TECHNICAL SUPPORT DOCUMENT FOR AMENDMENTS TO CLARK COUNTY AIR QUALITY REGULATIONS SECTIONS 92 AND 94

Background

On August 3, 2021, the Board of County Commissioners approved amendments to Air Quality Regulations (AQRs) Section 92, "Fugitive Dust Control Requirements for Unpaved Parking Lots and Storage Areas," and Section 94, "Permitting and Dust Control for Construction and Temporary Commercial Activities and Fugitive Dust Control at Stationary Sources." After implementing the regulations and receiving feedback from industry, the Clark County Department of Environment and Sustainability, Division of Air Quality (DAQ) is proposing additional amendments to update the applicability sections, update the Instantaneous Test Methods and emissions standards, standardize terms, and add clarifying language to both AQRs.

Excluded from SIP Submittal

AQR 94.4.2, "Complete Application," will be excluded from this submittal to the Nevada Division of Environmental Protection for U.S. Environmental Protection Agency approval into the Nevada State Implementation Plan.

Amendments to AQRs 92 and 94

AQRs 92 and 94 include similar fugitive dust control requirements; for consistency, comparable revisions were made in both AQRs to the applicability section, the definition of "clean gravel," the Instantaneous Test Method, and instantaneous opacity standards, as outlined below.

Applicability

Clark County's 2012 *Redesignation Request and Maintenance Plan for Particulate Matter (PM_{10})* states: "In June 2001, Clark County submitted a PM_{10} State Implementation Plan (SIP) that met federal requirements for serious PM_{10} nonattainment areas. The SIP demonstrated that the adoption and implementation of Best Available Control Measures for fugitive dust sources and continuation of controls for stationary sources would result in attainment of the 24-hour National Ambient Air Quality Standards (NAAQS) by December 31, 2006." The applicability sections of AQRs 92 and 94 have been amended to state that they apply to all stationary sources in Clark County as part of the consideration of a Reasonably Available Control Technology (RACT), Best Available Control Technology (BACT), or Lowest Achievable Emissions Rate (LAER) determination pursuant to AQRs 12.1–12.4 and, in accordance with that determination, provisions of AQRs 92 and 94 shall be incorporated into stationary source operating permits.

AQR 92 further states that unpaved parking lots and storage areas (areas) with public access at stationary sources must comply with all its requirements. For areas with no public access at stationary sources, AQR 92 requirements shall be incorporated into operating permits in accordance with RACT, BACT, or LAER determinations, as stated previously.

AQR 94 applicability further states that it applies to construction activities at stationary sources. "Construction activities" is defined in AQRs 0 and 94; the intent is to include any construction activities that are not associated with normal operation or production at a stationary source, including maintenance or new construction.

Definition of "Clean Gravel"

The defined term "gravel" was updated to "clean gravel" in 2021, but the percent of silt content was kept at 6%. This caused confusion since, per the Unified Soil Classification Chart, "gravel" can have up to 12% soil fines and "clean gravel" has less than 5% fines. DAQ has updated the definition to make the silt content 5%, which is consistent with the industry definition, and added the AP-42 test method to be consistent with the Silt Content Test Method in AQR 91, "Fugitive Dust from Unpaved Roads, Unpaved Alleys, and Unpaved Easement Roads."

Instantaneous Test Method and Opacity Standard

The Instantaneous Test Method was amended to averaging 12 opacity readings made within 1 minute instead of using one reading to determine compliance with the standard. This update is based on EPA Test Method 203C, "Visual Determination of Opacity of Emissions from Stationary Sources for Instantaneous Limitation Regulations." The instantaneous opacity standard was then reduced from 50% to 35% to take into account the averaging of multiple readings instead of only one. Every reference to instantaneous opacity standards was updated from 50% to 35%.

AQR 92, "Fugitive Dust Control Requirements for Unpaved Parking Lots and Storage Areas"

DAQ updated citations in the regulation and added clarifying language and updates to ensure consistency in references and terminology.

AQRs 92.2 and 92.3.1

Updated the definition of "existing unpaved parking lot(s) and(or) storage area(s)" and the "Requirements" section to include the effective date of the regulation for areas with public access at a stationary source. This is consistent with the revised applicability, which is now different for areas with and without public access at a stationary source. Stationary sources previously included AQR 92 requirements as part of a BACT analysis; now the effective date must be specified to differentiate previous BACT determinations for existing areas from RACT, BACT, or LAER determinations for new areas.

AQR 92.3.4

If owners or operators implement alternative asphalt paving as a control measure, they must obtain prior written approval from the Control Officer. They must also maintain the surface after initial application.

AQR 92.4(b)

The stabilization standard remains 6% silt content. This standard must be met throughout the life of the area which is not the same as the 5% silt content requirement in the definition of clean gravel. The exemption under AQR 92.3.4(c) was removed as that test method allows 8% silt content and the intent was never to exempt clean gravel from the stabilization standard.

AQR 94, "Permitting and Dust Control for Construction and Temporary Commercial Activities and Fugitive Dust Control at Stationary Sources"

DAQ updated citations and added clarifying language and updates to ensure consistency in references and terminology.

AQR 94.2

Moved the definitions for "particulate emission potential," "surfactant," and "tackifier" from Appendix 1 to the "Definitions" section.

AQR 94.5(l)

Added a requirement to submit a renewal application before the current Dust Control Operating Permit (DCOP) expires (if one is still required).

AQR 94.6

Retitled this section to more accurately reflect the information within. Updated the section to reflect current processes and align with language in AQR 4 that allows the Control Officer to revoke or suspend a DCOP for cause.

AQR 94.8(b)

Added Control Officer authority to require a Dust Control Monitor for construction projects of less than 50 acres when there is documented noncompliance with emissions standards. Based on observations in the field, a full-time, certified Dust Control Monitor in place as a corrective action has proved helpful with future compliance when there are repeated violations of emissions standards at the site.

AQR 94.8(f) – DAQ interpretation

A DCOP application must list a Dust Control Monitor. However, permittees may use another certified Dust Control Monitor if the listed individual is not available on a particular day.

AQRs 94.12–94.14

Removed all specific references to stationary source requirements in Sections 94.12–94.14 throughout AQR 94, since those will be incorporated into stationary source permits in accordance with RACT, BACT, or LAER determinations.

AQR 94.13(d)

Added an explicit requirement for implementing long-term stabilization within 10 days of the completion of a construction project and/or expiration of a DCOP if permit renewal is required.

AQRs 94.14(b) and (c)

Added an exemption to prohibitions against blower devices and dry rotary brushes in cases of technical infeasibility, but only with prior Control Officer approval.

AQR 94.14(g)

Updated requirements on stockpile height, distance from occupied buildings, and demonstration of effective dust control to provide more clarity, and provided exemptions based on feasibility, necessity, or other conditions.

Appendix 1, Table 1

Changed the control measure for moderate high soil Particulate Emission Potential (PEP) to add "surfactant" and remove "tackifier" during construction activities because tackifier is a glue-type substance that is only appropriate when soil disturbance is not ongoing or for long-term stabilization. It is not appropriate for temporary stabilization.

Appendix 1, Best Management Practices (BMP) 11

Added equivalent options (in terms of cost and effectiveness) for long-term stabilization. The additional options also take into consideration potential safety issues (depending on circumstances) and provide exemptions based on infeasibility or lack of necessity. Additional options to stabilize, where permissible, paved road shoulders and new, unpaved roads will provide industry with more flexibility to comply with requirements.

Appendix 1, BMP 19

Updated BMP 19 in conjunction with the new language in AQR 94.14(g).

Appendix 1, BMP 20

Updated BMP 20 in conjunction with the new language in Sections 94.14(b) and (c).

Exhibit 2

Expanded the PEP map of the Las Vegas Valley to include outlying areas and roads for ease of identifying project soil PEP throughout the valley.

