



Agenda

Clark County Air Pollution Control Hearing Board

February 8, 2018 – 1:30 P.M.
Clark County Building Department
Presentation Room
4701 West Russell Road
Las Vegas, NV

Hearing Board Members

Daniel Sanders, Chair
Evan S. Wishengrad, Esq., Vice-Chair
Ryan L. Dennett, Esq.
Tom Foster, P.E.
William Kremer
Lauren Rosenblatt, Esq.
Craig Schweisinger

Deputy District Attorney

Leslie A. Nielsen

Air Quality Staff

WPA
SP
Marci Henson, Director
Shibi Paul, Compliance & Enforcement Manager
Pamela Thompson, Senior Secretary

- Items on the agenda may be taken out of order.
- The Air Pollution Control Hearing Board may combine two or more agenda items for consideration.
- The Air Pollution Control Hearing Board may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.
- To request a copy of the supporting materials for an agenda item, please contact Pamela Thompson at pamela.thompson@clarkcountynv.gov or (702) 455-3126. Supporting materials are available for inspection at the Clark County Department of Air Quality office located at 4701 West Russell Road, Las Vegas, NV 89118 or on our website at: http://www.clarkcountynv.gov/AirQuality/compliance/Pages/Compliance_EnforcementNotices.aspx.

I. CALL TO ORDER

II. PUBLIC COMMENT

No action may be taken upon a matter raised under this item until the matter itself has been specifically included on an agenda. Public comments may be considered on specific agenda items. Please clearly state your name and address for the record. Speaking time will be limited to five (5) minutes per person.
(Discussion only)

III. APPROVAL OF MINUTES OF DECEMBER 14, 2017 MEETING

Approval of December 14, 2017 meeting minutes
(For possible action)

IV. BUSINESS ITEMS

A. Appeal of Synthetic Minor Source Permit Issued to Wells Cargo, Inc. by Lori Headrick, Director, Environmental Services, Clark County School District

1. Department of Air Quality's Motion to Dismiss Appeal or to Exclude Certain Evidence
(For possible action)
2. Hearing
(For possible action)

V. IDENTIFY EMERGING ISSUES TO BE DISCUSSED BY THE BOARD AT FUTURE MEETINGS

Identification of topics for future meetings.
(Discussion only)

VI. REPORT BY DEPARTMENT OF AIR QUALITY STAFF

General update
(Discussion only)

VII. PUBLIC COMMENT

No action may be taken upon a matter raised under this item until the matter itself has been specifically included on an agenda. Public comments may be considered on specific agenda items. Please clearly state your name and address for the record. Speaking time will be limited to five (5) minutes per person.

(Discussion only)

VIII. ADJOURNMENT

The Presentation Room is accessible to individuals with disabilities. With forty-eight (48) hour advanced request, a sign language interpreter may be made available by contacting (702) 455-3126 or TDD (702) 385-7486 or Nevada Relay toll-free (800) 326-6868, TT/TDD. Assistive listening devices are available upon request.

This notice and agenda was posted or caused to be posted at the following locations:

- Clark County Operations Center, West, 4701 W. Russell Road, Las Vegas, Nevada
- Las Vegas City Hall, 495 S. Main Street, Las Vegas, Nevada
- Henderson City Hall, 240 S. Water Street, Henderson, Nevada
- North Las Vegas City Hall 2250 Las Vegas Blvd. North Las Vegas, Nevada
- Boulder City, City Hall, 401 California Avenue, Boulder City, Nevada
- Mesquite City Hall, 10 E. Mesquite Boulevard, Mesquite, Nevada
- CC Government Center, 500 S. Grand Central Parkway, Las Vegas, Nevada



Minutes

Regular Meeting of the Clark County Air Pollution Control Hearing Board

December 14, 2017

**Clark County Building Services
Presentation Room
4701 West Russell Road
Las Vegas, NV**

I. CALL TO ORDER

Chair Daniel Sanders called the meeting of the Air Pollution Control Hearing Board to order at 1:33 p.m. A quorum was present and Affidavits of Posting of the agenda were provided as required by the Nevada Open Meeting Law. The Affidavits will be incorporated into the official record.

PRESENT: Daniel Sanders, Chair
Ryan L. Dennett, Esq.
Tom Foster, P.E.
William Kremer
Lauren Rosenblatt, Esq.
Craig Schweisinger

ABSENT: Evan S. Wishengrad, Esq., Vice-Chair

LEGAL COUNSEL: Leslie A. Nielsen, Deputy District Attorney

DAQ STAFF: Marci Henson, Director
Shibi Paul, Compliance and Enforcement Manager
Pamela Thompson, Senior Secretary

OTHERS PRESENT:

Jeffrey Robb, Senior Air Quality Specialist, DAQ; Anna Sutowska, Air Quality Specialist II, DAQ; Kim Krumland, Clark County School District; Lori Headrick, Clark County School District; Trent Scarlett, Wells Cargo, Inc.; Beau Wells, Wells Cargo, Inc.; Darius Roberts; Mike Shannon, District F, Clark County; Linda Bullen, Attorney for Wells Cargo, Inc. (via teleconference)

II. PUBLIC COMMENT

Chair Sanders asked if there were any persons present in the audience wishing to be heard. There being no one, Chair Sanders closed the public comments.

III. OATH OF OFFICE

Air Quality Specialist II Anna Sutowska administered the Oath of Office to Ryan L. Dennett, William Kremer, and Lauren Rosenblatt for their positions as members of the Air Pollution Control Hearing Board. The terms of Messrs. Dennett and Kremer will expire on October 6, 2020, and Ms. Rosenblatt's term will expire on November 15, 2020.

IV. APPROVAL OF MINUTES OF FEBRUARY 9, 2017 MEETING

Chair Sanders called for comments, changes, or corrections to the February 9, 2017 minutes. Hearing none, Board Member Schweisinger made a motion to approve the minutes. The motion was seconded by Board Member Kremer. Chair Sanders called for a vote on the motion, and asked those in favor of approving the minutes to signify by saying aye. It was met by a chorus of ayes. There was no opposition. The motion passed.

V. BUSINESS ITEMS

Chair Sanders called for a brief recess to contact Linda Bullen, Esq., Wells Cargo, Inc.'s legal representative, so she could be a part of the meeting via teleconference.

RECESSED: 1:40 p.m.

RESUMED: 1:43 p.m.

A. Appeal of Issuance of Synthetic Minor Source Permit to Wells Cargo, Inc. by Lori Headrick, Director, Environmental Services, Clark County School District

1. Staff Update by Ted Lendis, Permitting Supervisor

Mr. Lendis gave an overview of the permitting process, which included requiring the source to submit the results of a modeling exercise to demonstrate there would be no NAAQS exceedance and a public hearing, and he highlighted the changes necessitating the permit revision.

Due to the modeling exercise and Wells Cargo's demonstration of new particulate matter emissions factors, numerous revisions to the initial application were made, including reductions to the proposed throughputs, removing additional equipment, and paving all haul roads.

Chair Sanders asked how many people attended the public hearing. Ted Lendis responded that approximately 30 people spoke.

Deputy District Attorney Leslie A. Nielsen suggested that any substantive questions on the Clark County School District's appeal be asked during the scheduled hearing on February 8, 2018. Ms. Nielsen stated that, to her knowledge, the School District was not expecting to put on a case today, but at the next hearing presupposing that the Board will grant the Motion for the Briefing Schedule. Chair Sanders agreed since the information that the board members received was not sufficient to make a determination.

2. Motion for Briefing Schedule by Leslie A. Nielsen, Deputy District Attorney

Ms. Nielsen presented the following Motion for Briefing Schedule:

- On or before Thursday, December 28, 2017, the Appellant shall file an opening brief containing a detailed statement of the issue(s) to be raised during the hearing.
- On or before Thursday, January 11, 2018, Air Quality and any interested party permitted by this Board to intervene in this matter shall each file a responsive brief.
- On or before Thursday, January 18, 2018, the Appellant may file a reply brief.
- On or before Thursday, January 25, 2018, exchange with all other parties:
 - Notice of the identity of each person who will offer direct oral testimony at the hearing, and
 - Copies of each exhibit the party intends to offer as evidence at the hearing.
- The hearing in this matter is scheduled for February 8, 2018, at 1:30 p.m.

In addition, Ms. Nielsen asked if Lori Headrick, Environmental Director for the Clark County School District, had any opposition to the proposed briefing schedule. Ms. Headrick stated she is responsible for the environmental health and wellbeing of the children and staff, and her only concern with the proposed schedule is what would happen in the interim if there is a problem with Wells Cargo, Inc.'s facility before February 8, 2018.

In response, Ms. Nielsen stated if the Clark County School District wanted immediate action on the appeal, Air Quality could expedite the briefing schedule to hear the case before February 8, 2018. In the interim, Ms. Nielsen recommended the Clark County School District to consult with their legal representative, and see if the Clark County School District has any remedy in enjoining operations at Wells Cargo, Inc. if that is what Ms. Headrick was suggesting, and possibly seek relief in District Court.

Chair Sanders recommended that the Board accept the proposed Motion for Briefing Schedule as presented.

Board Member Schweisinger moved to approve the proposed Motion for Briefing Schedule. Chair Sanders asked, before moving on, if there were any more comments in reference to this subject matter.

Ms. Headrick asked for clarity of when the application for revision was accepted and is Wells Cargo, Inc. working under the extended permit.

Mr. Lendis responded that the Department of Air Quality deemed the application complete on August 20, 2017 and subsequently issued the permit on December 1, 2017. Ms. Nielsen added that the appeal does not have any effect of staying the operations, but that Wells Cargo, Inc. has not expanded their operations to add the hot mix asphalt plant. Ms. Nielsen deferred any other questions back to Mr. Lendis to answer. Mr. Lendis responded there were various things included in the modification application that Wells Cargo, Inc. submitted, including the new hot mix asphalt plant. There are other approvals needed before Wells Cargo, Inc. is able to construct that plant, and Mr. Lendis does not know the status of the other modifications that Wells Cargo, Inc. has proposed.

After hearing Mr. Lendis' statement, Chair Sanders reiterated that it would be appropriate for the Board to move forward to approve the proposed Motion for Briefing Schedule with a continued effort to try to work through this issue. The Clark County School District and Ms. Bullen were both in agreement with the proposed Motion for Briefing Schedule.

Ms. Bullen asked if it would be appropriate to ask for a ruling on Wells Cargo, Inc.'s Motion to Intervene. Ms. Nielsen suggested that the Motion to Intervene be addressed first, and asked the Clark County School District if they had any opposition to that motion. Being no objection from the Clark County School District or the Department of Air Quality to the intervention, Ms. Nielsen argued that it was appropriate for the Chair to sign the order granting the Motion to Intervene without a vote by the full Board, because it was a stipulated matter. Chair Sanders agreed to do so.

Chair Sanders reiterated that there was already a motion to approve the proposed Motion for Briefing Schedule, and Board Member Foster seconded that motion. It was met by a chorus of ayes. There was no opposition. The motion passed.

B. Possible Appeal of Issuance of Synthetic Minor Source Permit to Wells Cargo, Inc. by Others

Ms. Nielsen stated there were no other appeals filed within the appeal period. The Department of Air Quality had included an item for the Possible Appeal of Issuance of Synthetic Minor Source Permit to Wells Cargo, Inc. in the agenda anticipating that staff might receive another appeal in the meantime; however, there was none.

C. New Member Orientation

Ms. Nielsen distributed materials to the Air Pollution Control Hearing Board that would assist them in their roles as members, and encouraged the members to contact her if they have any legal questions about issues before the Board. The topics included in the materials are as follows (copy attached as Appendix A):

- Governing Law
 - Nevada Revised Statutes Chapter 445B (excerpts)
 - Clark County Air Quality Regulations Sections 7 and 9
 - Air Pollution Control Hearing Board/Hearing Officer Manual of Procedures
- Nevada Open Meeting Law Manual
- Ethics in Government Law Guide
- Robert's Rules of Order Cheat Sheet
- Department of Air Quality Organizational Chart

VI. REPORT BY DEPARTMENT OF AIR QUALITY STAFF

DAQ Director Marci Henson provided the Board with a brief overview of what DAQ has been up to in 2017 (copy attached as Appendix B):

- Planning
 - Criteria Pollutants
 - Carbon Monoxide (CO) – in attainment/maintenance
 - Ozone (O₃) – in attainment with the 2008 standards. 2015 standards, at the end of the Obama Administration, they reduced the ozone standard to 70 parts per billion. Based on DAQ data from 2014, 2015, and 2016, we would be deemed non-attainment for Northern Ivanpah Valley, Apex Valley and Las Vegas Valley. Since then, EPA administration has changed hands and has not rendered a decision on DAQ's attainment recommendations. If we get to include the 2017 data, the Las Vegas Valley would be the only area in Clark County out of attainment with the 2015 standard.
 - PM₁₀ - in attainment/maintenance
 - PM_{2.5} - in attainment/maintenance
 - Nitrogen dioxide (NO₂) - in attainment
 - Sulfur dioxide (SO₂) - in attainment
 - Lead (Pb) - in attainment

-
- Stationary Source Permit Increment Modeling
 - Performed increment modeling for 12 major sources
 - Performed increment modeling for 77 minor sources
 - Reviews/Analyses of Federal/Non-Federal Agency Action
 - Performed 108 reviews
 - Air Quality Studies
 - 2017 Fires, Asian, and Stratospheric Transport – Las Vegas Ozone Study
 - Investigating emissions from regional wildfires and pollution from southern California as well as transport from the stratosphere and Asia. Trying to better understand the causes of high-ozone events in Clark County.
 - NOAA, ESRL, CIRES, NASA, and NOAA's Geophysical Fluid Dynamics Laboratory.
 - 2016-2017 On Road Motor Vehicle Classification Study
 - Analyzing vehicle data provided by the DMV to better understand the make, model, year and emissions associated with mobile sources in Clark County.
 - Public Information and Education
 - Follow us on Twitter @CCAirQuality and Like Us on Facebook
 - Monitoring
 - Implemented 2017 Annual Monitoring Network Plan
 - Stations located in neighborhoods to assess exposure levels to the general population.
 - Network also characterizes pollution transported into Clark County and background levels natural to Clark County.
 - Stationary Source Permits
 - Issued 441 permits, 420 of which were issued within regulatory timeline
 - Administered an average of 1,041 active operating permits
 - Completed a Lean six sigma process improvement event in late 2016: identified over 90 process improvements: completed and implemented 85 % to date
 - Dust Permits and Vacant Lands
 - Issued over 2,000 dust permits, averaging 8.3 days of issuance
 - Conducted 5,384 inspections
 - Compliance & Enforcement
 - Conducted 279 stationary source full compliance evaluations
 - Responded to 1,033 complaints
 - Issued 49 construction Notices of Violation (NOVs)
 - Issued 6 vacant land NOVs
 - Issued 34 stationary source NOVs
 - Issued 1 nuisance odor NOV for marijuana
 - Issued 9 asbestos NOVs
 - Issued 1 NOV for sale of trees prohibited in AQR Section 44

- Transferred \$992,825 in penalty funds to the Clark County School District per NRS 445B.500(3) for fiscal year 2016/2017
- Collected \$621,800 in penalties for 2017
- Completed a Lean six sigma process improvement event in Spring 2017: identified over 90 process improvements: completed and implemented 33% to date
- Small Business Assistance Program
 - Responded to 1,668 requests for assistance, 1,033 of which were for permitting assistance and 388 for compliance assistance. This was a 14% increase in requests from 2016
 - Prepared a comprehensive marketing and outreach plan to increase business and industry awareness of the program and its services
 - Revised and updated the program based on the frequently asked questions
 - Began attending Hearing Officer meetings to make immediate contact with and offer compliance assistance to sources with NOVs
 - Proactively contacted stationary source permittees with expiring permits to offer a friendly reminder and assistance with their permit renewal

VII. IDENTIFY EMERGING ISSUES TO BE DISCUSSED BY BOARD AT FUTURE MEETINGS

Chair Sanders asked if there were any issues to be discussed.

Board Member Schweisinger asked whether Board members are held harmless by Clark County against any liability arising from their actions on the Board. Ms. Nielsen advised that NRS chapter 41 requires the County to indemnify Board Members and agreed to provide a copy of the applicable statute to the Board members by the next hearing.

Board Member Foster asked whether the Department of Air Quality tracks the changes being made by the EPA at the federal level. Ms. Henson responded that the department tracks those potential changes on a regular basis and there was a professional non-profit organization that helps all clean air agencies in keeping track of policy and guidance coming from Washington D.C. Ms. Henson further stated that the boundary determinations for attainment and non-attainment area designations related to the new ozone standard and the proposed budget cuts to the federal grants from EPA to state and local agencies to support the implementation of Clean Air Act were two hi-impact policy items that the department tracks regularly. Ms. Henson also stated that the department had not experienced any such reductions in funding yet and promised to keep the Board apprised on any such policy changes.

Ms. Henson apprised the Board of a proposed change in the structure and content of the meeting minutes. She stated that the change would be from the current paragraph form that was more of a transcription of the meeting to a traditional format similar to that of the Board of County Commissioner's meeting which captures the essence of the deliberations and decisions. Chair Sanders stated that the proposed change was appreciated.

VIII. PUBLIC COMMENT

There were no public comments.

IX. ADJOURNMENT

Being no further business, Chair Sanders adjourned the meeting at 2:30 p.m.

Approved:

Daniel Sanders, Chair

Date

DRAFT

1 **BEFORE THE CLARK COUNTY**

2 **AIR POLLUTION CONTROL HEARING BOARD**

3 In re:

4 Appeal of Synthetic Minor Source Permit Issued
5 to Wells Cargo, Inc. (Source: 12) by Lori
6 Headrick, Director, Environmental Services,
Clark County School District.

Date of Hearing: February 8, 2018

7 **CLARK COUNTY DEPARTMENT OF AIR QUALITY'S**
8 **MOTION TO DISMISS APPEAL**
9 **OR TO EXCLUDE CERTAIN EVIDENCE**

10 The Clark County Department of Air Quality (**Air Quality**), by and through its counsel Clark
11 County District Attorney Steven B. Wolfson and Leslie A. Nielsen, Deputy District Attorney, hereby
12 moves the Clark County Air Pollution Control Hearing Board (**Board**) for an order dismissing this
13 appeal or, alternatively, to exclude certain evidence listed by the Clark County School District
14 (**CCSD**) because it is irrelevant and extraneous to matters within this Board's purview. This appeal
15 should be dismissed, as explained below, because CCSD has not met its burden to show the Control
16 Officer has abused her discretion by violating any applicable law. This motion is necessitated, in part,
17 by the new arguments raised for the first time, not where they belonged in CCSD's appeal form and
18 opening brief, but in its reply brief (**Reply Brief**) and hearing exhibits. Additionally, this motion is
19 needed to correct the record, to avoid confusion, to narrow the scope of any hearing to only those
20 matters relevant to the CCSD appeal, and to reach a just, speedy and inexpensive resolution. This
21 motion is based on the points and authorities below and arguments to be made by counsel at the
22 hearing.

23 **POINTS AND AUTHORITIES**

24 As shown in the administrative record (**AAR**), the permit at issue is a *revision* (**Revised**
25 **Permit**) of the permit issued to Wells Cargo in 2016 (**2016 Permit**). The revision results in only small
26 increases of the PM₁₀ and PM_{2.5} emissions over the 2016 Permit (4.34 tpy and -0.43 tpy, respectively),¹

27
28 ¹ See AAR, page 55 for the PM_{2.5} increase and page 56 for the PM₁₀ increase.

1 which are not deemed “significant,” and would not alone have required an application for a significant
2 revision under AQR Section 12.1.6(a)(7).² Nor would those increases have required public notice and
3 participation under AQR Section 12.1.5.3(a)(1).³ The emissions threshold for a “significant” increase
4 in both PM₁₀ and PM_{2.5} is defined in Section 12.1.1(g) as 7.5 tpy. The pollutant triggering the
5 significant permit revision and public notice was the 37 tpy increase of CO which exceeded the
6 “significance” threshold of 35 tpy by only 2 tpy.⁴ CCSD is now focused solely on the PM₁₀ and PM_{2.5}
7 emissions from the source.⁵

8 Air Quality requires modeling of minor sources for NAAQS compliance only in rare cases,
9 such as this one involving neighborhood concerns having been expressed. The crux of CCSD’s case
10 now appears to be that they prefer monitoring to modeling, that Wells Cargo’s modeling was flawed,⁶
11 and CCSD’s preferred remedies are either for this Board to modify the revised permit to require Wells
12 Cargo to perform post-construction monitoring⁷ or for this Board to require Air Quality to modify its
13 monitoring network to include a site at Spring Valley High School (SVHS). The most glaring
14 omission in CCSD’s briefs and its proffered evidence is *there is nothing establishing a NAAQS*
15 *exceedance or violation of AQR Section 12.1 applicable to minor sources.*

16 The purpose of this Board’s Order Regarding Briefing Schedule was to provide fair notice to
17 the other parties and to the Board identifying CCSD’s grounds for appeal and our response. Rather

18
19 ² Section 12.1.6(a)(7) provides, in part:

20 A modification that increases the source’s potential to emit a regulated air pollutant by an amount equal to or
21 exceeding a significant increase. . . .

22 ³ Section 12.1.5.3 provides, in part:

23 (a) Notice of Proposed Action.

24 (1) After receipt of a complete application for (1) a new minor source with a potential to emit any pollutant
25 that exceeds 50 tpy for CO; 40 tpy for VOCs, SO₂, or NO_x; 10 tpy for PM_{2.5}; 15 tpy for PM₁₀; 10 tpy
26 for H₂S; or 0.6 tpy for lead; (2) a new minor source that will be located within 1,000 feet of the outer
27 boundary of a school, hospital, or residential area; or (3) a significant permit revision that is required
28 because of a *significant increase in an existing minor source’s potential to emit*, the Control Officer shall
publish in a newspaper of general circulation within Clark County, Nevada, and on the Department’s web
site, a Notice of Proposed Action on the application containing the following . . . (Emphasis added)

⁴ See AAR, page 55 and AQR Section 12.1.1(g).

⁵ The Reply Brief having not mentioned VOC emissions, we presume the Responsive Brief put those issues to rest.

⁶ CCSD cites only to Wells Cargo’s modeling analysis at AAR, pages 0333-0336, which was sent by Wells Cargo to Air
Quality on January 26, 2017. Wells Cargo submitted revised modeling analyses based on different assumptions, first on
May 16, 2017 (AAR, page 423) and again on July 25, 2017 (AAR, page 876). However, Air Quality relies on its own
independent verification as argued in the Responsive Brief with pinpoint cites to the AAR.

⁷ When CCSD requests onsite monitoring, we construe this as “post-construction” monitoring according to the vernacular
used in the AQRs.

1 than providing fair notice, each of CCSD's submissions brings up new matters not mentioned in the
2 prior submissions. In effect, CCSD's case is morphing over time starting with Headrick's appeal form
3 referring only to indoor PM₁₀ and unspecified VOC readings. Then the opening brief asks whether
4 the modeling properly accounted for source emissions on all 142 acres and whether monitoring was
5 needed to ensure there was no NAAQS exceedance. The reply brief makes all new arguments about
6 the modeling.⁸ Then CCSD's exhibits include two letters and an email from Ronnie J. Hawkins
7 addressing land use decisions and alleged code violations within the purview of other County
8 departments, the town board, planning commission and/or ultimately the Board of County
9 Commissioners. And finally, CCSD's witness list indicates Dr. Chen will testify about "Appellant's
10 air emission modeling," which is an entirely new topic never before mentioned. This shows CCSD
11 feels no compunction about ignoring the spirit, letter and intent of this Board's Order Regarding
12 Briefing Schedule, and CCSD may again surprise everyone with still new evidence and arguments at
13 the February 8 hearing.

14 When litigants raise new arguments in a reply brief, the Nevada Supreme Court refuses to
15 consider them even in murder cases involving the death penalty. *State v. Bennett*, 119 Nev. 589, 81
16 P.3d 1 (2003). In *Bennett*, the court stated,

17 Last, Bennett claims that this court has not applied its procedural bars consistently and
18 that applying the bars to him would violate his equal protection and due process rights.
19 Bennett did not make this argument in his opening brief, and the State did not raise
20 the issue in its answering brief. *Bennett is therefore barred from raising this claim in
his reply brief, pursuant to NRAP 28(c), which requires reply briefs to be limited to
new matters in the answering brief. Consequently, we will not consider this claim.*

21 *Id.* (Emphasis added) There is no ambiguity in this Board's use of the term "reply brief" to mean a
22 reply to arguments raised in the responsive briefs filed by Air Quality and Wells Cargo; and all of
23 CCSD's new arguments should, therefore, be disregarded.

24
25
26 ⁸ The *only* arguments made in reply to the Responsive Brief are on pages 5 and 6. In response to Air Quality's argument
27 that the AQRs do not authorize imposition of post-construction monitoring, CCSD merely "asserts that is the wrong
28 question." In response to Air Quality's argument that CCSD lacks standing due to its failure to participate during the
public comment period, CCSD provided an email sent over a year before the public hearing as evidence that because
"Appellant requested individual notice, it was entitled to it." Apparently, CCSD took no further action to protect its
interests until a year later when it commenced indoor air quality testing on November 17, 2017.

1 **I. THE MODELING WAS PERFORMED PROPERLY ACCORDING TO**
2 **APPLICABLE EPA GUIDELINES**

3 CCSD argues the modeling was flawed, but none of the sources cited by CCSD supports its
4 arguments.

5 **A. The Release Heights Are Correctly Modeled.**

6 CCSD relies on Appendix W, without a pinpoint cite,⁹ to argue that some of the sources should
7 have been modeled 85 feet deep inside the pit. In fact, to have modeled the very few emission units
8 located inside the pit would likely result in slightly *lower* PM₁₀ concentrations because dispersion is
9 occurring inside the pit with some expected pit retention. As explained in Air Quality's responsive
10 brief (**Responsive Brief**), "the elevations of each of the emission units and activities and receptors
11 were . . . used to determine how the topography is represented."¹⁰ The source release heights and
12 receptors *are* consistent and are shown in the record.¹¹ CCSD's lack of confidence in its release height
13 argument is apparent from its use of qualifiers such as "it appears,"¹² "does not seem,"¹³ and "is
14 unclear."¹⁴

15 **B. The Background Data Used in the Modeling are Appropriate.**

16 In arguing the background data used were improper, CCSD cites to the EPA's New Source
17 Review Workshop Manual (1990) (**Manual**), but the Manual applies only to Prevention of Significant
18 Deterioration (**PSD**) sources and *not to minor sources*.¹⁵ This is evident both on the Manual's cover
19 sheet and in the introduction to Chapter C:

20 An applicant for a PSD permit is required to conduct an air quality analysis of the
21 ambient impacts associated with the construction and operation of the proposed new
22 source or modification. The main purpose of the air quality analysis is to demonstrate
23 that new emissions emitted from a proposed major stationary source or major
modification, in conjunction with other applicable emissions increases and decreases

24 ⁹ CCSD's failure to provide pinpoint cites throughout its Reply Brief makes it impossible to find any relevant material in
the source or to hold CCSD accountable for its assertions.

25 ¹⁰ See Responsive Brief, p. 8, lines 21-22.

26 ¹¹ See AAR, pages 3177-3186. For example, the modeled release height for drum dryer HMA I (EU HM81) is 12.192
meters, and the asphalt heater HMA I is 2.7432 meters. As shown at the fourth double asterisk on AAR, page 3203, "The
Model Assumes No FLAGPOLE Receptor Heights," meaning they were modeled at ground level.

27 ¹² See Reply Brief, page 3, line 5.

28 ¹³ See Reply Brief, page 3, line 10.

¹⁴ See Reply Brief, page 3, line 13.

¹⁵ The Manual is available at <https://www.epa.gov/sites/production/files/2015-07/documents/1990wman.pdf>.

1 from existing sources (including secondary emissions from growth associated with the
2 new project), will not cause or contribute to a violation of any applicable NAAQS or
3 PSD increment. Ambient impacts of noncriteria pollutants must also be evaluated.
4 See Manual, page C.1. As pointed out in the Responsive Brief, the threshold for PSD permitting for
5 noncategorical sources (such as Wells Cargo) is 250 tpy of any regulated pollutant.¹⁶ Wells Cargo's
6 revised permit shows the highest source-wide PTE of any regulated pollutant is 84 tpy of CO, or 166
7 tpy below the PSD threshold. CCSD's confusion about the applicability of the PSD rules is also
8 apparent under its Conclusion heading which states: "AQR Section 12.2 requires the source must
9 meet all applicable requirements."¹⁷ Section 12.2 applies only to PSD sources as is apparent from
10 the heading of Section 12.2: "PERMIT REQUIREMENTS FOR MAJOR SOURCES IN
11 ATTAINMENT AREAS (PREVENTION OF SIGNIFICANT DETERIORATION)." CCSD should
12 be aware of the distinction between minor sources and PSD sources and the inapplicability of AQR
13 Section 12.2 and the Manual, based on its reliance on *Northwest Env'tl. Def. Ctr. V. Cascade Kelly*
14 *Holdings LLC*, 155 F. Supp. 3d 1100, 1105 (D. Or. 2015).¹⁸ In that case cited by CCSD, the court
15 explained that a PSD source is, "also known as a 'major source,' as a facility possessing the potential
16 to emit . . . 250 tons per year of the regulated pollutant . . . [depending] on the facility's industry
17 source category." *Id.* at 1105.

17 CCSD's arguments about the background data conflate considerations applicable to
18 background and source data.¹⁹ For example, CCSD argues the background data "must include . . .
19 the proposed source," "road dust, quarry emissions and aggregate stockpiles,"²⁰ while citing to text in
20 the Manual at page C.47 under the heading of "Source Data."²¹ If the modeling were performed
21

22 ¹⁶ The threshold for PSD permitting is stated in AQR 12.2.2(ff):

23 (ff) "Major stationary source"

24 (1) Means:

25 . . .
(B) Notwithstanding the stationary source size otherwise specified in paragraph (1)(A) of this
definition, any non-categorical stationary source which emits, or has the potential to emit, 250
tpy or more of a regulated NSR pollutant . . .

26 ¹⁷ See Reply Brief, page 6, line 10.

27 ¹⁸ See Appellant's Exhibit 10.

28 ¹⁹ See the first sentences in each of the two paragraphs in the Reply Brief, page 3, lines 17-26, page 4, lines 1-11, both of
both of which disparage the background concentration.

²⁰ See Reply Brief, page 3, lines 25-26, page 4, lines 1-2.

²¹ See Manual, page C.44.

1 according to CCSD's logic requiring that the background concentration include all of these source
2 impacts, then adding the background concentration to the total modeled impacts from the source would
3 count the source's impacts twice. That makes no sense when the point of the modeling exercise is to
4 quantify the source's impacts to determine whether the source's impacts combined with the
5 background concentrations cause a NAAQS exceedance.

6 The parties agree on two points. CCSD argues that monitors upwind of the facility are a better
7 indication of the true background in the area and that the most recent ambient concentration from the
8 nearest metropolitan monitor should be used.²² The background concentration used in the PM₁₀
9 modeling is from the Paul Meyer monitoring station, which as shown in Air Quality's Exhibits C and
10 D, is slightly more than one mile upwind of the source.

11 CCSD makes another mistake in assuming "an average of monitoring sources throughout the
12 Las Vegas Metropolitan area" was used as background.²³ This isn't true. The Modeling Memo clearly
13 identifies the source of PM₁₀ background data as Paul Meyer monitoring station and the source of
14 PM_{2.5} background data as JD Smith monitoring station.²⁴

15 C. All the Permitted Emissions Were Accounted For in the Modeling

16 Apparently unaware that Wells Cargo has paved all of its haul roads,²⁵ CCSD cites to Section
17 13.2.2 of the EPA's AP-42 emission factors applicable to "*Unpaved Roads*," in arguing that "modeling
18 of PM₁₀ and PM_{2.5} emissions of unpaved roads . . . is required."²⁶ As for the source's stabilized parking
19 and other stabilized surfaces, any emissions from them are deemed to be negligible and not
20 quantifiable, as evidenced by no AP-42 emission factors having been developed for them by the EPA.

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²² See Reply Brief, page 4, lines 8-11.

²³ See Reply Brief, page 4, lines 3-4.

²⁴ See Modeling Memo (Exhibit E), AAR 145-46, footnotes 6 and 7.

²⁵ See TSD, Exhibit B, AAR page 33: "Removal of the unpaved haul road identified as EU: MB01. All haul roads have been paved."

²⁶ See Reply Brief, page 4, lines 15-17. CCSD's citation to Section 13.2.2 of AP-42 is also misleading because it addresses emission factors, *not source impacts modeling*. Section 13.2.2 is available at <https://www3.epa.gov/ttnchie1/ap42/ch13/final/c13s0202.pdf>.

1 CCSD's reliance on Clark County's 48-page 2012 Redesignation Request and Maintenance
2 Plan for Particulate Matter without a pinpoint cite is equally troubling.²⁷ There is nothing in that
3 document that supports CCSD's arguments that certain emission units or activities *should have been*
4 captured for modeling purposes and *were not*.

5 **II. CCSD HAS NO EVIDENCE PROVING A NAAQS EXCEEDANCE**

6 CCSD has not asserted that it has any evidence in the form of expert witness testimony or
7 otherwise proving the source's impacts actually result in a NAAQS exceedance. Instead, CCSD cites
8 only to sources that (1) do not support its argument, (2) are inapplicable, or (3) do not say what CCSD
9 claims they say. As shown above, the alleged flaws in the modeling are an illusion. Unless CCSD's
10 expert witness Dr. Chen is able to testify "to a reasonable degree of scientific certainty"²⁸ that when
11 added to background concentrations, the source's PM₁₀ impacts exceed 150 µg/m³ or that the source's
12 PM_{2.5} impacts exceed 35 µg/m³ (24-hour daily averages), his testimony is irrelevant.²⁹ To reverse the
13 Control Officer's issuance of the Revised Permit, this Board would have to be persuaded that
14 Dr. Chen's opinions are substantially more credible than Air Quality's expert's opinions in order to
15 show the Control Officer abused her discretion in concluding that "the source . . . will not interfere
16 with . . . maintenance of the NAAQS."³⁰

17 **III. NOTHING IN NRS CHAPTER 445B OR IN AQR SECTION 7 GIVES THIS BOARD**
18 **THE POWER TO REVIEW THE ACTIONS AND DECISIONS OF THE CLARK**
19 **COUNTY BOARD OF COMMISSIONERS**

20 The preferred remedy CCSD seeks is a modification of the Revised Permit to require post-
21 construction monitoring. However, the Technical Support Document included in the records of the
22 Board of County Commissioners³¹ explicitly shows that when that Board removed the Control

23 ²⁷ See Reply Brief, page 4, lines 18-19. Clark County's Redesignation Request and Maintenance Plan for Particulate
24 Matter (PM₁₀) is available at http://www.clarkcountynv.gov/airquality/Documents/PM10_Plan_2012.pdf.

25 ²⁸ The "reasonable degree of scientific certainty" standard precludes expert witnesses from speculating and determines
26 whether the expert's testimony is admissible under Nevada law. See *Las Vegas Metro. Police Dep't v. Yeghiazarian*, 312
27 P.3d 503, 508, 129 Nev. Adv. Rep. 81 (2013).

28 ²⁹ Any such testimony would be a complete surprise to Air Quality and would, again, violate the spirit, letter and intent
29 of this Board's Order Regarding Briefing Schedule. This is known as "trial by ambush."

30 ³⁰ See AQR Section 12.1.5.1(a)(4) cited in the Responsive Brief showing that "a significant permit revision . . . may be
31 issued only if . . . the Control Officer has determined that the source or emission units will not interfere with . . .
32 maintenance of the NAAQS . . ."

33 ³¹ See agenda and supporting materials for Item No. 85 on the Board of County Commissioners' November 3, 2009
34 agenda.

1 Officer's authority to require post-construction monitoring of minor sources by adopting a new
2 Section 12.1 applicable to minor sources, the authority of this Board was similarly restrained. On
3 pages 6-7 of the Technical Support Document for Section 12.1, it states: "[T]he current rules establish
4 a requirement that is reflected in the permit application for pre- and *post-construction ambient*
5 *monitoring . . . for minor sources. Under the new rules, those requirements will no longer be imposed.*"
6 (Emphasis added)

7 Rather than responding to Air Quality's argument about the lack of authority to require post-
8 construction monitoring, CCSD pivoted asserting "that is the wrong question" and that the Control
9 Officer failed to exercise her discretion by not requiring it.³² The grant of authority in AQR Sections
10 4.4 and 4.5 are not construed by Air Quality, nor is it reasonable to construe them, to be so broad as
11 to authorize the Control Officer to disregard the Board of County Commissioners clear statement that
12 it was removing Air Quality's authority to require minor sources to perform post-constructing
13 monitoring. This legislative history is unambiguous. It should preclude CCSD from continuing to
14 assert onsite monitoring is an appropriate condition to impose on this minor source and is grounds to
15 dismiss the appeal.

16 **A. The Board has no Authority to Order Air Quality to Install a Monitoring Station**
17 **at Spring Valley High School**

18 CCSD now suggests a new remedy which is entirely separate from Wells Cargo's obligations
19 under the Revised Permit which is the subject of this appeal. CCSD now wants this Board to order
20 Air Quality to install a monitor at the SVHS. This goes way beyond the scope of this appeal and this
21 Board's authority.

22 The Board of County Commissioners has not delegated any authority over the design of Clark
23 County's monitoring network to this Board as evidenced by the June 6, 2017 agenda item marked as
24 Air Quality's Exhibit I. At that meeting, the Board of County Commissioners approved the 2017
25 Annual Monitoring Network Plan (**2017 Plan**), including staff's recommended changes to the network
26
27

28 ³² See Reply Brief, page 5, lines 1-3.

1 in 2018. The period for public comment on the 2017 Plan ran from April 5 through May 5, 2017,
2 without any comment from the CCSD or from anyone else.

3 Even if this Board were inclined to wade into the Board of County Commissioners' territory,
4 there are many reasons that installing a single monitor at SVHS to demonstrate a NAAQS exceedance
5 attributable to the source is ill-advised. For example:

- 6 1. SVHS has its own permitted emission units and mobile sources of pollution in the form of
7 dozens of buses and passenger cars idling for long periods.
- 8 2. Because the prevailing winds are from the south and southwest,³³ SVHS is upwind of the
9 source.
- 10 3. Clark County has already installed more than the minimum number of monitors throughout
11 the Las Vegas Valley sited according to 40 CFR Part 58 in the locations modeled and
12 approved by the EPA. A monitor at SVHS would be redundant.
- 13 4. It is not feasible or reasonable to require Clark County to install monitors to address
14 individual property owners' concerns.

15 This Board's authority is spelled out in AQR Section 7. There is nothing in Section 7
16 authorizing this Board to overrule Board of County Commissioner decisions about Clark County's
17 monitoring network. Indeed, the Nevada Supreme Court has ruled, "Nothing in NRS 445.201 [now
18 NRS 445B.210] . . . gives [the Nevada State Environmental Commission] the power to review the
19 actions and decisions of local governmental entities." *Helms v. Division of Env'tl. Protection*, 109
20 Nev. 310, 314, 849 P.2d 279, 282 (1993).³⁴ The same is true in this case, particularly where the local
21 governmental entity who makes decisions on placement of Clark County's air quality monitors is the
22 same one that appointed this Board and adopted the rules by which it is governed.

23 **A. This Board Should, at a Minimum, Exclude any Extraneous Evidence**

24 CCSD listed three exhibits authored by Ronnie J. Hawkins,³⁵ a person who did not appeal the
25 issuance of the Revised Permit and who was not identified by CCSD as a witness. Most of the issues
26 raised by Hawkins in these three exhibits involve either future land use applications or current alleged
27 code violations all governed by NRS chapter 278, Clark County Code Title 30, and other applicable

28 ³³ As shown in Air Quality's Exhibit C.

³⁴ This case was also cited in the Responsive Brief. A courtesy copy was previously provided to counsel and the Board.

³⁵ See Exhibits 6, 7 and 8.

1 law. Again, as argued above, this Board has no authority to review actions and decisions of a local
2 governmental entity, whether they be land use decisions being made by the Board of County
3 Commissioners or other Title 30 code enforcement matters. Additionally, this Board should exclude
4 these hearsay statements by Hawkins, because Air Quality will have no opportunity to cross-examine
5 him at the hearing. Accordingly, this Board should exclude any other testimony about matters over
6 which this Board has no jurisdiction.

7 **CONCLUSION**

8 Air Quality respectfully requests that this Board consider whether there is any evidence
9 referenced in the briefing or in the CCSD's ten exhibits showing that the Control Officer abused her
10 discretion in concluding that, according to AQR Section 12.1.5.1(a)(4), "the source . . . will not
11 interfere with . . . maintenance of the NAAQS," and by issuing the Revised Permit. If there is none,
12 dismissal of the appeal is warranted. Alternatively, Air Quality requests that any evidence related to
13 land use decisions, code enforcement or other matters over which this Board has no jurisdiction,
14 including the siting of a monitor at the SVHS, be excluded.

