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BEFORE THE MARICOPA COUNTY AIR POLLUTION HEARING BOARD

DANIEL E. BLACKSON, Petitioner and **MARICOPA COUNTY AIR QUALITY DEPARTMENT** Respondent	**CASE NO: MCAPHB2016-001-PA** In re: Minor Modification to Hickman's Egg Ranch, Inc. Permit No: 140062 **MCAQD'S 1st SUPPLEMENTAL PREHEARING DISCLOSURE STATEMENT** ***(New information indicated in bold italics)***

Pursuant to the Maricopa County Air Quality Hearing Board's ("Board") Manual of Procedures ("Manual") § 3.16 and the Board's Order on Jurisdiction (8/31/16), Maricopa County Air Quality Department ("MCAQD" or "Respondent") hereby discloses the following to Petitioner, Daniel E. Blackson ("Petitioner") regarding Hickman's Egg Ranch, Inc., Tonopah ("Hickman's" or "Hickman's Tonopah") Permit No. 140062 ("Permit"). As this is a preliminary disclosure statement, MCAQD will seasonably supplement or amend the disclosure upon discovery of new or different information.

I. FACTUAL BASIS OF MCAQD'S RESPONSE

Petitioner filed a Notice of Appeal on July 12, 2016 challenging MCAQD's decision to grant a minor permit revision to Hickman's Tonopah and challenging MCAQD's responses to Petitioner's comments dated April 19, 2016. *See* Notice of Appeal (7/12/16). On August 31, 2016, the Board dismissed the bulk of issues raised by Petitioner and narrowed the issues for hearing to the following:

> [Petitioner's] Comments #8, #9, #11, #13, #14 and #17…but evidence is limited to whether [MCAQD] properly calculated the emissions, characterized them as fugitive or point source, and, based upon the revised calculation, applied the proper permitting standards and procedures (e.g., did the source trigger a procedure other than the one that [MCAQD] used to process the permit application and revision).

Order on Jurisdiction (8/31/16). Hearing on the remaining issues is November 7, 2016.

Accordingly, the factual basis of MCAQD's Response to the remaining issues before the Board is two-fold: (1) the history of Animal Feeding Operations ("AFO") emissions and regulations; and (2) Hickman's Tonopah permitting history. MCAQD will address the facts in chronological order. As the history of AFO regulations predates Hickman's permitting history, MCAQD will address it first.

A. AFO Regulation History

1. History

AFOs are "agricultural operations where animals are kept and raised in confined situations. An AFO is a lot or facility (other than an aquatic animal production facility) where the following conditions are met: animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility." EPA Website, AFOs, https://www.epa.gov/npdes/animal-feeding-operations-afos (hereinafter " Ex. 1"), at AQ001. CAFO, or confined animal feeding operation, is a term for a large AFO. AFOs are currently regulated under the Clean Water Act and other non-air programs. The Clean Air Act appears to be silent on AFOs.

Air regulations concerning emissions from certain parts of the AFO process have been unsettled for a number of years. Specifically, the Environmental Protection Agency ("EPA") identified a general paucity of credible information concerning AFO emissions from buildings or structures housing agricultural livestock and lagoons or similar structures used for storage and/or treatment of agricultural livestock waste. Accordingly, though EPA had previously brought Clean Air Act enforcement actions against AFOs, it became apparent that more data

was necessary to determine: whether operations were in violation, the nature and extent of any violations, and the best practices to control industry-wide emissions. *See* EPA News Release, EPA Announces Air Quality Compliance Agreement for AFOs (1/21/05) (hereinafter "Ex. 2"), at AQ003.

To that end, the EPA coordinated a nationwide effort to achieve "real environmental benefits to protect public health and the environment while supporting a sustainable agricultural sector." *See id.* On February 25, 1998, the U.S. Department of Agriculture ("USDA") and EPA announced a Memorandum of Understanding ("MOU") to ensure the two agencies worked together to share expertise and processes for involving the agricultural community in cooperative ways to address agriculture-related air quality issues. The effort focused on collecting data and information related to operations at AFOs, determining emissions from individual AFOs, and identifying appropriate regulatory and non-regulatory (e.g., best management practices, environmental management systems, etc.) responses for each farm. *See* AFO Consent Agreement and Final Order (1/31/05), 70 Fed. Reg. 4958, 4961 (hereinafter "Ex. 3"), at AQ010-11.