Comments Received and DAQ Responses

DAQ conducted three public notice periods (5/23–6/7/2024, 6/25–7/19/2024, 9/20–10/11/2024) and two public workshops (7/1/2024, 10/3/2024).

Comment Received: 5/24/2024, via email
Commentor: Jay Francis
Jf1@cox.net

COMMENT: There's no need to implement any additional rules we have enough to deal with thank you.

RESPONSE: No changes proposed.

Comment Received: 5/24/2024 via Public Input
Commentor: anonymous

COMMENT:

1) The proposed changes to 94.14 (B) & (C) require prior approval from a Control Officer for blower devices and dry rotary brushes when water use is not technically feasible. This is also shown in the BMP 20. I do not understand the point of the prior approval from a Control Officer, if water use is not technically feasible it will not be technically feasible with or without the Control Officer's approval. As such, I don't see any functional benefit to the proposed language. Further, I'm concerned that adding this layer of approval will give opportunity for citations regardless of compliance with the stated regulation.

2) Section 94.14 (g) requires prior approval for a stockpile over 8' tall regardless of compliance with the stated regulations. This is also shown in BMP 19. Prior authorization would not improve the functionality of the required road and dust control measures for the stockpile. Any stockpile over 8' would still be inspected at normal intervals by Clark County and the roadways and dust control measures would be demonstrated at that time. My concern here is the same, adding in a layer of unnecessary approval will give opportunity for citations regardless of compliance with the stated regulation.

RESPONSE: Pre-approval from the Control Officer is required for alternative control measures to ensure that any methods used meet the necessary standards and requirements.

Comment Received: 6/7/2024, via email with attached letter
Commentor: Dedra Williams, Environmental Coordinator, Corporate, J.R. Simplot Company
dedra.williams@simplot.com
Phone: 208-780-7360

COMMENT: Opportunity for Discussion and Clarification: For this specific rulemaking, DAQ has offered no background information on the rulemaking website identifying the purpose or need for the current proposed rulemaking. With DAQ's comment period being limited to 14 days, there was limited opportunity for regulated sources to review the proposed rules, determine applicability to activities and meaningfully engage with DAQ on context or clarification. Although Simplot has prepared these comments, the ability to review the proposed changes, evaluate impacts, prepare comments, and circulate comments internally was limited. For these reasons,

Simplot requests DAQ hold a second comment period after holding a public meeting to ensure the regulated community understands the objective of the proposed changes and can participate in discussions to ensure the rule is clear and implementable.

RESPONSE: DAQ held two virtual workshops, on 7/1/2024 and 10/3/2024, and two additional comment periods, from 6/25–7/19/2024 and 9/20–10/11/2024.

COMMENT: Section 92, General Comments: DAQ has proposed to update the rule language for unpaved parking and storage areas at stationary sources in an overly prescriptive way. Specifically, DAQ has proposed that alternatives to asphalt paving must now receive written approval as a control measure. If accepted, the proposed revisions to Section 92 would limit the allowable means to control emissions and further require the DAQ Control Officer to approve any control measure other than paving or two inches of clean gravel (see proposed rule, Section 92.3.4).

Stationary source permits already include conditions to assure appropriate management of fugitive dust from open and disturbed areas as well as provide opacity limits. For example, Simplot's current operating permit already includes the following conditions:

"The permittee shall control fugitive dust emissions from any accessible disturbed open area or disturbed vacant lot that is owned or operated by the permittee, with the exception of areas undergoing active mining activities, by paving, applying gravel, applying a dust palliative, or applying water to form a crust." (Source 138, Permit Condition 2.2.14)

"The permittee shall not discharge into the atmosphere, from any emission unit, any air contaminant in excess of an average of 20% opacity for more than six consecutive minutes." (Source 138, Permit Condition 3.2.5)

Compliance with stationary source permit conditions is confirmed with inspections by the DAQ Compliance Department. Incorporation and explicit rules governing how to control fugitive dust of unpaved areas at stationary sources is unnecessary since it is already managed based on site-specific conditions and on a case-by-case basis in the permitting processes.

These examples demonstrate why it is unnecessary for the DAQ to apply Section 92 to stationary sources.

RESPONSE: The applicability of AQR 92 was updated so it now applies to areas that do not have public access at stationary sources in Clark County as part of the consideration of a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4. In accordance with this determination, provisions of Section 92 shall be incorporated into the stationary source permit. This allows sources to propose alternative stabilization methods that are at least as stringent, but take cost and technical feasibility into consideration. If areas at stationary sources have public access, AQR 92 applicability is no different than for any other area subject to air quality regulations.

COMMENT: Section 94, Applicability: DAQ's proposed draft rule states: "Section 94 applies to: …. (b) All stationary sources that disturb or have the potential to disturb soils and/or emit or have the potential to emit particulate matter into the atmosphere. Sections 94.12–94.14 shall apply

to the control of fugitive dust emissions. Applicable control measures, emissions standards, and soil stabilization standards shall be incorporated into the terms and conditions of the stationary source permit."

In DAQ's previous rule-making proposals, it was stated their intent was that only sub-sections 94.12–94.14 would apply to stationary sources. However, with a plain reading of the language as proposed, it could be interpreted that DAQ has proposed stationary sources are subject to all of Section 94. With the ambiguity in previous proposed updates to Section 94 regarding stationary sources, Simplot suggests that DAQ more clearly identify which portions of Section 94 are intended to apply to stationary sources and explicitly identify the portions in which stationary sources are exempt.

Additionally, for reasons detailed below, Simplot does not support newly proposed language in 94.1(a)(1) that states, "Applicable control measures, emissions standards, and soil stabilization standards shall be incorporated into the terms and conditions of the stationary source permit." As discussed in the comments provided below, a "one-size-fits-all" approach to standards and control measures of unique stationary sources is inappropriate and will create additional layers of bureaucracy that is unnecessary in the stationary source permitting process.

DAQ has proposed the ability for the "Control Officer" to approve other scenarios or conditions, however, the process to achieve that approval is not clear in the proposed rule, nor is it ideal. If this review and approval is handled within the permitting process of stationary sources, then it begs the question of what has been gained with applying this rule to stationary sources in the first place. If DAQ permitting staff must include blanket Section 94 requirements and cannot use their experience and expertise to evaluate and apply appropriate controls, then the department will likely find itself needing a process to review and document exceptions to Section 94. DAQ's current process that requires the permitting department to identify appropriate controls and standards for stationary sources allows DAQ staff to consider appropriateness of inclusion of controls and standards based on the processes present at the stationary source and the site-specific conditions of the stationary source.

The permitting program is equipped to handle the differences and nuances of different types of emission sources to assure the site-specific conditions are considered and evaluated on a case-by-case basis to assure proper levels of control and monitoring are incorporated into permits. For this reason, Section 94 should not be incorporated into stationary source permits.

> *RESPONSE:* The applicability of AQR 94 was updated so it now applies to stationary sources in Clark County as part of the consideration of a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4. In accordance with this determination, provisions of Section 94 shall be incorporated into the stationary source permit. This allows sources to propose alternative stabilization methods that are at least as stringent, but take cost and technical feasibility into consideration. Section 94 always has and continues to apply to construction activities at stationary sources that are not part of normal operations or production activities.

COMMENT: Definition Inconsistency and Uncertainty: The applicability section of the rule 94.1 identifies Construction Activities separate from stationary sources. Further, the definitions of Construction Activity and Stationary Source in Section 00 of the DAQ rules clearly differentiate

the two types of sources. Simplot agrees these are two very distinct and separate types of sources of fugitive dust. However, Construction Activities have been defined in Rule 94 and the definition includes various examples of activities such as rock crushing, screening, hauling, rock excavation or removal, and explosive blasting. Simplot believes there is likely to be confusion with these terms in the proposed rule changes if some of those types of activities occur at stationary sources as part of the stationary source's manufacturing process. For stationary sources, these activities are incorporated and controlled by the operating permit and should not be considered a Construction Activity for purposes of this rule or permitting rules. Simplot requests DAQ provide appropriate clarification to the proposed language to assure standards, controls and other requirements for Construction Activities are not applicable to manufacturing processes at Stationary Sources.