15 Dated this 1~~st~~ day of February, 2018.


16 STEVEN B. WOLFSON
17 DISTRICT ATTORNEY

18 By: Leslie A. Nielsen
19 LESLIE A. NIELSEN, ESQ.
20 Deputy District Attorney
21 500 S. Grand Central Pkwy. 5th Flr.
22 Las Vegas, NV 89106
23 Leslie.Nielsen@clarkcountyda.com
24 Attorneys for Department of Air Quality
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2018, I served a copy of the foregoing
**CLARK COUNTY DEPARTMENT OF AIR QUALITY'S MOTION TO DISMISS
APPEAL OR TO EXCLUDE CERTAIN EVIDENCE** as follows:

PARTY OR ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director, Environmental Services, Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net		<input type="checkbox"/> US Mail <input checked="" type="checkbox"/> Email
Carlos L. McDade, Esq. Clark County School District Office of the General Counsel 5100 West Sahara Avenue Las Vegas, Nevada 89146 clmcdade@interact.ccsd.net	<i>Clark County School District</i>	<input type="checkbox"/> US Mail <input checked="" type="checkbox"/> Email
Linda Bullen, Esq. Bullen Law, LLC 8635 W. Sahara Ave., #454 Las Vegas, NV 89117 linda@bullenlaw.com	<i>Wells Cargo, Inc.</i>	<input type="checkbox"/> US Mail <input checked="" type="checkbox"/> Email
Trent Scarlett Phil Groff Guy Wells Wells Cargo, Inc. 9127 West Russell Road, Ste. 210 Las Vegas, NV 89148-1240 TScarlett@wcilv.com PGroff@wcilv.com GWells@wcilv.com		<input type="checkbox"/> US Mail <input checked="" type="checkbox"/> Email


An Employee of the Clark County District
Attorney's Office – Civil Division

RE: Appeal of Synthetic Minor Source Permit Issued to Wells Cargo, Inc. (Source ID: 12) filed by the Clark County School District

EXHIBIT LIST

EXHIBIT #	DESCRIPTION	DATE
000001-000002	Clark County School District – Appeal of Control Officer’s Permitting Decision	12/8/2017
000003-000004	Signed Order Granting Motion to Intervene	12/14/2017
000005-000006	Signed Order Regarding Briefing Schedule	12/14/2017
000007-000013	Clark County School District – Appellant’s Opening Brief	12/28/2017
000014-000090	Clark County Department of Air Quality – Responsive Brief	1/11/2018
000091-000096	Wells Cargo, Inc.’s – Response to Appellant’s Opening Brief	1/11/2018
000097-000124	Clark County School District – Appellant’s Reply to Intervenor Wells Cargo, Inc.’s Response to Appellant’s Opening Brief and Clark County Department of Air Quality’s Responsive Brief	1/18/2018
000125-000205	Clark County School District – Appellant’s Disclosures	1/25/2018
000206-000215	Wells Cargo, Inc.’s Witness and Exhibit List	1/25/2018
000216-000304	Clark County Department of Air Quality’s Exhibits (Sent under separate cover)	1/25/2018

000305-000306	Clark County School District – Appellant’s Amended Disclosures	2/7/2018
000307-000310	Clark County School District – Appellant’s Opposition to Clark County Department of Air Quality’s Motion to Dismiss Appeal or to Exclude Certain Evidence and Intervenor Wells Cargo, Inc.’s Joinder to Clark County Department of Air Quality’s Motion to Dismiss Appeal or to Exclude Certain Evidence	2/7/2018

Request for Hearing Before The Clark County Air Pollution Control Hearing Board		For DAQ Use Only	
		Invoice Number:	027745 SM
Appeal of Control Officer's Permitting Decision			
Proposed Permit:		Source ID:	
Wells Cargo, Inc.		00012	
Date of Appeal:	Date of appeal must be within 10 days of the date of the Final Action Report		
12/8/2017			

RECEIVED CC DAQ
2017 DEC 8 PM 3:00 SM

Filing Fee: \$140.00

1. Appellant Information:

Name:	Lori Headrick			Title:	Director, Environmental Services		
Contact Information							
Number:	Direction:	Street:		Street Type:	Suite:	PO Box:	
4828	S.	Pearl		St.			
City:	Las Vegas			State:	NV	Zip: 89121	
Email Address:	headrle@nv.ccsd.net						
Phone Numbers							
Office:	702-799-6496	Extension:	5660	Cell:	702-280-0430	Fax:	702-799-2995

2. Reason for Appeal:

Provide a detailed explanation of the reason for your appeal:

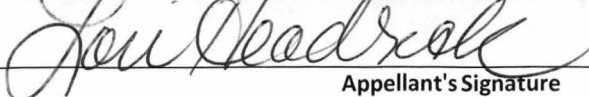
This appeal is requested because pollutants are likely entering the Spring Valley High School from the Wells Cargo asphalt plant operations located adjacent to the high school. This is based on recent results, from continuous indoor air quality monitoring (conducted from November 17, 2017 to December 4, 2017) out of the Dean's office, showing concentrations for Volatile Organic Compounds (VOCs) and Particulate Matter less than 10 microns (PM10) that are above industry guidelines and Federal standards. Readings were taken every 15 minutes with over 1,600 data points, of which the maximum reading for VOCs was 1,312 parts per billion, and the maximum reading for PM10 was 53.6 microgram/cubic meter. A detailed report can be provided upon request.

In addition, this appeal is also requested since this campus has approximately 2,510 students and 169 employees, and there are at least 365 individuals on our campus daily that have respiratory issues which we are attempting to manage.

3. Appellant Certification Statement. By signing this appeal request, the signatory acknowledges and certifies the following:

- a. A filing fee of \$140.00 must accompany this appeal request, which is non-refundable. **Cash payments are not accepted.** Checks and money orders must be made payable to the Department of Air Quality. **Only Visa and Mastercard credit cards may be accepted as payment.** Visa or Mastercard payments must be made at the department main office when the appeal request is submitted in person.
- b. The appeal request with full payment must be delivered or mailed to the Department of Air Quality, 4701 W. Russell Road, Suite 200, Las Vegas, NV 89118.
- c. The appellant or a representative of the appellant must be present at the hearing board meeting to answer any questions by the Air Pollution Control Hearing Board Members. **Please include any supporting documentation with this form for distribution to the respective board members.** Appeal request must be received by the department within 10 days of the date of the Final Action Report.
- d. I affirm that all statements made in this appeal request, including any supporting documentation, are true and complete to the best of my knowledge.

Appellant Certification

 Appellant's Signature	12/8/2017 Signature Date
---	---



RECEIPT

Clark County Nevada Department of Air Quality

4701 W Russell Road, Suite 200, Las Vegas, NV 89118
 Phone (702) 455-5942 Fax (702) 383-9994
 AirQuality@clarkcountynv.gov

Facility Information Source ID: 00012

GUY WELLS
 WELLS CARGO INC
 9127 W RUSSELL RD STE 210
 LAS VEGAS NV 89148

WELLS CARGO INC
 7770 W SPRING MOUNTAIN RD
 LAS VEGAS, NV 89117

Invoice #	Invoice Date	Invoice By	Invoice Type	Due Date
027745	12/8/2017	GREEN	STATIONARY SOURCE ENFORCEMENT	1/8/2018

Quantity	Description	Fee Code	Fee	Total
1	HEARING BOARD REQUEST	AGHB01	\$140.00	\$140.00
	12/08/2017 MASTERCARD CREDIT CARD (3476 / 072259)	PAYMENT		(\$140.00)

Notes: 12/14/17 HB; Wells Cargo, Inc. Appeal of Control Officer's Permitting Decision (Source ID: 12).

Subtotal:	\$140.00
Paid:	(\$140.00)
Adjustments:	\$0.00
Balance Due:	\$0.00

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**BEFORE THE CLARK COUNTY
AIR POLLUTION CONTROL HEARING BOARD**

In re:
Appeal of Synthetic Minor Source Permit Issued
to Wells Cargo, Inc. (Source: 12) by Lori
Headrick, Director, Environmental Services,
Clark County School District.

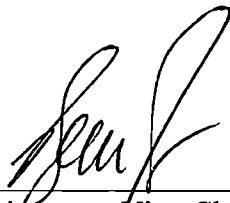
**ORDER GRANTING
MOTION TO INTERVENE**

On December 8, 2017, Lori Headrick, Director, Environmental Services, Clark County School District (**Appellant**) filed an appeal of the Synthetic Minor Source Permit (**Permit**) issued on December 1, 2017, by the Clark County Department of Air Quality (**Air Quality**) to Wells Cargo, Inc. (**Wells**).

On December 13, 2017, Wells Cargo, Inc. (**Wells**) filed a Motion to Intervene with the Air Pollution Control Hearing Board (**Board**). Neither Air Quality nor Appellant objected to the intervention, and as shown in the Motion to Intervene, Wells is directly impacted and has a direct and substantial interest in the appeal because it owns and operates the facility for which the Permit was issued.

Based on the foregoing, it is hereby ordered that the Motion to Intervene filed by Wells is GRANTED and Wells will be permitted to participate in this appeal as an intervener.

Dated this 14th day of December, 2017.



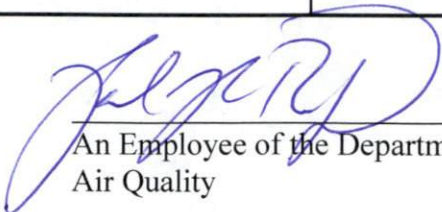
Chairman or Vice-Chairman
Clark County Air Pollution Control Hearing Board

CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of December, 2017, I served a copy of the foregoing

ORDER GRANTING MOTION TO INTERVENE as follows:

PARTY OR ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director, Environmental Services, Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>3:55 p.m.</u>
Linda Bullen, Esq. Bullen Law, LLC 8635 W. Sahara Ave., #454 Las Vegas, NV 89117 linda@bullenlaw.com	<i>Wells Cargo, Inc.</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email <u>3:55 p.m.</u>
Trent Scarlett Phil Groff Guy Wells Wells Cargo, Inc. 9127 West Russell Road, Ste. 210 Las Vegas, NV 89148-1240 TScarlett@wcilv.com PGroff@wcilv.com GWells@wcilv.com		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>3:55 p.m.</u>
Leslie A. Nielsen Deputy District Attorney 500 S. Grand Central Pkwy. 5 th Flr. Las Vegas, NV 89106 Leslie.Nielsen@clarkcountyda.com Attorneys for Department of Air Quality	<i>Department of Air Quality</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>3:55 p.m.</u>



An Employee of the Department of
Air Quality

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**BEFORE THE CLARK COUNTY
AIR POLLUTION CONTROL HEARING BOARD**

In re:

Appeal of Synthetic Minor Source Permit Issued to Wells Cargo, Inc. (Source: 12) by Lori Headrick, Director, Environmental Services, Clark County School District.

**ORDER REGARDING
BRIEFING SCHEDULE**

On December 8, 2017, Lori Headrick, Director, Environmental Services, Clark County School District (**Appellant**) filed an appeal of the Synthetic Minor Source Permit (**Permit**) issued on December 1, 2017, by the Clark County Department of Air Quality (**Air Quality**) to Wells Cargo, Inc. (**Wells**).

On December 13, 2017, Air Quality filed a Motion for Briefing Schedule. Having considered Air Quality's Motion for Briefing Schedule and good cause appearing therefor,

IT IS HEREBY ORDERED:

1. On or before Thursday, December 28, 2017, Appellant shall file an opening brief containing a detailed statement of the issue(s) to be raised during the hearing.
2. On or before Thursday, January 11, 2018, Air Quality and any interested party permitted by this Hearing Board to intervene in this matter shall each file a responsive brief.
3. On or before Thursday, January 18, 2018, Appellant may file a reply brief.
4. On or before Thursday, January 25, 2018, each party shall exchange with all other parties:
 - (a) notice of the identity of each person who will offer direct oral testimony at the hearing, and
 - (b) copies of each exhibit the party intends to offer as evidence at the hearing.
5. The hearing in this matter is scheduled for February 8, 2018, at 1:30 p.m.

Dated this 14th day of December, 2017.



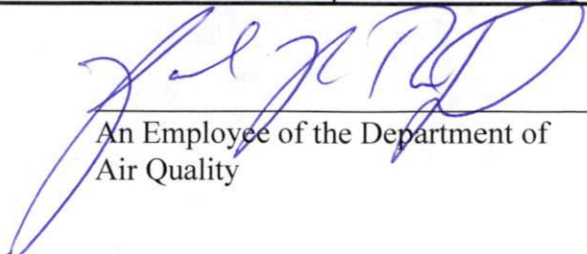
 Chairman or Vice-Chairman
 Clark County Air Pollution Control Hearing Board

CERTIFICATE OF SERVICE


I hereby certify that on this 14 day of December, 2017, I served a copy of the foregoing

ORDER REGARDING BRIEFING SCHEDULE as follows:

PARTY OR ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director, Environmental Services, Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>3:55 p.m.</u>
Linda Bullen, Esq. Bullen Law, LLC 8635 W. Sahara Ave., #454 Las Vegas, NV 89117 linda@bullenlaw.com	<i>Wells Cargo, Inc.</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email <u>3:55 p.m.</u>
Trent Scarlett Phil Groff Guy Wells Wells Cargo, Inc. 9127 West Russell Road, Ste. 210 Las Vegas, NV 89148-1240 TScarlett@wcilv.com PGroff@wcilv.com GWells@wcilv.com		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>3:55 p.m.</u>
Leslie A. Nielsen, ESQ. Deputy District Attorney 500 S. Grand Central Pkwy. 5 th Flr. Las Vegas, NV 89106 Leslie.Nielsen@clarkcountyda.com Attorneys for Department of Air Quality	<i>Department of Air Quality</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>3:55 p.m.</u>


An Employee of the Department of
Air Quality

1 Carlos L. McDade, Esq.
2 Nevada Bar No. 11205
3 CLARK COUNTY SCHOOL DISTRICT
4 OFFICE OF THE GENERAL COUNSEL
5 5100 West Sahara Avenue
6 Las Vegas, Nevada 89146
7 Telephone: (702) 799-5373
8 Facsimile: (702) 799-5505
9 *Attorneys for Appellant*

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7 **BEFORE THE CLARK COUNTY**
8 **AIR POLLUTION CONTROL HEARING BOARD**

9)
10 In re:)
11)
12 Appeal of Synthetic Minor Source Permit Issued) **APPELLANT'S OPENING BRIEF**
13 to Wells Cargo, Inc. (Source: 12) by Lori)
14 Headrick, Director, Environmental Services,)
15 Clark County School District.)

16 Clark County School District ("CCSD" or "Appellant") hereby submits this Opening Brief
17 on its Appeal of the issuance of the Synthetic Minor Source Permit, Source ID #00012 (Source
18 12) pursuant to Section 12.1 of the Clark County Air Quality Regulations, to Wells Cargo by
19 Clark County Department of Air Quality (DAQ).

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. INTRODUCTION**

22 Appellant files this appeal and respectfully requests the Clark County Air Pollution
23 Control Hearing Board consider whether, under the Synthetic Minor Source Permit (Source 12),
24 issued to Wells Cargo (the "Source") by Clark County Department of Air Quality (DAQ), (1) the
25 modeling for particulate emissions included operations on Parcel No. 163-15-101-001 and Parcel
26 No. 163-15-201-001, (2) the source is meeting NAAQS specifically for particulate matter and
27 hazardous air pollutants (HAP) emissions, and (3) the permit should include requirements for
28

1 monitoring in order to timely notify the public including a nearby CCSD school if exceedances
2 occur.

3 The federal Clean Air Act established the NAAQS for air pollutants considered to be
4 harmful to public health. The primary NAAQS standards are developed to protect public health,
5 including the health of sensitive populations such as asthmatics, children, and the elderly. DAQ is
6 bound by federal law to enforce the NAAQS standards. In order to test, monitor, record keep and
7 report compliance with the NAAQS, the states are required to issue permits to sources that emit
8 air pollution. 40 Code of Federal Regulations Part 70.

10 Minor sources are defined in Section 12.1.1. (c) of the Clark County Air Quality
11 Regulations (“AQR”): “Minor source” means a stationary source that is not required to obtain an
12 “Authority to Construct” pursuant to Section 12.4.3. or a Part 70 Operating Permit and that has a
13 potential to emit equal to or greater than the following levels for... [pollutants listed in
14 subparagraph (c)]”.

16 Wells Cargo (the “Source”) is a producer of asphalt and aggregate products on the
17 property adjacent to Spring Valley High School. The facility has been operating since 1965
18 under the Clark County Department of Air Quality Synthetic Minor Source Permit (Source 12).
19 The Source has voluntarily imposed upon itself operational limits that constitute a Voluntarily
20 Accepted Emission Limit pursuant to Section 12.1.7. of the AQR.

22 DAQ recently (December 1, 2017) renewed the permit that includes increased production
23 of the current asphalt plant. Appellant submitted a timely appeal on December 8, 2017.

1 **II. DISCUSSION**

2 A. Particulates

3
4 DAQ required that the Source conduct air dispersion modeling to determine if emissions
5 from the Source meet the NAAQS standards. According to the Final Air Report, this modeling
6 determined that Wells Cargo can meet the short-term NAAQS standard for particulate matter if
7 operations in the North Pit and Aggregate Plant, Rocky Mountain Crushing Plant, and the Lime
8 Marination Plant are limited to 9, 16 and 12 hours, respectively. This modeling also concluded
9 that, with the permit limitations in place, Wells Cargo is in compliance with the federal standards
10 for all criteria pollutants in both short term and long-term averaging.
11

12 The Technical Support Document (TDS) lists (on page 5) a 51 acres condition for
13 Emission Unit AG66. However, operations described in the permit (on page 2) appear to be
14 occurring entirely on Parcel No. 163-15-101-001 and Parcel No. 163-15-201-001. The parcels
15 total over 142 acres (according to Clark County's Openweb website). The modeling
16 methodology used to estimate the fugitive air emissions (which are not included in the emissions
17 from stockpiles) should be included. Therefore, the model is based upon 51 acres, which is
18 approximately one-third less than the actual 142 acres of operation. This is not representative of
19 the site operations and the actual site operations have not accurately been modeled. Therefore,
20 Appellant has concerns regarding the conclusions of the modeling that the emissions are in
21 compliance with standards.
22

23 This Source is described as construction sand and gravel mining, asphalt paving and block
24 manufacturing, landfill type operations on approximately 140 acres of disturbed open area. The
25 presence of large areas of bladed ground, stockpiles, trucks hauling bulk materials, and heavy
26 equipment traffic create significant amounts of fugitive dust with the potential to exceed the
27 NAAQS for particulate matter. As issued, the current conditions of the permit do not include
28

1 Best Available Control Technologies for fugitive dust, nor does it include a requirement to have a
2 Dust Control Monitor (AQR 94.7.5) and to submit a Dust Mitigation Plan (AQR 90.2.2 and
3 94.5.4) containing Best Management Practice requirements to adequately address fugitive dust,
4 and other applicable requirements in AQR 90 and 94.

5 B. Volatile Organic Compounds

6
7 The Final Action Report (FAR) states that the Las Vegas Valley's air quality is monitored
8 through a network of monitoring stations which show that Clark County is currently in
9 compliance with the NAAQS for all criteria pollutants. The DAQ response to public concerns
10 regarding harmful air pollutants thusly: "[o]ut of an abundance of caution, the [DAQ] required
11 that the source conduct air dispersion modeling to determine if it meets the NAAQS standards."
12 DAQ continued "This modeling also concluded that, with the permit limitations in place, Wells
13 Cargo is in compliance with the federal standards for all criteria pollutants in both short-term and
14 long-term averaging." The operation limitations are included in Section IV-A-3, Operational
15 Limitations, in the permit. Due to Clark County being in compliance with NAAQS standards, no
16 monitoring of actual air pollution emissions is required in the permit issued to the Source.
17

18 Appellant has conducted indoor air quality monitoring inside Spring Valley High School,
19 which is adjacent the Source. Testing was conducted recently from November 17, 2017 to
20 December 4, 2017. That air monitoring showed concentrations for Volatile Organic Compounds
21 ("VOCs") as well as particulate matter (PM 10) that is above industry guidelines and Federal
22 Standards. Readings were taken every 15 minutes with over 1,600 data points, of which the
23 maximum reading for VOCs was 1,312 parts per billion, and the maximum reading for PM 10
24 was 53.6 microgram/cubic meter.
25

26 This initial indoor test does not establish a cause for the high VOC readings and Appellant
27 does not herein attempt to identify a cause for the high reading. Appellant requests that the
28

1 Board consider whether requiring monitoring of NAAQS (specifically particulate matter and
2 VOCs) in the permit is prudent given that the Source is a synthetic minor for VOCs (see Permit,
3 page 9 of 24) and the administrative record does not indicate monitoring of actual VOC emissions
4 has ever been accomplished. Additionally, appellant notes that under Section 21.1.3.6.,
5 Application Contents, subsection (c), a significant permit revision should include a description
6 and quantification of actual emissions of all regulated air pollutants before and after the
7 modification. Therefore, appellant requests that a requirement of appropriate on-site monitoring
8 of actual emissions be included in the permit.
9

10 C. Notice of Exceedances

11 The permit does not contain requirements to inform the public of unhealthy air at the time
12 of exceedance. The public should be informed whenever the NAAQS are exceeded and the air
13 quality is unhealthy beyond the boundaries of the Source's facility. The DAQ's current
14 monitoring stations should not be considered to measure exceedances with NAAQS from the
15 Source since the monitors are located a considerable distance. On-site monitoring would provide
16 the ability to notify the public of actual exceedances of emission limits in order to take
17 precautionary measures.
18


19 The FAR also states that there is no applicable site-specific perimeter monitoring required
20 by the AQRs, but DAQ is bound by federal law to enforce the NAAQS standards at the time of
21 exceedance. On-site monitoring would allow the DAQ to receive information regarding actual
22 emissions and provide it to the public. Advanced monitoring technologies such as geospatial
23 measurement of air pollution, fence-line monitoring, infrared cameras, and photoionization
24 detectors or some type of continuous emission monitoring system could be considered for inclusion
25 in the permit.
26
27
28

1 **CONCLUSION**

2 Appellant requests this Board find that (1) the modeling for particulate emissions should
3 have included operations on Parcel No. 163-15-101-001 and Parcel No. 163-15-201-001 and
4 should be reaccomplished, (2) the permit should require appropriate on-site monitoring for
5 volatile organic compounds emissions and particulate matter, and (3) the permit should include
6 requirements for monitoring in order to provide DAQ with the ability to timely notify the public
7 and CCSD schools when exceedances occur.
8

9 DATED this 28th day of December, 2017.

10
11 **CLARK COUNTY SCHOOL DISTRICT**

12
13 By: 
14 Carlos L. McDade
15 General Counsel
16 5100 West Sahara Avenue
17 Las Vegas, Nevada 89146
18 Attorneys for Appellant, Clark County School District
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of CLARK COUNTY SCHOOL DISTRICT and that on this 28th day of December, 2017, I served a true and correct copy of **Appellant's Opening Brief** as follows:

PARTY OR ATTORNEY OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director Environmental Services Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net	<i>Appellant</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>2:55</u> p.m.
Linda Bullen, Esq. Bullen Law, LLC 8635 W. Sahara Avenue #454 Las Vegas, NV 89117 linda@bullenlaw.com	<i>Wells Cargo, Inc.</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>2:55</u> p.m.
Trent Scarlett Phil Groff Guy Wells Wells Cargo, Inc. 9127 West Russell Road Suite 210 Las Vegas, NV 89148-1240 TScarlett@wcilv.com PGroff@wcilv.com GWells@wcilv.com		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>2:55</u> p.m.
Leslie A. Nielsen, Esq. Deputy District Attorney 500 S. Grand Parkway, 5 th FL. Las Vegas, NV 89106 Leslie.Nielsen@clarkcountyda.com Attorneys for Department of Air Quality	<i>Department of Air Quality</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>2:55</u> p.m.


A Clark County School District employee

1 **BEFORE THE CLARK COUNTY**
2 **AIR POLLUTION CONTROL HEARING BOARD**

3 In re:

4 Appeal of Synthetic Minor Source Permit Issued
5 to Wells Cargo, Inc. (Source: 12) by Lori
6 Headrick, Director, Environmental Services,
Clark County School District.

Date of Hearing: February 8, 2018

7 **CLARK COUNTY DEPARTMENT OF AIR QUALITY'S**
8 **RESPONSIVE BRIEF**

9 The Clark County Department of Air Quality (**Air Quality**), by and through its counsel Clark
10 County District Attorney Steven B. Wolfson and Leslie A. Nielsen, Deputy District Attorney, submits
11 this brief responding to the Appeal and Opening Brief filed by the Clark County School District
12 (**CCSD**). As shown below, (1) Air Quality issued the synthetic minor source permit (**Permit**) in
13 compliance with applicable law, (2) CCSD failed to cite to any specific law violated by issuance of
14 the Permit, (3) the dispersion modeling properly accounted for all emission units and activities across
15 the entire 142-acre site, (4) no post-construction monitoring of particulate matter (**PM**) or volatile
16 organic compounds (**VOCs**) is warranted, (5) to require the post-construction monitoring of a minor
17 source as suggested by CCSD would violate Air Quality's current permitting regulations, (6) CCSD
18 has not shown that the Control Officer abused her discretion in issuing the Permit, and (7) in any
19 event, CCSD failed to raise any issue during the public comment period and therefore has no standing
20 to appeal.

21 **ISSUES PRESENTED**

- 22 1. *Whether the Permit complies with applicable law?*
23 2. *Whether CCSD has shown that the Control Officer abused her discretion in issuing*
24 *the Permit?*

25 **BACKGROUND**

26 Wells Cargo, Inc. (**Wells Cargo**) owns and operates a stationary source of regulated air
27 pollutants consisting of an aggregate processing facility and hot mix asphalt plant at 7770 West Spring
28 Mountain Road, Las Vegas, Nevada (**Source**). Wells Cargo has been operating at this location since

1 1954.¹ The Source consists of a quarry, aggregate crushing and processing operations, a hot mix
2 asphalt plant, lime marination processes, stockpiles and haul roads. Consistent with prior permitting
3 actions, Wells Cargo has proposed material throughput and operational-hour limits as voluntarily-
4 accepted emissions limitations (VAELs) in its permit applications under AQR Section 12.1.7 to avoid
5 major source status. Due to Wells Cargo having taken VAELs allowing it to avoid major source
6 status, it is currently classified as a synthetic minor source for PM₁₀, NO_x, CO and VOC. It is an
7 SM80 source (above 80% of the major source threshold) for CO and is a true minor source of PM_{2.5}
8 and SO₂.²

9 **A. Application**

10 On August 15, 2016, Wells Cargo submitted its application to initiate a significant revision to
11 its existing operating permit. Because Wells Cargo subsequently requested to renew its existing
12 permit due to expire on August 7, 2017, Air Quality processed the applications for significant revision
13 and for renewal concurrently.³ Ultimately, the permit revision proposed by Wells Cargo included
14 adding a second hot-mix asphalt plant, increasing material throughput limits for the existing hot-mix
15 asphalt plant, removing all diesel-powered electrical generators, paving all haul roads, requiring all
16 raw materials fed into the aggregate processing plant to contain a minimum of 3 percent moisture,
17 adding a baghouse to control particulate emissions from a crusher, using new emission factors based
18 on onsite performance testing to more accurately quantify particulate matter emissions, adding or
19 removing miscellaneous processing equipment, and increasing the total miles traveled on site by haul
20 trucks.⁴

21 **B. Public Participation**

22 Pursuant to Clark County Air Quality Regulations (AQRs) Section 12.1.5.3 and prior to
23 issuance of the Permit, Air Quality published notice of its proposed action and preliminary
24

25 ¹ Amended Administrative Record (AAR), page 2369. All similar references are to page numbers in the Amended
26 Administrative Record.

27 ² A "major stationary source" subject to Part 70 is one that has the potential to emit (PTE) 100 TPY of any criteria pollutant,
including nitrogen dioxide, ozone, sulfur dioxide, lead, carbon monoxide, PM_{2.5} and PM₁₀, and precursors of ozone
(VOC and NOX) and PM_{2.5} (SO₂ & NO_x). See 42 U.S.C.S. § 7602(j).

28 ³ AAR, pages 421, 32-33.

⁴ AAR, pages 32-33.

1 determination to issue the Permit. This notice was published in the Las Vegas Review-Journal on
2 October 27, 2017,⁵ and on Air Quality's web page during a 30-day public comment period expiring
3 on November 27, 2017. The notice solicited public comment either in writing during the public
4 comment period or orally during a public hearing held on November 27, 2017.⁶ Air Quality prepared
5 a Final Action Report containing detailed responses to all written and oral comments received before
6 the end of the 30-day public comment period.⁷ CCSD submitted no written comments and no
7 representative appeared at the public hearing. On December 1, 2017, having reviewed and considered
8 all comments and having determined that all applicable law and regulations had been satisfied, Air
9 Quality issued the Permit to Wells Cargo.

10 **C. Appeal**

11 On December 8, 2017, Lori Headrick, Director, Environmental Services, Clark County School
12 District filed an appeal of the Control Officer's permitting decision (**Appeal**). The Appeal asserted
13 that "pollutants are likely entering" the high school from the Source based solely on indoor air quality
14 monitoring conducted during the three weeks preceding the Appeal filing. In the Appeal, Headrick
15 offered to provide a detailed report of this testing, but CCSD's Opening Brief discounted the testing's
16 relevance by conceding there was no causal link shown between the Source's emissions and the
17 school's indoor air quality.⁸ There is no mention of the report in the Opening Brief, it is not in the
18 Administrative Record, and no one other than CCSD staff has seen it. Under these circumstances, any
19 consideration by this Board of the referenced indoor air quality test results in reversing the permitting
20 action would constitute reversible error. Air Quality respectfully asks this Board to disregard this
21 testing, except to the extent Air Quality argues below that the single maximum indoor air quality PM₁₀
22 and VOC readings do not warrant any action by Air Quality or by this Board.

23
24
25 ⁵ AAR, page 4646-47.

26 ⁶ Aware of neighborhood concerns about the pending permit application, Air Quality staff scheduled the public hearing
27 although no public hearing is required before issuance of a minor source permit unless a request is made under AQR
Section 12.1.5.3(a)(1)(J).

28 ⁷ AAR, pages 64-80.

⁸ "This initial indoor test does not establish a cause for the high VOC readings and Appellant does not herein attempt to
identify a cause for the high reading." Opening Brief, p. 4.

1 **ARGUMENT**

2 **Standard of Review**

3 The Clark County Air Pollution Control Hearing Board should limit its review of the Control
4 Officer's issuance of the Permit to determine only whether the Control Officer acted arbitrarily or
5 capriciously, thus abusing her discretion. *Titanium Metals Corp. v. Clark Co. Dist. Bd. Of Health Air*
6 *Pollution Control Hearing Bd.*, 99 Nev. 397, 663 P.2d 355, 357 (1983). Additionally, in the context
7 of a challenge to the Nevada Division of Environmental Protection's issuance of a wastewater
8 discharge permit, the Nevada Supreme Court has held that "'great weight' should be given to an
9 agency's interpretation of its own regulations." *Helms v. Div. of Env'tl. Protection*, 109 Nev. 310, 313,
10 849 P.2d 279, 282 (1993); accord *In re La. Dep't of Env'tl. Quality Permitting Decision*, 58 So. 3d
11 1155 (Ct. App. La. 2011)(in the context of a challenge to issuance of a synthetic minor source permit,
12 "considerable weight is afforded to an administrative agency's construction of a statutory scheme that
13 it is entrusted to administer").

14 **Jurisdiction**

15 This Board has jurisdiction to hear this appeal under AQR Section 7.10:⁹

16 **I. THE PERMIT COMPLIES WITH APPLICABLE LAW**

17 The Clean Air Act (Act) creates a partnership between the states and the federal government
18 for the regulation of air pollution.¹⁰ Under the Act states must enact legislation and regulations to
19 implement the air quality standards set by Congress and the EPA.¹¹ The Act requires states to submit
20 to the EPA an implementation plan that includes enforceable emission limitations and other control
21 measures, means, or techniques as may be necessary or appropriate to meet the applicable
22

23
24 ⁹ Section 7.10 states, in part:

25 7.10 Appeals

26 7.10.1 Any person aggrieved by:

27 7.10.1.1 The issuance, denial, renewal, suspension or revocation of an Operating Permit; or

28 7.10.1.2 The issuance, modification or rescission of any other order by the Control Officer may appeal to the Air
Pollution control Hearing Board.

7.10.2 The Air Pollution Control Hearing Board shall decide the appeal, and may order the affirmance,
modification or reversal of any action taken by the Control Officer which is the subject of the appeal.

¹⁰ 42 U.S.C.S. § 7410.

¹¹ 42 U.S.C.S. § 7410(a)(2)(A).

1 requirements of the Act.¹² After the EPA approves a state's regulatory and permitting program, the
2 state agency becomes the primary regulatory authority for interpreting and enforcing the program.¹³

3 Pursuant to NRS 445B.500(c), the Clark County Board of Commissioners is designated as the
4 lead air pollution control authority of Clark County. Clark County's current minor source permitting
5 program in AQR Section 12.1 was approved by the EPA by final rule adopted on October 17, 2014.¹⁴
6 The Director of Air Quality is designated as "Control Officer" charged with enforcement of the
7 AQRs.¹⁵

8 From receipt of the application on August 15, 2016 through Permit issuance on December 1,
9 2017, Air Quality scrutinized the application to determine compliance with AQR Section 12.1,
10 including whether emissions from this Source would interfere with maintenance of the National
11 Ambient Air Quality Standards (NAAQS) as required by AQR Section 12.1.5.1(a)(4).¹⁶ The EPA has
12 set NAAQS for six common air pollutants (known as criteria pollutants) including for PM₁₀ and ozone,
13 but none for VOCs or hazardous air pollutants (HAPs).¹⁷

14 Air Quality's scrutiny of the application for compliance with applicable law is evidenced in
15 the Amended Administrative Record by (1) the volume of Air Quality correspondence identifying
16 application deficiencies,¹⁸ along with Wells Cargo's responses and supplementation,¹⁹ (2) multiple

17
18 ¹² 42 U.S.C.S. § 7410(a)(2)(A).

19 ¹³ 42 U.S.C.S. § 7410(a)(2)(A).

20 ¹⁴ 40 CFR §52.1470 available at: <https://www.law.cornell.edu/cfr/text/40/52.1470>.

21 ¹⁵ AQR Section 4.1.

22 ¹⁶ "12.1.5.1 Action on Application

23 (a) A new minor source permit, significant permit revision, or permit renewal may be issued only if all of the following
24 conditions have been met:

25 (1) The Control Officer has received a complete application as prescribed by Section 12.1.3.3;

26 (2) The Control Officer has complied with the requirements for public participation under Section 12.1.5.3 as
27 applicable;

28 (3) The Control Officer has determined that the conditions of the permit provide for compliance with all applicable
requirements; and

(4) The Control Officer has determined that the source or emission units will not interfere with attainment and
maintenance of the NAAQS, and has imposed emission limitations in accordance with Sections 12.1.4.1(c)
and 12.1.4.1(f).

¹⁷ 40 CFR Part 50 available at: <https://www.law.cornell.edu/cfr/text/40/part-50>. CCSD is confused in asserting there are
NAAQS for hazardous air pollutants and VOCs. See Opening Brief at page 1, line 28 ("whether . . . the source is
meeting NAAQS specifically for . . . hazardous air pollutants (HAP) emissions . . ."), and at page 4, line 28 through
page 5, lines 1-2 ("Appellant requests that the Board consider whether requiring monitoring of NAAQS (specifically
particulate matter and VOCs) in the permit is prudent given that the Source is a synthetic minor for VOCs . . ." They
also appear confused in assuming VOCs are HAPs or they incorrectly use these terms interchangeably.

¹⁸ See, e.g., AAR, pages 953, 959, 985, 993, 1001, 1004, 1018, 1023, and 1053.

¹⁹ See, e.g., AAR, pages 297, 327, 329, 341, 421, 423, 528, 638, 842, 850, 866, and 1350.

1 meetings as referenced in the correspondence, (3) Air Quality's requirement that Wells Cargo conduct
2 ambient air dispersion modeling,²⁰ and (4) the site-specific performance testing to develop appropriate
3 emission factors for the aggregate processing equipment,²¹ all of which resulted in substantial revision
4 to the original application submitted on August 15, 2016.

5 **A. The Dispersion Modeling Showing no NAAQS Exceedance Properly Accounted**
6 **for all Emission Units and Activities Across the Entire 142-Acre Site**

7 CCSD has failed to cite to any specific regulation or permit condition to warrant reversal of
8 the permitting action. Instead, CCSD *suggests* that the Permit might result in a NAAQS exceedance.
9 CCSD asks the Board to "consider whether" monitoring should be required to ensure there is no
10 NAAQS exceedance.²² Because Wells Cargo's modeling, as independently verified by Air Quality,
11 was based on appropriate assumptions using appropriate modeling methods, this is not a credible
12 suggestion.

13 CCSD's only critique of Air Quality's modeling conclusions faults Air Quality for having
14 modeled only the "fugitive air emissions" from the "51 acres condition for Emission Unit AG66,"
15 rather than from the entire 142-acre site.²³ It isn't clear whether CCSD believes the problem is merely
16 that the 51-acre estimate is too small or that Air Quality modeled the Source's impacts based solely
17 on the emissions from 51-acres of stockpiles rather than from all the Source's emissions.²⁴ By making
18 either of these arguments, CCSD has, unfortunately, completely misunderstood Air Quality's
19 regulations and the modeling process.

20 The emission unit AG66 is sometimes described in shorthand by Air Quality only as
21 "stockpiles," but as shown in Permit condition IV-A-3(o) on page 17, emission unit AG66 includes
22

23 ²⁰ AAR, Page 959.

24 ²¹ See, e.g., AAR, page 1004-1017.

25 ²² This is posed not as an argument, but merely as a suggestion. CSD asks the Board to "*consider whether . . . the source*
26 *is meeting NAAQS specifically for particulate matter and hazardous air pollutants . . .*" on page 1, lines 27-28. Again,
27 on page 4, line 28 through page 5, lines 1-2, CCSD asks the Board to "*consider whether requiring monitoring of*
28 *NAAQS (specifically particulate matter and VOCs) . . . is prudent . . .*" (Emphasis added)

²³ See Opening Brief, middle of page 3.

²⁴ CCSD's argument is confusing, particularly as stated on page 3, lines 15-16: "The modeling methodology used to
estimate the fugitive air emissions (which are not included in the emissions from stockpiles) should be included." We
presume CCSD means that all emissions (and not just those from the 51 acres of stockpiles) should be accounted for
in the modeling.

1 both disturbed surfaces and stockpiles and must be *limited* at all times to 51 acres.²⁵ The term
2 “disturbed surface area” is defined in AQR Section 0 as:

3 “a portion of the earth’s surface (or material placed thereupon) which is being moved,
4 uncovered, *destabilized*, or otherwise modified from its undisturbed native condition,
thereby increasing the potential for the emission of fugitive dust.” (Emphasis added)

5 Under this definition, disturbed surfaces do *not* include stabilized surfaces of which there are many at
6 the Source. Permit condition IV-B-17 requires Wells Cargo to pave or to apply gravel, a dust palliative
7 or water to form a crust on any disturbed open area. These areas are then deemed to be stabilized and
8 are not counted against the 51-acre limit on disturbed surfaces and stockpiles in Permit condition IV-
9 A-3(o). Likewise, Permit conditions IV-B-18 and IV-B-19 require stabilization of inactive disturbed
10 surfaces and unpaved parking lots, respectively. Again, these stabilized surfaces are not considered
11 to be disturbed surfaces and are unlikely to contribute significantly to fugitive dust emissions. Air
12 Quality assumes that only portions of the site are disturbed at any one time as determined by the Drop
13 Ball Test prescribed in Permit condition IV-C-16.

14 Assuming CCSD is arguing the 51-acre estimated size of the emission unit labeled AG66
15 representing stockpiles and disturbed areas is too small and thus under-quantifies emissions, Air
16 Quality staff has plotted all the areas presumed to be stockpiles and disturbed surfaces as of March 17,
17 2017,²⁶ on both parcels.²⁷ Based on this effort, Air Quality estimates that only 43.25 acres were in
18 this condition. By arguing there are “140 acres of disturbed open area,”²⁸ CCSD shows its error in
19 incorrectly assuming (1) stabilized surfaces *are* included in Air Quality’s definition of “disturbed
20 surface area”, and (2) the emissions associated with haul trucks and heavy equipment traffic operating
21 across the 142-acre site have not been quantified or modeled.²⁹ In fact, there are multiple permitted
22 emission units representing exactly what CCSD is describing which were included in Air Quality’s

23
24
25 ²⁵ Air Quality’s Compliance and Enforcement Division enforces these types of permit conditions against all stationary
26 sources, including having issued a notice of violation to Wells Cargo in early 2012 for, among other things, exceeding
27 permit limits on the total disturbed acreage. The notice of violation resulted in payment of a penalty of \$16,000 and
28 the amendment of the permit to more accurately describe the disturbed area and more accurately quantify the associated
emissions.

²⁶ This is the aerial photo date according to Clark County GIS in OpenDoor.

²⁷ See Exhibit A attached hereto and incorporated herein by reference.

²⁸ Opening Brief, page 3, lines 23-24.

²⁹ Opening Brief, page 3, lines 26-28.

1 modeling. For example, emission unit LF94 for "Truck Unloading and Transfer over edge" represents
2 placement of waste material into the landfill,³⁰ emission units AG1, AG75, HM102, HM95, HM103,
3 HM97, HA01, TT2, RAP1 involve front-end loader activities,³¹ and emission unit MB02 for "Haul
4 Roads; Paved" represents 40,000 vehicles miles traveled on site each year.³²

5 As shown in Air Quality Modeler Vasant Rajagopalan's memorandum dated October 18, 2017
6 (Modeling Memo), the Source's emissions do not exceed the NAAQS.³³ On page 2 of the Modeling
7 Memo, the NAAQS for PM₁₀ is shown as 150 micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) (representing a 24-
8 hour average concentration).³⁴ When combined with the background concentration, the Source's
9 PM₁₀ potential impacts are 144.98 $\mu\text{g}/\text{m}^3$, thus not exceeding the 150 $\mu\text{g}/\text{m}^3$ standard.

10 The process used to model the Source's impact first requires plotting all emission units and
11 activities where they are located on the 142-acre site, including stacks, processing equipment, material
12 loading and unloading, vehicle miles traveled on haul roads, stockpiles and disturbed areas.³⁵ The
13 inclusion of all approximately 80 emission units and activities in the model is clearly shown over nine
14 pages in the Amended Administrative Record.³⁶ The first listed emission unit is shown on page 3177
15 as "Drum Dryer HMA I" and is preceded by two asterisks. The rest of the emission units and activities
16 are likewise preceded by two asterisks making them easy to spot, with the stockpiles and disturbed
17 surfaces being the last emission unit listed. These stockpiles and disturbed surfaces are labeled
18 "AG66_1" and "AG66_2" and are distributed evenly over the two separate parcels with references to
19 two separate coordinate locations.³⁷

20 The modeler then plotted 914 receptors³⁸ up to one kilometer away from the Source, including
21 along the fence line. The elevations of each of the emission units and activities and receptors were
22 then used to determine how the topography of the Source is represented. The model uses the

23 ³⁰ AAR, Page 50.

24 ³¹ AAR, pages 50-54.

25 ³² AAR, page 54.

26 ³³ AAR, pages 145-146.

27 ³⁴ 40 CFR §50.6(a) available at <https://www.law.cornell.edu/cfr/text/40/50.6>.

28 ³⁵ The stockpiles and disturbed areas were evenly distributed over both parcels. Because the Permit allows Wells Cargo to move the stockpiles and disturb new areas over time, the modeling assumptions are appropriate.

³⁶ AAR, pages 3177 through 3185.

³⁷ AAR, page 3185.

³⁸ The number of receptors used is shown on AAR, page 3203.

1 meteorological data for every hour over five years, including wind speed and direction, temperature
2 and pressure. The model estimates the PM₁₀ concentration at each receptor location. Finally, the
3 design concentration applicable to PM₁₀ (which takes the highest sixth highest reading from each
4 receptor) was used for comparison with the NAAQS.

5 Had CCSD asked during the public comment period whether the modeling accounted for all
6 emissions from the Source, Air Quality staff could have provided a complete explanation to allay
7 CCSD's concerns. This way, the misunderstanding and inconvenience to all involved in this appeal
8 process could have been avoided. The purpose of the public hearing and comment period is to provide
9 all relevant information to the public to avoid unnecessary litigation. CCSD should have asked all of
10 these questions before filing its appeal.

