus diminishing the effectiveness of the permitting program. EPA should seek to create a system of consistent and predictable review upon which the regulated community and states can rely. Similar efforts at a state level have resulted in 50 % reduction in permit process times, and a win-win for Arizona's businesses and environment.

   Although we are extremely appreciative of this opportunity, the short deadline to submit comments prevented us from engaging in a robust process to solicit customer feedback. As a result, I request additional opportunities to dialog with EPA on how to improve the regulatory structure for business and the environment. In addition, please be aware that ADEQ will respond under separate cover to EPA request for comment on individual rules, such as the Waters of the US rule. Thank you again for the opportunity to comment and I look forward to future discussions.

Respectfully,

Misael Cabrera, P.E.

Director

Attachment (1)

ATTACHMENT - I

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

SUBJECT	CITATION	WHY IS THIS A REGULATORY BURDEN?
PAMS Re-Engineering – Auto GC Portion	https://www3.epa.gov/ttn/amtic/pamsreeng.html	Operation and maintenance of equipment would be very expensive and technically difficult with little change to the data quality currently obtained by existing monitors. Auto GC Instrumentation required at PAMS sites in 2019. The operation of the instrument sounds difficult – Technician would need to be highly trained or a chemist. Very specialized equipment and training. Data Verification and validation would be very time consuming (hourly data for ~30 VOC species). Still lots to figure before 2019 – Seems like unattainable timeline.
NSPS for Municipal Solid Waste Landfills (WWW)	40 CFR 60.752(c)	Requires any facility over the 2.5E+06 design thresholds to obtain a Title V Operating Permit but emission controls are not triggered until a specific emission threshold has been reached. Therefore, Title V permit doesn't result in any decrease or limits on emissions.
NSPS for Other Solid Waste Incinerators (OSWI)	40 CFR 60.2974	Requires any Air Curtain Incinerator source to obtain a Title V Operating Permit regardless of operational/equipment specifics.
NSPS Emission Guidelines for OSWI (FFFF)	40 CFR 60.3076	Requires any Air Curtain Incinerator source to obtain a Title V Operating Permit regardless of operational/equipment specifics.
NESHAP for Municipal Solid Waste Landfills (AAAA)	40 CFR 63.1955	Requires any Air Curtain Incinerator source to obtain a Title V Operating Permit regardless of operational/equipment specifics.
NESHAP for Gold Ore Processing (EEEEEEE)	40 CFR 63.11640(d)	Requires any facility that processes over 100 tons per year to obtain a Title V Operating Permit.
Title V Permits Affirmative Defense for statups/shutdowns/malfunctions	40 C.F.R.63.6 (e)(3)(i)	Allow state programs and site-specific alternative emission limitations (including work practices) for startup and shutdown as Title V operating permit revisions and/or for malfunctions (e.g. SSM plan).
Clean Air Act- NESHAP “Once In, Always In” policy	40 C.F.R. Part 63	Rescind prior guidance and policy through rulemaking, establishing new policy under NESHAP program based on prior proposal; rulemaking should include stakeholder input and contemporaneous issuance of guidance.
Proposed Implementation Rule for 2015 Ozone Standard	Proposed rule 82 FR 3388 (January 11, 2017)	Proposed rule would require controls for nonattainment areas that demonstrate the international emissions are responsible for nonattainment issues. Proposed rule would also require control for upwind areas adjacent to nonattaiment areas. States should be given discretion on how to implement the standard, especially regarding international transport demonstrations and interstate transport.

ATTACHMENT - I

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

SUBJECT	CITATION	WHY IS THIS A REGULATORY BURDEN?
Exceptional Events – Mitigation Plan Portion	http://federal.elaws.us/cfr/title40.part51.section51.930	Mitigation Plans are required for Dust Storms or Volcanic eruptions. Specifically, Mitigation Plans were added requirement for areas with recurring events as part of 2016 EE Rule Revision. Plans require public notification/education, steps to identify, study, and implement mitigating measures, and provisions for plan review/evaluation. Mitigation Plan development workload may be similar to the development of a SIP. Mitigation Plans are inequitable to areas that experience frequent natural events by erroneously assuming that because events occur more frequently, they should be more easily mitigated. The Mitigation Plan as proposed in the revision is analogous to a separate, second evaluation of the reasonableness of controls.
Regional Haze	40 CFR 51.308	Regional Haze 5-year reports are burdensome and unnecessary, 10 year reports would be preferable.
Regional Haze	40 CFR 51.308(d)(1)(i)(B)	Achieving natural visibility for all Class I areas by 2064 is unreasonable as natural visibility is unknown and would be different throughout the course of history or pre-history.
CERCLA Guidance on Recovery of Indirect Costs	42 U.S.C. § 9607	Issue new guidance superseding prior guidance that allows EPA only to recover indirect costs for its employee time and not contactor costs. EPA's ability to recover indirect costs for its contractors is not reflective of EPA's true indirect costs. Especially for sites where EPA is performing remedial action, the indirect costs charged by contractors are significant.
Do not finalize the currently proposed CERCLA 108(b) rules for hardrock mining facilites.	Proposed rule 81 FR 81276 (November 17, 2016)	EPA has developed a financial assurance regulatory program that is expressly duplicative of other federal and state agencies, and that the 108(b) regulations will operate differently from existing financial responsibility programs. The Administration should ask the U.S. Court of Appeals for the District of Columbia Circuit to grant additional time for the EPA to redo the rulemaking by : (1) conducting a peer review of the model consistent with OMB's bulletin and own regulatory guidelines; (2) share the model with state regulators to ensure expert review as envisioned in the federalism consultation guidelines; and (3) conduct a more rigorous "regulatory gap analysis" to ensure against duplication.