The term "Responsible Official" has a different and substantially relaxed meaning in Section 94 when compared to Section 00. Simplot does not believe DAQ intended for stationary sources to employ a different meaning to the term Responsible Official when managing fugitive dust, however, assuring the two different rule sections provide the same definition for the term would ensure clarity for the regulated community.

> *RESPONSE:* AQR 94.2 provides a framework for interpreting terms. The order of authority begins with the definition provided in the specific AQR, followed by the definition in AQR 0, Chapter 445B of the Nevada Revised Statues (NRS), the Clean Air Act, and common usage. Every effort is made to keep definitions for the same term consistent but, depending on the AQR, differences may be unavoidable.

COMMENT: Section 94, Titles and Term Inconsistencies: The titles for Section 94.3, 94.4, 94.5 all include the term "Permit," but that term has been mostly removed from the text of the rule, seemingly to eliminate confusion between stationary source permits and Dust Control Operating Permits (DCOP). Simplot suggests eliminating the stand-alone term "Permit" from the titles and anywhere else in the Section 94 and replacing it with "Dust Control Operating Permit" or "DCOP."

It is Simplot's understanding that DAQ does not intend for stationary sources to secure a DCOP for manufacturing processes at the stationary source. As such, Simplot suggests including a sub-section in 94.3, Activities Exempt from Permitting, that states: "Stationary Sources with fugitive particulate emissions and dust that result from the manufacturing process are exempt from the requirement to obtain a DCOP. If a Stationary Source initiates a Construction Activity, as defined in Section 00, the Construction Activity alone is subject to the DCOP as defined in Section 94.4.1."

Simplot does not believe a Dust Control Monitor (DCM) is necessary for stationary sources, nor does Simplot believe DAQ intends for stationary sources to identify a DCM for manufacturing processes at stationary sources. Although Simplot does not believe DAQ intended for Section 94.8, or for a Dust Control Monitor to apply to stationary sources, it is imperative to confirm that intent and update the language in the proposed regulation to assure consistent interpretation. Given the text proposed in Section 94.1 and proposed text Section 94.8, this intent is not clear.

Simplot recommends DAQ add a subsection to Section 94.8 stating, "Stationary Sources are not required to assign a Dust Control Monitor for manufacturing processes at a stationary source and the Control Officer shall not require a Dust Control Monitor for stationary source activities."

RESPONSE: Section 94 was updated to ensure consistency when referring to DCOPs versus stationary source operating permits. The requirement for a Dust Control Monitor only applies to DCOP permittees. With the update to the applicability section, there is no longer a need to clarify whether a particular requirement is applicable to stationary sources; AQR 94 requirements are included in stationary source permits based on a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4.

COMMENT: Section 94.12: DAQ has proposed to insert language requiring that each stationary source to employ effective control measures related to soil stabilization standards. DAQ has intentionally removed the capitalization of the terms "control" and "measure," seemingly to intend a common definition rather than a defined term in the regulation. As such, Simplot interprets this statement that the control measures to be employed by a stationary source are general in nature and final determination of what control measure to be used shall be based upon its effectiveness rather than a prescriptive methodology required by the DAQ Control Officer. However, this interpretation appears to run contrary to text in Section 94.12(b) since DAQ has proposed to include prescriptive control measures for stationary sources.

For similar reasons already identified above, Simplot does not believe prescriptive measures for managing fugitive dust from stationary sources is appropriate in a rule. Stationary sources and the fugitive dust sources are evaluated in the stationary permitting process where appropriate emission control, monitoring and recordkeeping requirements are established based on site-specific conditions. Different activities, different geology, and different processes dictate that different controls are required and should be evaluated on a case-by-case basis.

Simplot's permit already contains requirements to manage dust on disturbed soils at the facility.[2] The current DAQ practice of using "permitting templates" to assure as much consistency as possible among stationary sources when similar sources of emissions exist, while still allowing for case-by-case circumstances to govern appropriateness of the control identified in the permits, has been an effective management approach. Given the existing permit conditions for stationary sources and history of the permitting department, there is no need to add stationary sources to the "Soil Stabilization Standards" of Section 94.

[2] "The permittee shall control fugitive dust emissions from any accessible disturbed open area or disturbed vacant lot that is owned or operated by the permittee, with the exception of areas undergoing active mining activities, by paving, applying gravel, applying a dust palliative, or applying water to form a crust." (Source 138, Permit Condition 2.2.14)

RESPONSE: The removal of the capitalization of defined terms was solely a formatting decision, with no other intent. If a term is defined in the AQR, that definition takes precedence, regardless of whether the term is capitalized. With the update to the applicability section, there is no longer a need to clarify whether a particular requirement is applicable to stationary sources; AQR 94 requirements are included in stationary source permits based on a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4.

COMMENT: Section 94.13: Section 94.13(d) states, "A control method for long-term stabilization, as described in BMP 11, "Long-term Stabilization," shall be implemented on all disturbed areas that are not built out, landscaped, or paved within 10 days of completion of a construction project and/or expiration of the DCOP if a permit renewal is not required per Sections

94.4.1(b)(1), (2), or (3).” The phrase “built out, landscaped, or paved within 10 days of completion of a construction project and/or expiration of the DCOP” only applies to Construction Activities and not manufacturing processes at stationary sources, therefore, Simplot has interpreted that this requirement would not apply to a stationary source process. To assure clarity, Simplot recommends DAQ include language in Section 94.13 explicitly stating these “Long-Term Stabilization” requirements do not apply to stationary source activities. Simplot also recommends removal of the term “permit” in this section to avoid confusion between DCOPs and stationary source permits.

RESPONSE: With the update to the applicability section, there is no longer a need to clarify whether a particular requirement is applicable to stationary sources; AQR 94 requirements are included in stationary source permits based on a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4.

COMMENT: Section 94.14: Section 94.14 seems to apply a new and more restrictive emission standard to stationary sources. Currently, stationary source permits already limit opacity and visible emissions from handling, transport and storage of materials. As previously mentioned, stationary sources such as Simplot already have permit conditions with emission standards. Examples of these existing permit conditions are provided below:

“The permittee shall sweep and/or rinse as necessary all paved roads accessing or located on the site to remove all observable deposits. *[AQR 12.5.2.6(a)]*” (Source 138, Permit Condition 2.2.11)

“The permittee shall control fugitive dust emissions from unpaved roads located on the site by paving, applying a dust palliative, or watering as necessary or by an alternative method preapproved by the Control Officer so as to exhibit an average opacity greater than 20 percent. *[AQR 12.5.2.6(a) and 26.1]*” (Source 138, Permit Condition 2.2.12)

“The permittee shall curtail operations (except the operation of water trucks) if dust control measures are ineffective at maintaining emissions at or below an average of 20% opacity when viewed in accordance with EPA Method 9. *[AQR 12.5.2.6(a) and 26.1]*” (Source 138, Permit Condition 2.2.13)

“The permittee shall control fugitive dust emissions from any accessible disturbed open area or disturbed vacant lot that is owned or operated by the permittee, with the exception of areas undergoing active mining activities, by paving, applying gravel, applying a dust palliative, or applying water to form a crust. *[AQR 12.5.2.6(a)]*” (Source 138, Permit Condition 2.2.14)

The prescriptive nature of Section 94.14 runs contrary to the mechanisms and processes involved in stationary source permitting. The DAQ permitting department should be allowed to use their experience and expertise to identify appropriate fugitive dust control for stationary sources where site-specific parameters can be evaluated on a case-by-case basis. The entirety of Section 94.14 should not be applied to stationary sources. Simplot requests DAQ provide clarifying text stating that Section 94.14 applies only to Construction Activities and not stationary source manufacturing processes.