Accordingly, in September 2001, the EPA's Office of Air and Radiation ("OAR") and the USDA jointly commissioned the National Academy of Sciences ("NAS") to prepare a report recommending approaches for characterizing emission profiles, to identify AFO emission mitigation techniques, and develop emission factors, among other goals. *See* Ex. 3 at AQ010. NAS uncovered "a general paucity of credible scientific information" on the effects of mitigation technologies on concentrations, and emissions rates from AFOs. *Id.* It advised that there was a need for "scientifically sound and practical protocols" for measuring air concentrations and emission rates. *Id.* NAS further concluded EPA and USDA should use process-based mathematical models to *identify, estimate, and guide management changes that decrease emissions for a regulatory and management program. Id.* NAS called these measures a *key step* in mitigating air pollution from those operations. *See* Ex. 2 at AQ003.

The NAS report highlighted to EPA that "current uncertainties" existed regarding air emissions from AFOs along with the need "to bring the entire AFO industry into compliance

with the CAA…." *See* Ex. 3 at AQ011. Consequently, on January 31, 2005, the EPA offered AFOs in the egg, broiler, chicken, turkey, dairy, and swine industries an opportunity to sign a voluntary consent agreement and final order (hereinafter "Air Compliance Agreement") "to address emissions of air pollutants and hazardous substances from certain animal feeding operation(s) that may be subject to requirements of the Clean Air Act" and other regulations. *See id.* at AQ013. Execution of the agreement was not an admission of violation of any regulation. *See id.* at AQ014. Rather, the agreement absolved companies of civil liability for potential violation of the Clean Air Act (and other regulations). *Id.* The agreement also preserved state and local agencies' authority to enforce local odor or nuisance laws. *Id.* at AQ050. Upon the completion of the study and upon establishment of the proper regulatory framework, operators would then apply for all applicable air permits and otherwise come into full compliance. *See* Ex. 3 at AQ011.

Occurring in stages over multiple years, the Air Compliance Agreement would facilitate development of data necessary to establish regulatory and non-regulatory responses to AFO emissions. Specifically, individual farm emissions estimates along with other relevant information would serve as models to estimate emissions from different types and sizes of feeding operations and develop BACT/LAER guidelines for AFOs. *See* Ex. 3 at AQ006-010.

The individual farm emissions would also serve as models for EPA fugitive emissions guidance of which EPA acknowledged the need to address: "[s]ources may also emit fugitive emissions, but this notice does not address fugitive emissions. *Guidance on fugitive emissions will be issued along with other appropriate guidance/and or regulations after the conclusion of the monitoring study*." *See id.* at AQ006.

On September 4, 2008, upon request by the United States Congress, the United States Government Accountability Office ("GAO") submitted a report regarding emissions from AFOs entitled "Report to Congressional Requesters, [CAFOs]: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern" (September 4, 2008) (hereinafter "Ex. 19"), at AQ631-715; See also "Testimony Before the Subcommittee on Environmental and Hazardous Materials, et al., [CAFOs]: EPA Needs

More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern" (September 24, 2008) (hereinafter "Ex. 20"), at AQ631-71; . The purpose of the report was to determine answers to five questions:

> *(1) trends in concentrated animal feeding operations (CAFOs) over the past 30 years; (2) amount of waste they generate; (3) findings of recent key academic, industry, and government research of the potential impacts of CAFOs on human health and the environment, and the extent to which the Environmental Protection Agency (EPA) has assessed the nature and severity of these identified impacts; (4) progress that EPA and states have made in regulating and controlling the air emissions of, and in developing protocols to measure, air pollutants from CAFOs that could affect air quality; and (5) extent to which recent court decisions have affected EPA and the states'ability to regulate CAFO discharges that impair water quality.*

Ex. 19.at 687. The report addressed the EPA study and concluded:

> *[Q]uestions about the sufficiency of the sites selected for the air emissions study and the quantity and quality of the data being collected could undermine EPA's efforts to develop air emissions protocols by 2011 as planned. Finally, while the study and resulting protocols are important first steps, a process-based model that more accurately predicts the total air emissions from an animal feeding operation is still needed. While EPA has indicated it intends to develop such a model, it has not yet established a strategy and timeline for this activity.*

Id. at AQ683. The report recommended:

> *In order to more effectively determine the extent of air emissions from [AFOs], the Administrator of the [EPA] should reassess the current data collection efforts, including its internal controls, to ensure that the National Air Emissions Monitoring Study will provide the scientific and statistically valid data that EPA needs for developing its air emissions protocol…and establish a strategy and timetable for developing a process-based model that will provide more sophisticated air emissions estimating methodologies for animal feeding operations.*

Id. at AQ683. The GAO opined their recommendations reflected other concerns with the study. Namely, "the monitoring sites selected may not represent a statistically valid sample or animal feeding operations that account for the differences in climatic conditions, manure-handling methods, and density of operations; and the study does not address other sources that can contribute significantly to emissions from animal feeding operations." Id. The EPA did not address these issues in its comments. Id. As a result, the GAO recommended that the EPA should reassess the ongoing effort to ensure the study, as currently structured, would provide the data that EPA needs. Id.

To date, the EPA has completed the monitoring study, but ***still has not "established a strategy and timeline" to resolve the concerns or to provide additional necessary steps. The EPA*** has not published any emission factors for determining permitting requirements, BACT/LAER guidance, or fugitive emissions guidance.

As a result, other agencies have refrained from adopting regulations for emissions categories in the EPA study. For example, the Indiana Department of Environmental Management ("IDEM") adopted a non-rule policy addressing permitting activities at AFOs. *See* IDEM, Permitting of Activities Located at Livestock Production Operations Including CAFOs (2/13/15) (hereinafter "Ex. 10"), at AQ438-446. IDEM recognized EPA's monitoring study but chose not to regulate or permit those units covered in the study due to the absence of reliable emission factors. *Id.* at AQ439. IDEM however clarified that it could regulate other activities associated with the process, including combustion equipment, grain dryers, manure digesters, egg washing process, and incinerators. *Id.* at AQ439-440.

1. <u>MCAQD Action in re: Regulation History of AFOs</u>

In light of the unsettled and complex history of AFO regulations as presented above, MCAQD chose not to regulate portions of the AFO process implicated by the EPA study. This approach is consistent with current law. Instead, MCAQD complied with all current applicable federal, state, and county rules regarding the regulation of AFO emissions. Accordingly, MCAQD regulates the following portions of the AFO process: heaters, boilers, emergency generators, and odors. *See infra*, Relevant Laws, Section IV.B.

MCAQD has not developed regulations addressing AFO emissions from the units covered in the EPA study for two main reasons. First, the absence of reliable emission factors, guidance on fugitive emissions and BACT/LAER, and federal AFO air emission regulations, as discussed in detail *supra*, Section I.A, interject uncertainties over AFO emissions that require EPA to *identify, estimate, and guide management changes for a regulatory and management program*. *See* Ex. 3 at AQ010. MCAQD deemed it most prudent to withhold regulation development until it could rely on this key data to determine whether operations are in violation, the nature and extent of any violations, and the best practices to control industry-wide emissions. *Accord* Ex. 2 at AQ003.

Second, federal and state law limit MCAQD's authority to promulgate regulations regarding AFO emissions from units in the EPA study. The EPA has the ultimate authority regarding MCAQD actions as related to federal permits through the EPA-MCAQD delegation agreement. Therefore, until EPA takes a position, MCAQD has no position. Additionally, the Arizona Department of Environmental Quality ("ADEQ") has not adopted relevant regulations, which means MCAQD must wait for direction from ADEQ due to statutory stringency requirements. *See* A.R.S. § 49-112. MCAQD will mirror its local program after a federal program.

B. Hickman's Egg Ranch, Inc. - Tonopah

The foregoing factual basis influenced and informed MCAQD's position at the time it received Hickman's application for a Non-Title V permit.