ATTACHMENT - I

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Definitions of *Facility* (related to corrective action) and *Facility or Activity* and *Hazardous Waste Management Facility*	40 CFR 260.10, 40 CFR 264.101, 40 CFR 267.101 and 40 CFR 270.2,	Allow for corrective action of solid waste management units outside of the permitted *facility* , but within the contiguous property under control of the owner or operator, as defined in 40 CFR 260.10 and 270.2, such that CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by a hazardous waste permit are considered to provide equivalent protection of human health and the environment. The National Oil and Hazardous Substance Contingency Plan, if applicable, must also be adhered to if deferral to CERCLA is selected, since petroleum releases are not required to be addressed under CERCLA, but are under RCRA. The regulatory authority for the hazardous waste permit must also be able to revisit a deferral decision if it appears that the response action is not being properly addressed under CERCLA.
Update EPA Guidance on Toxic Release Inventory Reporting Obligations & TRI Reform	40 CFR Part 372.	Issue new guidance consistent with statutory authority and judicial court decision.
Toxics Release Inventory (TRI) Reporting	42 USC 11023	The application of the statutory terminology through regulation to mining has resulted in the requirement to report as “releases” on TRI reports the trace amounts of naturally occurring metal and metal compounds that are present in the rock and dirt that is moved and managed at a mine site. The vast majority of what the metal mining industry reports – from 85 to 99 percent – consists of the management of these naturally occurring substances. Current implementation of the TRI program overestimates the risk associated with hard rock mine overburden common in the southwest. Because this data is utilized by EPA and others to evaluate the effectiveness of environmental policies, applicability of this regulation to hard rock mine overburden should be reevaluated and potentially removed.
Safe Drinking Water (SDW) Anti-back-sliding	Section 1412(b)(9) of the SDWA	States that are directly implementing the drinking water regulations may see opportunities for more efficient and effective approaches to meeting regulatory requirements, while still protecting public health and maintaining the economic health of communities. Some of the current SDWA regulatory requirements could be streamlined and still protect public health.

ATTACHMENT - I

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Reevaluate the necesity of all the inforamtion included in the Consumer Confidence Report (CCR)	40 CFR 141.155	If there have been violations, notification is made under the Public Notice (PN) requirements, so the effectiveness of the CCR as a public awareness tool is debatable. Simply maintaining test results for public review, upon request, for small systems would appear to be just as effective at much less cost. The CCR is especially burdensome for small systems. If there have not been violations, putting together all the requirements takes a lot of time and effort for an operator.
Eliminating the Certification Requirement for Consumer Confidence Report (CCR)	40 CFR 141.155	It is an extra step that the water system must complete even though the public has already been informed. It makes more sense for states to invest in tracking PN certifications to ensure PN was done for violations, rather than follow-up on CCR certifications.
Reevaluate the Use of Whole Numbers in the CCR	40 CFR 141.153	This requirement to change reporting units just for the CCR just doesn't make a lot of sense and is potentially misleading to consumers. This requirement assumes that lay people are not familiar with decimals. When an interested consumer looks on the EPA website, or one of the state websites, and sees that the MCL for benzene is 0.005 mg/L then gets a CCR which says they have detected 2 µg/L of benzene in their water, it may cause the reader to question the safety of that level in their drinking water. It is much easier to report the monitoring result in the same units as the MCL and then simply explain that 0.002 is less than 0.005.
Reevaluate the value of the Annual Public Water System Compliance Report	40 CFR 141.155	Data contained in the Annual Water System Compliance reports are available through other sources such as Envirofacts and the new OECA ECHO database which would allow interested parties to focus on specific interests rather than just receiving a high level statistical summary.
Modify Tier 3 Public Notice	40 CFR 141.204(b)	Consumers are upset when they find out a year later that their water system was not in compliance, however there is really no action they can take this long after the event to enhance their own health protection. In fact, they are not going to be able to use this information to protect their health even if notified prior to a year because the types of violations covered by Tier 3 PN are not directly health related.
Revisit the Occurrence of Phase II/V Contaminants (SOC, IOC, VOC)		Eliminate those contaminants from regulation that have not been found and haven't been manufactured for some period of time.
Eliminate Old Arsenic Language	40 CFR 141.11(9) & (b)	The Arsenic rule still contains some language related to the previous MCL of 0.05 mg/L which is no longer in effect. This language should be eliminated to avoid confusion and clean up the rule.