RESPONSE: With the update to the applicability section, there is no longer a need to clarify whether a particular requirement is applicable to stationary sources; AQR 94 requirements are

included in stationary source permits based on a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4.

COMMENT: Section 94.15: It is assumed that DAQ did not intend for Section 94.15 to replace the test methods that already exist for opacity and visible emission determinations in stationary source permits. Simplot requests DAQ provide clarifying text stating that Section 94.15 applies only to Construction Activities and not stationary source manufacturing processes.

RESPONSE: With the update to the applicability section, there is no longer a need to clarify whether a particular requirement is applicable to stationary sources; AQR 94 requirements are included in stationary source permits based on a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4.

COMMENT: Appendix 1, Best Management Practices: In Simplot's review of Appendix 1, it is clear the BMPs were intended to apply to construction-type projects and intended to address concerns with Construction Activities and would not apply to stationary sources. Simplot suggests DAQ insert language clarifying that the recommended BMPs are for Construction Activities and not for Stationary Sources. If DAQ does intend to apply the BMPs to stationary sources, Simplot is concerned about the potential for confusion on how BMPs should be used in relation with operating permit requirements. The following paragraphs describe areas of potential misunderstanding between the BMP requirements, what can be implemented at Simplot's operations, and with controls specified in Simplot's existing permit.

BMP 3 is specific to explosive blasting of soil and rock. Simplot has worked extensively with the DAQ permitting department on appropriate controls for drilling and blasting as it relates to mining activities at the Simplot mine. Specific conditions for blasting activities were incorporated into Simplot's most recently issued operating permit. If DAQ intends for stationary sources to comply with this BMP in the future, there are components that would be impossible to achieve; additionally, there would be requirements that severely inhibit the ability for the facility to operate efficiently. Specifically, BMP 03(i)(3) requires "presoak surface soils to the depth of caliche or bedrock with water or surfactant to limit fugitive dust." In a mining operation, this is impossible to achieve. The BMP also requires application of "water, surfactant, tackifier and/or dust palliative on disturbed soils to form a crust ***immediately*** *[emphasis added]* following blasting activities until the long-term stabilization requirements listed in BMP 11 are achieved." It is impossible to achieve these requirements in a mining environment. Final reclamation requirements are identified in mining permits and long-term stabilization cannot occur safely until reclamation activities have begun. Additionally, after a blast at a mining operation, it can take time to assure safety and build equipment access to the areas recently blasted.

BMP 17 is specific to screening of rock, soil, or construction debris. If this BMP were to be applied to stationary sources, it would run contrary to existing permits. Screens are already considered emission units at stationary sources and are subject to opacity limits, and other requirements. The opacity limits, monitoring requirements and record-keeping are driven by the type of screening activity conducted, considering for site-specific conditions to influence appropriate controls on a case-by-case basis. A "one-size-fits-all" rule is not appropriate to stationary source permits.

BMP 23 is specific to truck loading. Simplot loads silica sand in trucks via an overhead spout system. The BMP requires mixing material with water or surfactant prior to truck loading activities. Water cannot be applied to the finished silica sand for loadout and surfactants would contaminate the product. This illustrates again that a "one-size-fits-all" approach, if it were applied to stationary sources, does not serve the best interest of the DAQ or the businesses.

RESPONSE: With the update to the applicability section, there is no longer a need to clarify whether a particular requirement is applicable to stationary sources; AQR 94 requirements are included in stationary source permits based on a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4.

Comment Received: 7/19/2024, via email with letter attached
Commentor: Krista Kinsey, P.E., Sr. Environmental Engr. Mgr., Environmental & Regulatory Affairs, J.R. Simplot Company
Krista.Kinsey@simplot.com
Phone: 202-780-7241

COMMENT: Simplot submitted several pages of their interpretation of proposed sections.

Simplot appreciates that DAQ reconsidered the first proposed updates to Section 92 and 94 by placing the consideration and incorporation of appropriate emission controls into the permitting process. Simplot agrees that permitting is the appropriate time to evaluate new emission controls.

However, Simplot is still concerned there is ambiguity in the proposed rules which is why Simplot has provided comments that state our understanding of how the proposed rules, if adopted, would be implemented. If Simplot has misunderstood the applicability of the rules and it is apparent there is a misunderstanding based on Simplot's comments, we request DAQ provide clarification. This would afford Simplot the opportunity to consider any rule clarification and determine if additional comment is appropriate prior to adoption by the Board of County Commissioners.

RESPONSE: A complete application must be submitted in order for DAQ to have all the information necessary to make a formal decision on a particular scenario. The RACT, BACT, or LAER process is implemented pursuant to AQRs 12.1–12.4 (permitting regulations). There is not a separate approach for RACT, BACT, or LAER for fugitive dust, as opposed to other regulated pollutants.

Comments Received: 6/7/2024, 7/18/2024, and 10/10/2024, via email with letters attached
Commentor: John Hewson, West Regional Environmental Manager, Lhoist
John.HEWSON@lhoist.com
Phone: 725-309-3723

The comments below were included in letters dated 6/7/2024, 7/18/2024, and 10/10/2024. If the comments for the same topic were not identical, the latest comment submitted is listed.

COMMENT: Overall Effect of Added Water Consumption: LNA understands the purpose of AQR's 92 and 94 is to reduce fugitive emissions in Clark County. In many cases, to achieve this,

DAQ is requiring that operators use water, surfactants, tackifiers, and/or dust palliatives to achieve these standards. It is expected that the use of water will become the preferred resource as many of these other chemicals can contribute to product contamination in addition to the fact that the cost of these chemicals is increasing. In some cases, DAQ's Best Management Practices may require operators use more water than is necessary to achieve these particulate matter standards. This includes multiple water sprays for a single operation (e.g. crushers), dedicated water sources (e.g. crushers, screens, etc.), and a general overuse of water (e.g. blasting). LNA has two primary concerns. Firstly, in our crushers and other processes overly damp material causes buildup which can lead to equipment shutdowns and even contribute to excess emission events. Secondly, this extra water use contributes to the water shortages in our region.

For these reasons, LNA believes it would be prudent to specifically state that the Best Management Practices in these regulations are only one of possibly several options required to be included in the RACT/BACT/LAER top-down technology review. LNA appreciates that DAQ staff made that clarification about the top-down technology review during the October 3, 2024 workshop and believes that including a similar statement in the regulations will be helpful.

> *RESPONSE:* The revisions do not include any additional requirements for water application. DAQ does not require that operators use more water than is necessary. The need to clarify whether a particular requirement is applicable to stationary sources is no longer necessary with the update to the applicability section; AQR 92 and/or 94 requirements are included in stationary source permits based on a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4.

COMMENT: AQR 92.1, Applicability: Proposed AQR 92.1(b) states:

Section 92 applies to unpaved parking lots and storage areas that do not have public access at stationary sources in Clark County as part of the consideration of RACT, BACT, or LAER determination. In accordance with this determination, provisions of Section 92 will be incorporated into the stationary source permit.

AQR 92 should be clarified to state that the "In accordance with this determination, the most stringent dust controls deemed to be technically feasible and economical as determined through a RACT, BACT, or LAER technology review shall be incorporated into the stationary source permit." Note that during the October 3, 2004 DAQ workshop, it was clarified that the basis for the new permit conditions would be the RACT/BACT/LAER, not the provisions of Section 92 as stated here. This applicability section should reflect that.

Secondly, there is no benefit to pave or cover the area under the storage pile as long as the area remains covered by the pile. This requirement should be updated accordingly.

> *RESPONSE:* DAQ cannot include the proposed language because a LAER determination does not consider cost. Whether there is a benefit to any individual requirement will be addressed in the RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4. Neither AQR 92 nor AQR 94 is intended to address the criteria for a RACT, BACT, or LAER determination, since those criteria are already included in AQRs 12.1–12.4.