11 **B. No Monitoring of PM₁₀ is warranted**

12 CCSD asserts that the single maximum reading of 53.6 µg/m³ PM₁₀ inside the school exceeds
13 industry guidelines and federal standards without identifying which guidelines or standards were
14 exceeded. As explained above, the NAAQS for PM₁₀ is 150 µg/m³ based on a 24-hour average
15 concentration, so even the single maximum reading inside the school is well below the NAAQS for
16 PM₁₀. Indeed, the single maximum reading of 53.6 µg/m³ would be deemed by the EPA's Air Quality
17 Index to be in the "good" range of 0-54 µg/m³.³⁹

18 Additionally, the Source's PM₁₀ PTE is 38 TPY which is well below the 100 TPY Part 70
19 major source threshold.

20 **C. No Monitoring of VOCs is Warranted**

21 As this Board is probably aware, VOCs include a wide variety of chemicals emitted by a wide
22 array of products numbering in the thousands. Concentrations of many VOCs are consistently higher
23 indoors (up to ten times higher) than outdoors. Organic chemicals are widely used as ingredients in
24 household products, such as paints, varnishes and wax, cleaning, disinfecting, cosmetic, degreasing
25 and hobby products.⁴⁰ CCSD's single maximum reading of 1,300 ppb of VOCs does not speciate
26

27
28 ³⁹ See 40 CFR App. G to Part 58, Table 2 available at https://www.law.cornell.edu/cfr/text/40/appendix-G_to_part_58;
and 40 CFR §50.6(a) available at <https://www.law.cornell.edu/cfr/text/40/50.6>.

⁴⁰ See <https://www.epa.gov/indoor-air-quality-iaq/volatile-organic-compounds-impact-indoor-air-quality>.

1 which compounds were detected, so no OSHA exposure limits can be identified.

2 More relevant to Air Quality's responsibility for outdoor air, there is no NAAQS for VOCs,
3 but there is a NAAQS for ozone. Ozone is a criteria pollutant, but it is not directly emitted. Instead,
4 it is formed when NO_x and VOCs react in the presence of sunlight, meaning that VOCs are a *precursor*
5 for ozone. In order to address the ozone created by VOCs and NO_x emitted from any single source
6 in the context of modeling Prevention of Significant Deterioration (PSD) sources (not required of
7 Wells Cargo), the EPA has provided guidance to address single-source impacts on ozone.⁴¹ This
8 guidance involves the use of Modeled Emission Rates for Precursors (MERP) for evaluating a single
9 source's projected impacts. MERP values represent a level of precursor emissions that are not
10 expected to contribute significantly to levels of ozone. The most conservative MERP values in
11 predicting ozone formation in the western United States are 1,049 tons per year (TPY) of VOCs and
12 184 TPY of NO_x.⁴² When compared to the 31 TPY of VOCs and 18 TPY of NO_x emitted by the
13 Source,⁴³ these emissions are not even close to being deemed by the EPA to have a significant impact
14 on the formation of ozone to warrant modeling or monitoring.

15 CCSD argues that because the Source is classified as a synthetic minor source for VOCs, the
16 Board should consider whether to require monitoring of VOCs. As explained above, the Source's
17 VOC emissions total 31 TPY, which is well below the major source threshold of 100 TPY. A similar
18 argument was made by an entity challenging issuance of a synthetic minor source permit to a tank
19 farm in Louisiana in 2008. *In re La. Dep't of Env'tl. Quality Permitting Decision*, 58 So. 3d 1155 (Ct.
20 App. La. 2011). In rejecting the argument that major source requirements should apply to a facility
21 that was close to being a major source of VOC emissions, the court stated,

22 [T]he Petroplex facility is expected to emit 93.83 tons per year of VOCs, which is clearly
23 below the 100 ton-per-year threshold for major source status. Therefore, under this
24 criterion, the Petroplex facility is a minor source of air emissions and is not subject to
25 the enhanced requirements necessary for obtaining a major source permit.

26 ⁴¹ See Memorandum dated December 2, 2016, on "Guidance on the Development of Modeled Emission Rates for
27 Precursors (MERPs) as a Tier 1 Demonstration Tool for Ozone and PM_{2.5} under the PSD Permitting Program,"
available at https://www3.epa.gov/ttn/scram/guidance/guide/EPA454_R_16_006.pdf.

28 ⁴² See Revisions to the Guideline on Air Quality Models, Final Rule Webinar dated February 16, 2017, available at
https://www3.epa.gov/ttn/scram/appendix_w/2016/Appendix_W-WebinarPresentation.pdf, on page 41.

⁴³ AAR, page 12.

1 *Id.* The same rationale applies to CCSD's argument. In fact, the post-construction monitoring being
2 requested by CCSD requires VOC emissions to reach the 250 TPY threshold⁴⁴ for applicability to a
3 non-categorical source (such as Wells Cargo) of PSD permitting under AQR Section 12.2.12.2.⁴⁵

4 CCSD also cites to AQR Section 12.1.3.6(c) as support for its request to include an on-site
5 monitoring condition in the Permit.⁴⁶ CCSD does not explain how that regulation requires monitoring
6 nor does it recognize that the Technical Support Document (TSD) includes two tables containing the
7 required comparison between actual emissions before and after the revision.⁴⁷

8 **II. THE AQRs DO NOT AUTHORIZE AIR QUALITY TO IMPOSE ANY POST-
9 CONSTRUCTION MONITORING REQUIREMENTS ON A MINOR SOURCE**

10 On November 3, 2009, the Board of County Commissioners adopted an ordinance amending
11 the AQRs to revise the minor source permitting program by adopting a new Section 12.1.⁴⁸ Before
12 taking action to adopt the new rules, the Board of County Commissioners considered a Technical
13 Support Document (**Section 12.1 TSD**), which provided a detailed description of the changes
14 intended in the permitting of minor sources.⁴⁹ In describing the differences in how minor sources
15 would be treated under the new Section 12.1 as compared to the then-current Section 12, the Section
16 12.1 TSD states:

17 [T]he current rules establish a requirement that is reflected in the permit application for
18 pre- and *post-construction ambient monitoring* and a complete ambient impact analysis

19 ⁴⁴ The threshold for PSD permitting is stated in AQR 12.2.2(ff):

20 (ff) "Major stationary source"

(1) Means:

21 (B) Notwithstanding the stationary source size otherwise specified in paragraph (1)(A) of this
22 definition, any non-categorical stationary source which emits, or has the potential to emit, 250
tpy of more of a regulated NSR pollutant . . .

23 ⁴⁵ 12.2.12.2 Post-Construction Monitoring

The owner or operator of a major stationary source or major modification shall, after construction of the
major stationary source or major modification, conduct such ambient monitoring as the Control Officer
determines is necessary to determine the effect emissions from the major stationary source or major
modification may have, or are having, on air quality in any area.

24 ⁴⁶ Opening Brief, page 5, lines 4-9. CCSD referenced AQR Section 21.1.3.6, but the context points to Section 12.1.3.6(c).
25 It reads in relevant part: "[T]he application shall contain the following: . . . (2) A description and quantification of
26 actual emissions of all regulated air pollutants before and after the modification."

27 ⁴⁷ See Tables 10 and 11, AAR, page 55-56.

28 ⁴⁸ The agenda item describing the action by the Board of County Commissioners is available at:
<http://agenda.co.clark.nv.us/sirepub/cache/2/qzxsq5oxpeum5fuvo2pmuxdh/18426201102018082027762.PDF>

⁴⁹ The Technical Support Document describing the changes in the minor source permitting rule is available at:
<http://agenda.co.clark.nv.us/sirepub/cache/2/oxtgikid3bnsfvcux5s1mjzc/18426501112018022844589.PDF>

1 (on soils, vegetation, etc.) for minor sources. *Under the new rules, those requirements*
2 *will no longer be imposed.* (Emphasis added)

3 Under these circumstances where there is a clear record of the meaning of the minor source permitting
4 rules in AQR Section 12.1, the Control Officer would exceed her authority by requiring any post-
5 construction monitoring as requested by CCSD.

6 In *Hall v. EPA*, 33 F. App'x. 297, 299 (9th Cir. 2002), a concerned citizen made a remarkably
7 similar argument that the part 70 major source permit issued by the Clark County Health District
8 (CCHD) to Pacific Coast Building Products (PABCO) had to contain a post-construction monitoring
9 condition. . As a major source, the PABCO permitting action was governed by since-repealed AQR
10 Section 15.13.12(2) which contained the exact same language as the current PSD requirement in
11 Section 12.2.12.2.⁵⁰ In flatly rejecting Hall's argument that AQR Section 15.13.12(2) required the
12 CCHD control officer to impose post-construction monitoring, the Court of Appeals for the Ninth
13 Circuit stated,

14 That simply is not the law. The [post-construction monitoring requirement] is only
15 required when directed by the CCHD control officer, and there is discretion in that
16 official to demand or not demand monitoring by the permittee in any particular case
[citing Section 15.13.12(2)].

17 *Id.* Thus, even if AQR Section 12.1 *did* authorize the Control Officer to include such a
18 requirement, whether to include the permit condition would be left to her discretion, not
19 reviewable unless CCSD had shown such discretion had been abused.

20 **III. THE AQRs DO NOT REQUIRE BACT CONDITIONS BE INCLUDED IN THE** 21 **PERMIT**

22 By arguing Best Available Control Technology (BACT) conditions should have been
23 included in the Permit, CCSD again misconstrues the regulations applicable to minor stationary
24 sources. First, AQR Section 12.1 contains no such requirement. Second, the only AQR requiring
25 BACT conditions in permits apply only to major stationary sources.⁵¹ And third, CCSD's citation to
26
27

28 ⁵⁰ See footnote 45, *supra*.

⁵¹ AQR Section 12.2.9 and AQR Section 12.4.3.1(b)(1).

1 AQR Sections 90 and 94 are inapposite, because those sections do not apply to stationary sources.⁵²

2 In any event, as explained above, Permit conditions IV-B-17, 18 and 19 do require
3 stabilization methods (paving, application of gravel, a dust palliative or water to form a crust) on any
4 open area, unpaved parking lots and any disturbed surfaces. Once the stabilization method has been
5 applied, the area is considered to be stabilized, and not "disturbed" nor likely to cause significant
6 quantities of fugitive dust.

7 **IV. CCSD LACKS STANDING DUE TO ITS FAILURE TO RAISE THESE ISSUES AND**
8 **PARTICIPATE DURING THE PUBLIC COMMENT PERIOD**

9 As shown above, CCSD's Appeal asserted simply that pollutants were likely entering the high
10 school from the Source. The Opening Brief changed course by making entirely new arguments.
11 However, none of these arguments were raised during the public comment period. Although AQR
12 Section 7.10 contains no definition of an "aggrieved person," challenges to EPA-issued permits under
13 the Clean Air Act New Source Review program are governed by 40 CFR § 124.19. Under those
14 rules, appeals of permitting decisions must contain a showing that any issues being raised were raised
15 during the public comment period.⁵³ According to the EPA's Environmental Appeals Board, the
16 reason for this rule is that:

17
18
19 ⁵² See AQR Section 90.1.2 Applicability:

20 . . . The provisions of this Regulation shall not apply to stationary sources as defined in Section 0, except that these
21 control measures shall be considered as part of a BACT determination [to the extent the stationary source rule
22 expressly requires it]." Also, see AQR Section 94.2.1 Applicability, "This section of the Air Quality Regulations
23 applies to all construction activities . . ." and AQR Section 94.2.3, "This regulation shall not apply to operation of
24 emission units or activities permitted under any other section of the Air Quality Regulations, with the specific
25 exception that any construction activities that occur at such facilities . . . shall be subject to this regulation." Note
26 the definition of "construction activities" in Section 0 is "commercial and residential construction, flood control
27 construction, and highway construction as defined in Section 0.

28 ⁵³ See 40 CFR §124.13 Obligation to raise issues and provide information during the public comment period:

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the
Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is
inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments
supporting their position by the close of the public comment period (including any public hearing) under §
124.10. Any supporting materials which are submitted shall be included in full and may not be incorporated
by reference, unless they are already part of the administrative record in the same proceeding, or consist of
State or Federal statutes and regulations, EPA documents of general applicability, or other generally available
reference materials. Commenters shall make supporting materials not already included in the administrative
record available to EPA as directed by the Regional Administrator.

1 The effective, efficient and predictable administration of the permitting process demands
2 that the permit issuer be given the opportunity to address potential problems with draft
permits before they become final.

3 *In re Encogen Cogeneration Facility*, 1999 EAB PSD Appeal Nos. 98-22 through 98-24, p. 8.

4 By raising this argument, Air Quality is not asking the appeal be dismissed. Instead, Air
5 Quality asks this Board to rule on all arguments made herein, including that CCSD lacks standing,
6 and to render a decision on the merits in favor of Air Quality by affirming the issuance of the Permit.

7 CONCLUSION

8 With respect to CCSD's request to be notified of NAAQS exceedances, Air Quality maintains
9 a user-friendly website containing real-time air pollution data.⁵⁴ Air Quality encourages CCSD to
10 sign-up for EnviroFlash notifications to receive e-mails about daily pollution forecasts, alerts and
11 advisories about potential NAAQS exceedances based on an index showing unhealthy levels for
12 sensitive groups.⁵⁵

13 Air Quality's Compliance and Enforcement Division has been vigilant in responding to
14 neighborhood complaints about dust and odors emanating from the Source, conducting routine and
15 after-hours inspections, and taking aggressive enforcement action when warranted.⁵⁶ In fact, the
16 Compliance and Enforcement Division's recent enforcement actions in response to odor complaints
17 resulted in a hearing officer's order dated June 7, 2017, requiring Wells Cargo to install an odor
18 control system on its existing hot-mix asphalt plant estimated to cost between \$900,000 and
19 \$1,000,000. Air Quality is committed to enforcing all Permit conditions, including by closely
20 monitoring throughput and operational limits.

21 Throughout this permitting action, Air Quality has shown its commitment to the reasonable
22 enforcement of applicable regulations. This Board certainly understands the importance of treating
23 all sources consistently, according to predictable rules, and without arbitrarily imposing costly and
24
25
26

27 ⁵⁴ Available at http://airquality.clarkcountynv.gov/cgi-bin/aqi_map.pl.

28 ⁵⁵ Available at <http://lasvegas.enviroflash.info/signup.cfm>.

⁵⁶ A total of 12 notices of violation were issued and adjudicated between 2011 and 2017, seven of which were odor violations issued since December, 2016.

1 unnecessary burdens on the sources it regulates. Based on the arguments, information and
2 explanations provided above, Air Quality respectfully asks this Board to affirm its permitting action.

3 Dated this 11th day of January, 2018.


4 STEVEN B. WOLFSON
5 DISTRICT ATTORNEY

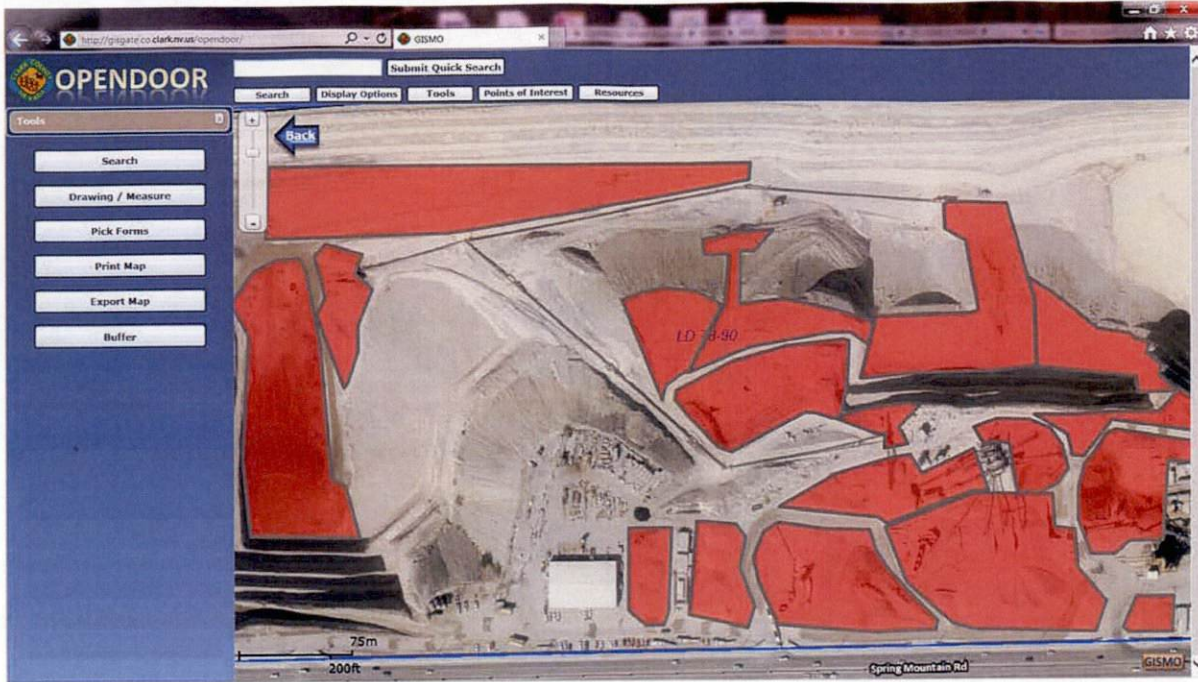
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2018, I served a copy of the foregoing **CLARK COUNTY DEPARTMENT OF AIR QUALITY'S RESPONSIVE BRIEF** as follows:

PARTY OR ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director, Environmental Services, Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>4:25</u> p.m.
Carlos L. McDade, Esq. Clark County School District Office of the General Counsel 5100 West Sahara Avenue Las Vegas, Nevada 89146 clmcdade@interact.ccsd.net	<i>Clark County School District</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>4:25</u> p.m.
Linda Bullen, Esq. Bullen Law, LLC 8635 W. Sahara Ave., #454 Las Vegas, NV 89117 linda@bullenlaw.com	<i>Wells Cargo, Inc.</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email <u>4:25</u> p.m.
Trent Scarlett Phil Groff Guy Wells Wells Cargo, Inc. 9127 West Russell Road, Ste. 210 Las Vegas, NV 89148-1240 TScarlett@wcilv.com PGroff@wcilv.com GWells@wcilv.com		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email at <u>4:25</u> p.m.


An Employee of the Clark County District
Attorney's Office – Civil Division



North Pit Stockpile Areas

See images below for individual sections.

- 0.34 ac
- 1.20 ac
- 0.17 ac
- 2.36 ac
- 1.55 ac
- 0.59 ac
- 0.44 ac
- 0.88 ac
- 0.18 ac
- 0.44 ac
- 0.52 ac
- 2.51 ac
- 1.80 ac
- 0.87 ac
- 0.77 ac
- 0.68 ac
- 1.34 ac
- 2.88 ac
- 19.52 ac Total



http://gisgate.co.clark.wa.gov/opensdoor/ DAQ - Staff Home GISMO

Submit Quick Search

Display Options Tools Points of Interest Resources

Drawing Toolbar Click To Close

drawpolyImage

Advanced Drawing Options

Search

Drawing / Measure

Pick Forms

Print Map

Export Map

Buffer

Measurement Results Click To Close

Area Measurement

Measurement Results: 0.165616336088154

Area Units: Acres

Information

Current Tool: Draw Polygon

Coordinates in State Plane ft

X: 753498 Y: 25747622

Flight Date: Most Current Flight

Current View: Parcel

1: 500

15m 65ft

http://gisgate.co.clark.wa.gov/opensdoor/ DAQ - Staff Home GISMO

Submit Quick Search

Display Options Tools Points of Interest Resources

Drawing Toolbar Click To Close

drawfreehand

Advanced Drawing Options

Search

Drawing / Measure

Pick Forms

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Information

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Coordinates in State Plane ft

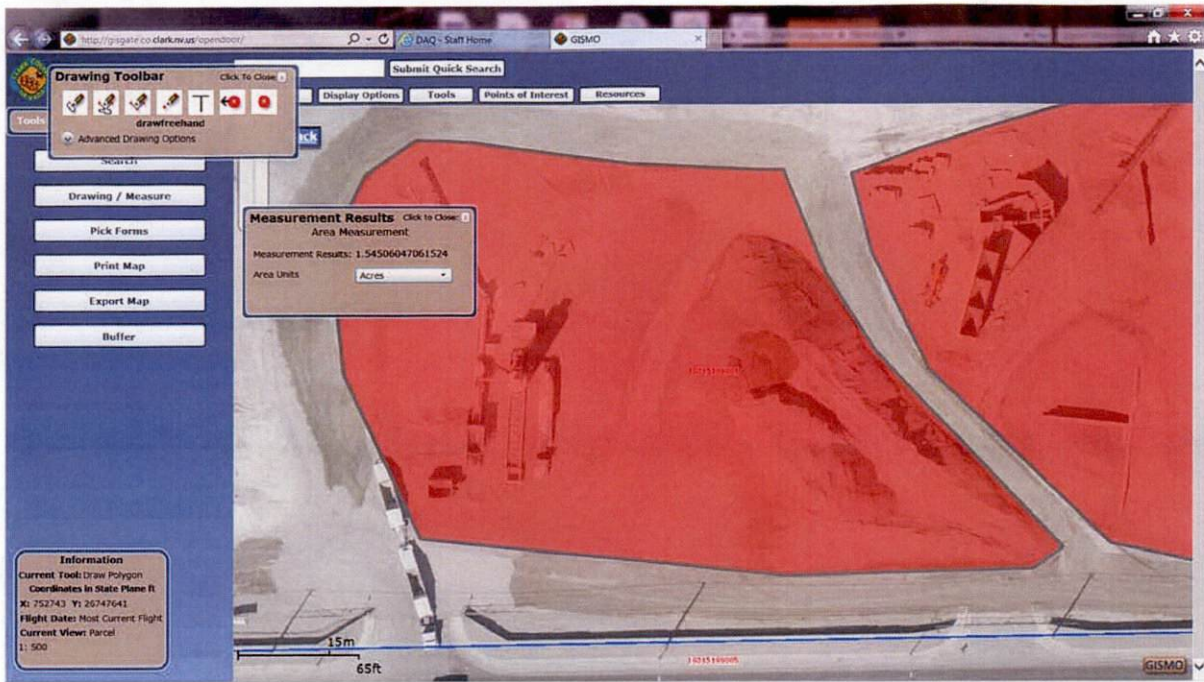
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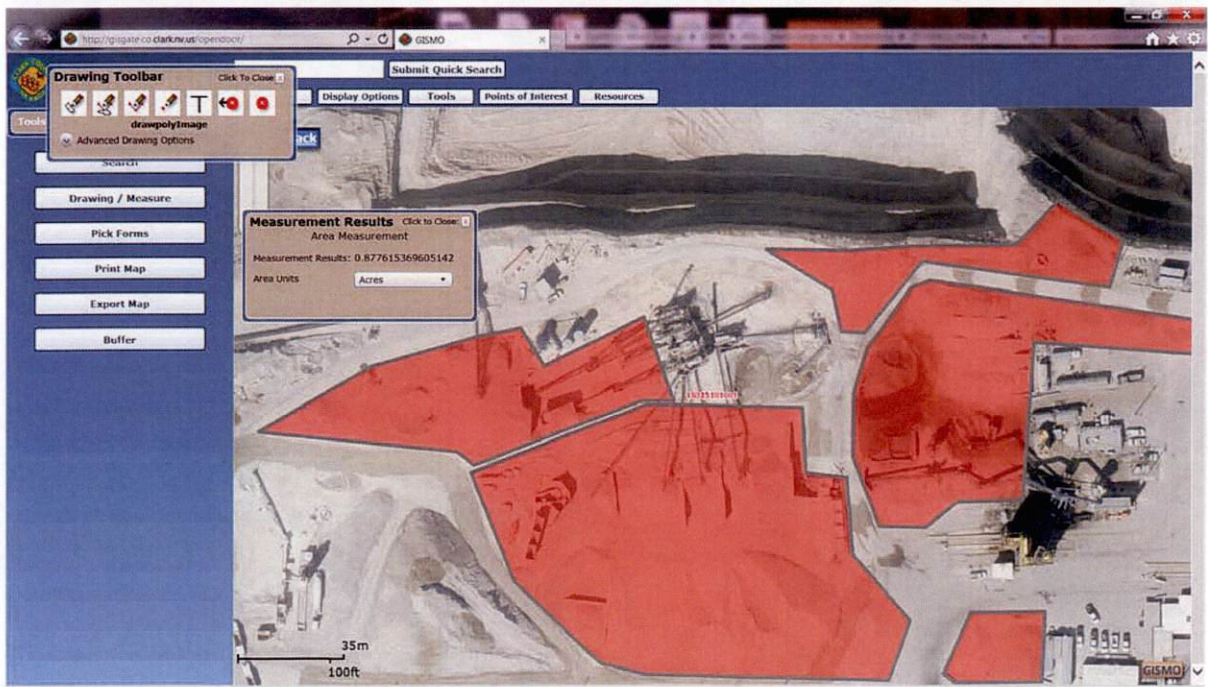
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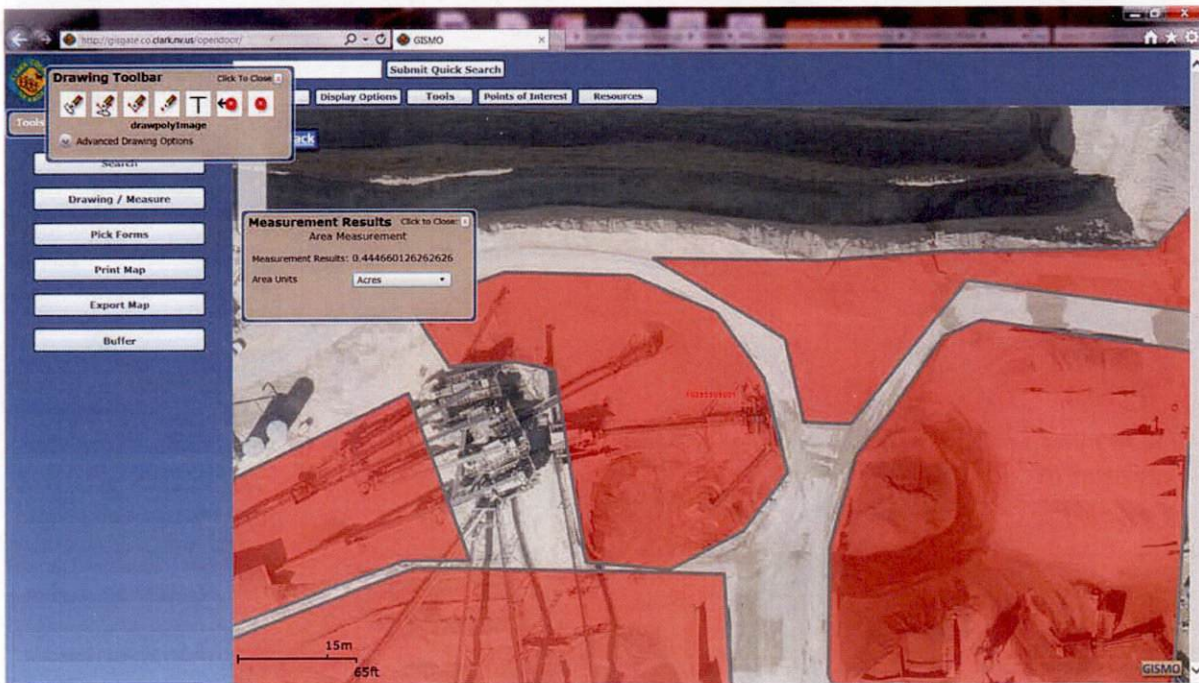
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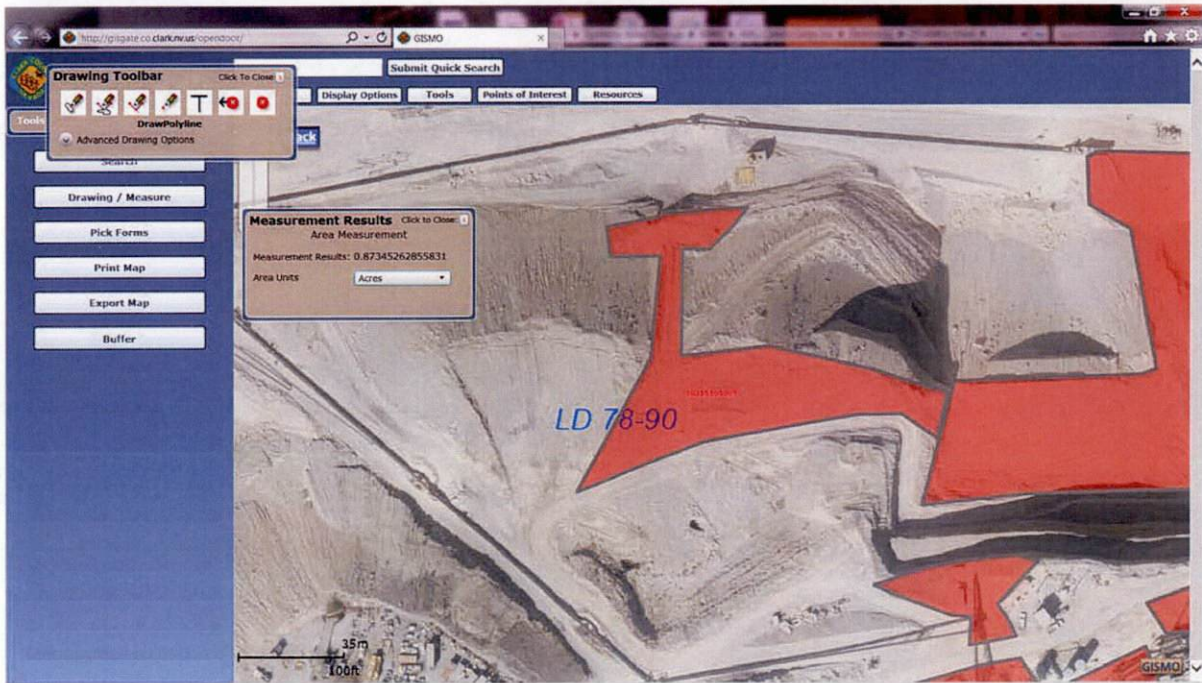
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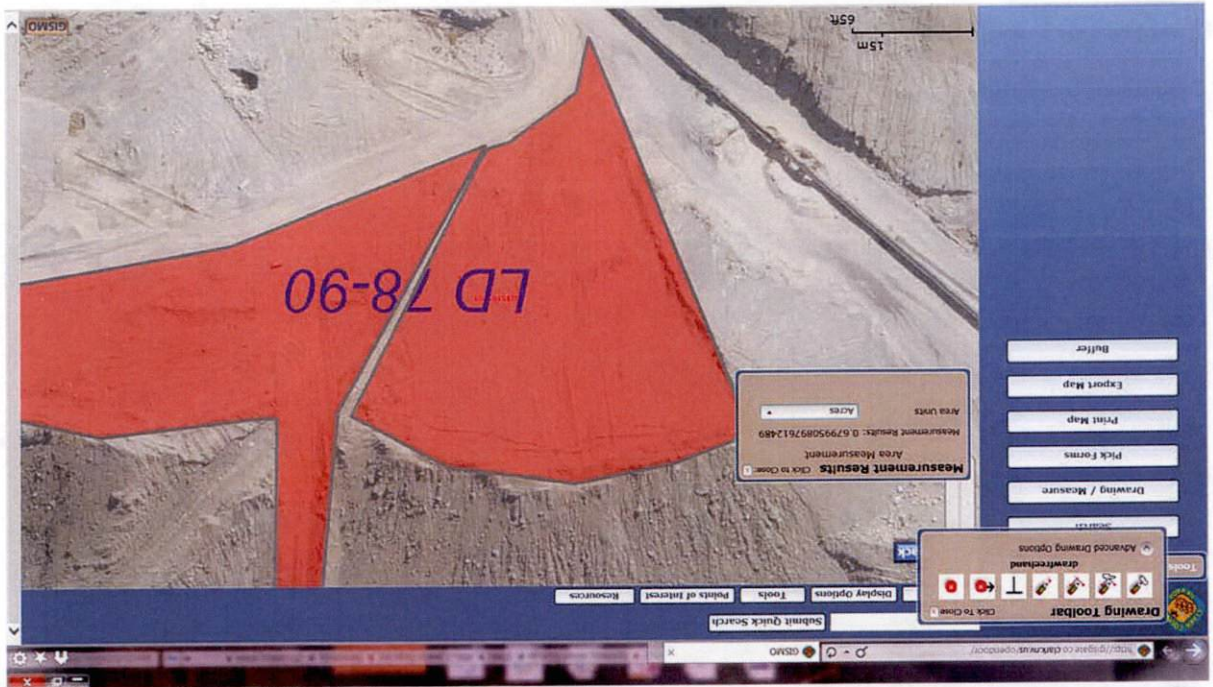


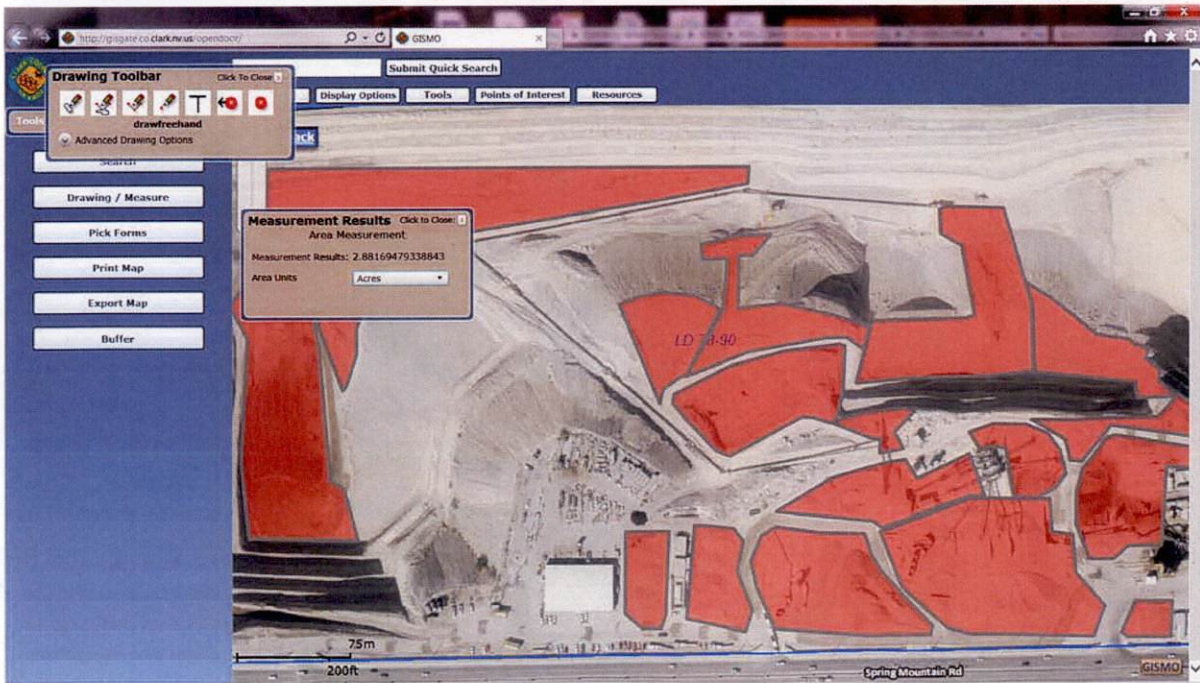










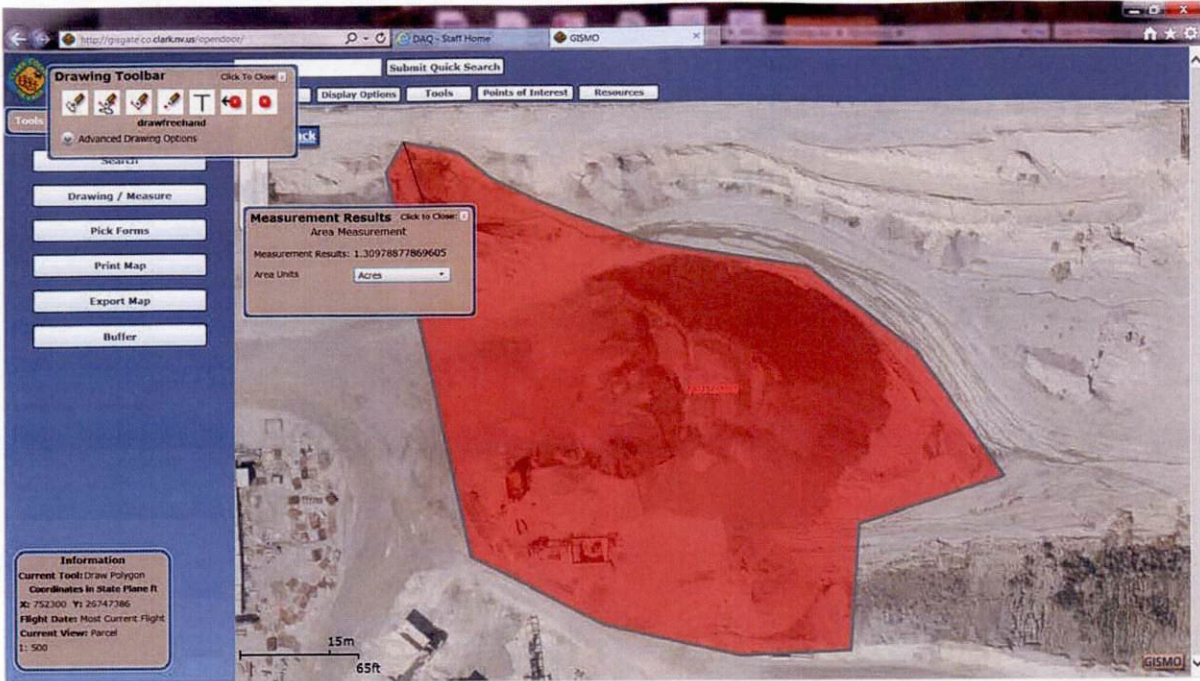




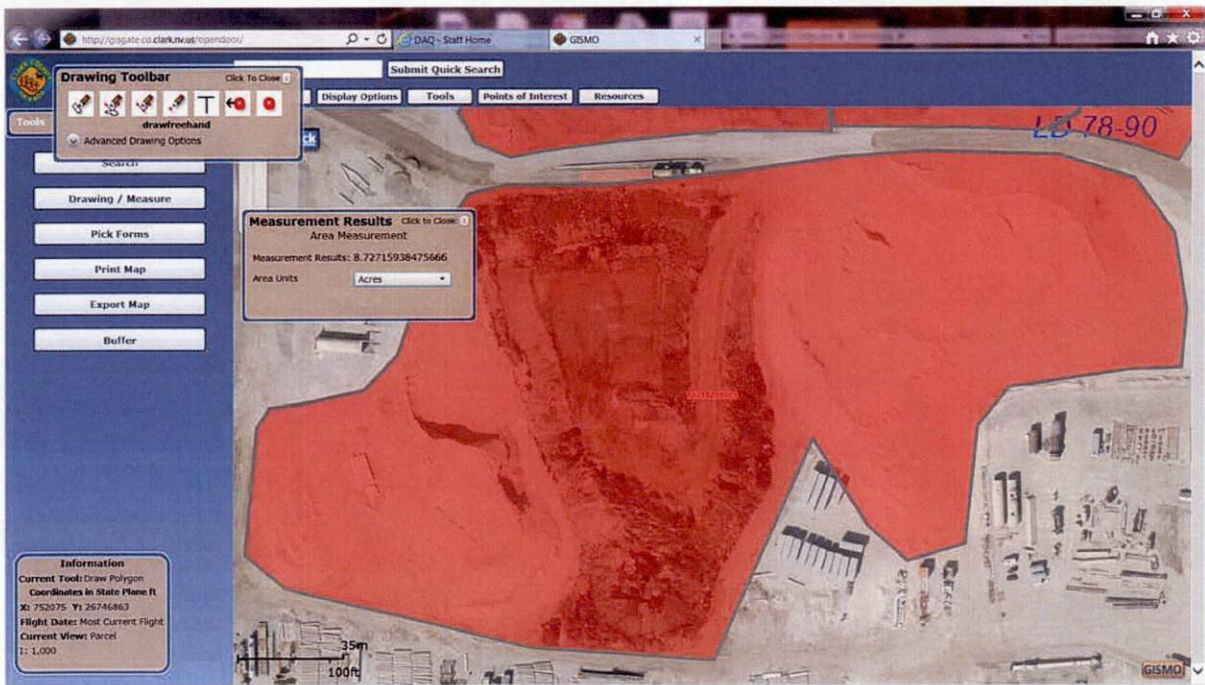
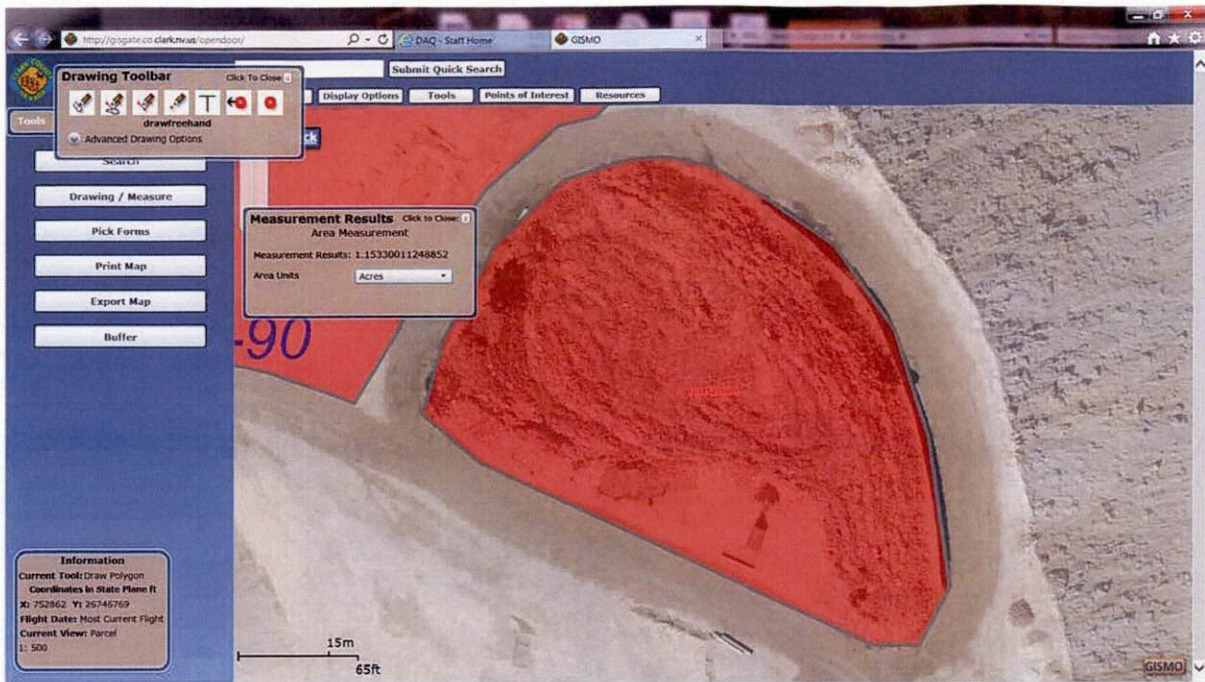
South Pit Stockpile Areas

See images below for individual sections.