1. Background

Hickman's Tonopah is a poultry egg production facility located on agricultural farmland at 41625 West Indian School Road, Tonopah, AZ 85354. Hickman's Tonopah houses chickens for the production of eggs for human consumption. The chickens reside in barns, which contain a fan system for ventilation, diesel-fueled emergency generator engines for power to the fans in the event of a power failure, and natural gas boilers for egg washing. The process also included manure piles and wastewater surface impoundment ponds.

2. Original Permit

On September 26, 2014, Hickman's Tonopah submitted an application for a Non-Title V Air Quality Permit to MCAQD for twelve (12) emergency backup diesel generators. *See* Hickman's Tonopah Application for Non-Title V Air Quality Permit (9/26/14) (hereinafter "Original Application" or "Ex. 6")), at AQ394. MCAQD reviewed the application for completeness per Maricopa County Air Pollution Control Regulation ("MCAPR") 220 § 301.4, which states:

> 301.1 Standard Application Form And Required Information: To apply for a permit under this rule, applicants shall complete a permit application filed in the manner and form prescribed by the Control Officer. *The Control Officer, either upon the Control Officer's own initiative or upon the request of a permit applicant, may waive the requirement that specific information or data for a particular source or category of sources be submitted in the Non-Title V permit application*. However, the Control Officer must determine that the information or data would be unnecessary to determine all of the following:
>
> a. The applicable requirements to which the source may be subject;
>
> b. The design and control of the air pollution control equipment such that the source may be expected to operate without emitting or without causing to be emitted air contaminants in violation of these rules;
>
> c. The fees to which the source may be subject under Rule 280-Fees of these rules; and
>
> d. A proposed emission limitation, control, or other requirement that meets the requirements of Section 304 of this rule.

(emphasis added).

Although Hickman's did not provide a calculation of emissions in Section Z of the application, *see* Ex. 6 at AQ397, MCAQD determined it had sufficient data to waive the inclusion of this data and still satisfy MCAPR 220 § 301.1 (a)-(d) because MCAQD engineers

possessed the expertise to calculate the emissions. MCAQD therefore deemed the Original Application complete.

MCAQD reviewed the application for local and federal rule applicability and determined federal New Source Review ("NSR") did not apply. MCAQD applied federal requirements in consideration of whether Hickman's Tonopah was a major source: "[t]he fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source..." 40 C.F.R. § 70.2 (major source definition). Fugitive emissions are considered if a source belongs to a listed stationary source category, which does not apply here. *See id.* "Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening." 40 C.F.R. § 70.2.

In the absence of EPA guidance regarding fugitive/non-fugitive classification of AFO emissions, *see* Ex. 3 at AQ006, MCAQD exercised *Chevron* deference; it applied and interpreted the federal definition of "fugitive emissions" to Hickman's process. *Accord Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984) (courts have "long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations."); ." *Kobold v. Aetna Life Ins. Co.*, 239 Ariz. 259, 259, 370 P.3d 128, 130, 131 (App. 2016) (quoting *Chevron*, 467 U.S. at 843, 104 S.Ct. at 2782) ("'If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.'").

Accordingly, MCAQD determined the emissions from the chickens in the barns, manure piles, and the wastewater surface ponds could not pass through a stack and were therefore fugitive and not included in the emissions calculations. *See* MCAQD Responsiveness Summary (hereinafter "Ex.7") at AQ610. Per MCAPR 100 § 200.65(c), the combined non-fugitive emissions were below the major source thresholds for all air pollutants and therefore did not trigger major source permitting requirements. Because the facility was not a major source, federal New Source Review requirement did not apply therefore further calculations did not apply. *See* MCAPR 240 § 102 (stating federal NSR requirements apply to new major sources or

a major source making a major modification); CAA § 172(c)(5), 42 U.S.C. 7502; § 173, § 7503.

After its review, MCAQD approved the application according to MCAPR 220 § 301.6 and issued Permit No. 140062 to Hickman's Tonopah for fuel combustion emissions from the emergency generator engines and boilers. *See* Hickman's Tonopah Permit (11/17/14) (hereinafter "Ex. 8"), at AQ425-434; *see also* Hickman's Tonopah Equipment List (11/17/14) (hereinafter "Ex. 9"), at AQ436. MCAQD relied on the information in the Technical Support Document ("TSD") in reaching its decision to approve the application. *See* TSD (10/20/14)(hereinafter "Ex. 7"), at AQ416-423. Public notice and hearing were not required because the facility did not meet the public notice threshold for regulated air pollutants. *See* MCAPR 100 § 200.98.