COMMENT: AQR 92.3.2, Existing Unpaved Parking Lot(s) or Storage Area(s): Proposed AQR 92.3.2 states:

The owner and/or operator of existing unpaved parking lot(s) or storage area(s) shall implement one or more of the control measures in Section 92.3.4 as needed to comply with the stabilization standards in Section 92.4

Note that Section 93.3.4 is accidently printed as 93.3.2. In other words, the regulation goes from Section 93.3.2 to 93.3.3 to 93.3.2 because of a typo.

RESPONSE: The formatting error has been corrected.

COMMENT: AQR 92.6.2, Instantaneous Method: Proposed AQR 92.6.2a last sentence states:

As much as possible, do not include more than one plume in the line of sight at one time.

LNA does not see how it is acceptable to have an opacity reading that could include a plume from more than one dust source or a plume that has double backed on itself. For instance, it is not acceptable to read a 30% plume that has double backed on itself as 60%. The last sentence of paragraph AQR 92.6.1a provides an elegant solution by stating, "If multiple plumes are involved, do not include more than one plume in the line of sight at one time." That sentence would be appropriate here.

RESPONSE: Construction sites are dynamic, as opposed to stationary sources, where stacks with emissions are not moving. The Compliance Section would provide evidence (which may include photographs and video) in Notices of Violation to show that multiple plumes were not in the line of sight. The language has been included in test methods since the adoption of the AQR, and an issue with the regulated community has never arisen in an enforcement situation.

COMMENT: AQR 94.1, Applicability: Proposed AQR 94.1(a)(1) states:

Section 94 applies to: All construction activities located in Clark County, including those located at stationary sources, that disturb, or have the potential to disturb soils and/or emit, or have the potential to emit, particulate matter into the atmosphere.

All construction activities have the potential to emit particulate matter into the atmosphere. Consider narrowing the applicability so that it is for construction over 0.25 acres or other criteria contained later in the rule. Also, by including stationary sources in paragraph 1, it implies that stationary sources are subject to the entire rule including Best Management Practices (BMPs). Someone could make the argument that stationary sources are subject to the BMPs through paragraph 1 even if paragraph 3 does not apply. LNA recommends that DAQ clarify that stationary sources' applicability to the BMPs is only through paragraph 3.

RESPONSE: Section 94 applies to all construction activities, regardless of whether the activity meets the threshold that requires an operator to obtain a DCOP. There has never been an exemption from maintaining dust control while performing construction activities based on acreage. Stationary sources are, and have always been, required to obtain a DCOP if they are doing construction activities not associated with normal production or operation. Any relaxing

of this requirement may be considered backsliding and therefore unallowable per Section 110(l) of the Clean Air Act.

COMMENT: AQR 94.2, Definitions: Proposed AQR 94.2 defines construction as activities that includes land clearing, soil and rock excavation, soil and rock hauling, soil and rock crushing, etc. This section should specifically exclude all normal, operating activities at a stationary source. Otherwise, normal stationary source activities could be confused as construction activities.

Proposed AQR 94.2 defines trackout as:

"Trackout" means soil, mud, or dirt on paved surfaces, including curbs, gutters, and sidewalks, that has come from a construction site or an unpaved access route onto the paved surface.

DAQ should revise the definition to indicate that trackout occurs when soil, mud, dirt, etc. comes from the construction site or stationary source, onto a paved surface of public domain. Without this clarification, the proposed rules related to trackout could be enforced at a construction site or stationary source where an unpaved road transitions into a paved section within a permitted facility.

RESPONSE: Activities associated with normal production or operation are subject to the requirements of the stationary source permit. PM_{10} being entrained into the ambient air from trackout is an issue whether the road is private or public. Additionally, stationary sources with paved roads must include a 98% control efficiency when calculating PM_{10} emissions. If trackout is an issue, the source is not in compliance with its permit whether or not the road is public.

COMMENT: AQR 94.13, Best Available Control Measures: Proposed AQR 94.13(b) states:

Control measure incorporated into a stationary source permit shall be implemented 24 hours a day, 7 days a week, until the DCOP is closed in accordance with Section 94.5(o)(2).

DAQ should revise the language to require that control measures be implemented while construction activities are happening. The dust monitor and other personnel are not required to be on site 24 hours a day, 7 days a week if no construction activity is happening.

Proposed AQR 94.13(c) states that construction activities that contribute to emissions must stop when wind causes fugitive dust. Recommend that this statement be clarified by saying that construction activities that contributes to excess emissions, as outlined in the subparagraphs below, must stop when wind causes fugitive dust. As it is currently worded, it could be interpreted that all construction activities must stop, even if the construction activities are not contributing to excess emissions.

Proposed AQR 94.13(c)(3) includes dust extending over 100 feet as a criterion for shutting down construction activities. LNA is not sure what the regulatory reasoning is of not allowing visible emissions to extend more than 100 feet. If the opacity standard is being achieved and the particulate matter has not crossed a property boundary, what is the reasoning for limiting visible emissions to 100 feet? And how could this reasonably be measured?

RESPONSE: The requirement to implement control measures 24 hours a day, 7 days a week has been in AQR 94 since its adoption on 6/22/2000. The 100-foot standard has been in AQR 94 since 3/18/2003. Compliance staff use two points of reference—GPS and Google Earth—to measure plume length. Any relaxing of these requirements may be considered backsliding and therefore unallowable per Section 110(l) of the Clean Air Act.

COMMENT: AQR 94.14 Emission Standards: Proposed AQR 94.14(a)(3) states:

Any person who engages in construction activities, with or without a DCOP, or operates a stationary source, shall not cause or allow the handling, transport, or storage of any material in a manner that allows visible emissions of particulate matter to: (3) Extend more than 100 feet.

Same comment as the one for AQR 94.13(c)(3).

Proposed AQR 94.14(e)(3) states:

Trackout, including trackout less than 50 feet in length or 0.25 inches in depth, shall be cleaned immediately and maintained to eliminate emissions of fugitive dust by removing all accumulations of mud or dirt on curbs, gutters, sidewalks, or paved surfaces that cause one or more of the following: (3) A dust plume to extend more than 100 feet, horizontally or vertically.

Same comment as the one for AQR 94.13(c)(3).

Proposed AQR 94.14(f) states:

Except as required in Sections 94.14(d) and(e), all trackout shall be cleaned up by the end of the workday or evening shift regardless of length or depth.

LNA has serious concerns about being able to safely clean trackout from Las Vegas Blvd, especially if there are no violations of air quality standards. The speed limit along Las Vegas Blvd. is 55 mph, with vehicles, including semis, dump trucks, etc. regularly exceeding this speed limit. The road is narrow and winding at times, which limits visibility. There are numerous accidents along this road every year, this includes people being struck by vehicles. LNA believes this requirement could lead to unsafe practices and strongly urges DAQ to remove this language from the proposed rule.

RESPONSE: The requirement to clean trackout has been in AQR 94 since its adoption on 6/22/2000. Highway projects have consistently been able to operate street sweepers and comply with the requirements while maintaining employee safety since then. Any relaxing of this requirement may be considered backsliding and therefore unallowable per Section 110(l) of the Clean Air Act.

COMMENT: AQR 94.15, Test Methods: Proposed AQR 94.15.2(a) and 94.15.3a state:

As much as possible, do not include more than one plume in the line of sight at one time.

Please see comment included above for AQR 92.7. AQR text provides a simple solution to this problematic text. If there are more than one plume in the line of sight, meaning that the observer

is reading through two plumes or the plume is doubling back on itself, the reading cannot be valid. With this statement in the regulation, it means that a DAQ inspector can record a 20% opacity, if two 10% opacity plumes are in the same line of sight. If something different is meant by this statement, then it should be clarified.

RESPONSE: Construction sites are dynamic, as opposed to stationary sources, where stacks with emissions are not moving. The Compliance Section would provide evidence (which may include photographs and video) in Notices of Violation to show that multiple plumes were not in the line of sight. With the update to the applicability section, there is no longer a need to clarify whether a particular requirement is applicable to stationary sources; AQR 94 requirements are included in stationary source permits based on a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4.