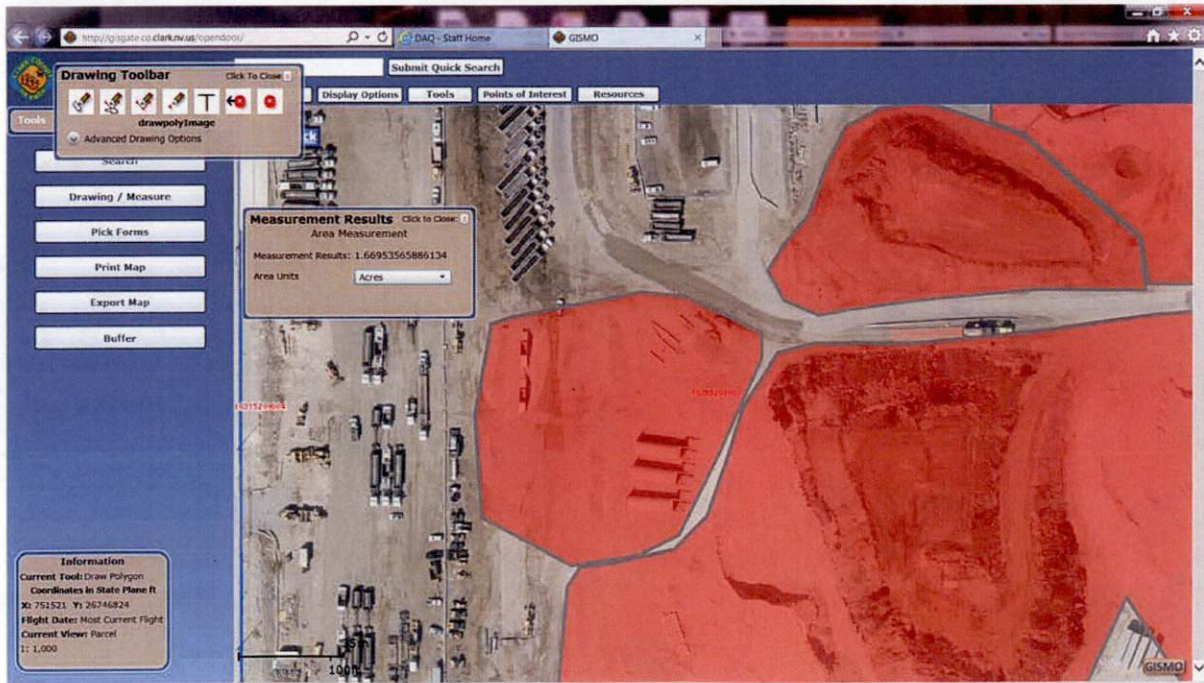
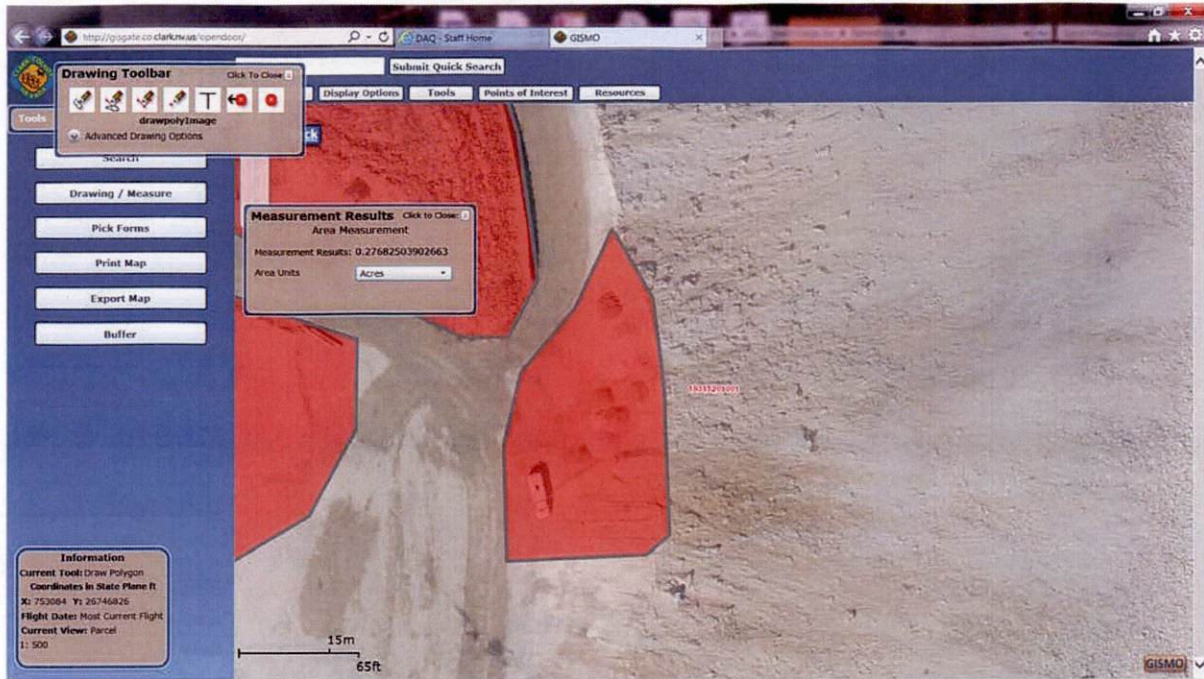
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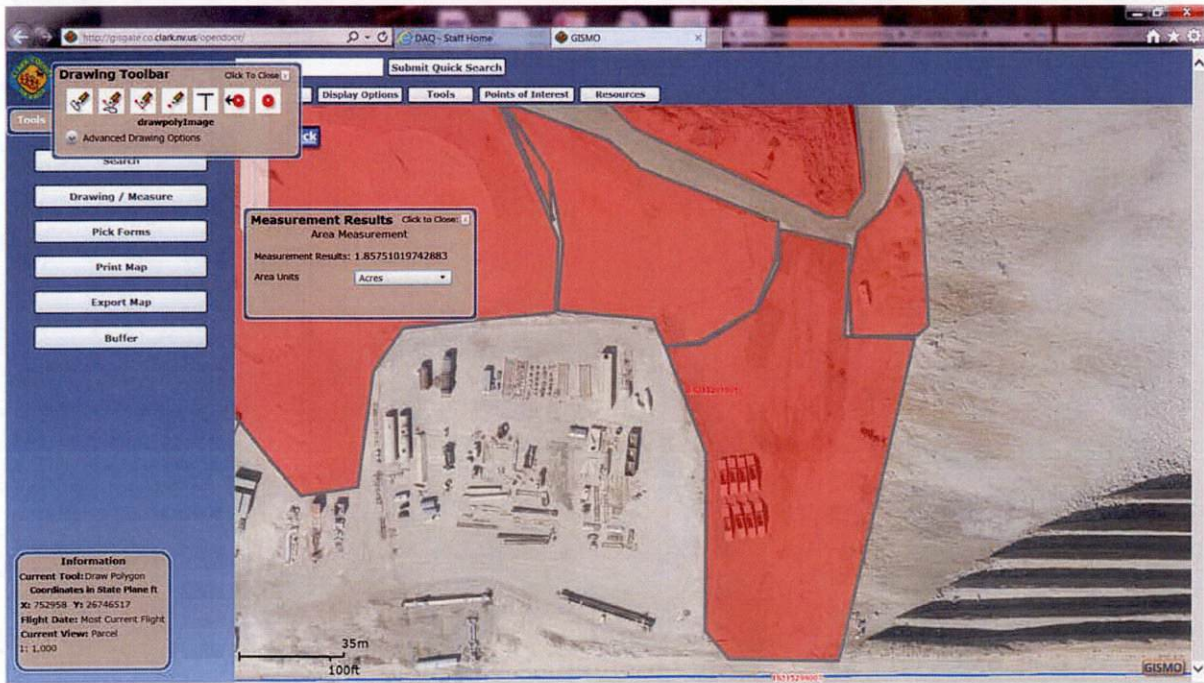












1 Cited
As of: January 11, 2018 11:33 PM Z

Titanium Metals Corp. v. Clark County Dist. Bd. of Health Air Pollution Control Hearing Bd.

Supreme Court of Nevada

May 23, 1983

No. 13889

Reporter

99 Nev. 397 *; 663 P.2d 355 **; 1983 Nev. LEXIS 452 ***

TITANIUM METALS CORPORATION OF AMERICA,
Appellant, v. CLARK COUNTY DISTRICT BOARD OF
HEALTH AIR POLLUTION CONTROL HEARING
BOARD, Respondent

Prior History: [***1] Appeal from an order affirming an administrative determination, Eighth Judicial District Court, Clark County; Joseph S. Pavlikowski, Judge.

Disposition: Reversed.

Core Terms

emissions, transformer, malfunction, air pollution control, district court, replacement, guidelines, atmospheric, Repairs, decision of the board, good practice, installation, expeditious, limitations, predicated, affirming, minimized, provides, excused, opacity, minute, fined, plant

Case Summary

Procedural Posture

Appellant corporation challenged the decision of the Eighth Judicial District Court, Clark County (Nevada), which affirmed the administrative determination of respondent county board of health that the corporation was liable for certain atmospheric emissions for violations of § 26 of the Air Pollution Control Regulations of the Clark County District Board of Health (regulations).

Overview

A transformer serving certain air pollution control equipment at the corporation plant failed suddenly. In the time between the transformer failure and the installation of the replacement, three emissions occurred that were

in excess of the standards set out in the regulations. The board charged the corporation with violating the regulations. The charge resulted from three observed atmospheric emissions. The corporation stipulated to the three emissions and their opacity but sought to excuse the emissions under the regulations. The board issued a decision that excused the first emission on the basis of an equipment malfunction but fined the corporation for the two subsequent emissions. The corporation filed a petition for judicial review of the board's decision. The district court affirmed the decision of the board, and the corporation appealed. Because the board made no finding that the corporation did not comply, the court held that the imposition of fines constituted an arbitrary application of the regulations. The court found an abuse of discretion and reversed because the corporation acted in full conformity with the § 25.1.2 of the regulations where a malfunction occurred.

Outcome

The court reversed the board's decision to fine the corporation for emissions in violation of county air pollution regulations.

LexisNexis® Headnotes

Environmental Law > Air Quality > General Overview

[HN1](#)  **Environmental Law, Air Quality**

Section 26 of the Air Pollution Control Regulations of the Clark County District Board of Health provides in part: 26.1 A person shall not discharge into the atmosphere,

Titanium Metals Corp. v. Clark County Dist. Bd. of Health Air Pollution Control Hearing Bd.

from any single source whatsoever, except from an incinerator, any air contaminants for a period or periods aggregating more than 3 minutes in any 60-minute period, which is: 26.1.1 Of such opacity to a degree equal to 20 percent obscuration or greater.

Environmental Law > Air Quality > General Overview

Evidence > Inferences & Presumptions > General Overview

Governments > Local
Governments > Administrative Boards

[HN2](#) Environmental Law, Air Quality

Section 25 of the Air Pollution Control Regulations of the Clark County District Board of Health provides that emissions in excess of the limits set out in the regulations constitute violations thereof unless: 25.1.2 Such emissions resulted from a malfunction. In determining whether or not a malfunction has occurred, the Control Officer or Hearing Board may utilize the following guidelines. The burden of proof shall be upon the operator. 1) The air pollution control equipment, process equipment, or processes involved in the incident were at all times maintained and operated in a manner reasonably consistent with good practice for minimizing emissions; 2) Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. The operator must have employed his best efforts to use off-shift labor and overtime to insure that such repairs were made as expeditiously as possible; 3) The amount and duration of the excess emissions were minimized in a manner reasonably consistent with good practice during periods of such emissions; 4) The excess emissions were not part of a historical pattern indicative of inadequate design; 5) No additional course of action other than that actually taken could reasonably have been implemented by the operator.

Administrative Law > Judicial Review > Standards

¹ [HN1](#)  Section 26 of the Regulations provides in part:

26.1 A person shall not discharge into the atmosphere, from any single source whatsoever, except from an incinerator, any air contaminants for a period or periods

of Review > Abuse of Discretion

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Standard of Review

[HN3](#) Standards of Review, Abuse of Discretion

On appeal of the decision of an administrative agency, the function of the appellate court is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency acted arbitrarily or capriciously, thus abusing its discretion.

Counsel: *Jones, Jones, Bell, Close & Brown*, and *Bruce K. Collmar*, Las Vegas, for Appellant.

Colucci, Minagil & Aurbach, Las Vegas, for Respondent.

Judges: Manoukian, C.J., Springer, J., Mowbray, J., Steffen, J., Gunderson, J.

Opinion by: PER CURIAM

Opinion

[*398] [356]** In this appeal from a district court order, appellant Titanium Metals Corporation of America (Timet) argues that the court erred by affirming an administrative determination that Timet is liable for certain atmospheric emissions. We agree.

On May 28, 1981, the Air Pollution Control Division of the Clark County District Board of Health (APCD) charged Timet with having violated section 26 of the Air Pollution Control Regulations of the Clark County District Board of Health (the Regulations). ¹ The charge resulted from three observed atmospheric emissions that occurred May 13, 16, and 17, 1981.

[*2]** The APCD Hearing Board (the Board) held a hearing on June 10, 1981. Timet stipulated to the three

aggregating more than three (3) minutes in any sixty (60) minute period, which is:

26.1.1 Of such opacity to a degree equal to 20 percent obscuration or greater.

Titanium Metals Corp. v. Clark County Dist. Bd. of Health Air Pollution Control Hearing Bd.

emissions and their opacity, but sought to excuse the emissions under section 25 of the Regulations.²

[**3] [*399] The Board issued a decision that excused the first emission on the basis of an equipment malfunction, but fined Timet for the two subsequent emissions. Timet filed a petition for judicial review of the Board's decision. The district court affirmed the decision of the Board, and this appeal followed.

The facts are undisputed and can be recited summarily. On May 13, 1981, a transformer serving certain air pollution control equipment at the Timet plant failed suddenly and without warning. Timet's personnel immediately began trying to repair or replace the transformer, and a replacement was located, installed and in operation by May 20, 1981. In the time between the transformer failure and the installation of the replacement, however, three emissions occurred that were in excess of the standards set out in section 26 of the Regulations.

[*357] [HN3](#) On appeal of the decision of an administrative agency, the function of this court is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency acted arbitrarily or capriciously, thus abusing its discretion. *Gandy v. State ex rel. Div. Investigation*, 96 [*4] Nev. 281, 607 P.2d 581 (1980).

The testimony before the Board was offered by Timet's representatives. They indicated that the failed transformer was a single large and expensive piece of equipment that had been properly maintained and for which no back-up was normally required. The testimony also revealed that Timet's operations were set up to be continuous and that the by-products of each area of

production were internally recycled, so that a shutdown of one area was impossible without causing repercussions throughout the plant. The Board's conclusion was apparently predicated on its acceptance of this testimony, since the first emission occurred about seven hours after the transformer failed. The Board's conclusion that the emission on May 13, 1981, was the result of a malfunction is apparently predicated on the acceptance of the Timet testimony.

The only significant distinction between the May 13, 1981, emission and the two later emissions was the passage of, respectively, three and four days. The Board concedes that "Timet acted as quickly as possible in replacing the transformer." This concession satisfies the only remaining guideline for determining whether a malfunction [*5] has occurred, and whether an otherwise violative emission is therefore excused. Regulation 25.1.2(2).

The Board's conclusions and concessions indicate that Timet acted in full conformity with the guidelines set out in section [*400] 25.1.2 of the Regulations, and the Board found that a malfunction had occurred. Since the Board made no finding that Timet did not comply with the guidelines either before or after the transformer failure, we are forced to conclude that the Board's imposition of fines for the May 16 and 17, 1981, emissions constituted an arbitrary application of its Regulations. This was an abuse of discretion, and the Board's decision should therefore be reversed. See *Turk v. Nevada State Prison*, 94 Nev. 101, 575 P.2d 599 (1978); *Kochendorfer v. Board of Co. Comm'rs*, 93 Nev. 419, 566 P.2d 1131 (1977).

Accordingly, the district court order affirming the decision of the Board is reversed.

² [HN2](#) Section 25 of the Regulations provides that emissions in excess of the limits set out in the Regulations constitute violations thereof unless:

25.1.2 Such emissions resulted from a Malfunction. In determining whether or not a Malfunction has occurred, the Control Officer or Hearing Board may utilize the following guidelines. The burden of proof shall be upon the operator.

1) The air pollution control equipment, process equipment, or processes involved in the incident were at all times maintained and operated in a manner reasonably consistent with good practice for minimizing emissions;


2) Repairs were made in an expeditious fashion when the Operator knew or should have known that applicable emission limitations were being exceeded. The Operator must have employed his best efforts to use off-shift labor and overtime to insure that such repairs were made as expeditiously as possible;

3) The amount and duration of the excess emissions were minimized in a manner reasonably consistent with good practice during periods of such emissions;

4) The excess emissions were not part of a historical pattern indicative of inadequate design;

5) No additional course of action other than that actually taken could reasonably have been implemented by the Operator.

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Helms v. Division of Env'tl. Protection

Supreme Court of Nevada

March 24, 1993, Filed

No. 23075

Reporter

109 Nev. 310 *; 849 P.2d 279 **; 1993 Nev. LEXIS 28 ***

ROBERT L. HELMS AND PAULINE F. HELMS FAMILY TRUST, Appellants, v. THE STATE OF NEVADA, DIVISION OF ENVIRONMENTAL PROTECTION; DOUGLAS COUNTY; JOHN SHAHIN; SIERRA VIEW DEVELOPMENT, INC., Respondents.

Prior History: [***1] Appeal from district court order dismissing petition for judicial review. Ninth Judicial District Court, Douglas County; Michael R. Griffin, Judge.

Disposition: Affirmed.

Core Terms

site, regional, local government, wastewater, planning commission, issuance, issuing

Case Summary

Procedural Posture

Appellant family trust sought review of an order of the Ninth Judicial District Court, Douglas County, Nevada, which dismissed its petition against respondent State of Nevada, Division of Environmental Protection (NDEP), Douglas County, Nevada (county), property owner, and corporation, challenging the issuance of a wastewater discharge permit to the county.

Overview

The family trust, which owned property in the county, challenged the issuance of a wastewater discharge permit by NDEP to the county. The district court dismissed its petition for judicial review. Upon the family trust's appeal, the court affirmed the district court's judgment holding that NDEP acted within its discretion in issuing the permit. The issuance of a wastewater discharge permit was governed by Nev. Rev. Stat. § 445.

NDEP was charged with ensuring compliance with certain enumerated factors dealing with effluent limitations and standards of performance, pretreatment, and injection of fluids to the ground waters of the state. Additionally, before NDEP may approve a site, it must obtain local government approval therefor. Nev. Admin. Code ch. 445.181(2). Nothing in Nev. Rev. Stat. § 445.201, Powers and Duties of Environmental Commission, or the Water Pollution Control Act gave the Nevada Environmental Commission the power to review the actions and decisions of local governmental entities. Such actions and decisions were subject to judicial review. [Nev. Rev. Stat. § 278.0235](#).

Outcome

The court affirmed the order of the district court, which dismissed the family trust's petition for judicial review of the issuance of a wastewater discharge permit by NDHP to the county.

LexisNexis® Headnotes

Administrative Law > Agency Rulemaking > State Proceedings

[HN1](#) Agency Rulemaking, State Proceedings

[Nev. Rev. Stat. § 278.220\(4\)](#) provides that: No change in or addition to the master plan or any part thereof, as adopted by the planning commission, shall be made by the governing body in adopting the same until the proposed change or addition shall have been referred to the planning commission for a report thereon and an attested copy of the report shall have been filed with the governing body. Failure of the planning commission to so

Helms v. Division of Env'tl. Protection

report within 40 days, or such longer period as may be designated by the governing body, after such reference shall be deemed to be approval of the proposed change or plan.

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

[HN2](#) Standards of Review, Abuse of Discretion

The Supreme Court of Nevada's review of an administrative decision is limited, like that of a district court, to the agency record and to determining whether the agency's decision was arbitrary or capricious, thereby constituting an abuse of discretion. [Nev. Rev. Stat. § 233B.135](#). The decisions of an administrative agency on questions of fact will be affirmed if there is substantial evidence to support them. Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.

Environmental Law > Land Use & Zoning > Conditional Use Permits & Variances

[HN3](#) Land Use & Zoning, Conditional Use Permits & Variances

The issuance of a wastewater discharge permit is governed by Nev. Rev. Stat. § 445 and regulations promulgated consistent therewith. The Nevada Division of Environmental Protection (NDEP), is charged with ensuring compliance with certain enumerated factors dealing with effluent limitations and standards of performance, pretreatment, and injection of fluids to the ground waters of the state. Further, the permit must specify quantitative limitations for the level of pollutants and contaminants in the authorized discharge. Nev. Rev. Stat. § 445.231. Additionally, before NDEP may approve a site, it must obtain local government approval therefor. Nev. Admin. Code ch. 445.181(2).

Administrative Law > Judicial Review > Standards of Review > Deference to Agency Statutory Interpretation

Administrative Law > Agency Rulemaking > Rule

Application & Interpretation > General Overview

Administrative Law > Judicial Review > Standards of Review > General Overview

[HN4](#) Standards of Review, Deference to Agency Statutory Interpretation

Although the Supreme Court of Nevada may undertake independent review of an administrative construction of a statute, "great weight" should be given to an agency's interpretation of its own regulations.

Administrative Law > Judicial Review > Standards of Review > Abuse of Discretion

Governments > Local

Governments > Administrative Boards

Administrative Law > Judicial

Review > Reviewability > Jurisdiction & Venue

[HN5](#) Standards of Review, Abuse of Discretion

Nothing in Nev. Rev. Stat. § 445.201, Powers and Duties of Environmental Commission, or the Water Pollution Control Act gives the Nevada Environmental Commission the power to review the actions and decisions of local governmental entities. Such actions and decisions are subject to judicial review. [Nev. Rev. Stat. § 278.0235](#).

Counsel: Brooke & Shaw, Minden, for Appellants.

Frankie Sue Del Papa, Attorney General, Brian Chally, Senior Deputy Attorney General, Carson City, for Respondent State of Nevada, Division of Environmental Protection.

Scott W. Doyle, District Attorney, Douglas County, for Respondent Douglas County.

Allison, MacKenzie, Hartman, Soumbeniotis & Russell and Karen Peterson, Carson City, for Respondent John Shahin and Sierra View Development, Inc.

Judges: Rose, C.J., Steffen, J., Young, J., Springer, J., Shearing, J.

Opinion

[*311] [****280**] OPINION

Helms v. Division of Env'tl. Protection

PER CURIAM:

Appellant, The Robert L. Helms and Pauline F. Helms Family Trust ("Helms"), challenges the issuance of a wastewater discharge permit by the Nevada Division of Environmental Protection (NDEP) to respondent Douglas County. Helms' challenge stems from the purportedly invalid action taken by the Douglas County Board of County Commissioners changing the site of a proposed regional wastewater treatment facility. Helms contends that NDEP abused its discretion in issuing the permit because NDEP did *****2** not independently determine whether Douglas County properly approved the site of the proposed regional facility. Without deciding the propriety of Douglas County's procedure, we hold that NDEP acted within its discretion in issuing the discharge permit. We therefore affirm.

FACTS

Helms owns 8,000 acres of land in Douglas County situated adjacent to property owned by John Shahin and Sierra Development Corporation (collectively "Shahin"). Shahin's property is the site of a proposed residential development known as the Buckeye Creek Development. The Buckeye Creek property also includes the site of Douglas County's proposed regional wastewater treatment facility. The decision to construct the regional facility on the Buckeye Creek site occurred in or about October, 1988. This decision entailed a change in the location of the regional facility from ****281** a previous site on the north end of the Carson Valley adopted by the County as part of its sewer master plan. The Board of County Commissioners approved the relocation to the Buckeye Creek site without first referring the matter to the County Planning Commission. See [NRS 278.220\(4\)](#).¹

*****3** **[*312]** Subsequently, the County applied for a wastewater discharge permit from NDEP. On January 30, 1991, NDEP held a public hearing concerning the issuance of the permit. Engineers for both Douglas County and Shahin presented their plans for construction, maintenance and expansion of the facility. Helms was represented at the hearing by counsel and an

engineer, both of whom voiced concerns over the potentially adverse effects a regional facility might have on the Helms' property. No mention was made of the County's failure to submit the amended plan to the Planning Commission. Based upon its review of the proposed location and the matters presented to it, NDEP determined that the location of the facility complied with state and federal law pertaining to water pollution and sewage disposal.

In determining that local government approval existed, NDEP relied on the County's representation, as the proposed permittee, that it had selected and approved the site for a regional treatment facility. NDEP's Bureau of Water Permits and Compliance made no independent investigation of the zoning or planning process. On May 22, 1991, NDEP issued the permit. Helms appealed NDEP's decision to the *****4** Nevada Environmental Commission ("NEC"), pursuant to NRS Chs. 233B and 445.

NEC held a hearing on July 1, 1991, to consider evidence pertaining to the facility's environmental impact. Helms used the occasion to present evidence concerning the manner in which the County adopted the proposed site. Helms argued, *inter alia*, that the County's adoption of the new site violated NRS Ch. 278 and was therefore invalid. Consequently, continued Helms, the permit was erroneously issued because NDEP did not obtain proper local government approval as required by NAC 445.181(2).² NEC concluded that NDEP acted in accordance with its primary duty to protect the waters of Nevada and that it had complied with the relevant provisions of NRS Ch. 445 (Water Pollution Control Law). Like NDEP, NEC also concluded that the evidence supported the existence of local government approval for the Buckeye Creek site, as required by NAC 445.181(2). NEC upheld the issuance of the permit.

*****5** **[*313]** On August 30, 1991, Helms petitioned for judicial review of NEC's decision. The gravamen of Helms' complaint was that NDEP did not have local government approval because Douglas County had not validly adopted the Buckeye Creek site for a regional

¹ [HN1](#)  [NRS 278.220\(4\)](#) provides that:

No change in or addition to the master plan or any part thereof, as adopted by the planning commission, shall be made by the governing body in adopting the same until the proposed change or addition shall have been referred to the planning commission for a report thereon and an attested copy of the report shall have been filed with the

governing body. Failure of the planning commission to so report within 40 days, or such longer period as may be designated by the governing body, after such reference shall be deemed to be approval of the proposed change or plan.

² NAC 445.181(2) provides that "no site may be approved by the department without having first been approved by local government."

Helms v. Division of Env'tl. Protection

treatment facility. In dismissing Helms' petition, the district court ruled, *inter alia*, that NDEP properly found local government approval for the issuance of the discharge permit. This appeal followed.

DISCUSSIONStandard of Review

[HN2](#) [↑] Our review of an administrative decision is limited, like that of the district court, to the agency record and to determining whether the agency's decision was arbitrary or capricious, thereby constituting an abuse of discretion. [Bivins Constr. v. State Contractors' Bd.](#), 107 Nev. 281, 283, 809 P.2d 1268, 1270 (1991); see generally [**282](#) [NRS 233B.135](#). The decisions of an administrative agency on questions of fact will be affirmed if there is substantial evidence to support them. [State Indus. Ins. Sys. v. Swinney](#), 103 Nev. 17, 20, 731 P.2d 359, 361 (1987). Substantial evidence is that which "a reasonable mind [***6](#) might accept as adequate to support a conclusion." [State Employment Sec. Dep't v. Hilton Hotels Corp.](#), 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting [Richardson v. Perales](#), 402 U.S. 389, 28 L. Ed. 2d 842, 91 S. Ct. 1420 (1971)).

NDEP's Obligation under NAC 445.181(2)

[HN3](#) [↑] The issuance of a wastewater discharge permit is governed by NRS Ch. 445 and regulations promulgated consistent therewith. NDEP is charged with ensuring compliance with certain enumerated factors dealing with effluent limitations and standards of performance, pretreatment, and injection of fluids to the ground waters of the state. Further, the permit must specify quantitative limitations for the level of pollutants and contaminants in the authorized discharge. NRS 445.231. Additionally, before NDEP may approve a site, it must obtain local government approval therefor. NAC 445.181(2). NEC concluded that in issuing the discharge permit, NDEP complied with pertinent statutes and regulations and acted in accordance with its primary duty to protect the waters of the State of Nevada. [HN4](#) [↑] Although this court may undertake independent review of the administrative construction [***7](#) of a statute, [American Int'l Vacations v. MacBride](#), 99 Nev. 324, 326, 661 P.2d 1301, 1302 (1983), "great weight" should be given to an agency's interpretation of its own regulations. [*314](#) [State Dep't of Wildlife v. Bentz](#), 106 Nev. 294, 297, 792 P.2d 28, 30 (1990).

Helms contends that NAC 445.181(2) required NDEP to independently investigate and determine whether proper local governmental approval actually existed as a

prerequisite to issuing the wastewater discharge permit. Its failure to do so, argues Helms, was an abuse of discretion. We disagree. [HN5](#) [↑] Nothing in NRS 445.201 (Powers and Duties of Environmental Commission) or the Water Pollution Control Act gives NEC the power to review the actions and decisions of local governmental entities. Such actions and decisions are subject to judicial review. [NRS 278.0235](#). NDEP was entitled to presume that the County's approval was valid. See [Rondono v. Nevada Real Estate Comm'n](#), 79 Nev. 132, 137, 379 P.2d 537, 539 (1963).

Moreover, the conclusion reached by NDEP and NEC that the County had approved the site of [***8](#) the regional facility was supported by substantial evidence. As noted previously, the County was the applicant; it had selected the site of the proposed regional facility. In addition, the County had issued a special use permit to Shahin for the operation of a private treatment facility for its residential development.

For the reasons discussed above, we conclude that NDEP did not abuse its discretion in issuing the discharge permit. We therefore affirm the district court's order dismissing Helms' petition for judicial review.

Rose, C.J.

Steffen, J.

Young, J.

Springer, J.

Shearing, J.

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In re La. Dep't of Env'tl. Quality Permitting Decision

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In re La. Dep't of Env'tl. Quality Permitting Decision

Court of Appeal of Louisiana, First Circuit

March 25, 2011, Judgment Rendered

2010 CA 1194

Reporter

2011 La. App. Unpub. LEXIS 166 *; 2010 1194 (La.App. 1 Cir. 03/25/11);; 58 So. 3d 1155

IN THE MATTER OF: LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY PERMITTING DECISION: REGARDING STATE (SYNTHETIC MINOR SOURCE) PERMIT NO. 2560-00292-00 TO PETROPLEX INTERNATIONA, L.L.C.

[30:2050.21\(A\)](#), of a final permit action of appellee Louisiana Department of Environmental Quality (DEQ), which granted a minor source permit for the construction and operation of a tank farm to appellee permittee. The 19th Judicial District Court, Parish of East Baton Rouge, Louisiana, affirmed the action. Appellant sought review.

Notice: NOT DESIGNATED FOR PUBLICATION.

PLEASE CONSULT THE LOUISIANA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE SOUTHERN REPORTER.

Prior History: [*1] On Appeal from the 19th Judicial District Court, Parish of East Baton Rouge, Louisiana. Docket No. 582,187, Section 23. Honorable William A. Morvant, Judge Presiding.

Disposition: AFFIRMED.**Core Terms**

air emissions, major source, comments, facility's, emissions, issues, emit, calculations, flawed, district court, permit application, public comment, air pollutant, per year, requirements, benefits, contends, storage, proposed facility, frivolous appeal, judicial review, public hearing, site selection, no evidence, threshold, damages, effects, argues, costs, site

Case Summary**Procedural Posture**

Appellant corporation sought judicial review of a judgment, pursuant to [La. Rev. Stat. Ann. §](#)

Overview

The corporation argued that the DEQ should have required full minimization of air emissions by using the best available control technology and the lowest achievable emission rate from the proposed facility as it was very close to being a major source of air emissions. It also argued that the permittee's calculations were flawed and that there were deficiencies in its environmental assessment statement (EAS). The court found that nothing in the statutes or regulations required a facility to conform to the standards required for a major source permit simply because it was close to being a major source of air emissions. There was no evidence that the DEQ failed to perform an independent review of the permittee's calculations. The DEQ was not required to compare an EAS from another facility in considering the permittee's application. The corporation raised its argument about an alternative design for the first time on appeal. Thus, it was barred under [La. Rev. Stat. Ann. § 30:2014.3](#). The DEQ's decision was supported by factual findings and articulated a rational connection between the facts and the permit action.

Outcome

The court affirmed the judgment.

LexisNexis® Headnotes

In re La. Dep't of Env'tl. Quality Permitting Decision

Constitutional Law > State Constitutional Operation

Environmental Law > Administrative Proceedings & Litigation > General Overview

[HN1](#)  **Constitutional Law, State Constitutional Operation**

Under Louisiana law, the Louisiana Department of Environmental Quality (DEQ) has a constitutional duty to act as the trustee of the environment. The Louisiana Supreme Court interpreted this constitutional mandate to impose a rule of reasonableness, which requires DEQ to determine, before granting approval of any proposed action affecting the environment, that adverse environmental impacts have been minimized or avoided as much as possible, consistently with the public welfare. However, considerable weight is afforded to an administrative agency's construction of a statutory scheme that it is entrusted to administer.

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

[HN2](#)  **Administrative Proceedings & Litigation, Judicial Review**

[La. Rev. Stat. Ann. § 30:2050.21](#) sets forth the procedure for judicial review of a final permit action of Louisiana Department of Environmental Quality (DEQ) and establishes that the judicial review provisions of the Administrative Procedure Act, including its standard of review, are applicable to DEQ proceedings. [La. Rev. Stat. Ann. § 30:2050.21\(F\)](#); [La. Rev. Stat. Ann. § 30:2050.28](#). Judicial review is conducted by the court without a jury and is confined to the record. [La. Rev. Stat. Ann. § 49:964\(F\)](#). Pursuant to [La. Rev. Stat. Ann. § 49:964\(G\)](#), a reviewing court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify an agency decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (6) not supported and sustainable by a preponderance of the evidence as determined by the reviewing court.

Administrative Law > Judicial Review > Standards of Review > Arbitrary & Capricious Standard of Review

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

[HN3](#)  **Standards of Review, Arbitrary & Capricious Standard of Review**


An appellate court should not reverse a substantive decision of Louisiana Department of Environmental Quality (DEQ) on its merits, unless it can be shown that the decision was arbitrary or that DEQ clearly gave insufficient weight to environmental protection in balancing the costs and benefits of the proposed action. However, if the decision was reached procedurally, without individualized consideration and balancing of environmental factors conducted fairly and in good faith, it is the court's responsibility to reverse. The test for determining whether an action was arbitrary or capricious is whether the action taken was without reason.

Environmental Law > ... > Emission Standards > Stationary Emission Sources > General Overview

[HN4](#)  **Emission Standards, Stationary Emission Sources**

Pursuant to La. Admin. Code tit. 33, § III.502(A), whether a proposed facility is a major source is determined by the facility's potential to emit certain pollutants and whether that potential to emit such pollutants exceeds certain thresholds. If the facility's potential to emit these pollutants exceeds such thresholds, the facility is a major source; if the facility's potential to so emit is below these thresholds, it is a minor source. With regard to certain regulated air pollutants, any stationary source that directly emits, or has the potential to emit, 100 tons per year of such air pollutants is considered to be a major source of air emissions.

Environmental Law > ... > Emission Standards > Stationary Emission Sources > General Overview

[HN5](#)  **Emission Standards, Stationary Emission Sources**

In re La. Dep't of Env'tl. Quality Permitting Decision

Pursuant to La. Admin. Code tit. 33, § III.5103, a major source is also defined as any stationary source of air pollutants that emits, or has the potential to emit, in the aggregate, 10 tons per year or more of any toxic air pollutant listed in La. Admin. Code tit. 33, § III.5112, Table 51.1 or 25 tons per year or more of any combination of toxic air pollutants listed in La. Admin. Code tit. 33, § III.5112, Table 51.1.

Environmental Law > Administrative Proceedings & Litigation > Jurisdiction

[HN6](#) **Administrative Proceedings & Litigation, Jurisdiction**

See [La. Rev. Stat. Ann. § 30:2014.3](#).

Environmental Law > Administrative Proceedings & Litigation > Jurisdiction

[HN7](#) **Administrative Proceedings & Litigation, Jurisdiction**

In making a decision, the Louisiana Department of Environmental Quality (DEQ) is required to make basic findings supported by the evidence and ultimate findings that flow rationally from the basic findings; it must also articulate a rational connection between the facts found and the order issued. A decision in conformity with these mandates should contain: (1) a general recitation of the facts as presented by all sides; (2) a basic finding of facts as supported by the record; (3) a response to all reasonable public comments; (4) a conclusion or conclusions on all issues raised that rationally support the order issued; and (5) any and all other matters that rationally support DEQ's decision. Additionally, the written finding of facts and reasons for decision must satisfy the issues of whether: (1) the potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible; (2) a cost-benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and (3) there are no alternative projects or alternative sites or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable.

Civil Procedure > Appeals > Frivolous Appeals

Governments > Legislation > Interpretation

Governments > Legislation > Types of Statutes

[HN8](#) **Appeals, Frivolous Appeals**

The imposition of damages for a frivolous appeal is regulated by [La. Code Civ. Proc. Ann. art. 2164](#). The courts have been very reluctant to grant damages under this Article as it is penal in nature and must be strictly construed. Although a successful appeal is by definition non-frivolous, the converse is not true because appeals are favored. In order to assess damages for a frivolous appeal, it must appear that the appeal was taken solely for delay or that appealing counsel does not sincerely believe in the view of the law he advocates.

Counsel: Stephen M. Irving, Baton Rouge, LA, and Julie DesOrmeaux Rosenzweig, New Iberia, LA, Attorneys for Appellant, Community Strength, Inc.

Herman Robinson, Kathy M. Wright, Jackie Marve, Baton Rouge, LA, Attorneys for Appellee, Louisiana Department of Environmental Quality.

James C. Percy, Boyd A. Bryan, Christopher D. Martin, Jones Walker Waechter Poitevent, Carrère & Denègre, L.L.P., Baton Rouge, LA, Attorneys for Intervenor/Appellee, Petroplex International, L.L.C.

Judges: BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Opinion by: PARRO

Opinion

[Pg 2] **PARRO, J.**

Community Strength, Inc. (Community Strength) sought judicial review in the district court, pursuant to [LSA-R.S. 30:2050.21\(A\)](#), of a final permit action of the Louisiana Department of Environmental Quality (DEQ), granting state (synthetic minor source) permit number 2560-00292-00 to Petroplex International, L.L.C. (Petroplex). By judgment dated March 5, 2010, the district court affirmed the action and decision of DEQ, and Community Strength has appealed that judgment. For the following reasons, [*2] we affirm.

In re La. Dep't of Env'tl. Quality Permitting Decision

FACTUAL AND PROCEDURAL BACKGROUND

On July 23, 2008, Petroplex submitted a permit application and an emission inventory questionnaire to DEQ, along with a request for expedited permit processing, seeking permission to construct and operate a new, full-service marine and land terminal on the west bank of the Mississippi River in St. James Parish, near Vacherie. According to the permit application, the Petroplex facility was intended to be a land-based tank farm storage facility in which certain petroleum liquid commodities¹ would be stored, and perhaps blended, in above-ground storage tanks until further distribution to commerce. The purpose of the facility was to provide a stable stock of petroleum liquid commodities to serve local and regional refiners and distributors. According to the application, the need for additional storage for local refineries became more pronounced after Hurricane Katrina, when many oil refineries were unable to obtain the petroleum stock necessary to maintain the gasoline supply. Nothing in the application itself suggests that anything was to be manufactured or refined at the Petroplex facility, and this issue does not appear to be disputed between [*3] the parties.

After submitting the original permit application, Petroplex submitted additional information to DEQ, as requested, on October 1, 2008, November 10, 2008, December 5, 2008, and January 26, 2009. In addition, between February 17 and February 19, [Pg 3] 2009, notices requesting public comment on the proposed permit and the accompanying Environmental Assessment Statement (EAS) and informing the public of the time and location of a public hearing were published in various newspapers in the area, as well as in the DEQ mailout.²³

After reviewing the permit application, the EAS, and all additional information submitted by Petroplex, as well as the public comments and other information obtained at the public hearing, DEQ issued a minor source permit to Petroplex in July 2009, authorizing the construction and operation of the tank farm. Concurrently with the permit,

¹ The facility was expected to store, blend, and distribute gasoline, light crude oil, heavy crude oil, ethanol, light petroleum distillates, mid petroleum distillates, heavy residual oils, vegetable oil, and bio-diesel.

² Notices were published as follows: (1) in *The Advocate*, Baton Rouge, East Baton Rouge Parish, on February 19, 2009; (2) in *The News-Examiner*, Litcher, St. James Parish, on February 19, 2009; (3) in *The Enterprise*, Vacherie, St. James Parish, on

DEQ also issued a basis for its decision and a response to the significant public comments it had received prior to, and during, the public hearing.

In September 2009, Community Strength filed a petition for judicial review of DEQ's final permit action, pursuant to [LSA-R.S. 30:2050.21\(A\)](#), seeking judicial review of DEQ's decision to issue the permit to Petroplex and requesting that the district court vacate DEQ's action in granting the permit to Petroplex. After reviewing the entire administrative record, the district court noted that it found Community Strength's allegations to be short on factual [*5] support. Accordingly, the district court signed a judgment affirming the action and decision of DEQ in approving and issuing the minor source permit to Petroplex. Community Strength has appealed. Petroplex has answered the appeal, seeking to recover attorney fees and costs it incurred in defending what it contends is a frivolous appeal.

STANDARD OF REVIEW

HN1 Under Louisiana law, DEQ has a constitutional duty to act as the trustee of the environment. *In re Shintech, Inc., 00-1984 (La. App. 1st Cir. 2/15/02), 814 So. 2d 20, 25, writ denied, 02-0742 (La. 5/10/02), 815 So. 2d 845.* In *Save Ourselves, Inc. v. [Pg 4] Louisiana Environmental Control Commission, 452 So.2d 1152, 1157 (La. 1984)*, the Louisiana Supreme Court interpreted this constitutional mandate to impose a "rule of reasonableness," which requires DEQ to determine, before granting approval of any proposed action affecting the environment, that adverse environmental impacts have been minimized or avoided as much as possible, consistently with the public welfare. However, considerable weight is afforded to an administrative agency's construction of a statutory scheme that it is entrusted to administer. *Calcasieu League for Environmental Action Now v. Thompson, 93-1978 (La. App. 1st Cir. 7/14/95), 661 So.2d 143, 149, [*6] writ denied, 95-2495 (La. 12/15/95), 664 So.2d 459.*

February 18, 2009; and (4) in the DEQ mailout on February 17, 2009.

³ As an applicant for a minor source permit, Petroplex was not required to submit an EAS to DEQ, nor was a public hearing required [*4] pursuant to the provisions of [LSA-R.S. 30:2018\(E\)\(2\)](#). However, DEQ requested that Petroplex submit an EAS in connection with its application, and Petroplex participated in a public hearing on March 27, 2009, at which both oral and written comments were received.

In re La. Dep't of Envtl. Quality Permitting Decision

[HN2](#)[↑] [Louisiana Revised Statute 30:2050.21](#) sets forth the procedure for judicial review of a final permit action of DEQ and establishes that the judicial review provisions of the Administrative Procedure Act, including its standard of review, are applicable to DEQ proceedings. See [LSA-R.S. 30:2050.21\(F\)](#); [LSA-R.S. 30:2050.28](#). Judicial review is conducted by the court without a jury and is confined to the record. [LSA-R.S. 49:964\(F\)](#).

Pursuant to [LSA-R.S. 49:964\(G\)](#), a reviewing court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify an agency decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (6) not supported and sustainable by a preponderance of the evidence as determined by the reviewing [*7] court.

