

TECHNICAL SUPPORT DOCUMENT FOR AMENDMENTS TO SECTIONS 12.0 AND 131 OF THE CLARK COUNTY AIR QUALITY REGULATIONS

AMENDMENTS TO AIR QUALITY REGULATION SECTION 12.0, “APPLICABILITY AND GENERAL REQUIREMENTS FOR PERMITTING STATIONARY SOURCES”

On February 20, 2024, the Board of County Commissioners (Board) approved the amendment of Section 12.0 of the Clark County Air Quality Regulations (AQRs), "Applicability and General Requirements for Permitting Stationary Sources."

AQR 12.0 is amended by removing the applicability summaries for the stationary source permitting regulations, since each individual AQR contains its own comprehensive applicability section. This amendment was initiated after the U.S. Environmental Protection Agency (EPA) provided feedback. The applicability language in AQR 12.0, adopted more than 15 years ago, has become outdated. Regulated sources have been relying on the current, section-specific applicability provisions, making the summaries in AQR 12.0 unnecessary. Removing this outdated language will reduce potential conflicts and inconsistencies with other AQRs.

The amendments include additional editorial, administrative, and nonsubstantive changes.

NEW AIR QUALITY REGULATION SECTION 131, “VOC EMISSIONS CONTROL FOR EMULSIFIED ASPHALT”

On December 19, 2024, EPA reclassified Hydrographic Area (HA) 212 (the Las Vegas Valley) as a serious ozone nonattainment area after finding that the area failed to meet its August 3, 2024, attainment date (89 FR 103657). This reclassification triggered an obligation for the Clark County Department of Environment and Sustainability, Division of Air Quality (DAQ) to prepare an attainment plan for the “Serious” nonattainment designation of HA 212 under the 2015 ozone NAAQS. Section 172(c)(9) of the Clean Air Act (the Act) requires an attainment plan to include contingency measures that will apply if an area fails either to achieve attainment by the new attainment date or to meet reasonable further progress (RFP) requirements (42 U.S.C. 7502). Section 182(c)(9) of the Act further requires contingency measures in the event that DAQ fails to meet a milestone. EPA defines these milestones in 40 CFR Part 51.1310(c) of its Ozone Implementation Rule.

In 2024, EPA issued revised guidance describing how air agencies may meet the statutory contingency measure requirement.¹ That guidance suggests that states provide one year’s worth (OYW) of progress for each of the ozone precursor pollutants (volatile organic compounds (VOCs) and nitrogen oxides (NO_x)) based on the difference in emissions of each pollutant between the base year inventory and the attainment year inventory. DAQ identified emulsified asphalt emissions as a source of unregulated VOC emissions for which there are available controls commonly implemented by other states. Therefore, DAQ

¹ *Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter*. Office of Air and Radiation, U.S. Environmental Protection Agency, dated 12/3/2024.

is proposing to create this new AQR to meet contingency measure requirements mandated by the Act requiring emissions reductions from this source category.

AQR 131 establishes VOC limits for emulsified asphalt operations as a contingency measure under Sections 172(c)(9) and 182(c)(9) of the Act. The rule follows approaches used in other jurisdictions to reduce ozone precursor emissions from emulsified asphalt manufacturing and use. For HA 212, as well as any future area in Clark County designated as a moderate or higher nonattainment area for the 2015 ozone NAAQS, the rule ensures that additional VOC reductions will occur if:

- Air quality in the area remains above the 2015 ozone NAAQS after the attainment date;
- Required emissions reductions are not achieved; or
- DAQ fails to meet any of the milestones in EPA's 2015 Ozone Implementation Rule (40 CFR Part 51.1310(c)).

Asphalt is widely used for paving, sealing, and maintaining surfaces on roads, parking areas, driveways, walkways, and airport runways. Emulsified asphalt consists of asphalt cement dispersed in water with the aid of an emulsifying agent (typically a surfactant, such as soap). It differs from "cutback asphalt," which uses petroleum distillates as a solvent and is regulated by AQR 107. AQR 131 will establish VOC content limits for emulsified asphalt.

While emulsified asphalt generally releases fewer VOC emissions than cutback asphalt, some emulsified formulations have a higher organic solvent content (up to 12% VOC by volume). Emissions occur primarily during application, when organic solvents evaporate, but also during the manufacturing process. This rule establishes a maximum permissible VOC content limit of 3% by volume to minimize VOC emissions during manufacturing and application.

Although many state rules include seasonal limits (e.g., summertime ban), HA 212's ozone season is year-round. DAQ, therefore, opted for a VOC content limit that is practical to implement year-round, in line with best practices in other states and the international community. For example, Maricopa County, AZ (Reg. III, Rule 340, § 301.3); Colusa County, CA (Rule 231, § 3.2); and the Bay Area Air Quality Management District, CA (Reg. 8, Rule 15, § 8-15-303) all have regulations that include a VOC content limit of 3% or less by volume. Vermont (Rule 5-253.15) allows a maximum VOC content of less than 5% by weight. Canada recommends a 3% VOC content limit by volume during the ozone season (*Code of Practice for the Reduction of Volatile Organic Compound (VOC) Emissions from Cutback and Emulsified Asphalt*, Environment and Climate Change Canada, Industrial Sectors, Chemicals and Waste Directorate, Section 2.2.1; available at https://publications.gc.ca/collections/collection_2017/eccc/En14-271-2017-eng.pdf).

DAQ conducted a workshop and held separate meetings with stakeholders to confirm the achievability and practicality of implementing a 3% VOC content restriction. The agency estimates that implementation of the rule could reduce 2026 VOC emissions from emulsified asphalt operations by approximately 79% (the actual reduction could be higher or lower, depending on the year of implementation).