COMMENT: AQR 94, Best Management Practices: LNA appreciates that DAQ changed this rule so that dust control at stationary sources will be required through the RACT, BACT, and LAER permitting process. LNA also appreciates that during the October 3 Workshop, DAQ stated that these BMPs will be one of the control technologies to be considered in the top-down approach for determining dust controls. LNA recommends that DAQ add language to this section of the rule stating the above clarifications. These proposed additions are very important because of the specific, technical requirements of the operating equipment. In some cases, DAQs suggested BMP may not be technically feasible, practical, or effective. In general, LNA wants to emphasize that all the pieces of equipment are connected, so the equipment both upstream and downstream are also affected by these rules.

LNA has provided the following examples, as it did in the last set of comments, to explain why it is problematic to implement these BMPs at LNA's operations, and likely many others.

BMP 01 – Backfilling (Filling area previously excavated or trenched)

- Proposed AQR 94 Appendix 1, Section 01(a)(2)

  Maintain optimum moisture content in backfill material and operate equipment in a manner that limits fugitive dust to comply with the AQRs before, during, and after handling of material and during storage until the long-term stabilization requirements listed in BMP 11 are achieved.

  (2) Dedicate an adequate water source to backfilling equipment and apply water as needed to minimize dust.

  (3) Empty loader bucket slowly and minimize drop height from loader bucket.

  (4) Ensure backfill material is moist or crusted at all times.

  (5) Apply water or surfactant to maintain disturbed soils in a stable condition to limit fugitive dust.

LNA has several concerns with how these management practices could be written into a permit.

2) LNA has many different operational areas throughput its operations. Dedicating a single water truck would be a waste of resources, both in equipment and manpower.

Water trucks are assigned to an operational area to ensure sufficient moisture is added to areas being worked to avoid excessive fugitive emissions.

3) LNA is unsure how DAQ will practically enforce the speed at which a loader bucket is emptied. Equipment is operated within its design capabilities.

4) It would be nearly impossible to ensure that all backfill material is always moist or crusted, nor does it need to be. Backfill material needs to have sufficient moisture to meet the applicable opacity standard.

5) It wouldn't make sense to apply surfactant to materials being backfilled. This material is being buried and won't be at the surface. Surfactant should be applied at the surface to control particulate matter from becoming airborne and to ensure the final grade meets stabilization standards.

BMP 03 – Blasting – Soil and Rock (explosive blasting of soil and rock)

- Proposed AQR 94 Appendix 1, Section 03

(c) Complete and submit a Blasting Supplemental Form; receive DAQ approval before conducting any blasting.

(d) No blasting may be conducted within 1,500 feet of a residential area, occupied building, or major roadway when the wind direction is towards these structures.

(f) No blasting is allowed when the National Weather Service forecasts wind gusts above 25 mph.

(i) Maintain the optimum moisture content in soil before, during, and after blasting activities to limit emissions until the long-term stabilization requirements listed in BMP 11 are achieved.

(1) Limit the blast area to what can be stabilized immediately following the blast

(3) Presoak surface soils to the depth of caliche or bedrock with water or surfactant to limit fugitive dust.

(4) Apply water, surfactant, tackifier, and/or dust palliative on disturbed soils to form a crust immediately following blasting activities until the long-term stabilization requirements in BMP 11 are achieved.

LNA has several concerns with how these management practices could be written into a permit.

c) LNA conducts blasting as a routine part of the business. Blasting can occur almost daily. Requiring LNA to complete a Blasting Supplemental Form and gaining DAQ approval prior to each blast would be overly burdensome and would negatively impact LNA operations. It is clear that DAQ intends this requirement for smaller operations, like construction activities, that are conducting blasting at infrequent periods.

d) LNA implements the highest safety standards while conducting blasting activities. This includes considering the location of structures such as buildings and roadways. Each blast is planned for accordingly. LNA suggests that this condition be modified to account for these structures during a Construction Notice period. The way the condition is currently written, even a wind speed of 1 mph would prevent a business from blasting in these conditions which is not reasonable.

f) DAQ needs to be clearer in the blasting requirements during construction notices. This condition states that blasting cannot occur when wind gusts are greater than 25 mph; however, in Condition (h) of this same condition allows for blasting to occur under certain circumstances when wind speeds are greater than 25 mph. Furthermore, LNA suggests that DAQ make Construction Notices clearer by putting in an exact time that blasting conditions cannot occur, instead of being subjective by saying "afternoon" or "morning"

i) (3) When wetting the area to be blasted, it is not clear how one is to know if the area has been soaked to the depth of caliche or bedrock? These are presumably below the surface level and out of site.

i) (4) LNA cannot apply surfactant, tackifier, and/or dust palliative on disturbed soils to form a crust immediately following a blast for many reasons. First, the material being blasted is pure limestone. It is not practicable to achieve a crust on limestone. Second, many of LNA's products are used in human and animal consumption products. LNA cannot add additional chemicals to the limestone being used to supply these product categories.

BMP 6 – Crushing (crushing of construction and demolition debris, rock, and soil)

- Proposed AQR 94 Appendix 1, Section 06

  (b) Maintain optimum moisture content in material before, during, and after crushing activities to limit emissions.

LNA has several concerns with how these management practices could be written into a permit.

a) DAQ should be aware that in LNA's case, adding too much water can be detrimental to emissions. The more moisture that enters the kiln, the less efficient LNA's kiln operations will be. This will include increases in NOx, SO2, CO, GHG's, PM, and other combustion emissions.

   Adding too much water can also lead to equipment plugging. This also leads to in inefficient operation by having to shut down equipment to remove the blockage. Stop the equipment increases emissions during startup and shutdown.

The condition also refers to those facilities that have DCOP conditions. This is clear that these requirements are meant to be applied to construction activities and not to stationary sources without construction activities.

BMP 11 – Long-Term Stabilization (Applies to disturbed land that is not built out, landscaped, or paved at DCOP closure)

- Proposed AQR 94 Appendix 1, Section 11

  a) Stabilize all disturbed land within 10 days of the completion of a project, or when active operations on all or part of the construction site will cease for 30 days or more. Restrict access to these areas to prevent soil disturbance and maintain long-term stabilization where feasible. The Control Officer must approve the control method selected by the permittee before its implementation. The permittee shall select one or more of the following control methods: (1) Pave. (2) Apply clean gravel or dust palliative (3) Install permanent metal or wood fencing and/or a post and cable at least 3 feet high, or other similar barrier approved by the Control Officer, and stabilize one of the following to create adequate crust

to pass the Drop Ball Test…(4) Install a dirt berm at least 4 feet high, or similar barrier approved by the Control Officer, and stabilize soil with one of the following to create adequate crust to pass the Drop Ball Test… .

b) Installation of signs, as described below, is required if BMPs 11(a)(2) or (4) are implemented unless the permittee obtain prior Control Officer approval based on infeasibility or lack of necessity. (1) Install orange "No Parking / Trespassing" signs with black lettering, at least 24 inches wide by 18 inches high, every 50 feet or as approved by the Control Officer….(4) Post on or near the property boundary, the property corners, and at all access points; post no further than 50 feet apart.

d) New construction or modification of unpaved roads must be stabilized before the DCOP is closed…

LNA has several concerns with how these management practices could be written into a permit.

(a) The requirement to pave, apply gravel, install a permanent metal or wood fence, and/or install a dirt berm at least 4 feet high is not practical at a mine operation. There are areas of the mine that will not be disturbed for periods of 30 days or more. Some of these areas may be many acres in size. To try to isolate them with any of the previously mentioned options would be nearly impossible. In addition, access would be necessary to continue to allow for inspection, addition of dust suppression methods (as needed), and to allow for safety observations by MSHA.