Based upon the arguments of Community Strength both to the district court and to this court, it appears that Community Strength is attempting to demonstrate that DEQ's decision to grant the permit to Petroplex was either arbitrary and capricious or characterized by an abuse of discretion, or that it was not supported and sustainable by [Pg 5] a preponderance of the evidence. Pursuant to the standard of review applicable to such allegations, [HN3](#)[↑] an appellate court should not reverse a substantive decision of DEQ on its merits, unless it can be shown that the decision was arbitrary or that DEQ clearly gave insufficient weight to environmental protection in balancing the costs and benefits of the proposed action. See [In re Shintech](#), 814 So.2d at 26. However, if the decision was reached procedurally, without individualized consideration and balancing of environmental factors conducted fairly and in good faith, it is the court's responsibility to reverse. See [Save Ourselves, Inc.](#), 452 So.2d at 1159. The test for determining whether an action was arbitrary or capricious is whether the action taken was "without reason." [Calcasieu League for Environmental Action Now](#), 661 So.2d at 150.

⁴ LAER would be applicable if the facility were to be located in a nonattainment area, as defined by [42 USC § 7407\(d\)\(1\)\(A\)\(i\)](#). See also [LAC 33:III.504](#). However, [*9] it is uncontested that St. James Parish is in an attainment area; therefore, LAER is

DISCUSSION

In [*8] its first assignment of error, Community Strength contends that DEQ should have required full minimization of air emissions from the proposed Petroplex facility, including the use of Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER), because the proposed facility is very close to being a major source of air emissions. This argument is flawed from the outset in that the proposed Petroplex facility is, in fact, a minor source of air emissions, and as such the requirements of BACT and LAER are simply inapplicable. ⁴ Indeed, Community Strength's own argument recognizes the proposed Petroplex facility's status as a minor source of air emissions, as their argument states that the proposed facility is *close* to being a major source of air emissions. However, nothing in the statutes or regulations concerning major sources of air emissions mandates a facility to conform to the standards required to obtain a major source permit simply because the facility is *close* to being a major source of air emissions.

Whether a proposed facility is a major source of air emissions is determined by [Pg 6] criteria set forth by regulation. [HN4](#)[↑] Pursuant to [LAC 33:III.502\(A\)](#), ⁵ whether a proposed facility is a major source is determined by the facility's potential to emit certain pollutants and whether that potential to emit such pollutants exceeds certain thresholds. If the facility's potential to emit these pollutants exceeds such thresholds, the facility is a major source; if the facility's potential to so emit is below these thresholds, it is a minor source. With regard to certain regulated air pollutants, any stationary source that directly emits, or has the potential to emit, 100 tons per year of such air pollutants is considered to be a major source of air emissions. DEQ's basis for decision listed the emissions of certain air pollutants from the proposed operation of the Petroplex facility. Specifically, the basis for decision listed the levels of emissions, in tons per year, for volatile organic compounds (VOCs) at 93.83, for carbon monoxide (CO) at 76.86, for nitrogen oxides (NOx) at 55.52, [*10] for particulate matter (PM10) at 7.30, and for sulfur dioxide (SO2) at 0.99.

In challenging the facility's status as a minor source of air emissions, Community Strength has focused solely on

inapplicable under that criterion.

⁵ See also [LAC 33:III.509\(B\)](#) (definition of Major Stationary Source) and [42 USC § 7412](#).

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the levels of VOCs potentially emitted by the facility each year. As the basis for decision demonstrates, the Petroplex facility is expected to emit 93.83 tons per year of VOCs, which is clearly below the 100 ton-per-year threshold for major source status. Therefore, under this criterion, the Petroplex facility is a minor source of air emissions and is not subject to the enhanced requirements necessary for obtaining a major source permit.

HNS Pursuant to [LAC 33:III.5103](#), a major source is also defined as "any stationary source ... of air pollutants that emits, or has the potential to emit, in the aggregate, 10 tons per year or more of any toxic air pollutant listed in LAC 33:III.5112, Table 51.1 or 25 tons per year or more of any combination of toxic air pollutants listed in LAC 33:III.5112, Table 51.1." According to DEQ's basis for decision, the toxic air pollutants that fall within this category and would be emitted **[*11]** per year by the proposed Petroplex facility total 8.80 tons per year, well below the aggregate 25 tons-per-year threshold. [Pg 7] Therefore, the Petroplex facility qualifies as a minor source of air emissions under this criterion as well.

Community Strength also contends in its brief to this court that DEQ was arbitrary and capricious in granting the permit to Petroplex without properly evaluating Petroplex's calculations of the above air emissions, which could have resulted in the reclassification of the facility as a major source. Community Strength does not specify what problems allegedly existed with the calculations, but it insists that the Environmental Protection Agency (EPA) advised DEQ of its concern that Petroplex's calculations may have been so flawed that the facility might have needed to apply for an air permit as a major source. Community Strength contends that DEQ failed to respond to any of the EPA's concerns in this matter.

This argument appears to be without any foundation. After a complete review of the record, the district court stated:

[Community Strength] also contends that [DEQ] failed to respond to the EPA concerns about the potential to emit and how monitoring **[*12]** requirements should have been addressed. The record in this case reflects that [DEQ] responded in detail to all of the EPA comments. [DEQ] sent the EPA the emissions estimates and the methodology that was used to calculate those estimates. The record also reflects it added conditions to the air permit in light of the EPA comments. And I realize this is a disputed point, but the EPA did not follow up, did not come back with

more responses or indicate that in any way it was not satisfied with the responses. What was probably more troubling to the Court is, as I read through the brief, [Community Strength] makes an erroneous assertion that the EPA felt the calculations were, and they used the term, flawed. And I can assure you, I've read through every page of this record, cited or not cited. I started first with what y'all pointed me out to in the briefs, and then I went back, and, although there was a lot of duplication in the record, I read through all of the documents contained therein. The EPA never said or even insinuated that the calculations were flawed in any way. They only wanted the estimates and the methodology employed, which were provided to them by [DEQ]. The only party **[*13]** to use the term flawed in connection with those calculations was [Community Strength], and to assert otherwise, in addition to being misleading, it's simply factually incorrect[,] and it's not supported by the record.

After a thorough review of the record, we also find no basis in fact for this allegation by Community Strength. DEQ responded to every comment or request for information from the EPA, and at no point did the EPA characterize the calculations as flawed. Rather, the EPA merely noted that emissions from otherwise insignificant [Pg 8] activities might be significant for Petroplex, because its VOC emissions are close to the major source threshold. DEQ responded by making certain changes in the permit requirements and by providing the EPA with Petroplex's emissions estimates and the methodology used to calculate them. There is nothing in the record to suggest that DEQ did not respond to all of the EPA's comments, nor is there anything to suggest that the EPA was not satisfied with DEQ's responses to its comments.

Community Strength has offered no evidence to demonstrate that Petroplex's calculations were flawed. Moreover, it has offered no evidence that DEQ failed to perform **[*14]** an independent review of the calculations and instead merely relied on the statements offered by Petroplex, as Community Strength suggests. Rather, Community Strength simply relies on its allegations, with no foundation, that DEQ failed to perform an independent inquiry prior to issuing the minor source permit to Petroplex. Accordingly, this argument is also without merit.

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In its second assignment of error,⁶ Community Strength argues that DEQ erred in granting the permit to Petroplex, when the Petroplex EAS was allegedly nearly identical to the EAS submitted for a different project, which allegedly demonstrated a lack of rigorous evaluation of the environmental risks by DEQ. During the public comment period, one person noted:

The Petroplex EAS submitted to [DEQ] in November 2008[,] is very similar and in large part word for word the same as the information submitted to [DEQ] by Safeland Storage, LLC [Safeland] for its Angelina Tank Farm facility. Since the two documents are almost identical, a large part of the deficiencies and inadequate information identified in the Safeland response are also deficiencies and inadequacies in the Petroplex EAS. Thus, I wish to submit Tulane's comments [*15] submitted ... regarding the [Safeland] facility. I request that [DEQ] review, evaluate[,] and use the [Pg 9] Tulane comments as they relate to both the [Safeland] and Petroplex facilities as the basis for denial of the Petroplex permit.

In response, DEQ stated that it was seeking comments concerning the initial minor source air permit for the proposed Petroplex facility and that it would "not consider, compare, review, evaluate, or respond to comments prepared and submitted regarding another facility's proposed permit[,] as they may or may not relate to the proposed permit for which it has requested public comments." According to DEQ, it evaluates all permit applications individually, and it did not rely on the Safeland EAS, or on comments made about the Safeland EAS, in evaluating the Petroplex application or EAS.

As is clear by the comment noted above, the person commenting sought to have DEQ consider and respond to public comments that had been previously submitted in opposition to the permit application for the Safeland facility, an entirely different facility than the proposed Petroplex facility, for which DEQ was seeking comment. Community Strength has offered no authority for the

⁶Community Strength listed four assignments of error at the beginning of its brief: (1) DEQ should have required full minimization of air emissions from the proposed Petroplex facility, because the EAS shows that the facility is very close to being a major source of air emissions; (2) DEQ erred in failing to properly evaluate whether the potential and real adverse environmental [*16] effects of the proposed facility have been avoided to the maximum extent possible; (3) DEQ erred in failing to properly evaluate whether the environmental impact costs balanced against the social and economic benefits of the

proposition that DEQ [*17] must consider such comments, and the district court properly concluded that there was no basis in law for this proposition. Likewise, Community Strength has offered no authority for the proposition that DEQ must compare an EAS prepared for one facility when evaluating an EAS prepared for an entirely different permit application. Furthermore, a review of the Safeland EAS demonstrates that while there are some similarities to the Petroplex EAS in the language it uses, particularly in the site selection process, the Petroplex EAS and the Safeland EAS contain different discussions in most of their substantive findings.

Community Strength also argues, for the first time on appeal to this court, that DEQ erred by not considering, as an alternative design, that the Petroplex facility could have been designed as a facility with slightly higher capacity. This would then have required it to operate as a major source, employing BACT and LAER technology. According to Community Strength, such an alternative design allegedly would have caused the facility to have lower air emissions. Community Strength raises this argument in its brief with no evidentiary support and with no record reference to where [*18] [Pg 10] it was allegedly proposed before, other than a reference to the part of DEQ's basis for decision demonstrating that no such alternative design was considered. However, Community Strength is precluded from raising this argument before this court for the first time by [LSA-R.S. 30:2014.3](#), which provides, in pertinent part:

[HN6](#) [↑] B. The applicant and any person who may become a party to an administrative or judicial proceeding to review the secretary's decision on an application must raise all reasonably ascertainable issues and submit all reasonably available evidence supporting his position on the permit application prior to the issuance of the final decision by the [DEQ] so that the evidence may be made a part of the administrative record for the application.

C. No evidence shall be admissible by any party to

proposed facility demonstrate that the latter outweighed the former; and (4) DEQ erred in failing to evaluate whether there were alternative sites that would offer more protection to the environment than the proposed site without unduly curtailing non-environmental benefits. However, other than the first assignment of error, Community Strength did not argue these assignments of error in the body of the brief. Therefore, we will discuss the remaining assignments of error actually briefed by Community Strength. See Uniform Rules of Louisiana Courts of Appeal, Rule 2-12.4.

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an administrative or judicial proceeding to review the secretary's decision on the application that was not submitted to the [DEQ] prior to issuance of a final decision or made a part of the administrative record for the application, unless good cause is shown for the failure to submit it. No issues shall be raised by any party that were not submitted to the [DEQ] prior to issuance [*19] of a final decision or made a part of the administrative record for the application unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise new issues or introduce new evidence shows that it could not reasonably have ascertained the issues or made the evidence available within the time established for public comment by the [DEQ], or that it could not have reasonably anticipated the relevance or materiality of the evidence or issues sought to be introduced.

In its final assignment or error, Community Strength argues in general terms that DEQ erred in failing to evaluate alleged deficiencies in the Petroplex EAS and that it relied on Petroplex's flawed statements and reasoning in response to the IT⁷ questions in granting the minor source permit. The IT questions have been expressed as either five or three questions, but in either case, they require that any written finding of facts and reasons for decision provided by DEQ must satisfy the issues of whether: (1) the potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible; (2) a cost-benefit analysis of the [*20] environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and (3) there are no alternative projects or alternative sites or mitigating measures which would offer more [Pg 11] protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable.⁸ [In re Belle Co., LLC, 00-0504 \(La. App. 1st Cir. 6/27/01\), 809 So. 2d 225, 238; see also Save Ourselves, Inc., 452 So.2d at 1157.](#)

Community Strength initially argues in its brief to this court that it was "nonsensical to issue a permit for a facility [whose] plan to reduce the environmental impact on the air is to comply with the permit that has no hard conditions." As noted by the district court, this was yet another misstatement of the record by Community Strength. The EAS gave very detailed descriptions of

how the facility intended to handle the emissions it generated. In addition to the specific details provided, [*21] Petroplex noted that it intended not only to follow the requirements of the permit, but also the state and federal laws, as well as the regulations promulgated by DEQ and the EPA. Furthermore, both the EAS and DEQ's basis for decision noted that Petroplex intended to employ technology that was above and beyond that required by law, which would have a greater effect in reducing emissions.

Community Strength further argues that Petroplex and DEQ improperly failed to address the cumulative effects of air emissions from the proposed Petroplex facility and releases from other surrounding industrial facilities. Community Strength contends that a comment was made regarding this alleged failure at the public hearing and that DEQ failed to respond to the comment. As a preliminary matter, Community Strength is incorrect. DEQ did, in fact, respond to that specific comment. Furthermore, DEQ also responded to a different comment regarding the cumulative effects of air emissions in St. James Parish, including the effects of the additional emissions of the proposed Petroplex facility. As DEQ explained in its response, Petroplex performed air modeling of the proposed facility's emissions based on a [*22] protocol previously approved by DEQ. After this modeling was performed, it was discovered that the proposed facility's screen modeling results were lower than 7.5% of the Louisiana ambient air standard for each [Pg 12] pollutant. Because of these results, further modeling, including that which would have addressed the cumulative impact of the proposed emissions along with those released by other facilities operating in the area, was not required.

Community Strength next argues that Petroplex failed to properly document a need for the facility. In support of this argument, Community Strength again points to various comments in opposition to the facility that allegedly call into question the need for the site. These comments address a letter submitted by Commissioner of Agriculture Mike Strain in support of the need for the project. In challenging this letter, Community Strength attempts to demonstrate that with the existence of the Safeland facility, there was no longer a need for the Petroplex facility. Thus, it points to comments that note that Commissioner Strain's letter makes no mention of the Safeland facility, which according to Community

⁷ The reference to "IT" relates to the IT Corporation, which was the applicant in [Save Ourselves, Inc., 452 So.2d 1152.](#)

⁸ Petroplex was also required to address these issues in its EAS.

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Strength, suggests that DEQ failed to [*23] do its due diligence in reviewing the EAS and permit application.

However, Community Strength simply ignores another letter in support of the facility in the record from James Richard "J.R." Owens, the global sourcing advisor for the Birla Carbon Division of Aditya Birla Management Corporation, Ltd. In this letter, Mr. Owens states his opinion that "notwithstanding the additional capacity to be provided by the Safeland facility, there is a significant need for the additional 10 million barrels of storage capacity for crude oil, refined products, and alternative fuels" to be provided by the Petroplex facility. Clearly, Mr. Owens was aware of the existence of the Safeland facility and still felt the need for the additional capacity that the Petroplex facility would provide.

As to the concerns about Commissioner Strain's letter, the fact that he did not mention the Safeland facility certainly did not mean he was unaware of it, and Community Strength has offered only speculation, with no evidence, to support the inference it suggests. Furthermore, Community Strength has offered no evidence to suggest that Commissioner Strain would not have supported the Petroplex facility if, in fact, he [*24] had been aware of the existence of the Safeland facility at the time he wrote [Pg 13] the letter at issue.

Finally, Community Strength contends that a public comment pointed out to DEQ that the site selection process used by Petroplex in its EAS was extremely flawed and was based on a manipulation of the site selection process. The comment at issue alleged that both Petroplex and Safeland used identical language in describing the site selection process, but that Petroplex added additional criteria at some point to manipulate the process into favoring the site ultimately chosen for the facility.

As noted above, DEQ reviews each application independently, so there would be no reason for DEQ to review the Safeland application or EAS while considering the Petroplex application or EAS. In addition, as the two facilities are both storage facilities with large storage capacities, which are attempting to target themselves to similar customers, it is not surprising that their site selection criteria would be similar or even identical in many ways. That alone does not make the site selection process flawed, and Community Strength once again offers no evidence to support its conclusory statements [*25] that this process was, in fact, flawed.

HNT [↑] In making a decision, DEQ is required to make basic findings supported by the evidence and ultimate

findings that flow rationally from the basic findings; it must also articulate a rational connection between the facts found and the order issued. In re American Waste & Pollution Control Co., 93-3163 (La. 9/15/94), 642 So.2d 1258, 1266; Save Ourselves, Inc., 452 So.2d at 1159. A decision in conformity with these mandates should contain: (1) a general recitation of the facts as presented by all sides; (2) a basic finding of facts as supported by the record; (3) a response to all reasonable public comments; (4) a conclusion or conclusions on all issues raised that rationally support the order issued; and (5) any and all other matters that rationally support DEQ's decision. In re Belle Co., LLC, 809 So.2d at 238; In re Rubicon, Inc., 95-0108 (La. App. 1st Cir. 2/14/96), 670 So.2d 475, 483. Additionally, as noted earlier, the written finding of facts and reasons for decision must satisfy the issues of whether: (1) the potential and real adverse environmental effects of the proposed project have been [Pg 14] avoided to the maximum extent possible; (2) [*26] a cost-benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and (3) there are no alternative projects or alternative sites or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable. In re Belle Co., LLC, 809 So.2d at 238; In re Rubicon, Inc., 670 So.2d at 483.

After a thorough review of the record, we find that DEQ's basis for decision sufficiently complies with the requirements above. Community Strength has offered nothing but allegations, with no factual basis, in opposition to DEQ's decision. Accordingly, we conclude that DEQ's decision is supported by its factual findings and its articulation of a rational connection between the facts found and the final permit action. In this respect, DEQ performed its duty as protector of the environment.

ANSWER TO APPEAL

Petroplex has answered the appeal, seeking damages, including attorney fees and costs it incurred in responding to and defending against this allegedly frivolous appeal. **HNT** [↑] The imposition of damages [*27] for a frivolous appeal is regulated by LSA-C.C.P. art. 2164. The courts have been very reluctant to grant damages under this Article as it is penal in nature and must be strictly construed. Guarantee Systems Const. & Restoration, Inc. v. Anthony, 97-1877 (La. App. 1st Cir. 9/25/98), 728 So. 2d 398, 405, writ denied, 98-2701 (La. 12/18/98), 734

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So.2d 636. Although a successful appeal is by definition non-frivolous, the converse is not true because appeals are favored. Daisey v. Time Warner, 98-2199 (La. App. 1st Cir. 11/5/99), 761 So.2d 564, 569. In order to assess damages for a frivolous appeal, it must appear that the appeal was taken solely for delay or that appealing counsel does not sincerely believe in the view of the law he advocates. Guarantee Systems Const. & Restoration, Inc., 728 So.2d at 405.

Even though Community Strength's arguments failed to persuade this court, we conclude that the arguments made by the appellant were not brought in bad faith solely [Pg 15] for purposes of harassment or delay. We cannot say that appealing counsel did not sincerely believe in the position they advocated. Therefore, damages for frivolous appeal are not warranted.

CONCLUSION

For the foregoing [*28] reasons, the judgment of the district court affirming the final permit action and decision of the Louisiana Department of Environmental Quality in approving and issuing the minor source permit to Petroplex International, L.L.C. is affirmed. The request for damages for frivolous appeal by Petroplex International, L.L.C. is denied. All costs of this appeal are assessed to Community Strength, Inc.

AFFIRMED.

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Hall v. EPA

United States Court of Appeals for the Ninth Circuit

March 12, 2002, Argued and Submitted, San Francisco, California ; March 28, 2002, Filed

No. 00-70257, No. 00-71676

Reporter

33 Fed. Appx. 297 *; 2002 U.S. App. LEXIS 5323 **; 32 ELR 20570

ROBERT W. HALL, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent. ROBERT W. HALL, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Notice: **[**1]** RULES OF THE NINTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

Prior History: On Petition for Review of an Order of the Environmental Protection Agency. EPA No. Clean Air Act, EPA No. 65-FR-71314-14.

Disposition: Petitions DENIED.

Core Terms

EPA, comments, Air

Case Summary**Procedural Posture**

Petitioner individual sought review of two decisions of the Environmental Protection Agency (EPA) under the Clean Air Act, [42 U.S.C.S. § 7401 et seq.](#)

Overview

The individual argued that there should have been a requirement of post-construction monitoring, and submission of a compliance schedule. The court disagreed. The individual also asserted that the permittee needed to use the best available control technology (BACT) to ensure that air quality did not deteriorate due to the permittee's operation. However, the BACT did not

require the most sophisticated technology without regard for other values such as energy, environmental, and economic impacts. The individual did not produce or point to evidence that effectively challenged the determination that the permit would meet the BACT standard. The individual asserted that preconstruction monitoring should have been required. However, the individual failed to raise that issue before the county health district, and therefore, the EPA was not required to consider his request for an objection on that ground. Finally, the individual's claim that the EPA erred when it decided that the carbon monoxide motor vehicles emissions budget was adequate lacked merit.

Outcome

The individual's petitions were denied.

LexisNexis® Headnotes

Environmental Law > Air Quality > Preconstruction Permits

Environmental Law > Air Quality > General Overview

Environmental Law > Air Quality > State Implementation Plans

[HN1](#)  Air Quality, Preconstruction Permits

In the context of the Clean Air Act, [42 U.S.C.S. § 7401 et seq.](#), post-construction monitoring is only required when directed by the county of health distract control officer, and there is discretion in that official to demand or not demand monitoring by the permittee in any particular

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case. Submission of a compliance schedule is required only when the permittee has been in a condition of noncompliance formerly.

Environmental Law > Air Quality > Operating Permits

Transportation Law > Commercial Vehicles > Emission Control

Environmental Law > Air Quality > General Overview

Environmental Law > Air Quality > Preconstruction Permits

Environmental Law > Air Quality > Prevention of Significant Deterioration

[HN2](#) Air Quality, Operating Permits

A permittee must use the best available control technology (BACT) to ensure that air quality does not deteriorate due to the permittee's operation. The Clean Air Act, [42 U.S.C.S. § 7401 et seq.](#), does so provide. [42 U.S.C.S. § 7475\(a\)\(4\)](#). However, BACT does not mean the most sophisticated technology that can be found, without regard for other values such as energy, environmental, and economic impacts. [42 U.S.C.S. § 7479\(3\)](#). In other words, BACT is not some ideal, invariable standard of excellence; it is something to be decided by the issuing authority on a case-to-case basis.

Environmental Law > Air Quality > Operating Permits

Environmental Law > Air Quality > General Overview

[HN3](#) Air Quality, Operating Permits

Where a petitioner fails to raise the issue of whether preconstruction monitoring should be required before the county health district the Environmental Protection Agency is not required to consider the request for an objection on that ground. [42 U.S.C.S. § 7661d\(b\)\(2\)](#).

Counsel: ROBERT W. HALL, Petitioner (00-70257, 00-71676), Pro se, Las Vegas, NV.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent (00-70257, 00-71676): Administrator, Environmental Protection Agency, Chief Counsel - EPA, Carol M. Browner, U.S. ENVIRONMENTAL PROTECTION AGENCY, Brian H. Lynk, Thomas A. Lorenzen, U.S. DEPARTMENT OF JUSTICE, Environment & Natural Resources, Melaine A. Williams, Washington, DC.

For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent (00-70257, 00-71676): Regional Counsel, ENVIRONMENTAL PROTECTION AGENCY, San Francisco, CA.

For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent (00-70257): Thomas H. Pacheco, Esq., U.S. Department of Justice, San Francisco, CA.

For UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent (00-70257): Judith Keith, UNITED STATES DEPARTMENT OF JUSTICE, Washington, DC.

For UNITED **[**2]** STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent (00-71676): Angeline Purdy, U.S. DEPARTMENT OF JUSTICE, Washington, DC.

Judges: Before: GOODWIN, REINHARDT and FERNANDEZ, Circuit Judges.

Opinion

[*299] MEMORANDUM *

Robert Hall petitions for review of two decisions of the Environmental Protection Agency under the Clean Air Act, [42 U.S.C. §§ 7401-7671q](#). We deny the petitions.

(1) Hall first claims that the EPA erred when it refused to object to the issuance of an operating permit to Pacific Coast Building Products, Inc. (PABCO) by the Clark County Health District (CCHD). We disagree.

Hall asserts that the permit had to be approved according to the existing rules adopted under Part 70, ¹ rather than


provided by [Ninth Circuit Rule 36-3](#).


* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be


¹ [40 C.F.R. §§ 70.1-70.11](#).

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under the proposed new rules under Part 70.² So much is true, but the permit based upon the new rules imposed more stringent conditions **[**3]** upon PABCO than the old ones would have; it is apodictic that meeting the former entailed meeting the latter.

Hall also argues that to be proper the permit had to impose upon PABCO a requirement of post-construction monitoring, and a requirement of submission of a compliance schedule. That simply is not the law. **HN1** ] The former is only required when directed by the CCHD control officer, and there is discretion in that official to demand or not demand monitoring by the permittee in any particular case. See State Implementation Plan, Clark County, Nev., § 15.13.12(2), available at <http://www.epa.gov/region09/air/sips/index.html> (Nov. 17, 1981). The latter is required **[**4]** only when the permittee had been in a condition of noncompliance formerly, and there is no evidence that PABCO had been. See State Implementation Plan, Clark County, Nevada, § 10.1, available at <http://epa.gov/region09/air/sips/index.html> (July 24, 1979).

Next, Hall asserts that in Apex, Nevada, where PABCO is located, **HN2** ] a permittee must use the best available control technology (BACT) to ensure that air quality does not deteriorate due to the permittee's operation. The Clean Air Act does so provide. 42 U.S.C. § 7475(a)(4). But Hall overlooks the fact that BACT does not mean the most sophisticated technology that can be found, without regard for other values such as "energy, environmental, and economic impacts." See 42 U.S.C. § 7479(3). In other words, BACT is not some ideal, invariable standard of excellence; it is something to be decided by the issuing authority on a case-to-case basis. See N. Plains Res. Council v. EPA, 645 F.2d 1349, 1351 (9th Cir. 1981). Here, CCHD determined that PABCO's permit **[*300]** would meet the BACT standard under the circumstances. EPA agreed, and Hall has not produced or pointed to evidence **[**5]** which effectively challenges that. See Citizens for Clean Air v. EPA, 959 F.2d 839, 847 (9th Cir. 1992). We cannot conclude that the EPA's decision was arbitrary or capricious.

Also, Hall now asserts that preconstruction monitoring should have been required. **HN3** ] But Hall failed to

raise that issue before the CCHD and, therefore, the EPA was not even required to consider his request for an objection on that ground. See 42 U.S.C. § 7661d(b)(2); see also Marbled Murrelet v. Babbitt, 83 F.3d 1060, 1063 (9th Cir. 1996); Duncanson-Harrelson Co. v. Dir., Office of Workers' Comp. Programs, 644 F.2d 827, 832 (9th Cir. 1981).

Finally, Hall challenges the permit on the general basis that the EPA had improperly extended the Part 70 interim approval, which it had given to Clark County, Nevada,³ among others, as a result of which CCHD could not issue any permits, much less the PABCO permit. This allonge at the permit misses its mark. In the first place, it amounts to an attack on the EPA's national Part 70 program, and cannot be brought in this court. See Hall v. Norton, 266 F.3d 969, 974-75 (9th Cir. 2001). **[**6]** In the second place, Hall did not challenge the extensions in a timely manner. See 42 U.S.C. § 7607(b)(1); Haw. Elec. Co. v. EPA, 723 F.2d 1440, 1447 (9th Cir. 1984); see also Shiny Rock Mining Corp. v. United States, 906 F.2d 1362, 1364 (9th Cir. 1990).

(2) Hall's second claim is that the EPA erred when it decided that the Carbon Monoxide Motor Vehicles Emissions Budget (MVEB) for the Las Vegas, Nevada area was adequate. The fault he finds is in the EPA's failure to address his comments in an appropriate manner. That attack must fail.

Hall's letter of September 28, 2000, set forth six comments, and the EPA did, indeed, respond to each of those, as it was required to do. See 42 U.S.C. § 7607(d)(6)(B). We have examined **[**7]** the responses, and cannot say that they were arbitrary and capricious. See Ober v. Whitman, 243 F.3d 1190, 1193 (9th Cir. 2001); Navistar Int'l Transp. Corp. v. EPA, 941 F.2d 1339, 1359 (6th Cir. 1991).

The September 28, 2000, letter also made reference to an earlier document that Hall had sent to Clark County and to the EPA on or about July 21, 2000. The EPA did not specifically respond to the comments in that document. However, Clark County did respond before the comment period for the EPA itself commenced on August 29, 2000. The EPA could hardly have been expected to assume that the July 21, 2000, comments, which had already been sent to Clark County and which

1160-61 (9th Cir. 2001).

² The new rules had gone into effect by the day that the permit was issued by CCHD, but the parties agree that the old rules were the proper standard. In any event, the approval of the new rules has been set aside. See Hall v. EPA, 273 F.3d 1146,

³ See 40 C.F.R. 70.4(d)(2), as extended by 61 Fed. Reg. 56368 (Oct. 31, 1996), 62 Fed. Reg. 45732 (Aug. 29, 1997), and 63 Fed. Reg. 40054 (Jul. 27, 1998).

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were responded to by that entity, had to be addressed all over again when Hall lodged no specific objections to the responses that had already been given to those comments. At any rate, the plan content included the public comments and Clark County's responses thereto, and the plan, including those, was approved by the EPA as part of its adequacy determination. We see no prejudice that did, or could, result because EPA did not address the comments all over again, even if its failure to do **[**8]** so was an error. See [*Sagebrush Rebellion, Inc., v. Hodel*, 790 F.2d 760, 764 \(9th Cir. 1986\)](#); [*County of Del Norte v. United States*, 732 F.2d 1462, 1466-67 \(9th Cir. 1984\)](#). We cannot say that the EPA's failure to respond separately **[*301]** was arbitrary and capricious under the present circumstances.

Petitions DENIED.

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(Slip Opinion)

NOTICE: This opinion is subject to formal revision before publication in the Environmental Administrative Decisions (E.A.D.). Readers are requested to notify the Environmental Appeals Board, U.S. Environmental Protection Agency, Washington, D.C. 20460, of any typographical or other formal errors, in order that corrections may be made before publication.

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)
In re:)
))
Encogen Cogeneration Facility) PSD Appeal Nos. 98-22
) through 98-24
PSD/CSP Permit No. 0243-01-C)
_____)

[Decided March 26, 1999]

ORDER DENYING REVIEW

***Before Environmental Appeals Judges Scott C. Fulton,
Ronald L. McCallum and Edward E. Reich.***

ENCOGEN COGENERATION FACILITY

PSD Appeal Nos. 98-22 through 98-24

ORDER DENYING REVIEW

Decided March 26, 1999

Syllabus

Before the Board are three petitions seeking review of certain conditions of a prevention of significant deterioration ("PSD") permit (the "Permit") granted by the State of Hawaii Department of Health ("DOH"). The Permit was issued to Encogen Hawaii, L.P. ("Encogen") and would authorize Encogen to construct a 65-megawatt ("MW") cogeneration facility (the "Station") in Honokaa on the Big Island of Hawaii. Both DOH and Encogen have filed responses to the petitions, arguing that the petitions fail to meet the minimal pleading requirement that they demonstrate that the issues raised in the petitions were first raised during the public comment period. In addition, both Encogen and DOH argue that the petitions fail to show that DOH's decision to issue the Permit was clear error.

HELD:

1) The Board will not consider issues that the Petitioners have failed to show were raised during the public comment period, and the Board will not consider issues that the Petitioners have not shown fall within the Board's jurisdiction over PSD permit decisions.

2) Petitioners' argument that the Permit should restrict Encogen's ability to apply in the future for a modification of the Permit's fuel restrictions is rejected because the regulations do not require that future operational changes, which will require modification of a permit, be considered as part of the initial application process.

3) Petitioners have failed to show clear error in (a) DOH's decision not to require Encogen to provide notice of changes in fuel-use among three authorized fuels and (b) DOH's decision not to limit fuel bound nitrogen content and the water-to-fuel ratio where DOH has determined that other permit conditions meet BACT requirements for control of nitrogen oxides. In addition, Petitioners' request for review of the authorization to use three different fuel types is rejected because Petitioners have not

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shown that any differences between the various fuel types would result in emissions greater than those modeled by DOH using what it determined to be "worst-case" conditions.

4) Petitioners' argument that additional measures must be taken to reduce lead emissions is rejected because the potential lead emissions do not exceed the applicable PSD significance level and no exceedence of air quality standards is predicted by modeling undertaken pursuant to the regulations. Although the Petitioners have shown that DOH miscalculated the worst-case lead emissions in the chart showing the Station's PSD significant emissions, the corrected emissions level shown by the Petitioners (and conceded by DOH) does not exceed the applicable PSD significance level.

5) The Petitioners' request for review of DOH's decision not to require on-site monitoring of background ambient air pollution concentrations, but instead to accept off-site data, is rejected because the Petitioners' argument does not show that DOH's response to comments is inadequate or that the off-site background data are not sufficiently conservative as to be reliable. The use of background data with higher pollution concentrations, in essence, provides an additional margin of safety for future air quality at the site.

6) The Petitioners' request for review of DOH's analysis of secondary emissions is rejected because the Petitioners' arguments do not identify secondary emissions that are specific, well-defined and quantifiable.

***Before Environmental Appeals Judges Scott C. Fulton,
Ronald L. McCallum and Edward E. Reich.***

Opinion of the Board by Judge Fulton:

Before the Board are three petitions seeking review of certain conditions of a prevention of significant deterioration ("PSD") permit, Permit No. 0243-01-C (the "Permit"), granted by the State of Hawaii Department of Health ("DOH").¹ The Permit was issued to Encogen

¹DOH administers the PSD program in Hawaii pursuant to a delegation of authority from U.S. EPA Region IX (the "Region"). Because DOH acts as EPA's delegate in implementing the federal PSD program within the State of Hawaii, the Permit is considered an EPA-issued permit for purposes of federal law, and is subject (continued...)

Hawaii, L.P. ("Encogen"). We have consolidated for decision the petitions for review (collectively, the "Petitions") filed by David A. Caccia ("Mr. Caccia"), Ada Lamme ("Ms. Lamme") and Cary Hoepker ("Mr. Hoepker") (collectively, the "Petitioners"). For the reasons explained below, we deny the Petitions.

I. BACKGROUND

A. Statutory and Regulatory Background

The Clean Air Act ("CAA") established the PSD program to regulate air pollution in certain areas, known as "attainment" areas, where air quality meets or is cleaner than the national ambient air quality standards ("NAAQS"), as well as areas that cannot be classified as "attainment" or "non-attainment" ("unclassifiable" areas). CAA §§ 160 *et seq.*, 42 U.S.C. §§ 7470 *et seq.*; see *In re EcoElectrica, L.P.*, PSD Appeal Nos. 96-8 & 96-13, slip op. at 5 (EAB, Apr. 8, 1997), 7 E.A.D. ___; *In re Commonwealth Chesapeake Corp.*, 6 E.A.D. 764, 766-67 (EAB, Feb. 19, 1997). The NAAQS are "maximum concentration 'ceilings'" for particular pollutants, "measured in terms of the total concentration of a pollutant in the atmosphere." U.S. EPA Office of Air Quality Planning, New Source Review Workshop Manual ("Draft Manual")² at C.3. NAAQS have been set for six criteria pollutants: sulfur

¹(...continued)

to review by the Board pursuant to 40 C.F.R. § 124.19. *In re Kawaihae Cogeneration Project*, PSD Appeal Nos. 96-9 to 96-11, 96-14 & 96-16, slip op. at 3 n.1 (EAB, Apr. 28, 1997), 7 E.A.D. ___; *In re Commonwealth Chesapeake Corp.*, 6 E.A.D. 764, 765 n.1 (EAB 1997); *In re West Suburban Recycling & Energy Ctr., L.P.*, 6 E.A.D. 692, 695 n.4 (EAB 1996).

²The Draft Manual was issued as a guidance document for use in conjunction with new source review workshops and training, and to guide permitting officials with respect to PSD requirements and policy. Although it is not accorded the same weight as a binding Agency regulation, the Draft Manual has been considered by this Board as a statement of the Agency's thinking on certain PSD issues. See, e.g., *In re Hawaii Elec. Light Co.*, PSD Appeal Nos. 97-15 to 97-23, slip op. at 9 n.7 (EAB, Nov. 25, 1998), 8 (continued...)

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oxides,³ particulate matter,⁴ nitrogen dioxide ("NO₂"), carbon monoxide ("CO"), ozone ("O₃"), and lead. See 40 C.F.R. §§ 50.4-.12. The Island of Hawaii is located in an area designated attainment or unclassifiable for meeting NAAQS for sulfur oxides, particulate matter, CO, NO₂ and O₃. 40 C.F.R. § 81.312.

In order to prevent violations of the NAAQS and, generally, to prevent significant deterioration of air quality, the PSD regulations require that new major stationary sources be carefully reviewed prior to construction to ensure that emissions from such facilities will not cause or contribute to an exceedence of the NAAQS or applicable PSD ambient air quality "increments." 40 C.F.R. §§ 52.21 *et seq.* A PSD "increment" refers to "the maximum allowable increase in concentration that is allowed to occur above a baseline concentration for a pollutant." Draft Manual at C.3; *see also* 40 C.F.R. § 52.21(c) (establishing increments for regulated pollutants).

The PSD requirements are pollutant-specific, which means that a facility may emit many different air pollutants, but, depending upon a number of factors, including the amount of emissions of each pollutant by the facility, less than all of those pollutants may be subject to the PSD permit requirements. *In re Hawaii Elec. Light Co.*, PSD App. Nos. 97-15 to 97-23, slip op. at 9 (EAB, Nov. 25, 1998), 8 E.A.D. __; Draft Manual at 4. In particular, PSD review is generally required for those pollutants regulated by the CAA that a new major stationary source has the potential to emit at rates equal to or in excess of the thresholds for "significant" emissions specified in 40 C.F.R. § 52.21(b)(23). In addition to the six

²(...continued)

E.A.D. __; *EcoElectrica*, slip op. at 5 n.3, 7 E.A.D. __; *In re Masonite Corp.*, 5 E.A.D. 551, 558 n.8 (EAB 1994).

³Sulfur oxides are to be measured in the air as SO₂. 40 C.F.R. § 50.4(c).

⁴For purposes of determining attainment of the NAAQS, particulate matter is to be measured in the ambient air as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ("PM₁₀"). 40 C.F.R. § 50.6(c).

criteria pollutants, other regulated pollutants for which a "significant" rate has been established and that are relevant to this case are volatile organic compounds ("VOCs"),⁵ arsenic and benzene.

An ambient air quality and source impact analysis, conducted pursuant to the regulatory requirements of 40 C.F.R. § 52.21(k), (l) and (m), is the central means for determining at the preconstruction stage whether the NAAQS or PSD increment will be exceeded by a new major stationary source. The CAA and the PSD regulations also require that new major stationary sources employ the "best available control technology," or BACT, to minimize emissions of pollutants that may be emitted by the new source in amounts greater than the applicable "significant" levels established by the regulations. 42 U.S.C. § 7475(a)(4); 40 C.F.R. § 52.21(j)(2). The requirements of preventing violations of the NAAQS and the applicable PSD increments, and the required use of BACT to minimize emissions of air pollutants, are the core of the PSD regulations. Draft Manual at 5; *accord In re Hawaii Elec.*, slip op. at 11, 8 E.A.D. __.

B. Factual and Procedural Background

The Permit was issued by DOH on June 8, 1998, and would authorize Encogen to construct a 65-megawatt ("MW") cogeneration facility in Honokaa on the Big Island of Hawaii (the "Station"). The Station, which will consist of two 23-MW combustion turbines, two unfired heat recovery steam generators and a 19-MW steam turbine generator, will have the potential to emit pollutants in amounts sufficient to classify it as a new major stationary source. DOH, Ambient Air Quality Impact Report (Mar. 31, 1998) ("AAQ Report") at 4-5. As a result, DOH determined that PSD review is required for the following pollutants, which the Station has the potential to emit at rates equal to or

⁵The term "volatile organic compounds" is defined at 40 C.F.R. §§ 51.100(s), 52.21(b)(30).

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in excess of the applicable "significant" thresholds: NO_x, SO₂, CO, particulate matter, VOC, arsenic and benzene. AAQ Report at 7.⁶

Encogen submitted its initial application for a PSD permit in December 1994. DOH prepared a draft permit in February 1997, and, in April 1997, DOH prepared an ambient air quality impact report for the Station. Certified Index to the Administrative Record at 4. The public was given notice and an opportunity to comment on the draft permit between April 8, 1997, and May 10, 1997. A public hearing was held on May 8, 1997. DOH prepared a summary of the comments received during the comment period and provided written responses to those comments. See Summary of Public Comments Received on the Draft Covered Source Permit for Encogen Hawaii, L.P. Cogeneration Facility Located at the Former Hamakua Sugar Mill, Haina, Hawaii ("DOH's Response to Comments"). DOH determined that the Station will not cause or contribute to an exceedence of the applicable NAAQS and PSD increments and that the Station, as designed, will use BACT for all pollutants that the Station has the potential to emit in regulatory significant amounts. AAQ Report at 27.

Thereafter, DOH submitted the Permit to U.S. EPA Region IX,⁷ and in May 1998 the Region concurred in the issuance of the Permit.

⁶The Petitioners appear to misunderstand the regulatory ramifications that flow from a predicted exceedence of a PSD threshold for "significant" emissions. They appear to argue that the admitted exceedence of an applicable significance threshold implies that the facility would *violate* the PSD requirements. See, e.g., Hoepker Pet. at 7; Caccia & Lamme Pets. at 2. However, such is not the case. The term "significant" in this context has a very specific meaning defined by the regulations at 40 C.F.R. § 52.21(b)(23). Exceedence of the PSD significance levels set forth in 40 C.F.R. § 52.21(b)(23) simply triggers the requirement that a source apply for a PSD permit, as set forth in the regulations.

⁷Pursuant to the Region's delegation agreement with Hawaii, the Region retains the authority to concur on DOH's determinations of what constitutes "best available control technology" for the control of regulated pollutants in PSD permits issued by DOH, and to concur on DOH's evaluation of air impact modeling analyses. Amended Delegation Agreement, 54 Fed. Reg. 23,978 (June 5, 1989).

Certified Index to the Administrative Record at 6. In June 1998, DOH issued its decision to grant the Permit and, thereafter, the Petitioners filed their Petitions requesting that this Board review various aspects of DOH's permitting decision.

II. DISCUSSION

The Petitions of Mr. Caccia and Ms. Lamme are virtually identical. In essence, they question whether DOH properly determined that the Station will not cause or contribute to an exceedance of the NAAQS or PSD increments, and whether DOH correctly determined that the Station will comply with the BACT requirements. Mr. Hoepker's petition, which is more detailed than the petitions filed by Mr. Caccia and Ms. Lamme, raises many of the same issues identified by Mr. Caccia and Ms. Lamme, but also raises several additional issues.