3. Minor Permit Modification

Approximately one year later on November 16, 2015, Hickman's Tonopah submitted an application for a minor permit modification to add two (2) diesel-fueled emergency generator engines to the existing twelve (12) units, and two (2) propane-fueled boilers to provide hot water for the egg washing and processing operations. *See* Hickman's Tonopah Application for Minor Permit Revision (11/16/15) (hereinafter "Minor Mod Application" or "Ex. 11")), at AQ449-450. Hickman's subsequently amended the Minor Mod Application to include six (6) additional diesel-fueled emergency generators. *See id.* at AQ460.

MCAQD evaluated the Minor Mod Application and determined it was a complete and proper request for a minor permit modification per MCAPR 220 §§ 301.4(e) and 406.2(b).

MCAQD provided notice, opportunity to comment, and a hearing on Minor Mod Aplication. *See* Public Notice (2/19/16) (hereinafter "Ex. 13") (cancelled), at AQ472-500; Public Notice (3/16/16) (hereinafter "Ex. 14") (rescheduled), at AQ502-531. MCAQD received a high volume of public comments, which included comments from Petitioner. *See* Public Comments (hereinafter "Ex. 15"), at BATES AQ533-600 (Petitioner's comments at AQ556-576). Due to the high volume of comments received, MCAQD provided a joint response

addressing all comments. *See* MCAQD Responsiveness Summary (6/10/16) (hereinafter "Ex. 16"), at AQ602-616.

According to MCAPR 220 § 406.3(a)(1), "a source may implement the changes addressed in the …minor permit revision application after it files the application, unless the revision triggers [minor NSR]…" Stated differently, an application for a minor permit revision is approved upon filing. Therefore, on June 10, 2016, MCAQD issued the Permit according to the minor modification application. *See* Hickman's Tonopah Permit (After Minor Modification) (hereinafter "Ex. 17"), at AQ618-627; *see also* Hickman's Tonopah Equipment List (6/10/16) (hereinafter "Ex. 18"), at AQ629. MCAQD relied on the information in the TSD in reaching its decision to approve the request. *See* TSD (11/30/15)(hereinafter "Ex. 12"), at AQ462-470.

II. LEGAL THEORIES SUPPORTING MCAQD'S RESPONSE

A. MCAQD is bound by federal, state, and county rules.

See list of applicable laws, Section IV.B, *infra*.

B. Petitioner has the burden of proving MCAQD did not act reasonably.

"At a hearing on the Control Officer's or Department's grant or denial of a permit, permit revision, or conditional order, or denial of a permit transfer, the petitioner has the burden of persuasion that the decision was arbitrary, unreasonable, unlawful or based upon a technical judgment that is clearly invalid." Manual § 3.22, p. 18; *Accord Harris v. Schmitt*, 180 Ariz. 560, 561, 885 P.2d 1125, 1126 (App. 1994) (holding "the decision of an [administrative agency] will not be disturbed unless it was arbitrary, capricious, or an abuse of discretion."). "If the administrative decision is supported by competent evidence, [the court] will not disturb it, and in reviewing that decision, [the court] will not substitute [its] judgment for that of the agency." *Id.* (citing *Sherrill v. Department of Transportation*, 165 Ariz. 495, 497, 799 P.2d 836, 838 (1990) and *Ontiveros v. Arizona Department of Transportation*, 151 Ariz. 542, 542, 729 P.2d 346, 346 (App.1986)).

The evidence supports MCAQD acted within its discretion as an agency. MCAQD's actions were reasonable, lawful, and based on clearly valid technical judgment.

C. MCAQD is entitled to *Chevron* deference.

The U.S. Supreme Court has "long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to administrative interpretations." *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984). "Administrative implementation of a particular statutory provision qualifies for *Chevron* deference when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority, as the result of a formal adjudication or rule-making procedure." *Kobold v. Aetna Life Ins. Co.*, 239 Ariz. 259, 259, 370 P.3d 128, 130, 131 (App. 2016) (internal quotations omitted). Further, "'If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.'" *Id.* (quoting *Chevron*, 467 U.S. at 843, 104 S.Ct. at 2782).