(b) The addition of adding signs outside of these isolated areas does not make sense either as these isolated areas are within the mine boundary. No one is allowed on the mine site until they have checked in and visitors are always escorted. The language on the sign is supposed to state "No Parking / Trespassing" and be posted on the property boundary and placed no more than 50 feet apart. These isolated areas are all within the mine property, likely where there is no direct access, and may not be located at the property boundary.

This BMP is clearly intended for soil stabilization standards at construction sites that have a DCOP. This is emphasized again in condition (a) and (d). The management practices identified are not practical to be implemented at stationary sources that are not undergoing construction, like a mine site.

BMP 13 – Importing / Exporting of Bulk Material (Importing or exporting of soil, aggregate, decorative rock, debris, Type II, and other bulk material).

- Proposed AQR 94 Appendix 1, Section 13

a) Maintain optimum moisture content in surface soils and bulk material before, during, and after all importing/exporting activities to prevent unstable soils and limit fugitive dust until the long-term stabilization requirements listed in BMP 11 are achieved.

3) Limit vehicle speeds to 15 mph on the work site

4) Maintain 3 – 6 inches of freeboard to prevent spillage.

5) Apply tarps or other suitable enclosures that completely cover the load on haul trucks before they exit the project onto public roads, and maintain throughput transport. Tarps must be well-maintained and serviceable at all times.

b) Clean the wheels and undercarriage of haul trucks before they leave the Construction site.

LNA has several concerns with how these management practices could be written into a permit.

(a)(3) LNA maintains speed limits within the lime manufacturing plant to 15 mph or less. However, in the mine site, speed limits may be greater than 15 mph as conditions allow. LNA contends that these speed limit restrictions should not apply to transfers of material within the plant operations.

(a)(4) The majority of the trucks loaded at LNA are closed top tankers. Bulk loaders use a weigh scale to determine the correct amount of material to be loaded in each truck. It is not necessary to maintain 3 – 6 inches of freeboard in a bulk tanker. If applied, it may be very difficult to determine this as the loaded material tends to "cone" while loading and is not evenly distributed throughout the tanker until the truck is moved. DAQ should remove this requirement from closed tanker trucks.

(a)(5) LNA works with contract trucking companies to deliver materials from LNA sites to customers. LNA can require that all trucks leaving the site are tarped; however, LNA has no control over if the trucking contractor keeps the tarp on throughout transport and if the tarp is well maintained and serviceable.

(b) LNA can require that contract truck drivers clean the wheels and undercarriage of haul trucks; however, LNA is not sure how this would be implemented.

This BMP is clearly intended for the movement of bulk materials at construction sites, not at stationary sources. This is stated again in condition 13(b).

BMP 17 – Screening (Screening of rock, soil, or construction debris)

- Proposed AQR 94 Appendix 1, Section 17(b)

Maintain optimum moisture content in material before, during, and after screening activities to limit emissions until the long-term stabilization requirements listed in BMP 11 are achieved.

2) Drop material through the screen slowly; minimize drop height.

3) Dedicate an adequate water source to the screening operation, and apply water as needed to minimize dust.

5) Apply water, surfactant, or dust palliative to screened material and surrounding areas following screening activities until long-term stabilization is achieved.

LNA has several concerns with how these management practices could be written into a permit.

2) LNA will operate screening operations to their designed and permitted capabilities. If any fugitive dust emission concerns are observed, LNA will take the necessary corrective actions to reduce emissions below permitted levels. This could include slowing down the screening operation but could also include several other corrective measures.

3) LNA maintains and operates water supply systems throughout the facility. Limestone screening operations have a water suppression system; however, the water supply system is not solely dedicated to limestone screening operations, nor does it need to be to maintain an effective operation.

LNA would also like to note that LNA is not capable of applying water to limestone screening systems. LNA operates screening systems with the lime handling operations; however, it would not be possible to add water to these screens due to the exothermic reaction that will occur when water is added to lime.

BMP 20 – Trackout Prevention and Cleanup (Prevention and cleanup of mud, silt, and soil tracked out onto paved surfaces)

- Proposed AQR 94 Appendix 1, Section 20

  (a) Install and maintain trackout control device in an effective condition at all locations where paved and unpaved travel routes intersect.

  (b) Maintain dust control and clean all trackout from paved surfaces

LNA has several concerns with how these management practices could be written into a permit. DAQ should make sure that the regulation is clear that trackout requirements are required from unpaved surfaces to paved surfaces with public access. When interactions of unpaved surfaces to paved surfaces occur within a facility, the trackout standards do not apply. While LNA will continue to manage and sweep paved surfaces on a regular basis, these management practices should not be included within a BMP

BMP 21 – Traffic – Unpaved Routes and Parking Areas (construction-related traffic on unpaved roads and parking areas)

- Proposed AQR 94, Appendix 1, Section 21(a)

Limit vehicle speeds to 15 mph on all unpaved routes and parking areas.

LNA has limited vehicle speeds to 15 mph within the plant operating areas. However, vehicle speed in the mine may exceed 15 mph, as conditions allow. Plant operations (equipment size, manpower, etc.) have been established by determining cycle times between the mine and the plant. Reducing the speed limit in the mine would disrupt these cycle times and may cause distinct disruptions in the LNA's operations. DAQ should not restrict the speed limit with the mining areas.

> *RESPONSE:* The need to clarify whether a particular requirement is applicable to stationary sources is no longer necessary with the update to the applicability section; AQR 94 requirements are included in stationary source permits based on a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4.

The comments below were included in letters dated 6/7/2024 and 7/18/2024. If the comments were not identical for the same topic, the latest comment is listed.

COMMENT: AQR 92.6.1 Opacity Test Method: Proposed AQR 92.6.1 states:

The purpose of this test method is to estimate the percent opacity of fugitive dust plumes caused by vehicle movement on unpaved parking lots and storage areas. This method can only be conducted by an individual who has received certification as a qualified Visible Emissions Evaluator.

Request that DAQ better define the certification to become a qualified Visible Emissions Evaluator. For instance, is this someone that has a valid Method 9 certification? Or is DAQ referencing another standard that needs to be obtained?

RESPONSE: Clarifying language added to AQR 92.6.1 now states, "This method can only be conducted by an individual who has received certification as a qualified Visible Emissions Evaluator (e.g., EPA Method 9-certified observer)."

The comments below were included in letters dated 7/18/2024 and 10/10/2024. If the comments were not identical for the same topic, the latest comment is listed.

COMMENT: AQR 94.4.1, Duty to Apply for a Dust Control Operating Permit: Proposed AQR 94.4.1b states that a DCOP will be required for construction that disturbs soil that is more than 0.25 acres in overall area. Recommend that the overall area be increased to at least an acre, given all the regulatory burdens associated with the rule. It is recommended that the mechanized trenching threshold be increased to 1000 feet.

RESPONSE: Any relaxing of the applicability thresholds may be considered backsliding and therefore unallowable per Section 110(l) of the Clean Air Act.

COMMENT: AQR 94.4.2, Complete Application: Proposed AQR 94.4.2c states that if the Responsible Official fails to respond within 14 days the application will be denied. Recommend that the time period be extended to at least 21 days. Note there are several reasons why a Responsible Official will not immediately realize he has received a notice that the application is incomplete including: holiday weeks, vacation, and business travel.

RESPONSE: The average processing time for DCOP applications is 7–10 business days. When DAQ staff gets an out-of-office response to an email, they will wait until the return date specified. DAQ staff make multiple attempts to contact the Responsible Official listed on a DCOP application before it is denied.

COMMENT: AQR 94.8, Dust Control Monitor: Proposed AQR 94.8(f) states that the dust control monitor's name must be on the form and submitted with the application. Recommend that this requirement be removed. As long as there is a person on site who is designated as the dust control monitor; they have all the proper training; and dust control is one of their primary duties; then the environment should be protected. As it is written now, a company must stop construction if the dust control monitors listed on the application are not available. For instance, if the application has two dust control monitors listed and both happen to be sick on the same day, then construction must stop. If the regulation did not require the names be listed in the application, then the company would have the option of hiring a dust control monitor from a different company the same day and keep construction moving.