Both DOH and Encogen have filed responses to the Petitions. *See* Encogen Hawaii, L.P.'s Brief in Opposition to Petitions for Review ("Encogen's Brief"); State of Hawaii Department of Health's Response to Petitions for Review ("DOH's Brief"). Both Encogen and DOH object to the Petitions on the ground that they fail to meet the minimal pleading standard of demonstrating that the issues raised in the petitions were first raised during the public comment period. In addition, both Encogen and DOH provide detailed arguments on the merits of each issue, explaining why the Petitions fail to show that DOH's decision to issue the Permit was clear error. Mr. Caccia has filed a reply to the responses filed by DOH and Encogen. *See* Letter from David A. Caccia to the Environmental Appeals Board (Sept. 17, 1998) ("Mr. Caccia's Reply").

For the reasons stated below, we conclude that the Petitioners have failed to sustain their burden of showing that review by this Board is warranted.

A. Threshold Pleading Requirements

The Board's review of PSD permitting decisions is governed by 40 C.F.R. part 124. *Commonwealth Chesapeake Corp.*, 6 E.A.D. 764, 769 (EAB 1997) (quoting *In re Envotech, L.P.*, 6 E.A.D. 260, 265 (EAB 1996)). The Board's role "is to consider issues raised in petitions for review that pertain to the PSD program and that meet the threshold procedural requirements of the permit appeal regulations." *In re Knauf Fiber Glass, GmbH*, PSD Appeal Nos. 98-3 to 98-20, slip op. at 8 (EAB, Feb. 4, 1999), 8 E.A.D. ___. At all times, the Board's approach is guided by the preamble to section 124.19, which states that the Board's power of review "should be only sparingly exercised" and that "most permit conditions should be finally determined at the Regional [State] level." 45 Fed. Reg. 33,412 (May 19, 1980); accord *Kawaihae Cogeneration*, slip op. at 10, 7 E.A.D. ___.

Although the Board broadly construes petitions like these, filed without the apparent aid of legal counsel, *Envotech*, 6 E.A.D. at 268, the burden of demonstrating that review is warranted nonetheless inevitably rests with the petitioner challenging the permit decision. 40 C.F.R. § 124.19(a); accord, e.g., *Kawaihae Cogeneration*, slip op. at 10, 7 E.A.D. ___; *EcoElectrica*, slip op. at 7, 7 E.A.D. ___; *Commonwealth Chesapeake*, 6 E.A.D. at 769. Significantly, the petition must contain "a demonstration that any issues being raised were raised during the public comment period." 40 C.F.R. §§ 124.13, 124.19(a); accord *In re Puerto Rico Elec. Power Auth.*, 6 E.A.D. 255, 255 (EAB 1995).⁸ The effective, efficient and predictable administration of the permitting process demands that the permit issuer be given the opportunity to address potential problems with draft permits before they become final. See *Kawaihae Cogeneration*, slip op. at 18, 7 E.A.D. ___. In the present case, the

⁸Alternatively, a petitioner may demonstrate that the issue over which review is sought was not reasonably ascertainable during the public comment period. See, e.g., *In re Keystone Cogeneration Sys.*, 3 E.A.D. 766 (Adm'r 1992). None of the Petitioners has argued that review should be granted under this alternative standard.

Petitioners have failed to show that a number of the issues over which they now seek review were raised during the public comment period.

The only demonstration made by the Petitioners that any of their issues were properly raised during the public comment period consists of occasional references to the summary of the public comments set forth in DOH's Response to Comments.⁹ Accordingly, we will not consider arguments or issues raised in the Petitions, unless those issues or arguments were described in DOH's Response to Comments as having been raised during the public comment period.¹⁰ For this reason, we will not consider the following issues raised by the Petitioners: issues regarding the impact of agricultural burning on the background air quality (Caccia & Lamme Pets. at 1; Hoepker Pet. at 3); visibility as an indication of air quality (Caccia & Lamme Pets. at 1; Mr. Caccia's Reply at 1); whether Honokaa is allegedly a "non-attainment" area for certain periods of the year (Caccia & Lamme Pets. at 1);¹¹ any exceedence of the PSD increment for sulfur dioxide allegedly shown by Table 8 of the AAQ Report

⁹In particular, Mr. Caccia stated that "[s]ince we are required to limit ourselves to issues that were raised in the public comment period, we addressed and identified by page number issues in the 'Summary of Public Comments.'" Mr. Caccia's Reply at 1.

¹⁰It is not incumbent upon the Board to scour the record to determine whether an issue was properly raised below: this burden rests with Petitioners. See *In re Essex County (N.J.) Resource Recovery Facility*, 5 E.A.D. 218, 224 (EAB 1994) (denying review where response to comments failed to show that issue was raised during public comment period); *In re Inter-Power of New York, Inc.*, 5 E.A.D. 130, 152 (EAB 1994).

¹¹Mr. Caccia and Ms. Lamme contend that the area to be impacted by emissions from the facility is not in attainment and that the Lowest Available Emissions Rate, or "LAER," not BACT, is required for control of emissions from the Station. As noted above, Hawaii is classified as attainment or unclassifiable, thereby making the PSD and BACT requirements applicable. Reclassification of an area from attainment or unclassifiable to non-attainment may not be addressed in a PSD permit proceeding such as this case. CAA § 164, 42 U.S.C. § 7474; 40 C.F.R. § 52.21(g); accord *In re Hawaii Elec. Light Co.*, PSD Appeal Nos. 97-15 to 97-23, slip op. at 10 n.10 (EAB, Nov. 25, 1998). Thus, even if this issue had been raised in the permit proceeding, it would not be reviewable in this case.

(Hoepker Pet. at 6-9); alleged impacts of the Station on drinking water, soils, vegetation, agriculture, bee keeping, ranching, and the astronomical observatory (Hoepker Pet. at 7-9); issues regarding beryllium, benzene and arsenic emissions (Hoepker Pet. at 7; Caccia and Lamme Pets. at 1-2); alleged atrazine pollution in the ground water to be used by Encogen as a coolant (Hoepker Pet. at 10-11); and the impacts of any pollution from the Station on the Hawaiian hawk, Hawaiian bat, Hawaiian duck, and the damsel fly as endangered species.¹² The Petitioners have not demonstrated that these issues were raised during the public comment period. Indeed, Mr. Caccia filed a reply to the responses of Encogen and DOH, but did not provide any additional citations showing that any of these issues were raised during the public comment period.¹³

B. *The Petitioners Have Not Shown that DOH's Responses to Comments Were Inadequate on the Issues That Were Raised During the Public Comment Period.*

A decision to issue a PSD permit will ordinarily not be reviewed unless the decision is based on either a clearly erroneous finding of fact or conclusion of law, or involves an important matter of policy or exercise of

¹²Mr. Hoepker refers to paragraph C.5 of DOH's Response to Comments to show that these issues were raised. Hoepker Pet. at 5. However, that paragraph merely summarizes the public comment as having stated that DOH's conclusion of no impact on endangered species "is misleading to say the least." DOH's Response to Comments at 7. Apparently, during the public comment period, no specific endangered species were identified and no evidence was submitted showing that such species will be impacted by the Station. In addition, DOH consulted with, and relied upon the judgment of, the U.S. Fish and Wildlife Service, which determined that there are no threatened, endangered, or candidate species that occur in the project area. DOH's Response to Comments at 7. Where, as here, an issue is raised only generically during the public comment period, the permit issuer is not required to provide more than a generic justification for its decision, and the petitioners cannot raise more specific concerns for the first time on appeal. *Knauf*, slip op. at 35, 8 E.A.D. __.

¹³Contrary to Mr. Caccia's argument in his Reply, the requirement that all ascertainable issues be raised during the public comment period is not a mere technicality, *see* Mr. Caccia's Reply at 1, but instead is a regulatory requirement serving the important policy functions discussed above. *See* 40 C.F.R. §§ 124.13, 124.19(a).

discretion that warrants review. 40 C.F.R. § 124.19(a); *accord, e.g., In re Kawaihae Cogeneration Project*, PSD Appeal Nos. 96-9 to 96-11, 96-14 & 96-16, slip op. at 10 (EAB, Apr. 28, 1997), 7 E.A.D. ___; *In re EcoElectrica, L.P.*, PSD Appeal Nos. 96-8 & 96-13, slip op. at 7 (EAB, Apr. 8, 1997), 7 E.A.D. ___, *Commonwealth Chesapeake*, 6 E.A.D. at 769. In order to establish that review of a permit is warranted, a petitioner must, pursuant to section 124.19(a), both state the objections to the permit that are being raised for review and explain why the permit decision maker's previous response to those objections (*i.e.*, the decision maker's basis for the decision) is clearly erroneous or otherwise warrants review. *See Kawaihae Cogeneration*, slip op. at 10, 7 E.A.D. ___; *see also In re Puerto Rico Elec. Power Auth.*, 6 E.A.D. 253, 255 (EAB 1995); *In re Genesee Power Station, L.P.*, 4 E.A.D. 832, 866 (EAB 1993). The burden is on the petitioner to demonstrate that the permit issuer's responses to comments were inadequate. *In re GMC Delco Remy*, RCRA Appeal No. 95-11, slip op. at 8 n.14 (EAB, June 2, 1997); *In re Exxon Co., U.S.A.*, 6 E.A.D. 32, 38-39 (EAB 1995).

As discussed below, with respect to the issues raised by the Petitioners during the public comment period, the Petitioners have not shown that DOH's responses to these comments were inadequate or that the basis for DOH's decision was clearly erroneous.

1. BACT Requirements

In this part, we discuss issues raised by the Petitioners relating to DOH's BACT conclusions.

a. BACT for SO₂ -- Fuel Restrictions

The Permit authorizes Encogen to fire the turbine generators on naphtha fuel, low sulfur fuel oil ("LSFO"), and gasoline. Permit § C.1.d.1. The maximum sulfur content of any fuel, however, is required by the Permit not to exceed 0.05% by weight. *Id.* This fuel restriction was determined to meet or exceed the BACT requirements for SO₂. AAQ Report at 14. The Petitioners raise two issues regarding this fuel

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restriction, neither of which warrant granting review of DOH's permitting decision.

First, the Petitioners contend that the fuel restrictions should be made more stringent to bar Encogen from applying for a modification of the Permit to authorize use of more polluting fuels. Caccia & Lamme Pets. at 2; Hoepker Pet. at 10. The Petitioners' arguments, however, do not show any error in DOH's Response to Comments.

DOH stated in its Response to Comments as follows:

The facility is permitted to burn only naphtha, gasoline and low sulfur diesel no.2 as fuel. If the permittee intends to burn any other fuel, Department approval is required before a different fuel can be burned. If the new alternate fuel will increase pollution levels, the applicant will be required to go through the permitting modification process, including a public comment period, to obtain approval.

DOH's Response to Comments at 14. This response adequately explains why the comments were rejected. The regulations do not require that future operational changes, which require modification of a permit, be considered as part of the initial application process. *See Knauf*, slip op. at 52; *Puerto Rico Elec.*, 6 E.A.D. 258 ("any consideration of what [the permittee] might or might not do in terms of future expansion of the facility is premature and not appropriate for consideration in this proceeding."). Accordingly, the Petitioners have not shown that DOH's Response to Comments was inadequate regarding a possible future modification application.

Second, Mr. Hoepker seeks review of DOH's deletion of a permit condition regarding notification of changes in the type of fuel being used. The draft permit contained a condition requiring Encogen to notify DOH each time Encogen switches the fuel it uses among the different authorized fuels. During the public comment period, DOH received a comment requesting that this notification requirement be deleted on the grounds that

the limitation on sulfur content of the different fuels obviates any need for such notification. DOH's Response to Comments at 4. DOH responded to this comment by deleting the notification requirement, stating that it agreed with the comment. *Id.* at 4-5.

Mr. Hoepker now objects to DOH's deletion of this permit condition, arguing that DOH did not provide a scientific basis for its decision. Mr. Hoepker argues that deletion of the condition "will provide opportunities for Encogen to alternate fuels that may not meet permit guidelines (*e.g.* high sulfur)." Hoepker Pet. at 2. Without greater specificity, such speculation is not a sufficient basis for us to grant review. *In re Colmac Energy, Inc.*, 2 E.A.D. 687, 689 (Adm'r 1988) ("Petitioners have not established that their concerns are anything other than speculative, which is not a sufficient basis to justify exercise of the review powers under the applicable regulations."). Mr. Hoepker has simply not shown that frequent switching between the authorized fuels will result in emissions greater than those contemplated by the AAQ Report.¹⁴ Accordingly, Mr. Hoepker's arguments fail to demonstrate that DOH's deletion of the fuel-switch notification requirement was clear error, and review is therefore denied.

b. BACT Is Not Required for Lead Emissions

DOH determined that BACT would not be required to control lead emissions. AAQ Report at 7 (identifying the pollutants with potential to be emitted in amounts greater than the significant thresholds). Mr. Caccia and Ms. Lamme argue that DOH's conclusion is not supported because it is based upon a modeling of lead emissions from burning of only naphtha, not gasoline. Caccia & Lamme Pets. at 1. They argue that, although burning of naphtha will produce lead emissions of only 0.11 tons

¹⁴This is particularly true since a violation of the Permit's conditions restricting fuel use will expose Encogen to possible enforcement action including, among other things, the assessment of civil penalties.

per year as projected by DOH,¹⁵ burning gasoline will produce substantially greater lead emissions of 0.22 tons per year. *Id.* The Petitioners argue that this error is important because “any amount of lead in the air will have an impact on the IQ of our children. Whatever it takes to remove the lead should be done, regardless of the cost.” *Id.* at 1-2.

DOH has admitted in its Brief that the Petitioners are correct that it miscalculated the worst-case lead emissions as shown in Table 1 of the AAQ Report. DOH’s Brief at 22. DOH further concedes that Petitioners are correct that worst-case lead emissions will be 0.22 tons per year, not the 0.11 tons shown on Table 1.¹⁶ This concession does not, however, mean that DOH committed clear error in determining that BACT is not required for lead emissions. The higher emissions of 0.22 tons per year is still below the applicable PSD significant level of 0.6 tons per year. 40 C.F.R. § 52.21(b)(23). Accordingly, the regulations do not require that BACT be used to control lead emissions, *id.* § 52.21(j)(2), or that an ambient air quality analysis be conducted with respect to lead emissions. *Id.* § 52.21(m)(1)(i)(a).

Thus, the error identified by the Petitioners in DOH’s analysis does not show that DOH’s conclusion was clearly erroneous, and we must reject the Petitioners’ argument that additional measures must be taken to reduce lead emissions. The statute and regulations simply do not require such measures, where, as here, the potential emissions do not exceed the applicable significant level and no exceedence of air quality standards is predicted by modeling undertaken pursuant to the regulations. Accordingly, we deny review of issues relating to DOH’s analysis of BACT for controlling lead emissions.

¹⁵See AAQ Report at 28 tbl. 1.

¹⁶DOH also states in its Brief that it did not miscalculate the emissions of lead when doing the analysis for compliance. DOH’s Brief at 22. Petitioners have not alleged such an error; accordingly, this question is not before us.

c. *NO_x BACT -- Water-to-Fuel Ratio*

DOH determined that Encogen's proposed use of selective catalytic reduction ("SCR") with water injection meets or exceeds the BACT requirements for control of NO_x emissions. AAQ Report at 12. The draft permit also contained additional conditions limiting fuel-bound nitrogen content and the water-to-fuel ratio. During the public comment period, DOH received a comment requesting that these conditions be eliminated on the grounds that there is no need for them given the technologies used and limitations required as BACT. Specifically, the comment noted that NO_x emissions are controlled and limited through the use of an SCR system and that there are permit conditions pertaining to SCR performance as well as NO_x, CO, CO₂ and O₂ concentrations. DOH's Response to Comments at 18. In its Response to Comments, DOH stated that it agreed with the comment and was eliminating these conditions, but was adding a permit condition, Special Condition C.1.e, to allow DOH to establish water-to-fuel limits at a later date. *Id.*

Mr. Hoepker requests that we grant review of DOH's decision to eliminate these permit conditions, arguing that the conditions should be reintroduced "as a safeguard against the failure of other emission control technologies." Hoepker Pet. at 12. Mr. Hoepker has not, however, offered any details that would show that DOH's Response to Comments was inadequate or that its decision to eliminate the permit conditions at issue was inconsistent with the applicable regulations. Because Mr. Hoepker had the burden of showing that elimination of this provision of the permit was clear error, review on this point is denied.

2. *Air Quality and Source Impacts Analysis*

In this part, we discuss issues raised by the Petitioners relating to another central requirement of PSD review: DOH's determination that the Station will not cause or contribute to a violation of the NAAQS or PSD increment based upon an analysis of air quality and source impacts.

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a. *Background Ambient Air Data*

The regulations require an air quality assessment based upon monitoring data for any pollutants that the Station has the potential to emit in amounts greater than the applicable PSD significant levels. 40 C.F.R. § 52.21(m)(1)(i)(a). DOH determined not to require on-site monitoring data of background ambient air pollution concentrations, but instead accepted, as representative, background air data measured at the Puna monitoring station. Mr. Hoepker seeks review of this determination, arguing that the Puna data do not “represent site-specific air quality and meteorological conditions.” Hoepker Pet. at 12. Mr. Hoepker argues that “[d]ue to the agricultural and rural land use in the [area of the Station], background levels are likely to be significantly lower than those found in Puna.” *Id.*

EPA guidance has recognized that representative data gathered from off-site locations and/or gathered from time periods other than the year immediately preceding the permit application may be used in lieu of on-site air monitoring. See Draft Manual at C.18-19; accord *In re Hawaii Elec. Light Co.*, PSD App. Nos. 97-15 to 98-23, slip op. at 41 (EAB, Nov. 25, 1998), 8 E.A.D. __; *In re Kawaihae Cogeneration Project*, PSD Appeal Nos. 96-9 to 96-11, 96-14 & 96-16, slip op. at 29 (EAB, Apr. 28, 1997), 7 E.A.D. __. The Draft Manual provides the following guidance regarding the criteria for determining whether data are “representative”:

In determining the “representativeness” of any existing data, the applicant and the permitting agency must consider the following critical items * * *:

1. monitor location;
2. quality of the data; and
3. currentness of the data.

Draft Manual at C.19. Generally, the choice of appropriate data sets for the air quality analysis is an issue largely left to the discretion of the permitting authority. *Hawaii Elec.*, slip op. at 41 (citing *In re Hibbing*

Taconite Co., 2 E.A.D. 838, 851 (Adm'r 1989) (denying review of permitting authority's decision to use "representative" off-site data, rather than requiring pre-application, on-site monitoring)).

In questioning whether the data were collected at a "representative" location, Mr. Hoepker argues that the background air concentrations in Puna are higher than the concentrations in the area to be affected by the Station. Even assuming that Mr. Hoepker is correct, this is not a basis for review in this case. The use of background data with higher pollution concentrations, in essence, provides an additional margin of safety for future air quality at the site. *Knauf*, slip op. at 36 n.39, 8 E.A.D. __; *accord Kawaihae Cogeneration*, slip op. at 32, 7 E.A.D. __. Since the data inputs reflected higher pollution concentrations than actual background concentrations, the model's predictions are expected to show overall pollution concentrations that are greater than will actually occur when the Station is operational. It follows that, if those higher modeled concentrations do not exceed the NAAQS and PSD increments, the actual concentrations at the Station also are even less likely to exceed those standards. Accordingly, Mr. Hoepker has not shown that DOH's Response to Comments was inadequate or its decision clearly erroneous.

Mr. Caccia and Ms. Lamme assert that "[t]hey apparently did not do their air quality background studies on days when the volcanic haze (VOG) was bad. On these days (anywhere from a couple week[s] to a couple months per year) the air quality would not be compliant with Federal ambient standards." Caccia & Lamme Pets. at 1. DOH's Response to Comments on the question of VOG stated that the ambient air quality analysis "used the most conservative (worst-case) scenario with regards to plant and atmospheric conditions, and incorporated background ambient air concentrations. The results of the analysis indicated no violations of State or Federal air quality standards." DOH's Response to Comments at 3. The Petitioners' argument does not show, based upon specific information in the record, that this response is inadequate or that the background data from Puna did not represent the same or more

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conservative VOG conditions.¹⁷ Accordingly, review of these issues regarding “VOG” in the background ambient air is denied.

b. Issues Regarding Modeling of LSFO Emissions

Mr. Hoepker argues that DOH failed to consider adequately the emissions that will result from the use of LSFO and/or the use of no.2 fuel oil. Hoepker Pet. at 5, 9-10, 11, 12. Specifically, he contends that DOH did not consider the different emissions that may result from use of LSFO because DOH only modeled emissions of naphtha. Mr. Hoepker also contends that DOH did not consider differences between LSFO and no.2 fuel oil. DOH’s Response to Comments stated that “[w]hen calculating pollutant emission rates for the ambient air analysis, the worst-case emission rate between naphtha, gasoline, and low sulfur diesel no.2 was used.” DOH’s Response to Comments at 6; *see also id.* at 3, 4, 7. DOH’s Response to Comments also noted that the sulfur content of all of the authorized fuels is limited to 0.05% by weight. *Id.* at 7. DOH has stated further in its Brief that for the purposes of this Permit, “diesel no. 2 and LSFO are the same” because the sulfur content is limited to 0.05% by weight regardless of the type of fuel used. DOH’s Brief at 19-20.

Upon review, none of Mr. Hoepker’s arguments show that DOH’s responses to comments were inadequate or that its modeling analysis was clearly erroneous. Mr. Hoepker has not shown that any differences between the various fuel types would result in emissions greater than those modeled by DOH using what it determined to be “worst-case” conditions. Accordingly, review of these issues is denied.

¹⁷In *Hawaii Electric*, we granted review and remanded the permit to DOH for further proceedings because the petitioners argued that the data used in that case to represent background ambient air quality were out of date, in part because the data were collected prior to a change in the pattern of volcanic eruption. *Hawaii Elec.*, slip op. at 42-47, 8 E.A.D. __. While the Petitioners in the present case have intimated that the Puna data do not sufficiently account for background VOG concentrations, they have offered no support for this supposition, and they have not alleged that the Puna data are out of date. Thus, we find that they have not shown any error in DOH’s determination that the Puna data represent a sufficiently conservative air quality picture in this regard.

c. Secondary Emissions

The Petitioners also argue that secondary emissions and associated growth impacts have not been adequately addressed. Hoepker Pet. at 4; Caccia & Lamme Pets. at 2. DOH's Response to Comments gave specific reasons, based on the identification of certain anticipated growth industries, for its conclusion that "no significant adverse secondary impacts occur[] as a result of the project." DOH's Response to Comments at 6. The Petitioners have not shown that this response to comments is inadequate.

For PSD review, "Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source * * * undergoing review." *Knauf*, slip op. at 59 (quoting Draft Manual at A.18); *see also* 54 Fed. Reg. 27,286, 27,289 (June 28, 1989). Here, Mr. Caccia and Ms. Lamme argue that secondary growth industries are not yet known and therefore "their emissions are not yet known." Caccia & Lamme Pets. at 2. Surely, uncertainty is inherent in any judgment as to what may occur in the future. The mere identification of that uncertainty, however, cannot, without a more meaningful accounting, serve to show clear error in DOH's determination. In somewhat greater detail, Mr. Hoepker also argues that the Encogen Station is intended to "revitalize" the area into a "combined light industrial park," which Mr. Hoepker argues will consist of industries different from those considered by DOH in its Response to Comments. Hoepker Pet. at 4-5. Mr. Hoepker does not, however, identify specific growth industries; nor does he show what the expected emissions will be from such industries. Because his arguments do not identify secondary emissions that are specific, well-defined and quantifiable, Mr. Hoepker's argument that DOH's Response to Comments are inadequate must fail.

3. Miscellaneous

The Petitioners have also raised a variety of issues that do not clearly fall within the Board's jurisdiction over PSD permit decisions. As we recently noted,

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The Board's jurisdiction to review PSD permits extends to those issues directly relating to permit conditions that implement the federal PSD program. In determining whether we have jurisdiction, the Board places considerable reliance on how the issue is framed in the petition for review, such as the basis upon which relief is being sought.

The Board does not have authority to review every environmental concern associated with this project. Rather, the Board is charged with ensuring that [the permit issuer's] PSD permit decision comports with the applicable requirements of the federal PSD program.

Knauf, slip op. at 53-54, 8 E.A.D. ___. In the present case, the Petitioners have raised a variety of issues over which they have not shown that the Board has jurisdiction in this PSD case.

Mr. Hoepker argues that DOH's responses to noise and water-related issues were not adequate, and that agencies such as DOH's Clean Water Branch, Safe Drinking Water Branch, and Noise and Radiation Branch should be required to give written comments on the Permit. Hoepker Pet. at 2. Hoepker also argues that Encogen should be required to comply with Title IV of the Clean Air Act with respect to controlling acid rain. Hoepker Pet. at 6. In addition, all of the Petitioners argue that DOH should have required an epidemiological study of the surrounding communities. Hoepker Pet. at 3; Caccia & Lamme Pets. at 2. The Petitioners, however, have not shown how these issues fall within the Board's PSD jurisdiction.¹⁸ Moreover, even if these matters were to fall

¹⁸In particular, DOH responded to the comments regarding noise and water-related issues by stating that such issues need to be addressed by the appropriate agency. DOH's Response to Comments at 5. DOH also responded to comments regarding acid rain by noting that the State of Hawaii is exempt from Title IV of the Clean Air Act. DOH's Response to Comments at 8. Mr. Hoepker has not shown how failure to solicit comments from other branches of DOH regarding noise and water issues violates the

(continued...)

within our PSD jurisdiction, the Petitioners' general allegations do not provide sufficient information or specificity from which the Board could conclude that DOH clearly erred in issuing the Permit or in establishing the conditions contained in the Permit. *See, e.g., In re Commonwealth Chesapeake Corp.*, 6 E.A.D. 764, 772 (EAB 1997) (denying review on the grounds that the petitions lacked sufficient information or specificity); *In re Inter-Power of New York, Inc.*, 5 E.A.D. 130, 150 (EAB 1994) (denying review of noise-related issues on grounds of lack of specificity). Accordingly, review of these issues is denied.

III. CONCLUSION

For the reasons set forth above, we deny Mr. Caccia's, Ms. Lamme's and Mr. Hoepker's Petitions for review of DOH's determination to issue the Permit to Encogen.

So ordered.

¹⁸(...continued)

requirements of the federal PSD program, nor has he shown any other error in DOH's Response to Comments.

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8 **BEFORE THE CLARK COUNTY**
9 **AIR POLLUTION CONTROL HEARING BOARD**

10 In re:

11 Appeal of Synthetic Minor Source Permit Issued
12 to Wells Cargo, Inc (Source: 12) by Lori Headrick,
13 Director, Environmental Services, Clark County
14 School District

**INTERVENOR WELLS CARGO
INC.'S RESPONSE TO
APPELLANT'S OPENING BRIEF**

15 Wells Cargo Inc. ("WCI" or "Intervenor") hereby submits its Response to Appellant's Clark
16 County School District's ("CCSD's") Opening Brief.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 Appellant's Opening Brief (the "Appellant's Brief") fails to provide any legal support for
20 Appellant's request that the Air Pollution Control Board (the "Board") require WCI to re-model
21 particulate emissions, monitor for volatile organic compounds ("VOCs") or notify the public and
22 CCSD of exceedances of the Synthetic Minor Source Permit issued to WCI on December 1,
23 2017(the "Permit"). The Brief does not even articulate a legal standard by which the Department
24 of Air Quality's ("DAQ's") decision to issue the Permit could be challenged. The Brief provides
25 no legal basis for Appellant's requested relief, and Appellant's arguments should be rejected as
26 without merit.

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II. DISCUSSION

A. Appellant Fails to Demonstrate that the Dispersion Monitoring Was Inadequate¹

Appellant asserts, essentially, that 51 acres were modeled as a predicate to the Permit, and that 142 acres should have been modeled, and that as a result, "actual site operations have not accurately been modeled. Appellant's assertion is incorrect.

The 51 acres referenced in the Permit limits WCI to an active area of disturbed surfaces and stockpiles of material. This 51 acres was not included in the model, because stockpiles are not considered to be emissions units. The modeling was, however, conducted on all pieces of equipment and roadways that DAQ deemed to be emissions sources. Therefore, the area required to be modeled in support of the permit significant revision was correctly modeled.

The standard of review applicable to the decision of an administrative agency is to determine whether the agency acted arbitrarily and capriciously, and thus abused its discretion. *See Titanium Metals Corp. v. Clark County Dist. Bd. Of Health Air Pollution Control Hearing Bd.*, 99 Nev. 397, 399, 663 P.2d 355, 356 (1983); citing *Gandy v. State ex rel. Division of Investigation*, 96 Nev. 281, 607 P.2d 581 (1980). Here, Appellant provides no basis upon which this Board can conclude that the decision of the Hearing Officer in approving the Permit was arbitrary and capricious, and therefore an abuse of discretion. Appellant's claims, therefore, fail in their entirety.

A. Appellant Provides No Legal Basis for its Request for On-Site Monitoring

Appellant asserts that it has conducted indoor air quality monitoring inside Spring Valley High School, which is located near the WCI facility, and that such monitoring showed volatile

¹ Appellant also relies upon Air Quality Regulations ("AQRs") 90 and 94 as a partial basis for the relief requested. However, those requirements are applicable to Dust Control Permits which are issued to construction activities and are not applicable to stationary sources such as WCI.

1 organic compound ("VOC") levels "above industry guidelines and Federal Standards". Guidelines
2 for which industry and what Federal Standards are alleged to be exceeded is not articulated in
3 Appellant's Brief. In addition, Appellant's Brief draws no connection between VOC levels inside
4 the school and emissions from WCI. Indoor VOC issues are most commonly the result of the
5 materials used in the construction of a building, but in this instance, there is simply no way of
6 knowing the source of the levels inside the school and there is certainly no nexus between those
7 levels and WCI operations.
8

9 As part of the Source 12 Significant Permit Revision, WCI conducted air dispersion
10 modeling for those required National Ambient Air Quality Standards (NAAQS) for all affected
11 sources. The NAAQS do not include either volatile organic compounds (VOC), nor does existing
12 AQRs require an applicant to model VOC. The air dispersion modeling conducted by WCI in
13 support of the Significant Permit Revision demonstrated that all affected sources were in
14 compliance for all NAAQS.
15

16 The indoor air monitoring conducted by CCSD collected data for all contributing sources
17 surrounding the subject facility. Those data cannot distinguish between any discrete source of
18 pollution (i.e., particulate or VOC). Therefore, the particulate and VOC data collected by
19 Appellant are considered to be ambient data representing all sources of pollution (e.g., mobile and
20 stationary).
21

22 Finally, DAQ's mandate is the protection of outdoor air quality. Indoor air is not within
23 its jurisdiction, and any issues associated with indoor air quality are simply not issues that can be
24 addressed in the context of a DAQ operating permit. DAQ has no legal authority to require
25 monitoring associated with indoor air quality.
26

27 There is simply no basis in the law for Appellant's assertion that "the permit should require
28 appropriate on-site monitoring for volatile organic compounds emissions and particulate matter"
29

1 (Brief p. 6), and Appellant has not shown that it was an abuse of discretion for the requirement not
2 to be included in the Permit.

3 B. The Is No Basis for Notification of Exceedances

4 Appellant criticizes the permit for not containing "requirements to inform the public of
5 unhealthy air at the time of exceedance." (Brief, p. 5.) Appellant cites no federal, state or local
6 statute or regulation that require monitoring because no such requirement exists. WCI, as with
7 any permitted stationary source operating in Clark County, is not required to give notice to the
8 public concerning compliance with the NAAQS.

9 Because there is no such requirement, DAQ cannot be criticized for not including it in the
10 Permit and the Permit cannot be faulted for not containing it. As much as Appellant might want
11 such monitoring, it has not shown that the issuance of the Permit was arbitrary or capricious for
12 not containing it.

13 Moreover, Appellant's concerns are adequately addressed via DAQ's practice of informing
14 the public of potentially unhealthy levels of ozone, dust and smoke through advisories and alerts.
15 These alerts and advisories are widely distributed and available to the public through local media
16 outlets, the Clark County website and DAQ's social media. Accordingly, there is no need for the
17 notification sought by Appellant.

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III. CONCLUSION

1
2 Appellant has failed to show that the Hearing Officer's decision was arbitrary or capricious
3 and that the issuance of the Permit was an abuse of discretion, and its appeal should, therefore, be
4 denied in its entirety.

5 Respectfully submitted January 11, 2018.

6 Linda M. Bullen

7 

8 Bullen Law, LLC

9 Attorney for Wells Cargo Inc.

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CERTIFICATE OF SERVICE

I hereby certify that the attached Response to Appellant's Opening Brief was sent to the following on January 11, 2018.

PARTY OR ATTORNEY OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director Environmental Services Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 <u>Headrl@nv.ccsd.net</u>	<i>Appellant</i>	Electronic Mail
Carlos McDade, Esq. Clark County School District Office of the General Counsel 5100 West Sahara Avenue Las Vegas, 89146 <u>mcdadcl@nv.ccsd.net</u>	<i>Clark County School District</i>	Electronic Mail
Leslie A. Nielson, Esq. Deputy District Attorney 500 S. Grand Parkway, 5 th FL. Las Vegas, NV 89106 <u>Leslie.Nielson@clarkcountyda.com</u>	<i>Clark County Department of Air Quality</i>	Electronic Mail

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7 **BEFORE THE CLARK COUNTY**
8 **AIR POLLUTION CONTROL HEARING BOARD**

9)
10 In re:) **APPELLANT'S REPLY TO**
11) **INTERVENOR WELLS CARGO**
12 Appeal of Synthetic Minor Source Permit Issued) **INC.'S RESPONSE TO**
13 to Wells Cargo, Inc. (Source: 12) by Lori) **APPELLANT'S OPENING BRIEF**
14 Headrick, Director, Environmental Services,) **AND CLARK COUNTY**
15 Clark County School District.) **DEPARTMENT OF AIR QUALITY'S**
16) **RESPONSIVE BRIEF**

17 CCSD submits the following reply on its Appeal of the issuance of the Synthetic Minor
18 Source Permit, Source ID #00012 (Source 12)(the "Permit.")

19 As Clark County School District ("CCSD" or "Appellant") stated in its Opening Brief, it
20 suggested that the Clark County Air Pollution Control Hearing Board (the "Board") consider the
21 overall approach used by the Clark County Department of Air Quality ("DAQ") which is to rely
22 on modeling to extrapolate what emissions of air pollutants could be, even in the face of
23 uncertainty regarding the accuracy of the modeling. Appellant asserted that actual monitoring
24 would address the uncertainty in the modeling and it was within the authority of the DAQ to
25 require that monitoring in the permit.

26 Given that there are serious questions raised by the details in the Amended Administrative
27 Record issued on January 11, 2018, regarding the accuracy of the modeling that DAQ based a
28 decision upon, Appellant asserts that DAQ's issuance of the Permit was arbitrary and capricious.

1 Appellant requests that the Board require permittee to acquire actual meteorological and baseline
2 data from the local area in order to verify that the permittee is meeting National Ambient Air
3 Quality Standards (“NAAQS”) at the fence line and thereby not exposing the nearby school to
4 harmful air pollutants. *See* Exhibit 1 attached hereto.

5 ARGUMENT

6 Standard of Review

7
8 The DAQ has jurisdiction over this permit appeal in accordance with Clark County
9 Department of Air Quality’s Air Quality Regulation Section 7.10. Section 7.10 is silent with
10 regards to the standard of review of the issuance of the permit. Appellant does not contest DAQ’s
11 assertion of the “arbitrary and capricious” standard. However, while an agency’s interpretation of
12 its own regulations may be entitled to “great weight,” as cited by DAQ to *Helms v Div. of Env’tl.*
13 *Protection*, 109 Nev. 310, 313, 849 P.2d 279, 282 (1993), *other citations omitted*, there is a lesser
14 standard for factual determinations that the modeling shows compliance with NAAQS, which are
15 given “some deference” rather than the “great weight” standard. *See Northwest Env’tl. Def. Ctr.*
16 *V. Cascade Kelly Holdings LLC*, 155 F. Supp. 3d 1100, 1125 (D. Or. 2015), (“...the Court must
17 give “some deference” to DEQ’s factual determination that the PSEL for VOCs limits the
18 facility’s potential to emit to 78 tons per year”).

19 The Modeling is Deficient

20
21 The summarized modeling documents included in the Amended Administrative Record
22 dated January 11, 2018 do not include sufficient information (1) to determine whether the
23 modeling accurately demonstrated compliance with the NAAQS and (2) whether the modeling
24 was completed in accordance with applicable EPA guidance.

25
26 For example, the release heights of the volume sources appear to be incorrectly modeled
27 for NAAQS analysis. EPA has provided guidance regarding the modeling of sources inside of
28

1 pits in the ground (Appendix W Guidance, Screening Guidance and Other Permitting Guidance
2 https://www3.epa.gov/ttn/scram/guidance_permit.htm). The guidance includes establishing a
3 baseline for modeled sources and receptors that is consistent for both. Based upon the Wells
4 Cargo Dispersion and Modeling Analysis Tables 1a-Volume Sources Summary (page CCDAQ
5 0333-0336) and Table 2-Input Data Summary (page CCDAQ 0336), it appears that the release
6 height for the volume sources are not based on the same elevation as the height of the receptors.
7 As can be seen clearly from Exhibits 2 and 3 attached hereto, some of the sources are below
8 ground level yet none of the release heights for the volume sources are negative. In other words,
9 the model does not seem to take into account that some sources are at the bottom of deep pits, one
10 85 feet below the ground level. The model does not indicate whether (1) the bottom of the pit
11 was used as the baseline elevation; or (2) the model used ground level or flagpole receptors, *see*
12 Table 2, *supra*. Therefore, the modeling is unclear whether the actual distances from the sources
13 to the receptors are greater than the distances used in the model. In accordance with EPA
14 Appendix W Guidance, *supra*, the baseline must be consistent for emission sources and receptors.
15

16
17 Additionally, the model apparently fails to properly account for background pollution in
18 accordance with EPA guidance. Specifically, in accordance with EPA's Draft New Source
19 Review Workshop Manual (USEPA, 1990) ("Manual"), for a modified source, compliance with
20 any NAAQS is based upon the total estimated air quality, which is the sum of the ambient
21 estimates resulting from existing sources of air pollution (modeled source impacts plus measured
22 background concentrations). In other words, it must include not only the background
23 concentration for each pollutant, but also other nearby sources including mobile sources. The
24 guidance also states that the applicant must also include any quantifiable fugitive emissions from
25 the proposed source and any nearby sources such as paved road dust. Common quantifiable
26
27
28

1 fugitive emissions sources of particulate matter, defined on page C.47 of the Manual, are road
2 dust, quarry emissions and aggregate stockpiles. It is unclear if this is the case in the modeling.

3 In addition, the use of an average of monitoring sources throughout the Las Vegas
4 Metropolitan area as background is questionable in this case. None of these monitors are located
5 near an operating aggregate facility and therefore are representative of the background at this site.
6 These monitors were established in accordance with EPA guidance for area concentrations and
7 are purposefully located in areas without nearby sources of pollutants. Monitors upwind of the
8 facility would be a better indication of the true background in this area. At a minimum, the most
9 recent ambient concentration from the nearest metropolitan monitor should be used and other
10 nearby sources should be included. See Page C.59 *et. seq.* of the Manual.

12 Using modeling as the only tool creates uncertainty regarding the actual level of emissions
13 of unhealthy particulates. The use of onsite monitoring would provide more certainty.
14 The modeling of PM₁₀ and PM_{2.5} emissions of unpaved roads and parking areas and other fugitive
15 dust sources is required (EPA. 2006. "Unpaved Roads." Section 13.2.2 of Vol. I, "Stationary
16 Point and Area Sources," of AP-42, Compilation of Air Pollutant Emission Factors. 5th ed.
17 Washington, D.C.: U.S. Environmental Protection Agency and the Redesignation Request and
18 Maintenance Plan for Particulate Matter (PM10) for Clark County, Nevada (August 2012)).
19 Stabilized fugitive dust sources can be modeled as controlled.

21 The permit limits opacity but that does not correlate to limited emissions of particulates.
22 There is no correlation between opacity and PM₁₀ and PM_{2.5} levels. Therefore, opacity limits in
23 the Permit to demonstrate compliance with PM₁₀ and PM_{2.5} NAAQS are not adequate protection
24 against exceedances/unhealthy exposure of the public.

26 The lack of site specific data has caused CCSD to raise issue with this Source and DAQ's
27 plan to permit. DAQ asserts that the Control Officer may not require post-construction
28

1 monitoring. Appellant asserts that is the wrong question. The question is whether or not the
2 Control Officer failed to exercise discretion to require on-site monitoring when the modeling, as
3 conducted, leaves open great uncertainty as to whether NAAQS is met at the fence line.

4 AQR Section 4.4 states that “the Control Officer may designate an authorized agent to
5 make an independent study and report as to the nature, extent, quantity or degree of any air
6 contaminants which are or may be discharged from source. In addition, Section 4.5 states that the
7 Control Officer may require any person responsible for emission of air contaminants to make or
8 have tests made in order to determine the emission of air contaminants from any source,
9 whenever the Control Officer has reason to believe that an emission in excess of that allowed by
10 the Air Quality Regulations is occurring. The Control Officer may specify testing methods to be
11 used in accordance with good professional practice. The Control Officer may observe the testing.
12 All tests shall be conducted by reputable, qualified personnel. The Control Officer shall be given
13 a copy of the test results in writing and signed by the person responsible for the tests. *Id.*

14
15
16 In the present matter, the modeling does not follow EPA guidance in several respects (as
17 identified above), therefore creating uncertainty regarding the accuracy of the conclusion that
18 NAAQS is being met. On-site monitoring could help relieve that uncertainty. Appellant asserts
19 that not recognizing the deficiencies in the modeling, and not requiring testing to address the
20 uncertainties created thereby, was arbitrary and capricious.

21
22 In November 2016, Appellant asked for an ambient monitor station to be constructed on
23 the Spring Valley High School property. DAQ declined. Appellant and DAQ have nine monitors
24 through an expired interlocal agreement, attached hereto as Exhibit 4, and siting an ambient
25 monitor station would provide comfort to the students and families that attend and work at the
26 school, just as they do at the other nine schools.

1 With regards to the argument that Appellant did not present its case during public
2 comment, Appellant answers thusly - CCSD did not participate in the public comment period
3 because staff was expecting a notice from Air Quality regarding the public comment period.
4 DAQ told CCSD that the notice for public review and comment would be emailed, attached
5 hereto as Exhibit 5, directly to CCSD. The email was never received. CCSD relied upon that
6 statement. As Appellant requested individual notice, it was entitled to it. CCSD did not
7 intentionally fail to participate in the comment period.
8

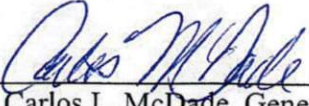
9 CONCLUSIONS

10 AQR Section 12.2 requires the source must meet all applicable requirements. Applicable
11 requirements include Title 1 of the Clean Air Act (CAA), as amended, 42 U.S.C. 7401, *et seq*
12 which includes NAAQS. Based on review of the amended administrative record, the NAAQS
13 modeling is flawed, the dispersion modeling inaccurate, and must be corrected before actual
14 ambient air quality impacts can be determined. At minimum, the tables in the Amended
15 Administrative Record must be updated.
16

17 Therefore, the modeling does not demonstrate compliance with NAAQS in accordance
18 with EPA guidance and Permittee should not be granted a modified operating permit.