ATTACHMENT - I

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Eliminate the special monitoring requirement for sodium at community systems	40 CFR 141.41	This would ease the monitoring burden with minimal impact on the health of the public.
Allow States to Further Reduce Disinfection By-Product Rule (DBPR) Monitoring Requirements for Small Systems	40 CFR 141.623	States should be able to allow additional reductions in Disinfection By-Product Rule (DBPR) monitoring requirements for groundwater systems that consistently have very low DBPs. Every 3 years can be a significant expense. States would like the option of reducing the monitoring to less frequently than every three years where water quality and treatment are well defined and stable.
Allow States to Reduce Maximum Residual Disinfectant Level (MRDL) Reporting Requirements for Small Systems	40 CFR 141.134	While the cost of this monitoring is not great, the reporting can be burdensome. The monthly averages of all TCR site chlorine levels must be submitted each quarter, with a running annual average calculated. The MRDL is 4.0 mg/L; however, most of these ground water systems have levels < 0.5 mg/L. When water quality and treatment are well defined and stable, additional reductions in reporting should be allowed at state discretion.
Modify or Eliminate Old Lead and Copper Language	40 CFR 141.81(d)	Contains specific dates by which a large system must complete certain steps. No longer relevant.
Eliminate Water Quality Parameter (WQP) Monitoring and OCCT Plans for System Utilizing Plumbing Replacement	40 CFR Part 141 - Subpart I	The Water Quality Parameter (WQP) requirements and other (Optimal Corrosion Control Treatment) OCCT requirements should be eliminated for systems that have complete control over their plumbing (schools, institutions, etc.) and elect to complete a full plumbing replacement or lining inserts of all lines. If this change were allowed, consumer confidence would be increased because contact with lead and copper would be eliminated rather than relying on a treatment process. Most parents would rather their children went to a school without lead pipes than with OCCT.
Modify Water Quality Parameter (OWQP) Requirements	40 CFR Part 141 - Subpart I	Measurement, reporting, and tracking of Optimal Water Quality Parameters (OWQP) is a burden for water systems and states and can lead to many unintentional violations that further increase the burden with little value added.

ATTACHMENT - I

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NPDES Final construction site stabilization requirements are onerous in some regions.	40 CFR 450.21(b)	Reconsider the requirement that "final stabilization" must consist of an established permanent cover, such as a perennial vegetative cover, concrete, rip rap, gravel, roof tops, asphalt, etc. For arid regions, especially dry washes and desert landscapes this is not necessary, burdensom, and costly.
NPDES Pesticide General Permit	40 CFR 122.28	The pesticide general permit is unnecessary, burdensome, and duplicative of other regulations. The PGP authorizes the discharge of pesticides to waters of the U.S. under the National Pollutant Discharge Elimination Program (NPDES) and was first issued in 2011. However, pesticide approvals, use, and labeling requirements are already regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As such, the the application of a pesticide is regulated by two separate programs with effectively the same goal of protection human health and the environment. This dual permitting approach increases the burden on states, EPA, and the regulated community with little to no additional value added.
Areawide waste treatment management (CWA 208)	33 USC 1288; 40 CFR 130.5, 130.6	Entities wishing to upgrade or expand treatment facilities to account for growth and improved technologies must go through a time consuming and burdensom process to get approval by local planning agencies. Water Quality Management (208) plans are sometimes used as a tool to address local planning/zoning concerns (versus water quality issues).
Reevaluate the NPDES requirement to express permit limits as total	40 CFR 122.45	The requirement to express permit limits as total even where applicable water quality is expressed as dissolved is confusing and can make data difficult to compare.
The National Pollutant Discharge Elimination System (NPDES) Applications and Program Updates Rule (NPDES Rule)	Proposed Rule 81 FR 31344-31374 (May 18, 2016).	Allows EPA to designate certain administratively continued permits as “proposed permits” if EPA determines that states are not acting quickly enough on renewal applications. Pursuant to that provision, EPA could designate administratively continued “environmentally significant” permits (which would include, among many others, all mining-related NPDES permits which have been administratively continued for either two or five years) as “proposed,” thereby effectively taking over the permitting authority of the state on an ad-hoc, permit-by-permit basis.