RESPONSE: A Dust Control Monitor must be listed in the application. Permittees have always been able to employ another certified Dust Control Monitor in the event the listed individual is not available on a particular day.

COMMENT: AQR 94.8, Dust Control Monitor: Proposed AQR 94.8(i) states that the dust control monitor cannot have other duties besides dust control at the site, and they cannot be a

foreman or supervisor. Recommend that this restriction be removed. The needed authorities of the dust control monitor to minimize dust are to conduct inspections, deploy resources, and shut down activities as needed. The best person to conduct these activities is the supervisor or foreman. They have the actual and moral authority to allocate resources and manage personnel. As this rule is written now, it is requiring companies to hire at least one extra person per construction site which adds to the cost of the project. If the Best Management Practices in this rule are properly implemented, there may be no dust on site for days or weeks, and the dust control monitor will not have anything to do other than observe/inspect. Companies need to minimize their costs to stay competitive in the marketplace, so the dust monitor being hired may be more junior and may not have significant construction experience. This more junior person would be given the authority on paper to allocate resources and manage the activities of more senior construction workers, but in reality, they are not going to have the moral authority to properly do their job. The best person to do this job is a foreman or supervisor who is not normally conducting construction activities, but is conducting inspections, directing personnel, and responding to abnormal activities such as excessive dust.

> *RESPONSE:* AQR 94 has consistently included the following language: "The Dust Control Monitor shall be present at all times construction activities occur on the project site and shall devote the majority of his/her time specifically to managing dust prevention and control on the site." Superintendents and supervisors have many responsibilities on a job site, including safety, inspections, occupational safety and health requirements, and subcontractor management. With all these duties, they do not meet the requirement of "the *majority* of their time." Any relaxing of this requirement may be considered backsliding and therefore unallowable per Section 110(l) of the Clean Air Act. Employing a Dust Control Monitor should not affect a company's competitive advantage because every company is required to hire one.

The comments below were only included in the letter dated 6/7/2024.

COMMENT: Deadline for Comments: The proposed changes to these regulations and the potential impact to affected sources is significant. They have the potential to impact our operations and change the way we manage many of our processes. LNA is requesting an additional 16 days (making the comment period a total of 30 days) so that the proposed regulations can be evaluated further.

> *RESPONSE:* DAQ held two virtual workshops, on 7/1/2024 and 10/3/2024, and two additional comment periods, from 6/25–7/19/2024 and 9/20–10/11/2024.

COMMENT: AQR 92.3.2, Existing Unpaved Parking Lot(s) or Storage Area(s): Proposed AQR 92.3.2 states:

The owner and/or operator of existing unpaved parking lot(s) or storage area(s) shall implement one or more of the control measures in Section 92.3.4 as needed to *comply with the stabilization standards in Section 92.4*

As stated above, it would be unreasonable for DAQ to require LNA to implement one of the control measures listed in Section 92.3.4 underneath large, outdoor storage piles (e.g. limestone, solid fuel, etc.). The current Title V Permit for Apex allows for approximately 48 acres of storage for

limestone and 9.5 acres for solid fuels. These piles are located throughout the plant, strategically located [to] improve efficiency of plant operations. The piles are already covering the subsurface, meaning fugitive dust cannot be produced from the ground level. LNA believes a more effective solution to minimizing fugitive dust at storage areas for stationary sources is through the permitting process.

RESPONSE: The applicability of AQR 92 was updated so it now applies to areas without public access at stationary sources in Clark County as part of the consideration of a RACT, BACT, or LAER determination pursuant to AQRs 12.1–12.4. In accordance with this determination, provisions of Section 92 shall be incorporated into the stationary source permit. This allows sources to propose alternative stabilization methods that are at least as stringent, but take cost and technical feasibility into consideration. If areas at stationary sources have public access, AQR 92 applicability is no different than for any other area subject to air quality regulations.

The comments below were only included in the letter dated 7/18/2024.

COMMENT: Deadline for Comments: The proposed changes to these regulations and the potential impact to affected sources is significant. They have the potential to impact our operations and change the way we manage many of our processes. LNA is requesting a workshop so DAQ and the regulated community can have a robust dialogue prior to the regulations being finalized.

RESPONSE: DAQ held two virtual workshops, on 7/1/2024 and 10/3/2024, and two additional comment periods, from 6/25–7/19/2024 and 9/20–10/11/2024.

COMMENT: AQR 94.6, General and Administrative Standards: Proposed AQR 94.6a should be clarified by adding the word "unpaid" in front of the word "penalties." Currently, the text could be interpreted as saying that a permit with adjudicated penalties, which could mean all processed penalties, will not be issued a DCOP.

RESPONSE: Clarifying language was added to AQR 94.6, which now states, "The Control Officer shall not issue new, renewed, or revised DCOPs to any person who is delinquent paying department fees and/or delinquent paying adjudicated penalties."

COMMENT: AQR 94.6, General and Administrative Standards: Proposed AQR 94.6b should put the phrases "within a 180-day period" and "for the same project for which the DCOP was issued" immediately after its object, "the third notice of violation." This change will clarify that notices of violation that are not related to the DCOP or are not in a 180-day period would not jeopardize the DCOP under this paragraph.

RESPONSE: The section was updated to reflect the current processes, aligns with language in AQR 4, and allows the Control Officer to revoke or suspend a DCOP for cause.

The comments below were only included in the letter dated 10/10/2024.

COMMENT: AQR 92.6.3: Proposed AQR 92.6.3b states:

Only collect dirt/gravel to an approximate depth of 3/8 of an inch (1 cm) in the 1 square foot area. If you reach a hard underlying subsurface that is greater than 3/8 of an inch in depth, do not continue digging into the hard surface.

LNA believes this paragraph would be clearer if it stated, "If you reach a hard underlying subsurface at a depth less than 3/8 of an inch, do not continue digging into the hard surface." In this scenario, the wooden dowel will confirm that the sample was not taken to the required depth of 1 cm. LNA requests that a statement be added to the regulations making it clear that if the required depth is not reached, then the sample is not valid according to the method.

> *RESPONSE:* The EPA test method referenced included the symbol "<" and it was transcribed incorrectly. The error has been corrected and AQR 92.6.3(b) now states, "If you reach a hard, underlying subsurface that is less than 3/8 inch in depth, do not continue collecting the sample by digging into the hard surface."

COMMENT: Clark County Air Quality Dust Control Class: Proposed AQR 94.10a(1) states, "Construction site superintendent and all others designated as representatives of the permittee" are required to complete the dust control class. Who are the "others designated as representatives of the permittee"? LNA recommends that this group be defined. Is it all contractors? Is it all operators?

> *RESPONSE:* The designated representative of the permittee is whomever the permittee chooses as an on-site contact in the DCOP application. There is no need to define the term, since there are no restrictions on who can be listed.

COMMENT: AQR 94.14, Emission Standards: Proposed AQR 94.14(g)(1) states:

Stockpiles greater than 8 feet shall have a road bladed to the top to allow water trucks access.

It is not possible to blade a road to the top of a stockpile due to safety concerns. LNA recommends that this paragraph be revised to state that roads be bladed to the top of stockpile if feasible.

> *RESPONSE:* AQR 94.14(g)(1) already provides for other means of dust control, stating, "Stockpiles higher than 8 feet shall have a road bladed to the top to allow water truck access, or the permittee must demonstrate to the Control Officer another means of effectively controlling dust from the entire stockpile."

Comments Received: 12/1/2024, via email with letters attached
Commentor: John Hewson, West Regional Environmental Manager, Lhoist
John.HEWSON@lhoist.com
Phone: 725-309-3723

These were a word-for-word subset of the comments in Lhoist's email dated 10/10/2024, which are addressed above in this TSD.

END