MCAQD is entitled to *Chevron* deference.

D. The presumption of evidence is in the light most favorable to the agency.

Arizona courts will view "evidence in the light most favorable to upholding the Department's decision and will affirm if any reasonable interpretation of the record supports the decision." *See Baca v. Ariz. Dep't of Econ. Sec.*, 191 Ariz. 43, 46, 951 P.2d 1235, 1238 (App. 1997); *Accord Lewis v. Arizona State Pers. Bd.*, 240 Ariz. 331, 379 P.3d 227, 231 (App. 2016) ("Because the Department's order was legally sufficient and supported by substantial evidence, we affirm the superior court's order affirming the Department's [decision]").

The Board should view the evidence in the light most favorable to MCAQD.

E. MCAQD's authority to regulate AFO activities is limited.

MCAQD does not have absolute, unchecked authority to regulate emissions from AFO activities. Indeed, "[an agency's power to promulgate rules] is not unlimited; administrative bodies may make rules and regulations supplementing legislation for its complete operation and enforcement *as long as* such rules and regulations are within the standards set forth in the legislative act." *Gutierrez v. Indus. Comm'n*, 226 Ariz. 1, 5, 243 P.3d 604, 608 (App. 2010), aff'd in part sub nom. *Gutierrez v. Indus. Comm'n of Arizona*, 226 Ariz. 395, 249 P.3d 1095 (2011).

Rather, "[a]n administrative agency ... must exercise its rule-making authority within the parameters of its statutory grant; to do otherwise is to usurp its legislative authority." *Sharpe v. Arizona Health Care Cost Containment Sys.*, 220 Ariz. 488, 495, 207 P.3d 741, 748 (2009).

Specifically, in Arizona, a county is prohibited from promulgating a rule that is more stringent than a state rule unless all of the following conditions are met: "1. The rule, ordinance or other regulation is necessary to address a peculiar local condition. 2. There is credible evidence that the rule, ordinance or other regulation is either:(a) Necessary to prevent a significant threat to public health or the environment that results from a peculiar local condition and is technically and economically feasible.(b) Required under a federal statute or regulation, or authorized pursuant to an intergovernmental agreement with the federal government to enforce federal statutes or regulations if the county rule, ordinance or other regulation is equivalent to federal statutes or regulations." A.R.S. § 49-112. The exceptions do not apply here.

Additionally, ADEQ in connection with a best management practices committee ("committee") regulates agricultural activities and has sole authority to adopt rules to regulate the same. *See* A.R.S. § 49-457 (A)-(F), (H). The statute requires the development of a best management practices committee, comprised, in part, of state directors: ADEQ director, DOA director, etc. *See* A.R.S. § 49-457 (A)-(B). "A person who commences a regulated agricultural activity shall immediately comply with the agricultural general permit prescribed by this section." *Id.* at (G). "The regulation of PM-10 particulate emissions produced by regulated agricultural activities is a matter of *statewide* concern. Accordingly, *this section preempts further regulation of regulated agricultural activities by a county*, city, town or other political subdivision of this state." *Id.* at (O) (emphasis added). "Agricultural general permit" means best management practices that…Reduce PM-10 particulate emissions from the activities of a dairy, a beef cattle feed lot, a poultry facility or a swine facility, including practices relating to the following: (i) Unpaved access connections. (ii) Unpaved roads or feed lanes. (iii) Animal waste handling and transporting. (iv) Arenas, corrals and pens." *Id.* at (P)(e).

III. MCAQD'S HEARING WITNESSES

A. Lay Witnesses

1. Richard Sumner: MCAQD Permitting Division Manager, 1001 N. Central Avenue, Suite 125, Phoenix, AZ 85004, (602) 506-1842, richardsumner@mail.maricopa.gov.

Mr. Sumner is expected to testify to the following. MCAQD followed all applicable laws in issuing the Hickman's original permit and permit modification. MCAQD applied the appropriate permitting standards and procedures in issuing the Hickman's original permit and permit modification. MCAQD properly calculated emissions used in the permit. MCAQD correctly categorized emissions from the chickens as fugitive sources.