19 DATED this 18th day of January, 2018.

21 CLARK COUNTY SCHOOL DISTRICT

22 By: 
23 Carlos L. McDade, General Counsel
24 5100 West Sahara Avenue
25 Las Vegas, Nevada 89146
26 *Attorneys for Appellant, Clark County School District*
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of CLARK COUNTY SCHOOL DISTRICT and that on this 18th day of January, 2018, I served a true and correct copy of **Appellant's Reply to Intervenor Wells Cargo Inc.'s Response to Appellant's Opening Brief** as follows:

PARTY OR ATTORNEY OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director Environmental Services Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net	<i>Appellant</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
Linda Bullen, Esq. Bullen Law, LLC 8635 W. Sahara Avenue #454 Las Vegas, NV 89117 linda@bullenlaw.com	<i>Wells Cargo, Inc.</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
Trent Scarlett Phil Groff Guy Wells Wells Cargo, Inc. 9127 West Russell Road Suite 210 Las Vegas, NV 89148-1240 TScarlett@wcilv.com PGroff@wcilv.com GWells@wcilv.com		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
Leslie A. Nielsen, Esq. Deputy District Attorney 500 S. Grand Parkway, 5 th FL. Las Vegas, NV 89106 Leslie.Nielsen@clarkcountyda.com Attorneys for Department of Air Quality	<i>Department of Air Quality</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email



 A Clark County School District employee

EXHIBIT 1

000104

Wells Cargo Facility

Spring Mountain

Wells Cargo Facility

Buffalo

16315

Spring Valley High School

EXHIBIT 2



000107

EXHIBIT 3

000108

Exhibit 3 Wells Cargo Asphalt Plant in Las Vegas, January 3, 2018 Erik Verduzco/Las Vegas Review-Journal



EXHIBIT 4

000110

Lori Headrick

From: Lori Headrick
Sent: Wednesday, November 02, 2016 10:47 AM
To: KIM KRUMLAND
Subject: FW: current agreements and map
Attachments: 2011 BCC agenda & Interlocal Agmt - exp Jan 2016.pdf; Monitoring Sites.kmz

Here is the agreement for the current air monitoring stations. It is expired. Since we need to renew, hopefully we can add Spring Valley HS as a new location. ☺

From: Mike Sword [mailto:SWORD@ClarkCountyNV.gov]
Sent: Wednesday, November 02, 2016 10:32 AM
To: Lori Headrick <loriheadrick@rmdccsd.net>
Subject: current agreements and map

Lori,

Attached is the most recent Interlocal Agreement. It actually expired this past January and I don't think a replacement has been processed yet. I also included a Google Earth (.KMZ) file that has the location of all of our monitoring sites if that is helpful to you. The monitoring sites are the green location markers.

Mike Sword, P.E., CEM
Planning Manager
Clark County Department of Air Quality
702-455-1615
sword@ClarkCountyNV.gov

Lori Headrick

From: Lori Headrick
Sent: Wednesday, November 02, 2016 9:19 AM
To: KIM KRUMLAND
Subject: Air Monitoring Station Construction Cost Estimate for Spring Valley HS

Hi Kim,

Speaking with DAQ, the estimated cost for us to construct an air monitoring station at Spring Valley High School would be approx. \$150K. This would include a structure to house the equipment. DAQ mentioned that they have installed a system in a storage closet for \$30K. But, this gives them access issues when the unit goes down after school hours.

They are very interested in pursuing this as a "special purpose monitoring site". These sites are operated by DAQ less than 3 years when EPA typically wants it a part of their network of sites.

DAQ is sending me the list of air monitoring sites on our property currently.

Regards, Lori

Lori Headrick CEM
Director
Environmental Health Services

"Taking Care of Environmental Health in Schools for Greater Student Achievement"

<http://ccsd.net/departments/environmental-services>

Office: 702-799-6496 Ext. 5660
Cell: 702-289-0430
CCSD Direct Line: 0767-5660
LHeadrick@Interact.CCSD.net

Clark County School District
Business & Finance Division/Risk & Environmental Services Department
4828 S. Pearl St.
Las Vegas, NV 89121

**CLARK COUNTY BOARD OF COMMISSIONERS
AGENDA ITEM**

Issue:	Approve Interlocal Agreement	Back-up:
Petitioner:	Carel Carter, Director Real Property Management Lewis Wallenmeyer, Director Air Quality and Environmental Management	Clerk Ref. #
Recommendation:		
<p>That the Board of County Commissioners approve and authorize the Director of Real Property Management or her designee to sign an interlocal agreement between Clark County School District and Clark County to locate, install, and maintain new and existing air quality monitoring stations and towers at various school sites across the valley for a period of five (5) years commencing upon receipt of approval by the governing bodies of both parties.</p>		

FISCAL IMPACT:

Fund #: N/A
Fund Center: N/A
Description: N/A

Fund Name: N/A
Funded Pgm/Grant: N/A
Amount: None

Added Comments:

BACKGROUND:

In October of 2005, an original Memorandum of Understanding was completed between the Clark County School District (CCSD) and Clark County through its Department of Air Quality and Environmental Management (DAQEM) to install and maintain air quality monitoring stations at various school sites across the valley. The original agreement was for a term of five (5) years for existing sites and for five (5) years from the date of execution of an entry permit for any new sites.

The original five (5) year term has expired and a new agreement needs to be completed. DAQEM has added new sites, and desires to operate and maintain the equipment for additional period of five (5) years. The Clark County School District Board of Trustees approved the new interlocal agreement at their January 13, 2011 meeting.

This item was presented to the County Long Range Planning Committee on January 20, 2011.

Respectfully submitted,


DONALD G. BURNETTE, County Manager

Cleared for Agenda
3/1/11 MD

Agenda Item #

50

000113

**INTERLOCAL AGREEMENT
BETWEEN THE
CLARK COUNTY SCHOOL DISTRICT
AND CLARK COUNTY**

This Interlocal Agreement dated this 1 day of March, 2011, is made by and between the CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada (hereinafter referred to as the "DISTRICT"), and CLARK COUNTY also a political subdivision of the State of Nevada (hereinafter referred to as "COUNTY"). The DISTRICT and COUNTY hereinafter may be referred to individually as "Party" or collectively as the "PARTIES".

RECITALS

WHEREAS, pursuant to NRS 277.180 any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and,

WHEREAS, the DISTRICT owns property in various locations (hereinafter collectively referred to as "SCHOOLS"), as shown on Exhibit "A" attached hereto and incorporated by this reference; and,

WHEREAS, COUNTY installs and operates air quality monitoring stations and towers (hereinafter referred to as "EQUIPMENT") for the purpose of monitoring air quality; and

WHEREAS, the PARTIES entered into a Memorandum of Understanding on October 4, 2005 to place EQUIPMENT on SCHOOLS that expired on October 4, 2010; and,

WHEREAS, COUNTY desires to operate and maintain the EQUIPMENT on the SCHOOLS for an additional period of five (5) years; and,

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth below the PARTIES agree as follows:

SECTION 1: PURPOSE

The purpose of this Interlocal Agreement sets forth the conditions whereby COUNTY and its employees, authorized agents, and contractors may enter upon SCHOOLS to monitor and maintain air quality EQUIPMENT.

SECTION 2: RESPONSIBILITIES

COUNTY agrees to:

- Obtain any permits as required by the County, State, DISTRICT or other governing bodies.
- Maintain and repair all EQUIPMENT at no expense to the DISTRICT.
- Provide a list of authorized COUNTY maintenance personnel to the Facilities Service Representative (FSR) who will obtain and have access to the SCHOOLS.
- Notify the appropriate FSR prior to accessing the SCHOOLS and coordinate a time not to conflict with or disrupt school class instruction.
- Travel, when practicable, on existing trails or roads.
- Upon completion of said entry, leave the SCHOOLS in as neat and presentable condition as existed prior to entry, with all fences, structures, and other property intact.

**INTERLOCAL AGREEMENT
BETWEEN THE
CLARK COUNTY SCHOOL DISTRICT
AND CLARK COUNTY**

- No property of the DISTRICT will be disturbed without prior DISTRICT approval.
- At COUNTY's sole expense, replace and/or repair any damage caused to DISTRICT SCHOOLS by COUNTY activity.
- Obtain written approval to place monitoring equipment on SCHOOLS not listed on Exhibit "A". All such requests shall be submitted to DISTRICT, attention Director of Real Property Management.
- Upon removal of EQUIPMENT, be responsible for replacing DISTRICT property to its original condition, at no cost to the DISTRICT.

DISTRICT agrees to:

- Provide access to COUNTY for the maintenance of EQUIPMENT.
- Provide an FSR as a contact person for the purpose of communication and coordination at the SCHOOLS.
- Ensure all personnel shall be supervised at all times.

SECTION 3: DURATION AND TERMINATION

This Interlocal Agreement is effective for five (5) years and shall commence after receipt of approval by the governing bodies of both PARTIES and the official commencement date shall be the date of the latest signing by an authorized representative of the governing bodies of the PARTIES hereto. DISTRICT may terminate this Interlocal Agreement and order the removal of all EQUIPMENT upon a ninety (90) day written notice to COUNTY as provided for in Section 5.

SECTION 4: MODIFICATION OR AMENDMENT

This Interlocal Agreement may not be modified or amended except by express written agreement, duly authorized and executed by the authorized representatives of each of the PARTIES. Any other attempt at modification, amendment or extension of this Interlocal Agreement shall have no force or effect and shall not be relied upon by any of the PARTIES.

SECTION 5: NOTICES

All notices, legal and otherwise, required or permitted to be given pursuant to this Interlocal Agreement shall be in writing and shall be deemed effective and delivered as follows: (i) if hand or courier delivered, upon personal delivery to the Party to whom addressed; (ii) if telecopied, upon receipt of confirmation that successful facsimile transmission has occurred; and (iii) if mailed, three (3) business days following deposit in the U.S Mail, provided such mailing is mailed registered or certified, return receipt requested, postage prepaid. For purposes hereof, the PARTIES' notice information is set forth below:

DISTRICT Representative:

For the purpose of communication, negotiation, or other notices the following will be considered the DISTRICT representative:

Clark County School District
Real Property Management
Attn: Director

**INTERLOCAL AGREEMENT
BETWEEN THE
CLARK COUNTY SCHOOL DISTRICT
AND CLARK COUNTY**

4190 McLeod Drive, 2nd Floor
Las Vegas, Nevada 89121
(702) 799-5214 (Office)
(702) 799-5435 (Fax)

With a Copy To: Clark County School District Legal Office
Attn: General Counsel
5100 W. Sahara Avenue, 3rd Floor
Las Vegas, NV 89146
(702) 799-5373 (Office)
(702) 799-5505

Facilities Service Representative:
For the purpose of site coordination and communication:

Clark County School District
Facilities Division
Special Projects Renovation Services & Requirements
2501 Sunrise Avenue
Las Vegas, Nevada 89101
(702) 855-6650
(702) 855-6660

COUNTY Representative:
For the purpose of communication, negotiation, or other notices the following will be considered the COUNTY representative.

Clark County Real Property Management
Attn: Director
500 S. Grand Central Parkway, 4th Floor
Post Office Box 551825
Las Vegas, Nevada 89155
(702) 455-4616
(702) 455-5817

With a Copy To: Clark County Department of Air Quality and Environmental Mgmt.
Attn: Director
500 S. Grand Central Parkway
Las Vegas, NV 89155
(702) 455-5942
(702) 383-9994

SECTION 6: ENTIRE AGREEMENT

This executed Interlocal Agreement constitutes the entire agreement among the PARTIES hereto relating to rights granted and obligations assumed by the PARTIES and intended as a complete and exclusive statement of the promises, representations, discussions, and other agreement that may have been made in connection with the subject matter hereof. Any prior agreement, contract, promise, negotiation, or representation, either oral or written, relating to the subject matter for this Interlocal Agreement not

**INTERLOCAL AGREEMENT
BETWEEN THE
CLARK COUNTY SCHOOL DISTRICT
AND CLARK COUNTY**

expressly set forth in this Interlocal Agreement is superseded by this Interlocal Agreement and is of no further force or effect.

SECTION 7: EXECUTION IN COUNTERPARTS

This Interlocal Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

SECTION 8: INSURANCE & INDEMNIFICATION

The PARTIES shall be responsible for their own negligence subject to the limitations on liability provided under Nevada Revised Statutes, Chapter 41.

The PARTIES hereto shall carry commercial general liability and workers compensation insurance, or shall self-insure, in accordance with Nevada Revised Statutes. Such insurance shall be written by a company licensed by the state of Nevada, and shall respond in tort in accordance with NRS Chapter 41. The PARTIES shall also maintain protection (insurance or approved self-insurance) for liability arising in other legal jurisdictions, including federal courts, in which the statutory tort caps of NRS Chapter 41 would not apply.

SECTION 9: GENERAL CONDITIONS

The laws of the State of Nevada will govern as to the interpretation, validity and effect of this Interlocal Agreement. This Interlocal Agreement is intended only to benefit the PARTIES hereto and does not create any rights, benefits or causes of action for any other person, entity or member of the general public.

The PARTIES are associated with each other only for the purposes and to the extent set forth in this Interlocal Agreement, and in respect to performance of services pursuant to this Interlocal Agreement, the PARTIES are and shall be a public agency separate and distinct from the other. Nothing contained in this Interlocal Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other.

Pursuant to NRS 239.010, information or documents in connection with this Interlocal Agreement may be open to public inspection and copying. The PARTIES will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

Should any part of this Interlocal Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such determination shall not render void, invalid, or unenforceable, under any other part of this Interlocal Agreement.

**INTERLOCAL AGREEMENT
BETWEEN THE
CLARK COUNTY SCHOOL DISTRICT
AND CLARK COUNTY**

**EXHIBIT A
"SCHOOLS"**

School Name	Address	Assessor Parcel Number
Elton M. Garrett Middle School	1200 Avenue G, Boulder City, NV 89005	186-09-310-004
Walter D. Johnson Middle School	7701 Duchame Ave., Las Vegas, NV 89145	138-33-601-007
Joe M. Neal Elementary School	6651 W. Azura Dr., Las Vegas, NV 89130	125-26-202-001
J. D. Smith Middle School	1301 E. Tonopah Ave., North Las Vegas, NV 89030	139-23-801-001
E. W. Griffith Elementary School	324 Essex Dr., Las Vegas, NV 89107	139-31-203-001
Jerome Mack Middle School	4250 Karen Ave., Las Vegas, NV 89121	161-08-102-005
Palo Verde High School	333 Pavilion Center Dr., Las Vegas, NV 89144	137-35-501-005
Sunrise Acres Elementary School	211 28 th St., Las Vegas, NV 89101	139-36-301-005
William E. Orr Middle School	1562 E. Katie Ave. Suite D, Las Vegas, NV 89119	162-14-302-001

EXHIBIT 5

000120

Lori Headrick

From: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Sent: Monday, October 17, 2016 7:23 AM
To: Lori Headrick
Cc: Rose Webster; Grace Bautista; KIM KRUMLAND
Subject: RE: Wells Cargo Air Permit Modification

Lori,

Notices are posted in the newspaper and provided by email to government agencies, tribal councils, and other interested parties that have requested notification of all public notices. I have copied Grace and Rose so they can notify you when this action eventually goes to notice.

Richard D Beckstead
Permitting Manager
Clark County Department of Air Quality
4701 W. Russell Road, Ste 200
Las Vegas, NV 89118
(702) 455-1669
beckstead@ClarkCountyNV.gov

From: Lori Headrick [mailto:loriheadrick@rmdccsd.net]
Sent: Friday, October 14, 2016 10:58 AM
To: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>; Grace Bautista <BAUTISTA@ClarkCountyNV.gov>; KIM KRUMLAND <KIMKRUMLAND@INTERACT.CCSD.NET>
Subject: Wells Cargo Air Permit Modification

Thanks, Richard.

Would it be possible for you to send me the notice directly? The land is leased from BLM, so we are technically not the owner of the adjacent property. Are notices sent to adjacent properties or only by newspaper?

Cheers, Lori

Lori Headrick CEM, Director I

Environmental Health Services
Office: 702-799-6496 Ext. 5660
CCSD Direct Line: 0767-5660
Cell: 702-289-0430
LHeadrick@Interact.CCSD.net

From: Richard Beckstead [mailto:Beckstead@ClarkCountyNV.gov]
Sent: Friday, October 14, 2016 9:38 AM

To: Lori Headrick <loriheadrick@rmdccsd.net>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>; Grace Bautista <BAUTISTA@ClarkCountyNV.gov>
Subject: RE: Invoice Question

Lori,

I spoke with our Director, Marci Henson about your request. Marci indicated she had spoken with Carolyn Edwards earlier this week about this. The permit is currently being drafted. The modification to the Wells Cargo permit will require it to be public noticed. At that time the application, proposed permit, and the proposed support document will be considered public record and will be available for review.

If you have any further questions, please let me know.

Richard D Beckstead
Permitting Manager
Clark County Department of Air Quality
4701 W. Russell Road, Ste 200
Las Vegas, NV 89118
(702) 455-1669
beckstead@ClarkCountyNV.gov

From: Lori Headrick [<mailto:loriheadrick@rmdccsd.net>]
Sent: Friday, October 14, 2016 9:09 AM
To: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>; Grace Bautista <BAUTISTA@ClarkCountyNV.gov>
Subject: RE: Invoice Question

Thanks, Lori

On another issue, would you send me the permit for Wells Cargo recent modification to add two silos. It is next to Spring Valley High School and the trustee would like this information.

Lori Headrick CEM, Director I

Environmental Health Services
Office: 702-799-6496 Ext. 5660
CCSD Direct Line: 0767-5660
Cell: 702-289-0430
LHeadrick@Interact.CCSD.net

From: Richard Beckstead [<mailto:Beckstead@ClarkCountyNV.gov>]
Sent: Friday, October 14, 2016 7:24 AM
To: Lori Headrick <loriheadrick@rmdccsd.net>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>; Grace Bautista <BAUTISTA@ClarkCountyNV.gov>
Subject: RE: Invoice Question

Lori,

I looked at the application we received. It clearly indicates that two 2.29 MMBtu/hr Boilers are being added to the permit. The application also identifies that these boilers have been operating at the school and were not included in earlier applications. The fees identified in the invoice are correct for the addition of the boilers. Had the boilers been properly identified when they were installed and included in the original permit, the same fees would have applied at that time. Air Quality hasn't received the required annual fees for the years these were missing from the permit, but, as a practice, we don't go back and collect those missing fees typically. The County statute of limitations is two years, if there were any action that would be taken.

Hope this helps.

Richard D Beckstead
Permitting Manager
Clark County Department of Air Quality
4701 W. Russell Road, Ste 200
Las Vegas, NV 89118
(702) 455-1669
beckstead@ClarkCountyNV.gov

From: Lori Headrick [<mailto:loriheadrick@rmdccsd.net>]
Sent: Wednesday, October 12, 2016 11:27 AM
To: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>
Subject: FW: Invoice Question

Hi Richard, Is the attached invoice correct? Thanks, Lori

From: Lori Headrick
Sent: Wednesday, October 05, 2016 10:08 AM
To: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Cc: KIM KRUMLAND <KIMKRUMLAND@INTERACT.CCSD.NET>; JENALYN STEWART <jstewart@interact.ccsd.net>
Subject: Invoice Question

Hi Richard,

I see annual emissions charged on the attached invoice. Is this correct?

Thanks, Lori

Lori Headrick CEM
Director
Environmental Health Services

"Taking Care of Environmental Health in Schools for Greater Student Achievement"

<http://ccsd.net/departments/environmental-services>

Office: 702-799-6496 Ext. 5660
Cell: 702-289-0430
CCSD Direct Line: 0767-5660
LHeadrick@Interact.CCSD.net

Clark County School District
Business & Finance Division/Risk & Environmental Services Department
4828 S. Pearl St.
Las Vegas, NV 89121

1 Carlos L. McDade, Esq.
Nevada Bar No. 11205
2 CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
3 5100 West Sahara Avenue
4 Las Vegas, Nevada 89146
Telephone: (702) 799-5373
5 Facsimile: (702) 799-5505
6 *Attorneys for Appellant*

7 **BEFORE THE CLARK COUNTY**
8 **AIR POLLUTION CONTROL HEARING BOARD**

9)
10 In re:)
11) **APPELLANT'S DISCLOSURES**
12 Appeal of Synthetic Minor Source Permit Issued)
to Wells Cargo, Inc. (Source: 12) by Lori)
13 Headrick, Director, Environmental Services,)
Clark County School District.)
14)

15 The Clark County School District ("CCSD" or "Appellant") submits the following
16 disclosures on its Appeal of the issuance of the Synthetic Minor Source Permit, Source ID
17 #00012 (Source 12)(the "Permit"), pursuant to the Order Regarding Briefing Schedule dated
18 December 14, 2017:

- 19 A. The following individuals will be offering direct oral testimony:
20 1. Lori Headrick, CEM, Director I, Environmental Services, Clark County School
21 District, 4828 S. Pearl Street, Las Vegas, NV 89121

22 This individual will testify as to their knowledge of the events leading up to the incident, the
23 incident itself, and/or related events occurring either before or after the incident.

- 24 2. Tam Lamerd, Principal, Spring Valley High School, Clark County School District
3750 S. Buffalo Drive, Las Vegas, NV 89147

25 This individual will testify as to their knowledge of the events leading up to the incident, the
26 incident itself, and/or related events occurring either before or after the incident.

27
28

1 3. Lung-Wen Antony Chen, Ph.D., Assistant Professor; Director, Urban Air Quality
2 Laboratory, Department of Environmental and Occupational Health, Office:
3 MSM-HRC 303, University of Nevada, Las Vegas, 4505 S. Maryland Parkway,
 Las Vegas, NV 89154

4 This individual will provide expert testimony regarding their review and analysis of the
5 Appellant's air emission modeling.

6 Appellant reserves the right to amend, add to, or supplement this report as necessary.

7 B. The following documents will be offered as evidence:

- 8 Exhibit 1 Aerial Photograph of the Wells Cargo Facility and Spring Valley High
 School.
- 9 Exhibit 2 Photograph depicting the view of the Wells Cargo Facility from the
10 second floor of the high school.
- 11 Exhibit 3 Photograph depicting sources below ground level.
- 12 Exhibit 4 Interlocal Agreement between Clark County and Clark County School
13 District for air monitoring stations.
- 14 Exhibit 5 Email dated October 17, 2016 from Richard Beckstead indicating that
15 notice for public review and comment would be provided directly to
 CCSD.
- 16 Exhibit 6 Ronnie J. Hawkins Letter dated October 16, 2017 to See Attached
17 Distribution List, includes supporting attachments.
- 18 Exhibit 7 Ronnie J. Hawkins Letter dated December 15, 2017 to Sami Real re
19 Wells Cargo Application WS/DR-1001-17.
- 20 Exhibit 8 Ronnie J. Hawkins Email dated January 4, 2018 to Sami Real re Wells
21 Cargo Application WS/DR-1001-17.
- 22 Exhibit 9 Photograph printed by Tam Larnerd dated January 10, 2018.
- 23 Exhibit 10 Case cited in Appellant's Reply Brief *Northwest Env'tl. Def. Ctr v.*
24 *Cascade Kelly Holdings LLC.*

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Appellant reserves the right to supplement this list of witnesses and documents.

DATED this 25th day of January, 2018.

CLARK COUNTY SCHOOL DISTRICT

By: Carlos L. McDade
Carlos L. McDade, General Counsel
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorneys for Appellant, Clark County School District

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of CLARK COUNTY SCHOOL DISTRICT and that on this 25th day of January, 2018, I served a true and correct copy of **Appellant's Disclosures** as follows:

PARTY OR ATTORNEY OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director Environmental Services Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net	<i>Appellant</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
Linda Bullen, Esq. Bullen Law, LLC 8635 W. Sahara Avenue #454 Las Vegas, NV 89117 linda@bullenlaw.com	<i>Wells Cargo, Inc.</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
Trent Scarlett Phil Groff Guy Wells Wells Cargo, Inc. 9127 West Russell Road Suite 210 Las Vegas, NV 89148-1240 TScarlett@wcilv.com PGroff@wcilv.com GWells@wcilv.com		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
Leslie A. Nielsen, Esq. Deputy District Attorney 500 S. Grand Parkway, 5 th FL. Las Vegas, NV 89106 Leslie.Nielsen@clarkcountyda.com Attorneys for Department of Air Quality	<i>Department of Air Quality</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email

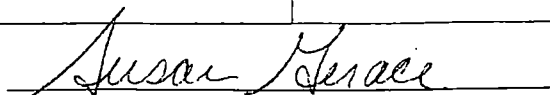

A Clark County School District employee

EXHIBIT 1

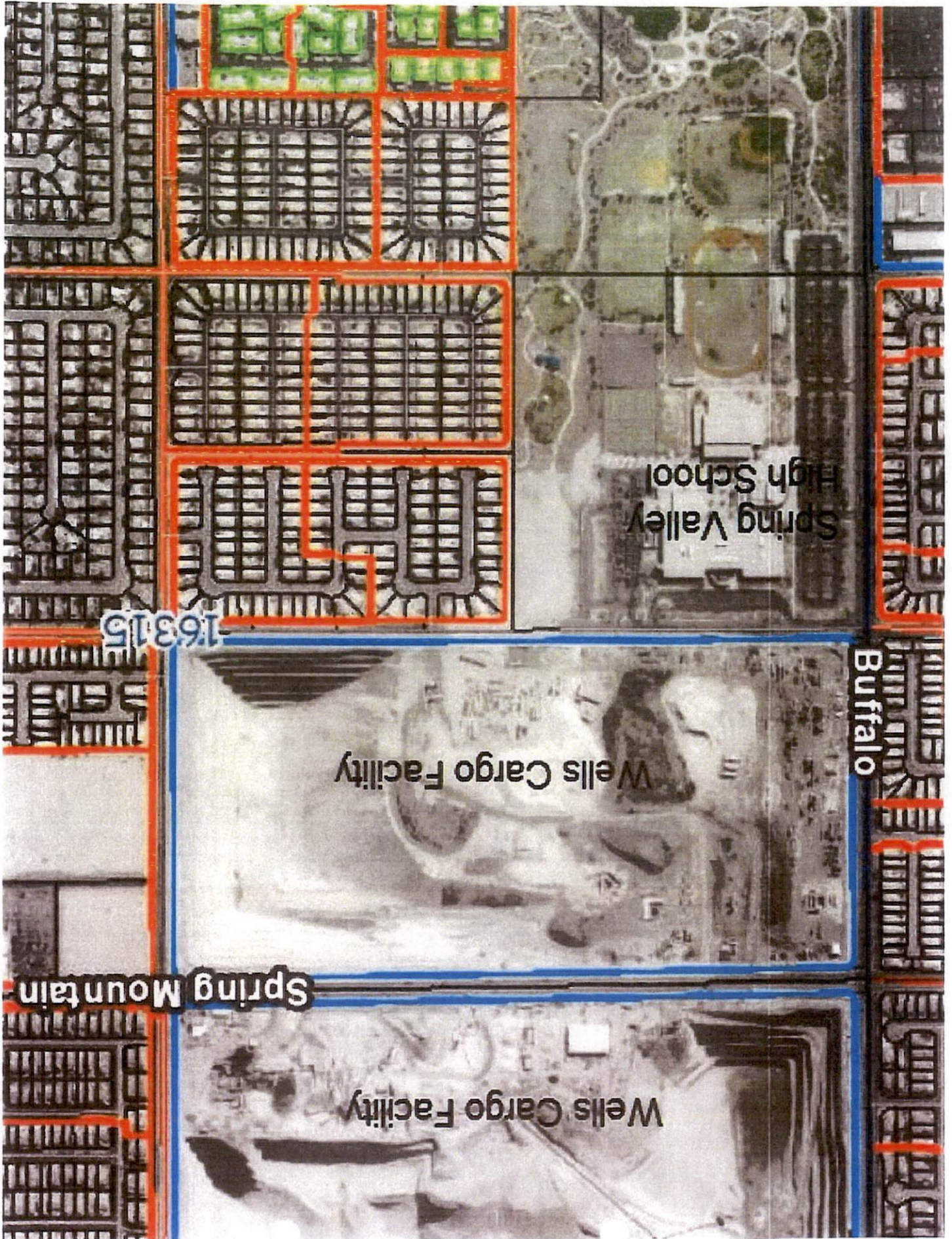


EXHIBIT 2



000132

EXHIBIT 3



Exhibit 3 Wells Fargo Asphalt Plant in Las Vegas, January 3, 2018 Erik Verduzco/Las Vegas Review-Journal

EXHIBIT 4

Lori Headrick

From: Lori Headrick
Sent: Wednesday, November 02, 2016 10:47 AM
To: KIM KRUMLAND
Subject: FW: current agreements and map
Attachments: 2011 BCC agenda & Interlocal Agmt - exp Jan 2016.pdf; Monitoring Sites.kmz

Here is the agreement for the current air monitoring stations. It is expired. Since we need to renew, hopefully we can add Spring Valley HS as a new location. ☺

From: Mike Sword [mailto:SWORD@ClarkCountyNV.gov]
Sent: Wednesday, November 02, 2016 10:32 AM
To: Lori Headrick <loriheadrick@rmdccsd.net>
Subject: current agreements and map

Lori,

Attached is the most recent Interlocal Agreement. It actually expired this past January and I don't think a replacement has been processed yet. I also included a Google Earth (.KMZ) file that has the location of all of our monitoring sites if that is helpful to you. The monitoring sites are the green location markers.

Mike Sword, P.E., CEM
Planning Manager
Clark County Department of Air Quality
702-455-1615
sword@ClarkCountyNV.gov

Lori Headrick

From: Lori Headrick
Sent: Wednesday, November 02, 2016 9:19 AM
To: KIM KRUMLAND
Subject: Air Monitoring Station Construction Cost Estimate for Spring Valley HS

Hi Kim,

Speaking with DAQ, the estimated cost for us to construct an air monitoring station at Spring Valley High School would be approx.. \$150K. This would include a structure to house the equipment. DAQ mentioned that they have installed a system in a storage closet for \$30K. But, this gives them access issues when the unit goes down after school hours.

They are very interested in pursuing this as a "special purpose monitoring site". These sites are operated by DAQ less than 3 years when EPA typically wants it a part of their network of sites.

DAQ is sending me the list of air monitoring sites on our property currently.

Regards, Lori

Lori Headrick CEM
Director
Environmental Health Services

"Taking Care of Environmental Health in Schools for Greater Student Achievement"

<http://ccsd.net/departments/environmental-services>

Office: 702-799-6496 Ext. 5660
Cell: 702-289-0430
CCSD Direct Line: 0767-5660
LHeadrick@Interact.CCSD.net

Clark County School District
Business & Finance Division/Risk & Environmental Services Department
4828 S. Pearl St.
Las Vegas, NV 89121

**CLARK COUNTY BOARD OF COMMISSIONERS
AGENDA ITEM**

Issue:	Approve Interlocal Agreement	Back-up:
Petitioner:	Carel Carter, Director Real Property Management Lewis Wallenmeyer, Director Air Quality and Environmental Management	Clerk Ref. #
Recommendation:		
<p>That the Board of County Commissioners approve and authorize the Director of Real Property Management or her designee to sign an interlocal agreement between Clark County School District and Clark County to locate, install, and maintain new and existing air quality monitoring stations and towers at various school sites across the valley for a period of five (5) years commencing upon receipt of approval by the governing bodies of both parties.</p>		

FISCAL IMPACT:

Fund #: N/A	Fund Name: N/A
Fund Center: N/A	Funded Pgm/Grant: N/A
Description: N/A	Amount: None

Added Comments:

BACKGROUND:

In October of 2005, an original Memorandum of Understanding was completed between the Clark County School District (CCSD) and Clark County through its Department of Air Quality and Environmental Management (DAQEM) to install and maintain air quality monitoring stations at various school sites across the valley. The original agreement was for a term of five (5) years for existing sites and for five (5) years from the date of execution of an entry permit for any new sites.

The original five (5) year term has expired and a new agreement needs to be completed. DAQEM has added new sites, and desires to operate and maintain the equipment for additional period of five (5) years. The Clark County School District Board of Trustees approved the new interlocal agreement at their January 13, 2011 meeting.

This item was presented to the County Long Range Planning Committee on January 20, 2011.

Respectfully submitted,


DONALD G. BURNETTE, County Manager

Cleared for Agenda
3/11/11 MD

Agenda Item #

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**INTERLOCAL AGREEMENT
BETWEEN THE
CLARK COUNTY SCHOOL DISTRICT
AND CLARK COUNTY**

This Interlocal Agreement dated this 1 day of March, 2011, is made by and between the CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada (hereinafter referred to as the "DISTRICT"), and CLARK COUNTY also a political subdivision of the State of Nevada (hereinafter referred to as "COUNTY"). The DISTRICT and COUNTY hereinafter may be referred to individually as "Party" or collectively as the "PARTIES".

RECITALS

WHEREAS, pursuant to NRS 277.180 any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and,

WHEREAS, the DISTRICT owns property in various locations (hereinafter collectively referred to as "SCHOOLS"), as shown on Exhibit "A" attached hereto and incorporated by this reference; and,

WHEREAS, COUNTY installs and operates air quality monitoring stations and towers (hereinafter referred to as "EQUIPMENT") for the purpose of monitoring air quality; and

WHEREAS, the PARTIES entered into a Memorandum of Understanding on October 4, 2005 to place EQUIPMENT on SCHOOLS that expired on October 4, 2010; and,

WHEREAS, COUNTY desires to operate and maintain the EQUIPMENT on the SCHOOLS for an additional period of five (5) years; and,

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth below the PARTIES agree as follows:

SECTION 1: PURPOSE

The purpose of this Interlocal Agreement sets forth the conditions whereby COUNTY and its employees, authorized agents, and contractors may enter upon SCHOOLS to monitor and maintain air quality EQUIPMENT.

SECTION 2: RESPONSIBILITIES

COUNTY agrees to:

- Obtain any permits as required by the County, State, DISTRICT or other governing bodies.
- Maintain and repair all EQUIPMENT at no expense to the DISTRICT.
- Provide a list of authorized COUNTY maintenance personnel to the Facilities Service Representative (FSR) who will obtain and have access to the SCHOOLS.
- Notify the appropriate FSR prior to accessing the SCHOOLS and coordinate a time not to conflict with or disrupt school class instruction.
- Travel, when practicable, on existing trails or roads.
- Upon completion of said entry, leave the SCHOOLS in as neat and presentable condition as existed prior to entry, with all fences, structures, and other property intact.

**INTERLOCAL AGREEMENT
BETWEEN THE
CLARK COUNTY SCHOOL DISTRICT
AND CLARK COUNTY**

- No property of the DISTRICT will be disturbed without prior DISTRICT approval.
- At COUNTY's sole expense, replace and/or repair any damage caused to DISTRICT SCHOOLS by COUNTY activity.
- Obtain written approval to place monitoring equipment on SCHOOLS not listed on Exhibit "A". All such requests shall be submitted to DISTRICT, attention Director of Real Property Management.
- Upon removal of EQUIPMENT, be responsible for replacing DISTRICT property to its original condition, at no cost to the DISTRICT.

DISTRICT agrees to:

- Provide access to COUNTY for the maintenance of EQUIPMENT.
- Provide an FSR as a contact person for the purpose of communication and coordination at the SCHOOLS.
- Ensure all personnel shall be supervised at all times.

SECTION 3: DURATION AND TERMINATION

This Interlocal Agreement is effective for five (5) years and shall commence after receipt of approval by the governing bodies of both PARTIES and the official commencement date shall be the date of the latest signing by an authorized representative of the governing bodies of the PARTIES hereto. DISTRICT may terminate this Interlocal Agreement and order the removal of all EQUIPMENT upon a ninety (90) day written notice to COUNTY as provided for in Section 5.

SECTION 4: MODIFICATION OR AMENDMENT

This Interlocal Agreement may not be modified or amended except by express written agreement, duly authorized and executed by the authorized representatives of each of the PARTIES. Any other attempt at modification, amendment or extension of this Interlocal Agreement shall have no force or effect and shall not be relied upon by any of the PARTIES.

SECTION 5: NOTICES

All notices, legal and otherwise, required or permitted to be given pursuant to this Interlocal Agreement shall be in writing and shall be deemed effective and delivered as follows: (i) if hand or courier delivered, upon personal delivery to the Party to whom addressed; (ii) if telecopied, upon receipt of confirmation that successful facsimile transmission has occurred; and (iii) if mailed, three (3) business days following deposit in the U.S Mail, provided such mailing is mailed registered or certified, return receipt requested, postage prepaid. For purposes hereof, the PARTIES' notice information is set forth below:

DISTRICT Representative:

For the purpose of communication, negotiation, or other notices the following will be considered the DISTRICT representative:

Clark County School District
Real Property Management
Attn: Director

**INTERLOCAL AGREEMENT
BETWEEN THE
CLARK COUNTY SCHOOL DISTRICT
AND CLARK COUNTY**

4190 McLeod Drive, 2nd Floor
Las Vegas, Nevada 89121
(702) 799-5214 (Office)
(702) 799-5435 (Fax)

With a Copy To: Clark County School District Legal Office
Attn: General Counsel
5100 W. Sahara Avenue, 3rd Floor
Las Vegas, NV 89146
(702) 799-5373 (Office)
(702) 799-5505

Facilities Service Representative:
For the purpose of site coordination and communication:

Clark County School District
Facilities Division
Special Projects Renovation Services & Requirements
2501 Sunrise Avenue
Las Vegas, Nevada 89101
(702) 855-6650
(702) 855-6660

COUNTY Representative:
For the purpose of communication, negotiation, or other notices the following will be considered
the COUNTY representative.

Clark County Real Property Management
Attn: Director
500 S. Grand Central Parkway, 4th Floor
Post Office Box 551825
Las Vegas, Nevada 89155
(702) 455-4616
(702) 455-5817

With a Copy To: Clark County Department of Air Quality and Environmental Mgmt.
Attn: Director
500 S. Grand Central Parkway
Las Vegas, NV 89155
(702) 455-5942
(702) 383-9994

SECTION 6: ENTIRE AGREEMENT

This executed Interlocal Agreement constitutes the entire agreement among the PARTIES hereto relating to rights granted and obligations assumed by the PARTIES and intended as a complete and exclusive statement of the promises, representations, discussions, and other agreement that may have been made in connection with the subject matter hereof. Any prior agreement, contract, promise, negotiation, or representation, either oral or written, relating to the subject matter for this Interlocal Agreement not

**INTERLOCAL AGREEMENT
BETWEEN THE
CLARK COUNTY SCHOOL DISTRICT
AND CLARK COUNTY**

expressly set forth in this Interlocal Agreement is superseded by this Interlocal Agreement and is of no further force or effect.

SECTION 7: EXECUTION IN COUNTERPARTS

This Interlocal Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

SECTION 8: INSURANCE & INDEMNIFICATION

The PARTIES shall be responsible for their own negligence subject to the limitations on liability provided under Nevada Revised Statutes, Chapter 41.

The PARTIES hereto shall carry commercial general liability and workers compensation insurance, or shall self-insure, in accordance with Nevada Revised Statutes. Such insurance shall be written by a company licensed by the state of Nevada, and shall respond in tort in accordance with NRS Chapter 41. The PARTIES shall also maintain protection (insurance or approved self-insurance) for liability arising in other legal jurisdictions, including federal courts, in which the statutory tort caps of NRS Chapter 41 would not apply.

SECTION 9: GENERAL CONDITIONS

The laws of the State of Nevada will govern as to the interpretation, validity and effect of this Interlocal Agreement. This Interlocal Agreement is intended only to benefit the PARTIES hereto and does not create any rights, benefits or causes of action for any other person, entity or member of the general public.

The PARTIES are associated with each other only for the purposes and to the extent set forth in this Interlocal Agreement, and in respect to performance of services pursuant to this Interlocal Agreement, the PARTIES are and shall be a public agency separate and distinct from the other. Nothing contained in this Interlocal Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other.

Pursuant to NRS 239.010, information or documents in connection with this Interlocal Agreement may be open to public inspection and copying. The PARTIES will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

Should any part of this Interlocal Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such determination shall not render void, invalid, or unenforceable, under any other part of this Interlocal Agreement.

**INTERLOCAL AGREEMENT
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AND CLARK COUNTY**

**EXHIBIT A
"SCHOOLS"**

School Name	Address	Assessor Parcel Number
Elton M. Garrett Middle School	1200 Avenue G, Boulder City, NV 89005	186-09-310-004
Walter D. Johnson Middle School	7701 Duchame Ave., Las Vegas, NV 89145	138-33-601-007
Joe M. Neal Elementary School	6651 W. Azura Dr., Las Vegas, NV 89130	125-26-202-001
J. D. Smith Middle School	1301 E. Tonopah Ave., North Las Vegas, NV 89030	139-23-801-001
E. W. Griffith Elementary School	324 Essex Dr., Las Vegas, NV 89107	139-31-203-001
Jerome Mack Middle School	4250 Karen Ave., Las Vegas, NV 89121	161-08-102-005
Palo Verde High School	333 Pavilion Center Dr., Las Vegas, NV 89144	137-35-501-005
Sunrise Acres Elementary School	211 28 th -St., Las Vegas, NV 89101	139-36-301-005
William E. Orr Middle School	1562 E. Katie Ave. Suite D, Las Vegas, NV 89119	162-14-302-001

EXHIBIT 5

Lori Headrick

From: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Sent: Monday, October 17, 2016 7:23 AM
To: Lori Headrick
Cc: Rose Webster; Grace Bautista; KIM KRUMLAND
Subject: RE: Wells Cargo Air Permit Modification

Lori,

Notices are posted in the newspaper and provided by email to government agencies, tribal councils, and other interested parties that have requested notification of all public notices. I have copied Grace and Rose so they can notify you when this action eventually goes to notice.

Richard D Beckstead
Permitting Manager
Clark County Department of Air Quality
4701 W. Russell Road, Ste 200
Las Vegas, NV 89118
(702) 455-1669
beckstead@ClarkCountyNV.gov

From: Lori Headrick [mailto:loriheadrick@rmdccsd.net]
Sent: Friday, October 14, 2016 10:58 AM
To: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>; Grace Bautista <BAUTISTA@ClarkCountyNV.gov>; KIM KRUMLAND <KIMKRUMLAND@INTERACT.CCSD.NET>
Subject: Wells Cargo Air Permit Modification

Thanks, Richard.

Would it be possible for you to send me the notice directly? The land is leased from BLM, so we are technically not the owner of the adjacent property. Are notices sent to adjacent properties or only by newspaper?