AQR 131 could impose additional restrictions on owners or operators already subject to AQR 107 requirements for cutback asphalt operations. As with AQR 107, the new rule imposes restrictions on manufacturing, selling, offering for sale, mixing, storing, using, or supplying emulsified asphalt materials within an ozone nonattainment area once the Control Officer notifies owners and operators of the rule's applicability.

The new rule has several exemptions, such as using emulsified asphalt as a penetrating prime coat, to fill potholes or make emergency road repairs, or for residential applications, airfield pavement, and dust control, among other exceptions. Including such exemptions balances environmental goals with practical considerations for small-scale and specialized asphalt operations.

For small-scale paving jobs (e.g., residential driveways, potholes, emergency repairs), contractors often need a surface ready for traffic quickly. A higher VOC content accelerates drying and hardening, reducing the time needed for surface availability. Higher-emission formulations can also penetrate dusty or porous surfaces more effectively than low-solvent ones; thus higher-VOC content materials, which bind loose particles and stabilize surfaces better than lower-VOC materials, are better for suppressing dust or sealing unpaved roads (which require deep penetration). Allowing higher-VOC materials for such applications has an added environmental benefit: it reduces particulate matter emissions more effectively. Finally, airfields and runways often require high durability and resistance to heavy loads, and are subject to specific Federal Aviation Administration requirements. With its higher VOC content, emulsified asphalt can provide a stronger initial bond and better cohesion under stress over a longer duration, reducing the frequency of required paving activities and associated VOC emissions.

The definitions in Section 131.3 align with existing DAQ terminology in AQRs 0 and 107, ensuring clarity and consistency across rules. Sections 131.7–8 also mirror the registration and reporting requirements found in Sections 107.6 and 107.7.2. The registration requirements allow DAQ to identify owners or operators subject to the new rule, and enhance tracking and enforcement efforts. The recordkeeping requirements impose a minimum burden that builds on existing business records while ensuring information is available for effective enforcement. Owners or operators must maintain records for five years, which is consistent with the time required for sources subject to stationary source permitting requirements.

Section 131.6 includes labeling requirements for small containers (5 gallons or less). This section is modeled after New York’s asphalt pavement and asphalt-based surface coating rule, which includes labeling requirements for small containers (10 gallons or less) (6 NYCRR 241.5(c)). DAQ conducted a visual review of containers at a local supply store and found that the store only stocked containers of 5 gallons or less. Accordingly, DAQ is applying the small container labeling requirement to containers of that size. Labeling requirements ensure the VOC content of material is known and tracked by owners and operators and readily apparent to field inspectors. Containers larger than the 5 gallons found on local supply shelves are subject to the recordkeeping and other requirements of Section 131.8 because of their greater potential for increased VOC emissions.

Once the Control Officer issues a notice that the rule applies, owners or operators have 180 days to comply. This time allows existing supplies of asphalt to be used while providing adequate time for owners and operators to plan for future compliance.

PUBLIC WORKSHOP

DAQ hosted a public workshop on AQR 131 on July 22, 2025. Comments were received and addressed as part of the workshop.

COMMENTS RECEIVED AND DAQ RESPONSES

DAQ conducted a public comment period November 11–21, 2025, receiving no comments on the proposed changes to AQR 12.0 and two comments on AQR 131. DAQ also published a notice of public hearing in the *Las Vegas Review-Journal* and made drafts of AQRs 12.0 and 131 available for review,

both online and at its offices, from December 29, 2025, to January 30, 2026. Staff has scheduled a public hearing before the Clark County Board of County Commissioners on March 17, 2026.

Comment Received: 11/20/2025, via email

Commentor: EPA Region 9

COMMENT 1: If this is the only contingency measure that Clark is submitting with their serious plan, I recommend adjusting this language to either add in more clauses or make this more vague so it satisfies the requirements under CAA Section 182(c)(9). This part of the CAA states that for ozone nonattainment areas classified Serious or above, contingency measures are triggered by an area's failure to meet *any* applicable milestone. This includes Reasonable Further Progress (RFP) requirements, quantitative milestones, missing submission of a quantitative milestone report, or attainment.

RESPONSE: DAQ revised Section 131.1 to reference CAA Section 182(c)(9) and added language to Section 131.2 to reference RFP and EPA's Ozone Implementation Rule with respect to milestone obligations (40 CFR Part 51.1310(c)).

COMMENT 2: We think that this language might be a bit redundant and could lead to issues triggering the contingency measure. If we've approved the rule as satisfying the CM requirement, by definition it will help achieve/maintain attainment. Because of this, I would recommend removing or amending this language to prevent any issues or uncertainty that this language could create later on.

RESPONSE: DAQ is retaining the language in Section 131.2(c)(2) related to the contingency measure. As EPA explained in its recently issued guidance, the purpose of a contingency measure is "to ensure uninterrupted progress toward attainment while the air agency takes the next steps to address the failure" (Memo, J. Goffman to Regional Air Division Directors, "Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter," EPA 12/3/2024). DAQ is submitting this single rule to meet contingency measure requirements, but may adopt additional measures in the future as substitutes or alternatives to this control measure. Since the rule has an uncertain future effective date, DAQ cannot predict "conditions in the nonattainment area at the time of the potential triggering event" (Goffman memo). The area may be NO_x-limited, VOC-limited, or neither. Retaining the paragraph as written allows DAQ to assess current air quality conditions and manage its contingency measure obligations through meaningful emissions reduction strategies.

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