2. Daniel E. Blackson: 42211 W. Salome Highway, Tonopah, AZ 85354, blackson.daniel@yahoo.com

MCAQD expects Mr. Blackson to testify to matters to which he has personal knowledge, experience, and expertise as limited by the instructions in the Board's Order dated August 31, 2016.

B. Expert Witnesses

MCAQD has not identified any expert witnesses for trial. MCAQD reserves the right to disclose hearing experts in accordance with the Manual upon discovery of an expert witness.

IV. HEARING EXHIBITS

A. Evidentiary Exhibits

MCAQD may use some or all of the following exhibits:

	Date	Exhibits	Bates No.
1.	N/A	EPA Website, AFOs	AQ001
2.	01/21/05	EPA News Release: EPA Announces Air Quality Compliance Agreement for AFOs	AQ003
3.	01/31/05	AFO Consent Agreement and Final Order, 70 Fed. Reg. 4958	AQ005-047
4.	07/12/05	AFO Consent Agreement and Final Order, 70 Fed. Reg. 40016	AQ049-057
5.	07/31/10	NAEMS Chicken Emissions Study	AQ059-388
6.	09/26/14	Hickman's Tonopah Application for Non-Title V Air Quality Permit	AQ390-414
7.	10/20/14	TSD	AQ416-423

8.	11/17/14	Hickman's Tonopah Original Permit	AQ425-434
9.	11/17/14	Hickman's Tonopah Equipment List	AQ436
10.	02/13/15	IDEM, Permitting of Activities Located at Livestock Production Operations Including CAFOs	AQ438-446
11.	11/16/15	Hickman's Tonopah Application for Minor Modification to Permit – With Addendum	AQ448-460
12.	11/30/15	TSD	AQ462-470
13.	02/19/16	Public Notice	AQ472-500
14.	03/16/16	Public Notice	AQ502-531
15.	4/26/16	Public Comments - All	AQ533-600
16.	06/10/16	MCAQD Responsiveness Summary	AQ602-616
17.	06/10/16	Hickman's Tonopah Revised Permit (After Minor Modification)	AQ618-627
18.	06/10/16	Hickman's Tonopah Equipment List	AQ629
19.	***09/4/08***	***CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern***	***AQ631-715***
20.	***09/24/08***	***CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA Needs More Information on a Clearly Defined Strategy to Protect Air and Water Quality***	***AQ717-741***

B. Relevant Laws

1.	CAA § 113, 42 U.S.C. § 7413 (portions not overruled)
2.	40 C.F.R. § 70.2 - Definitions
3.	A.R.S. § 49-457 - Agricultural best management practices committee; members; powers; permits; enforcement; preemption; definitions
4.	A.R.S. § 49-112 - County regulation; standards
5.	MCAPR 100 - General Provisions and Definitions
6.	MCAPR 200 - Permit Requirements
7.	MCAPR 210 - Title V Permit Provisions
8.	MCAPR 220 - Non-Title V Permit Provisions
9.	MCAPR 240 - Federal Major New Source Review (NSR)
10.	MCAPR 241 - Minor New Source Review (NSR)
11.	MCAPR 280 - Fees

12.	MCAPR 300 - Visible Emissions
13.	MCAPR 310 - Fugitive Dust from Dust-Generating Operations
14.	***MCAPR 310.01 - Fugitive Dust from Non-Traditional Sources of Fugitive Dust***
15.	MCAPR 320 - Odors and Gaseous Air Contaminants
16.	MCAPR 324 - Stationary Internal Combustion (IC) Engines

C. Exhibits from Other Parties

Without waiving any objections, all exhibits listed by any other party in this matter, even if later delisted.

Respectfully submitted this 3rd day of November, 2016

By: */s/ Robert C. Swan*
Robert C. Swan
Deputy Maricopa County Attorney
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that Respondent served or caused to be served an electronic copy of this Pre-Hearing Disclosure Statement on all parties in accordance with procedures in the Maricopa County Air Quality Hearing Board Manual of Procedures.

Daniel E. Blackson
Petitioner
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/s/ *Robert C. Swan*
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Dated: November 3, 2016