Cheers, Lori

Lori Headrick CEM, Director I

Environmental Health Services
Office: 702-799-6496 Ext. 5660
CCSD Direct Line: 0767-5660
Cell: 702-289-0430
LHeadrick@Interact.CCSD.net

From: Richard Beckstead [mailto:Beckstead@ClarkCountyNV.gov]
Sent: Friday, October 14, 2016 9:38 AM

To: Lori Headrick <loriheadrick@rmdccsd.net>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>; Grace Bautista <BAUTISTA@ClarkCountyNV.gov>
Subject: RE: Invoice Question

Lori,

I spoke with our Director, Marci Henson about your request. Marci indicated she had spoken with Carolyn Edwards earlier this week about this. The permit is currently being drafted. The modification to the Wells Cargo permit will require it to be public noticed. At that time the application, proposed permit, and the proposed support document will be considered public record and will be available for review.

If you have any further questions, please let me know.

Richard D Beckstead
Permitting Manager
Clark County Department of Air Quality
4701 W. Russell Road, Ste 200
Las Vegas, NV 89118
(702) 455-1669
beckstead@ClarkCountyNV.gov

From: Lori Headrick [<mailto:loriheadrick@rmdccsd.net>]
Sent: Friday, October 14, 2016 9:09 AM
To: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>; Grace Bautista <BAUTISTA@ClarkCountyNV.gov>
Subject: RE: Invoice Question

Thanks, Lori

On another issue, would you send me the permit for Wells Cargo recent modification to add two silos. It is next to Spring Valley High School and the trustee would like this information.

Lori Headrick CEM, Director I

Environmental Health Services
Office: 702-799-6496 Ext. 5660
CCSD Direct Line: 0767-5660
Cell: 702-289-0430
LHeadrick@Interact.CCSD.net

From: Richard Beckstead [<mailto:Beckstead@ClarkCountyNV.gov>]
Sent: Friday, October 14, 2016 7:24 AM
To: Lori Headrick <loriheadrick@rmdccsd.net>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>; Grace Bautista <BAUTISTA@ClarkCountyNV.gov>
Subject: RE: Invoice Question

Lori,

I looked at the application we received. It clearly indicates that two 2.29 MMBtu/hr Boilers are being added to the permit. The application also identifies that these boilers have been operating at the school and were not included in earlier applications. The fees identified in the invoice are correct for the addition of the boilers. Had the boilers been properly identified when they were installed and included in the original permit, the same fees would have applied at that time. Air Quality hasn't received the required annual fees for the years these were missing from the permit, but, as a practice, we don't go back and collect those missing fees typically. The County statute of limitations is two years, if there were any action that would be taken.

Hope this helps.

Richard D Beckstead
Permitting Manager
Clark County Department of Air Quality
4701 W. Russell Road, Ste 200
Las Vegas, NV 89118
(702) 455-1669
beckstead@ClarkCountyNV.gov

From: Lori Headrick [<mailto:loriheadrick@rmdccsd.net>]
Sent: Wednesday, October 12, 2016 11:27 AM
To: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Cc: Rose Webster <rwebster@ClarkCountyNV.gov>
Subject: FW: Invoice Question

Hi Richard, Is the attached invoice correct? Thanks, Lori

From: Lori Headrick
Sent: Wednesday, October 05, 2016 10:08 AM
To: Richard Beckstead <Beckstead@ClarkCountyNV.gov>
Cc: KIM KRUMLAND <KIMKRUMLAND@INTERACT.CCSD.NET>; JENALYN STEWART <jstewart@interact.ccsd.net>
Subject: Invoice Question

Hi Richard,

I see annual emissions charged on the attached invoice. Is this correct?

Thanks, Lori

Lori Headrick CEM
Director
Environmental Health Services

"Taking Care of Environmental Health in Schools for Greater Student Achievement"

<http://ccsd.net/departments/environmental-services>

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Cell: 702-289-0430
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LHeadrick@Interact.CCSD.net

Clark County School District
Business & Finance Division/Risk & Environmental Services Department
4828 S. Pearl St.
Las Vegas, NV 89121

EXHIBIT 6

Date: October 16, 2017

To: See Attached Distribution List

With this letter we are reaching out to our elected officials, municipal and Clark County employees, medical and business professionals, educators, community leaders, and the media, concerning the health and safety in our community. Our concern is with the Wells Cargo, Inc. (Wells Cargo) sand/gravel/asphalt plant located at the southeast corner of Buffalo Drive and Desert Inn Road, Clark County, Nevada.

It is our collective opinion that the current Wells Cargo business operations are in non-compliance with established laws, codes, ordinances and regulations, which is endangering the health and safety of residents in our community. An explanation of our concerns is listed below.

Wells Cargo currently owns and operates a sand/gravel/asphalt plant located on 160-gross acres of land at the southeast corner of Buffalo Drive and Desert Inn Road in the Las Vegas Metropolitan Area. This plant is located in a residential community adjacent to hundreds of single-family residential houses, the large Spring Valley High School, a corner drug store, and two very small parcels of vacant land, one of which is owned by Wells Cargo. At one time Wells Cargo had substantial land holding surrounding and buffering the plant; but over the years all of the land, except one small three acre parcel, was sold for residential development. Now, there are no remaining large parcels of vacant land to buffer the sand/gravel/asphalt plant operations from the residential developments.

The Wells Cargo 160-gross acres of land is divided into two parts with 80-gross acres of land located on the north side of Spring Mountain Road and 80-gross acres of land on the south side of Spring Mountain Road. Both parcels are located south of Desert Inn Road between Buffalo Drive on the west and Tenaya Way on the east.

The entire 160-gross acres of land has Rural Estates Residential Zoning (R-E) that allows for a maximum density of two single-family dwelling units per acre. There is a zoning variance on the property that allows for a sand/gravel mine and an asphalt plant on 40-gross acres. The 40-gross acre variance is split with about 20-gross acres of land each located on north and south sides of Spring Mountain Road (see attachment).

The 80-gross acres of land on the south side of Spring Mountain Road has been completely mined-out and is currently approved only for use as a solid waste disposal site (Permit Number LF009-3GO-01). Since the 80-gross acres has been completely mined-out there should be no other activities on this parcel, except for filling in the existing pit. Yet, almost the entire 80-gross acres that have been filled in are currently used for activities not approved in Residential R-E zoning, or by the zoning variance. (Clark County has determined that the zoning variance only allows for one asphalt plant on the entire 40-gross acres and since there is an existing asphalt plant on the north side of the road, no additional asphalt plants are permitted within the 40-gross acre variance area. There is no remaining sand/gravel that can be mined on the south parcel.)

The 80-gross acres of land on the north side of Spring Mountain Road has R-E Residential zoning and there is a 20-gross acre zoning variance that allows for the existing asphalt plant and

a sand/gravel mine. However, there are numerous other activities on the north side of the road that are not allowed under the R-E zoning, or the zoning variance.

In 1963 Wells Cargo applied for M-2 Industrial zoning on 40-gross acres of the 160-acre parcel. The Clark County Board of Commissioners (Board) rejected the zoning request; but the Board did approve a variance "...to construct and maintain an asphalt plant and to mine sand and gravel..." on 40-gross acres of land. At that time there were several gravel pits operating in the area (now all closed), and the Wells Cargo 40-gross acre variance was still located over one mile away from any residential development projects.

It is obvious by the Board's 1963 approval of only a variance on just a small portion of the Wells Cargo's 160-gross acres of land with R-E Residential zoning that the Board never intended for this site to be a large sand and gravel mine, or an industrial area. This opinion was upheld again on at least two subsequent occasions.

In 1970, Wells Cargo Application ZC-122-70 for M-2 Industrial Zoning on the land was withdrawn after the Planning Department recommended that Industrial Zoning continue to be denied. Then, in 1971, apparently knowing that M-2 Zoning would be denied for a third time, Wells Cargo filed Application ZC- 122-71 for a zoning change on 400 acres of land (80 acres of the 160 acres plus 320 acres they owned in the adjacent Section), requesting that the R-E Residential Zoning be changed to R-U Zoning that would allow for sand and gravel mining. Although less restrictive than the R-E zoning, even the R-U zoning was denied by final action of the Board. Even though there was not significant residential development in the immediate area at that time, this is a strong indicator that the Board intended that these lands would become residential communities when developed, and not industrial areas or mining quarries.

However, over a time span of 50+ years, apparently it somehow became overlooked that the variance was only approved for 40-gross acres. Thus, Wells Cargo kept expanding their operations on the site until the entire 160-gross acres were being used for heavy industrial purposes. [When citizens from the community asked the Clark County Comprehensive Planning Department (Planning Department) why Wells Cargo was able to conduct industrial operations on land with R-E zoning, the Planning Department's response was that the entire 160-gross acres had a zoning variance, which would indicate that the Planning Department may not have been aware that the variance was only for 40 gross acres.]

In 2016 Wells Cargo filed Application WS-0592-16 to construct a second asphalt plant that was to be located on the south 80-gross acre parcel (near the high school) and it was at this time that neighborhood residents discovered that the zoning variance approved by the Board in 1963 was only for 40-gross acres – not the entire 160-gross acres. This discovery was reported to the Planning Department and Clark County then decided that the application for a second asphalt plant could not be processed because only one asphalt plant was allowed within the 40-gross acre variance area. Since Wells Cargo already had an existing asphalt plant within the 40-gross acre variance area, Application WS-0592-16 was withdrawn by Wells Cargo. However, it is unclear why Clark County has allowed Wells Cargo to continue heavy industrial operations on the entire 160-gross acre parcel when they now know that the entire site has R-E Residential zoning and only 40-gross acres are approved for an asphalt plant and sand/gravel mining.

After discovering that the variance approved in 1963 was only for 40-gross acres, in 2016 area residents filed Complaints 16-13565 and 16-13566 with the Clark County Public Response Office (Public Response Office) that contained a partial list of items that appeared to be in non-compliance with County Codes. Several months later, when a telephone call was made to the Public Response Office to check on the status of the complaints, we were informed that after the complaints were filed, representatives from the Public Response Office, Building Department, and Planning Department inspected the property and found additional non-compliant items not included in the complaints filed by the residents. The Public Response Office then informed us that we did not need to amend the original complaints to include the additional items discovered by the Public Response Office because the Public Response Office would include all non-compliant items discovered during their property inspections in their investigation. However, the Public Response Office closed complaint (16-13565) on the north 80-gross acre parcel because they could find "No Violations." The residents were never informed that the complaint was closed and in a subsequent phone call we were informed that both complaints were still open, when, in fact, one complaint had been closed. We recently asked the Public Response Office why they had not informed us that complaint 16-13566 had been closed and the Public Response Office responded that they are not obligated to tell the complainant when a complaint had been closed. It is the opinion of the residents that there are still non-compliant items on the north parcel that need to be address by the Public Response Office and Complaint 16-13566 needs to be reopened.

It appears that since our complaints were filed, the Public Response Office has only required Wells Cargo to correct some minor items that we can see visually from outside of the property boundary. Our complaint (16-13566) on the south 80-gross acre parcel is still open, but we have not seen any reduction in activity on the site. In fact, we have seen an increase in activity. It is unclear why the County would allow Wells Cargo to increase non-compliant activities on the south 80-gross acres when there is an open complaint on the property.

After our complaints had been filed with the Public Response Office, we learned that Wells Cargo had received a large contract to supply asphalt for the "Neon Project." Then, in January 2017, Wells Cargo made a major expansion to include a large grinding/crushing operation on the south 80-gross acre parcel. Large quantities of reclaimed asphalt and other materials started being trucked to the site for processing. It is unknown what chemical substances are in the reclaimed asphalt, and the neighborhood is concerned that the reclaimed asphalt may contain hazardous materials because we have been told that asbestos was historically used in the production of asphalt. Even though we reported the grinding/crushing expansions to Clark County at the time they occurred (starting January 2017), Clark County has done nothing to stop the Wells Cargo expansions and non-conforming uses.

Over the past few years there have been numerous expansions of office trailers, storage areas, and various types of activities on the 160-gross acres. Historic signage on the office trailers at the time of our complaints indicated that there were at least three different companies working from the property. (As of this date the business signs have been removed; so we do not know how many companies are working from the site, but the office trailers are still located on the property. It appears that the businesses are still on the site and it was just the signage that was removed.) A maintenance facility has been constructed on the north property and trucks and other heavy equipment are being stored, serviced and repaired all over the entire 160-gross acres. Heavy construction equipment that is used for road construction and has nothing to do with gravel pit

Wells Cargo

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mining operations is stored at various locations on the property. The grinding and crushing equipment that was installed on the south 80-gross acres operates at various times during the day and night and causes considerable noise and dust that is disturbing neighborhood residents. As a result of the grinding and crushing operations, there are now gigantic piles of reclaimed asphalt that have been trucked to the site for processing. After the reclaimed asphalt has been processed, it is then stored on the site along with other very large piles of materials (the piles look like large sand dunes) that are also trucked to the property. At times, the asphalt plant on the north side of the Spring Mountain Road runs 24-hours per day, which is also a disturbance to the neighborhood. The crushing of reclaimed asphalt, and the processing of new asphalt, creates what appears to be a greasy asphalt dust that sticks to everything and is hard to remove. Obviously, none of these items or operations are allowed on property with R-E Residential Zoning.

Dust from the Wells Cargo operations continually covers houses and schools in the neighborhood and the streets are a mess. There is a Wells Cargo street sweeper that attempts to clean the public streets adjacent to their property, but the street sweeper cannot keep up with the large amount of dust generated at the site. Consequently, Spring Mountain Road between Tenaya Way and Buffalo Drive has been nicknamed "The Beach," due to the large quantities of sand/dust that often accumulates on the road and sidewalk. Wells Cargo does nothing to clean the private residential streets, or public streets that are not adjacent to their property. More importantly, since Wells Cargo cannot contain the dust they generate from business operations to their own property, their dust covers all of the single-family houses and schools in the area and the residents and students are forced to live with the Wells Cargo unwanted dust, which includes what appears to be a greasy asphalt residue.

The neighborhood residents and students are very concerned about the health hazards from all of the Wells Cargo dust, with special concerns about the small particulate matter that is known to cause health problems. There may also be hazardous materials in the dust that carries asphalt residue, which needs to be studied. Since many of these possible health problems do not show up for a number of years, we do not know what the future consequences of breathing this dust will be, nor what the long-term respiratory problems may be for neighborhood residents and students at the various schools. It is our opinion that all unauthorized grinding and crushing operations at this plant need to cease immediately and an independent, thorough environmental study is needed to determine the health hazards for residents and students from this operation.

What is really disturbing is that the large Spring Valley High School is located directly adjacent to the Wells Cargo property and our high school students are exposed to these dangerous dust conditions as they walk to school and when they are outside on the athletic field (during school hours and during evening uses). Of special concern is that there are several classes of medically fragile students at this high school and the bus loading zone is adjacent to the south 80-gross acres of the Wells Cargo property. In addition to the large public high school, a data search of the area reveals numerous day care centers, elementary schools, and middle schools in close proximity to the Wells Cargo operation.

Dr. Chen, an Assistant Professor from UNLV, installed air monitoring equipment in one of the nearby subdivisions and found that fine particulates (PM2.5) significantly exceeded EPA standards 14 out of 20 monitoring days. The County Air Quality Department will not recognize Dr. Chen's findings and has stated that they do not do site-specific monitoring. The County's

monitoring facility is located 1.5 miles away – upwind, which fails to detect the majority of the dust problems associated with the Wells Cargo operation. Winds at the site typically blow from west-to-east.

We have repeatedly contacted the Federal EPA and the Clark County Health Department with our concerns, but we have yet to see any formal sanctions against Wells Cargo from these organizations.

Wells Cargo has received numerous fines from the Clark County Air Pollution Control Board (Pollution Control Board), but the fines have typically been very small and have not been effective at reducing the dust particulates or plant odors. The fines were often reduced because Wells Cargo agreed to install new equipment (that should have been there anyway) and the fines were reduced to help offset the cost of new pollution equipment.

It is our understanding that Wells Cargo has agreed to install additional new equipment to reduce the “rotten egg” smell, and in return for installing new equipment the Clark County Air Quality Department will remove five complaints (3 violations settled and two alleged violations waiting for a hearing) from the Wells Cargo Air Quality file. The community residents feel that this file purging of complaints (settled or alleged violations) is inappropriate because when viewing the Wells Cargo Air Quality file it will not show a true account of the actual air quality violations (settled or alleged) and it will present a false impression of historic practices.

Apparently, Wells Cargo will also extend the height of the asphalt plant exhaust stack so that the “rotten egg” smell will be spread over a larger area of the City, and not be concentrated in just the area around the plant. However, the new equipment does nothing to control the dust problem and asphalt residue, which is the main health concern of the neighborhood.

Wells Cargo has informed area residents that they have no plans to leave the area and they intend to move forward with a new application for a second asphalt plant that will add even more pollutants to the air. This is really unbelievable! Clark County is currently reviewing two Air Quality (AQ) permits for Wells Cargo that will increase production and emissions levels and the permit review is expected to be completed by the end of the year. By even requesting any additional expansions, Wells Cargo is demonstrating their total disregard for the health and safety of people living in the neighborhood around their plant -- particularly the nearly 2,500 students at the adjacent Spring Valley High School and the numerous students at the other area schools. Due to the nature of their business, Wells Cargo cannot contain the large amounts of dust and emissions produced by their operations. On-site monitoring of dust particulates in a residential subdivision adjacent to the Wells Cargo plant indicates that that the harmful fine dust particulates (PM2.5) released into the air significantly exceeded EPA standards 14 of 20 monitoring days. And, to make thing worse, there is on-site grinding/crushing of reclaimed asphalt and the neighborhood residents do not even know if there are hazardous materials being released into the air from this process. Wells Cargo business operations require that they sometimes operate 24-hours per day, so the noise, dust, and lights disturb area residents. Traffic congestion from large trucks and heavy equipment crossing the roads is a safety hazards not only for students that have to walk past the plant, but also for pedestrians and the large volume of neighborhood vehicular traffic that uses Spring Mountain Road. In other words, Wells Cargo is an environmental polluter to the neighborhood, an inappropriate use in a residential community, and a bad neighbor. The majority of the operations on the Wells Cargo site do not conform to the

Wells Cargo

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site's R-E Residential zoning. Yet, Wells Cargo continues to bid on and receive asphalt and sand/gravel contracts from federal, state, county, and city government contracting departments – which they in turn use to justify their expansions.

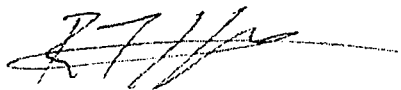
Therefore, we are reaching out for your assistance to help protect the health and safety in our community and our schools, by:

- immediately requiring Wells Cargo to comply with all applicable zoning and air quality laws, codes, ordinances and regulations as established by federal, state, county, and city entities. Only those activities allowed by the current zoning should be permitted on the site and no new temporary or permanent applications for any type of activities relating to the production of sand/gravel/asphalt should be accepted by the Planning Department.
- immediately requiring Wells Cargo to remove all unauthorized businesses and equipment from the site.
- requiring the Public Response Office to reopen Compliant 16-13565 and have an independent agent inspect the north 80-gross acre site to include all non-compliant items.
- requiring Wells Cargo to have an independent source conduct site specific air quality monitoring around the perimeter of the 160-gross acres to determine the level of fine particulates (PM2.5) and potential carcinogenic substances. Disclose the air quality results so that the neighborhood will be informed of air quality conditions emitted from the Wells Cargo plant and any health safety actions that should be taken.
- taking steps to ensure that P2.5 particulate levels do not exceed EPA levels outside of the Wells Cargo plant.
- requiring Wells Cargo to discontinue all operations when wind speeds exceed 10 MPH.
- conducting a thorough investigation of the site by an independent party to determine if there are hazardous materials located on the property. This includes materials trucked to the site and materials used in the production of asphalt.
- closely monitoring future site activity expansions. Comprehensive Planning should enforce Title 30 and not allow any future temporary or permanent expansions, or relocation of facilities and plant equipment, on the property, as stipulated under current County requirements.
- improving monitoring of site activities. Wells Cargo often conducts dusty operations at night when the Air Quality Department is closed and there is no one on duty to answer the phone when neighborhood residents call to complain about the dust. Consequently, the Air Quality inspectors do not come out to investigate the complaint until the next day when the dust levels are lower and then the investigators report that they did not observe a dust problem. The Air Quality Department needs to be staffed 24 hours a day, at least during the week. (We have been informed that after we file an air quality complaint, the Clark County Air Quality Department calls Wells Cargo before they come out to inspect the property. We feel that this is an inappropriate action prior to an inspection and Clark County inspectors should arrive at the site unannounced. However, we have also been informed that on occasions the Air Quality Department makes unannounced visits to the property.)
- denying any future Air Quality requests for expanded or increased emissions and pollutions levels from Wells Cargo plant operations, current or future expansions. Air Quality applications should not be accepted for illegal operations (e.g., a second asphalt plant located on a site only approved for a single plant).

- removing Wells Cargo from lists of approved contractors/suppliers and no new contracts for services or materials should be issued to Wells Cargo until they are in complete compliance with all applicable federal, state, county, and city established laws, codes, ordinances and regulations because Wells Cargo, at the expense of the neighborhood health and safety, uses these contracts to justify new plant expansions.
- determining Wells Cargo current asphalt production capacity. If Wells Cargo does not have asphalt production capacity with existing equipment, then they should not be allowed to bid on any new contracts that would require production beyond their current capacity.
- not allowing Wells Cargo to truck materials from other locations for storage and processing on the site. There is nothing in the site zoning, or the site variance, that allows for trucking reclaimed asphalt to the site for processing, or for trucking large quantities of other materials to the site for storage to be used in the production of asphalt.
- improving communications. Through the use of media, parents of students that attend classes within a two mile radius of the Wells Cargo plant need to be informed of the potential health hazards that their students are exposed to on a daily basis. This is also true for residents of the community, who should know what emissions and pollution Wells Cargo is emitting into the atmosphere. Schools need to be notified on days that the PM2.5 particulate count exceeds EPA Standards
- monitoring on-site businesses and contracts. No future temporary or permanent sand/gravel/asphalt operations should be allowed on the site as a result of contracts, present or future, which Wells Cargo may have or receive, and no other current or future businesses should be allowed to operate from the property based on these contracts.
- limiting business hours. Business operations need to be limited to hours compatible with a residential neighborhood; e.g. 7 AM to 9 PM.

Your assistance in helping resolve the dangerous health and safety issues surrounding the Wells Cargo plant, and bringing these conditions to the attention of the public, will be greatly appreciated.

Thank you for your consideration. This letter is submitted on behalf of residents surrounding the Wells Cargo plant. All correspondence and comments should be sent to the undersigned.



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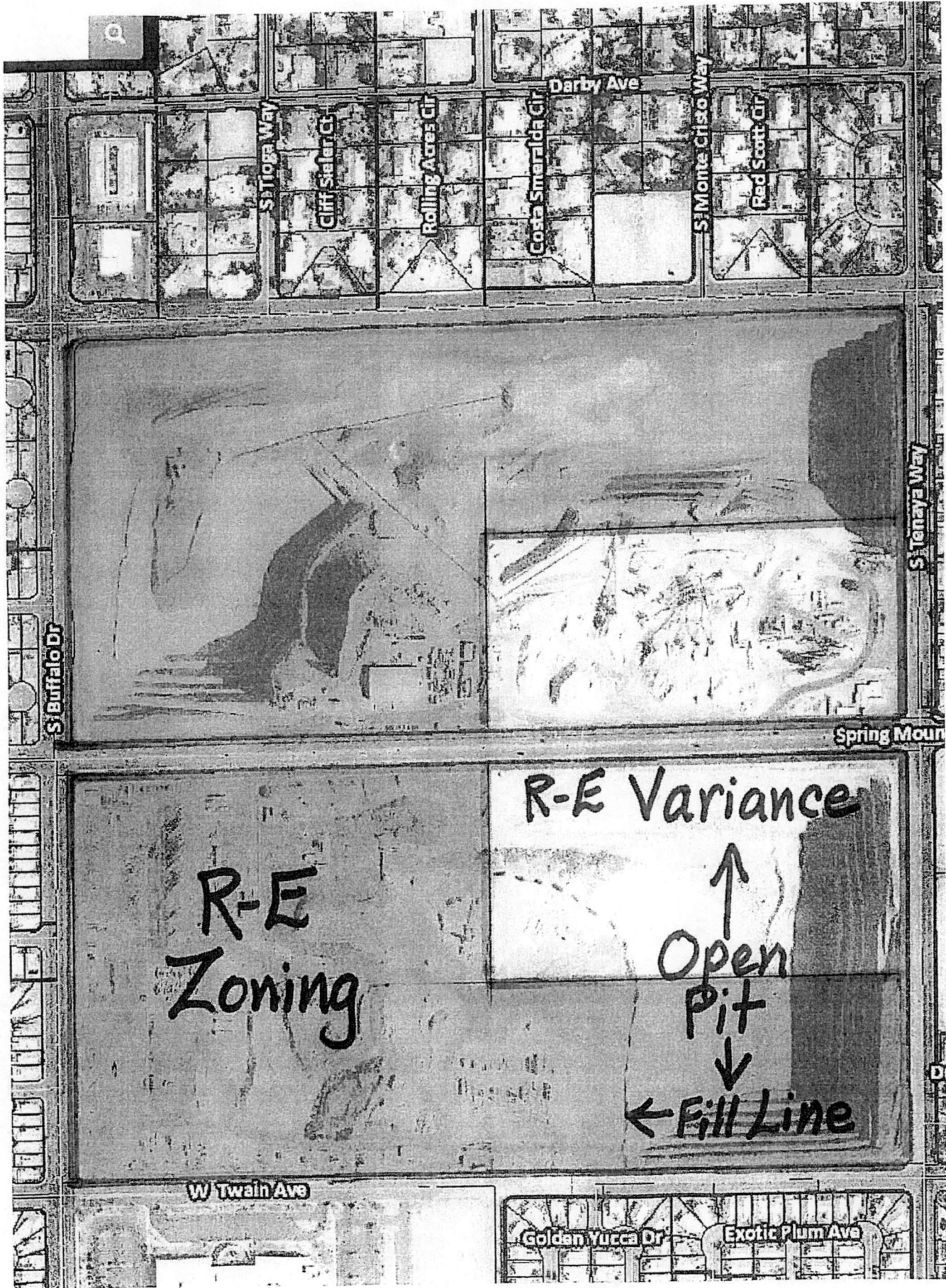
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R-E
Zoning

R-E Variance

↑
Open
Pit

↓
← Fill Line



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EXHIBIT 7

December 15, 2017

Re: Wells Cargo Application WS/DR-1001-17

Hi Sami:

Thank you for visiting with us today about the current Wells Cargo Application WS/DR-1001-17 that was filed on November 14, 2017. As I explained, there is a high level of frustration in our district concerning this application.

In our meeting you stated that the Planning Department has a neutral position concerning the Application, but to many people in our district it appears that the Planning Department just "rubber stamps" anything that Wells Cargo wants without any investigations or logical reasons (e.g., three modular office trailers, 38 storage trailers, 4 shipping containers, use of waivers and design reviews, etc.).

During our December 6, 2017 meeting with Wells Cargo and their attorneys, Mr. Kaempfer stated that there were no "illegal uses" on the site and the Application was not an "expansion" of the site improvements. I disagree with Mr. Kaempfer on both of these issues.

I have searched the Clark County files and can find no Design Review Approvals for the existing items listed in Wells Cargo Land Use Application WS/DR-1001-17. If Wells Cargo placed these items on the site without an Approved Design Review, then I would consider the items to be "illegal uses," regardless of what Mr. Kaempfer calls them.

I do not understand how Mr. Kaempfer can say that the Application is not an "expansion" of the Approved improvements on the site. If all of the existing "illegal uses" were removed from the site, and the site was clean and not covered with rubble, then it would be an "expansion" of the Approved improvements if office and storage trailers were placed on the site.

Wells Cargo would have you believe that bringing office and storage trailers to the site are "Accessory Uses" and are part of the sand/gravel/asphalt operation. At a different sand/gravel/asphalt plant that is a conforming use -- this may be true. However, the subject is a Legal Non-Conforming Use, so different parts of Title 30 apply.

According to Wells Cargo, they moved to the site on May 12, 1954. I have no way to verify this date, but I did find a document indicating that on May 12, 1954 Wells Cargo entered into an agreement with Dredge Corporation to develop gravel properties. I also found a copy of Federal Government Land Patent #1211179 issued to Dredge Corporation on July 26, 1960 that included the subject property (Dredge No. 62 Claim, embracing; NW¼ Sec 15 T21S R60E). Therefore, in order to get a land patent from the Federal Government, the Bureau of Land Management must have issued someone an unpatented mining claim for the subject property prior to July 26, 1960.

Since Federal Government land actions supersede County Ordinances and Codes, mining gravel on the site was a legal use prior to July 26, 1960. However, when the land transferred from Federal to private ownership, the lands were assigned Clark County R-E Residential Zoning and were considered to be a Legal Non-Conforming use because the use was legal prior to the County R-E Residential zoning being placed on the property. Therefore, because the sand/gravel

Wells Cargo Application WS/DR-1001-17

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operation on the site is still a Legal Non-Conforming use, all uses on the property fall under Title 30.76 Nonconformities.

Title 30.76.010 clearly states "It is the intent of this Chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Chapter that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses prohibited in the same district." Therefore, office and storage trailers cannot legally be placed on the site as "Accessory Uses" because that would constitute an "expansion" of the Approved improvements. The Wells Cargo improvements are not a Compatible Use in our district; and as a matter of fact, they are a Conflicting Use as defined by Title 30.

In the November 14, 2017 Wells Cargo Justification Letter it states "Due to the nature of the sand and gravel mining operation and the Class III/Reclamation operation, Wells Cargo cannot utilize irrigation as it would compromise the walls of the mining and Class III Landfill/Reclamation." I have a difficult time believing Wells Cargo would make such an absurd, fabricated statement and not supply any scientific support. Where are the geotechnical investigations that include core boring data and soils analyses performed by an engineering geologists? How could "irrigation...compromise the walls" without knowing the soils specific characteristics and shear strength? Was a perc test performed? Flood irrigation is not available at the site and plant materials in Clark County typically use a drip irrigation system anyway. In most situations plant materials are used to stabilize soils, not compromise them! The statement made by Wells Cargo concerning irrigation is totally unreliable and needs to be supported or removed from the Wells Cargo Justification Letter.

As we discussed, the Wells Cargo asphalt plant is sited on 40-gross acres of residential zoned land with a Variance granted in 1963; so, as you stated, the plant is a legal non-conforming use. According to Title 30.76.050 Nonconforming Uses, "No waivers or variances allowed to this section." Therefore, we do not understand why the Planning Department accepted and processed Land Use Application WS/DR 1001-17 that contains a Waiver of Development Standards.

Furthermore, we do not understand why the Planning Department accepted Wells Cargo Application WS/DR-1001-17 that contains a Design Review request when Title 30 Table 30.16-9 clearly states: "Applications shall only be accepted when the applicant demonstrates that the proposed project is in conformance with the provisions of this Title." In the Table 30.16-9(i) Standards for Approval, it states: "The applicant for any design review shall have the burden of proof to establish that plans, including changes in location of uses or principal structures, satisfy the following criteria:

1. The proposed development is compatible with adjacent development and development in the area, including buildings, structures or sites with a Historic Designation;
2. The proposed development is consistent with the applicable land use plan, this Title, and other regulations, plans and policies of the County;
3. Site access and circulation do not negatively impact adjacent roadways or neighborhood traffic;
4. Building and landscape materials are appropriate for the area and for the County;
5. Elevations, design characteristics and other architectural and aesthetic features are not unsightly, undesirable or obnoxious in appearance; create an orderly and aesthetically pleasing environment; and are harmonious and compatible with development in the area;

Wells Cargo Application WS/DR-1001-17

6. Appropriate measures are taken to secure and protect the public health, safety, and general welfare.”

Wells Cargo Application WS/DR-1001-17 that contains a Design Review request does not meet any of the above 6 requirements!

In summary, Wells Cargo Application WS/DR-1001-17 is only an attempt to circumvent the requirements of Title 30 and legalize all of the existing “illegal uses” on the site.

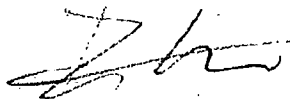
The 1963 Variance states that the Application was “...to construct and maintain an asphalt plant and to mine sand and gravel...” on the legally defined 40-gross acres. I can find no reference that the Board ever approved Wells Cargo to operate a business from this site. Wells Cargo Construction is located at 9127 W. Russell Road, Suite 210, Las Vegas, Nevada 89148, so why are there currently office trailers at the Spring Mountain/Tenaya Way site? There is a 1,700 sf Scale House that contains all of the office space required to run the sand/gravel/asphalt operation, so why are any additional office trailers needed? I can find no explanation for the Office Trailer request in the Justification Letter.

In 2016 Complaints (16-13565 and 16-13566) were filed with the Clark County Public Response Office concerning numerous code violations on the Wells Cargo site and for the past year we have seen very little action on our complaints. And what is really disturbing is that during the past year we have seen major expansions on the site. Therefore, we were very disappointed when Wells Cargo filled Land Use Application WS/DR-1001-17 requesting a Waiver of Development Standards and a Design Review that would basically negate the items contained in our complaints, and the Application was accepted by the Planning Department.

Therefore, due to the large number of irregular and inappropriate items contained in Wells Cargo Application WS/DR-1001-17, we respectfully request that the Application be Withdrawn. We also request that the two open Complaints filed on the 160-gross acres be enforced and Wells Cargo be instructed to immediately start removing all “illegal” uses from the site. Our Complaints were filed over a year ago, so Wells Cargo has had adequate time to remove all of the “illegal” uses; thus, no additional time should be granted to clean up the site. If Wells Cargo did not start preparing to remove all of the “illegal” items during the past year, it is hard to justify any additional removal time based on a business enterprise hardship, when the hardship is related to poor business practices.

Thank you for your considerations and actions concerning the items listed in this letter.

Sincerely,



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Wells Cargo Application WS/DR-1001-17
Page 3

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EXHIBIT 8

Re: Wells Cargo Application WS/DR-1001-17

Ron Hawkins

Thu 1/4/2018 11:58 AM

To: Sami Real <Sami.Real@ClarkCountyNV.gov>;

Hi Sami:

I'm obviously missing something. Will you please supply me with references and supporting documents for the below-listed four questions!

- (1) Where in Title 30, or other documents, does it state that a Waiver of Development Standards can be granted to a non-conforming use? (see Title 30.76.050)
- (2) Where in Title 30, or other documents, does it state that a non-conforming use property can have accessory use structures approved? (see Table 30.44-1)
- (3) Where in Title 30, or other documents, does it state that a Design Review does not have to comply with the requirements listed in Table 30.16-9?
- (4) Why does the County "not view the current application as an expansion of their legal non-conforming use (sand and gravel operation)?" If all of the non-permitted (illegal) uses (e.g., office trailers) were removed from the property, then placing new uses (e.g., office trailers) on the property would be an expansion. Please explain why this is not an expansion. Thanks

From: Sami Real <Sami.Real@ClarkCountyNV.gov>
Sent: Thursday, January 4, 2018 9:44 AM
To: Ron Hawkins
Subject: RE: Wells Cargo Application WS/DR-1001-17

Ron.

As we discussed in our meeting:

the County does not view the current application as an expansion of their legal nonconforming use (sand and gravel operation);

the applicant requested a hold of their application after the neighborhood meeting to see what can be done to address some of the questions/concerns they heard at that meeting;

when this application is ready to go forward again, notices will be sent out to the surrounding property owners to inform them of the Town Board and BCC meeting dates.

Sami R. Real
Planning Manager, Department of Comprehensive Planning
Ph: (702) 455-3129

From: Ron Hawkins [mailto:ronnie_hawkins@hotmail.com]
Sent: Wednesday, January 03, 2018 4:05 PM
To: Sami Real <Sami.Real@ClarkCountyNV.gov>
Subject: Re: Wells Cargo Application WS/DR-1001-17

I just had an email that WC in not on the agenda for Tuesday night. Is that true? Are they withdrawing the Application or just delaying the Town Board meeting?

From: Sami Real <Sami.Real@ClarkCountyNV.gov>
Sent: Wednesday, January 3, 2018 8:16 AM
To: Ron Hawkins
Subject: RE: Wells Cargo Application WS/DR-1001-17

Good morning Ron.
I just checked the file. This application has not been withdrawn by the applicant.
Please let me know if there is anything else I can assist with.
Thank you.

Sami R. Real
Planning Manager, Department of Comprehensive Planning
Ph: (702) 455-3129

From: Ron Hawkins [mailto:ronnie_hawkins@hotmail.com]
Sent: Monday, January 01, 2018 6:27 PM
To: Sami Real <Sami.Real@ClarkCountyNV.gov>
Subject: Wells Cargo Application WS/DR-1001-17

Hi Sami:
Has Wells Cargo Application WS/DR-1001-17 been withdrawn yet?

EXHIBIT 9



EXHIBIT 10



Cited

As of: January 18, 2018 2:45 PM Z

Northwest Env'tl. Def. Ctr. v. Cascade Kelly Holdings LLC

United States District Court for the District of Oregon

December 30, 2015, Decided; December 30, 2015, Filed

Case No. 3:14-cv-01059-SI

Reporter

155 F. Supp. 3d 1100 *; 2015 U.S. Dist. LEXIS 173277 **; 46 ELR 20009; 82 ERC (BNA) 1150

NORTHWEST ENVIRONMENTAL DEFENSE CENTER, CENTER FOR BIOLOGICAL DIVERSITY, and NEIGHBORS FOR CLEAN AIR, Plaintiffs, v. CASCADE KELLY HOLDINGS LLC, d/b/a COLUMBIA PACIFIC BIOREFINERY, and GLOBAL PARTNERS LP, Defendants.

Core Terms

emissions, barge, vapor, requirements, loading, calculations, emit, capture, citizen suit, per year, tons, TANKS, leaks, regulations, Facility's, sources, enforceable, pollutant, crude oil, temperature, major source, railcars, Air, molecular weight, estimates, permits, limits, Plaintiffs', tightness, deference

Counsel: [**1] For Plaintiffs: Janette K. Brimmer, EARTHJUSTICE, Seattle, WA; Moneen S. Nasmith, EARTHJUSTICE, New York, NY; Andrew M. Hawley, NORTHWEST ENVIRONMENTAL DEFENSE CENTER, Portland, OR.

For Defendants: Jay T. Waldron, Brien J. Flanagan, and Sara C. Cotton, SCHWABE, WILLIAMSON & WYATT, P.C., Portland, OR.

Judges: Michael H. Simon, United States District Judge.

Opinion by: Michael H. Simon

Opinion

[*1102] OPINION AND ORDER

Michael H. Simon, District Judge.

Plaintiffs Northwest Environmental Defense Center, the Center for Biological Diversity, and Neighbors for Clean Air (collectively "Plaintiffs") bring action under the citizen suit provision in § 304 of the Clean Air Act ("CAA"), *42 U.S.C. § 7604*. The defendants are Cascade Kelly Holdings LLC, doing business as Columbia Pacific Bio-Refinery ("CPBR"), and Global Partners LP (collectively "Defendants"). Plaintiffs allege that Defendants began construction and operation of a crude oil transloading terminal in Clatskanie, Oregon, (the "Facility") without first obtaining a federal Prevention of Significant Deterioration ("PSD") permit under § 165 of the CAA, *42 U.S.C. § 7475*. The Court has bifurcated the liability and penalty portions of Plaintiffs' claims and now considers only Plaintiffs' request for relief enjoining Defendants from [**2] further construction and operation of the Facility without a PSD permit. From October 6 to October 8, 2015, the Court held a bench trial.

Plaintiffs' position is that Defendants are required under the CAA to have a PSD permit because the Facility has the potential to emit 100 tons per year or more of volatile organic components, which contribute to the creation of ozone in the atmosphere. Facilities that meet or exceed the 100 tons-per-year threshold must comply with more rigorous pollution control requirements than

facilities that do not meet this threshold. Instead of the PSD permit that Plaintiffs contend Defendants should have obtained, Defendants obtained a different permit that allows the Facility to emit no more than 78 tons per year of volatile organic components. Plaintiffs argue that because of inaccurate emissions calculations and unrealistic assumptions, Defendants cannot possibly comply with the regulatory limit of 78 tons per year of the relevant pollutant. Plaintiffs further argue that Defendants lack the technology to measure the precise amount of pollutants the Facility actually emits. For these reasons, Plaintiffs argue, the Facility must have a PSD permit to operate **[**3]** lawfully and Defendants' current permit is insufficient. Whether Plaintiffs are correct is the question now before the Court.

Notably, Plaintiffs brought this lawsuit before Defendants obtained any permit for new construction at the Facility. Indeed, it appears that Plaintiffs' lawsuit may have prompted Defendants to seek and obtain the permit that they received from State of Oregon's Department of Environmental Quality ("DEQ"). By filing this lawsuit and then participating in the public comment process on draft permits for the Facility sought by Defendants, Plaintiffs helped protect the environment by ensuring that Defendants' current permit limits Defendants to processing only 20 percent of the **[*1103]** Facility's maximum throughput capacity, at least without first obtaining a PSD permit, and contains other environmentally protective restrictions on the Facility's operations. Thus, regardless of whether Plaintiffs prevail on the specific question now before the Court, Plaintiffs have already played an important role in ensuring that Defendants comply with applicable federal and state laws and environmental regulations. And that is one of the key roles that Congress envisioned for the citizen **[**4]** suit provision of the CAA.

The Court has considered Plaintiffs' argument and evidence that Defendants have a razor-thin margin of error for complying with the emissions limit of 78 tons per year of volatile organic compounds

stated in its DEQ-issued permit. Additionally, the Court has considered Plaintiffs' argument that DEQ, which determined as part of the state permitting process that the Facility will emit no more than 78 tons per year of the relevant pollutants, could have imposed additional monitoring and recordkeeping requirements on Defendants. Had CPBR relied on any more generic emissions assumptions in its potential-to-emit calculations and had DEQ imposed any less stringent monitoring or testing provisions, the Court might have reached a different conclusion than it now does. Notwithstanding Plaintiffs' concerns about Defendants' compliance and DEQ's permitting process, the Court finds that Plaintiffs did not meet their burden in this case. Plaintiffs have not proven by a preponderance of the evidence that Defendants inaccurately calculated the Facility's potential to emit, which is the foundation of the DEQ-issued permit. Thus, Plaintiffs have not shown that the Facility **[**5]** will emit at least 100 tons per year of volatile organic components, which is the threshold that would render Defendants subject to the more demanding PSD permitting requirements.

The Court has jurisdiction over this matter under 42 U.S.C. § 7604 and 28 U.S.C. §§ 2201 and 2202.¹ Having weighed and evaluated all of the evidence in the same manner that it would instruct a jury to do and having fully considered the legal arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52(a).

FINDINGS OF FACT²

The Court finds the following facts by a preponderance of the evidence. Because the factual allegations underlying this controversy relate to the CAA and its related regulations, the Court begins

¹ The Court discusses additional jurisdictional matters below.

² Exhibits received in evidence at trial are referred to as "Ex." followed by the specific page number of that exhibit.

with an examination of the applicable statutory and regulatory framework.

A. General Provisions of the CAA

Congress enacted the 1970 CAA "to protect and enhance the quality of the Nation's air resources" and "promote the public health and welfare and the productive capacity of [the Nation's] population." 42 U.S.C. § 7401(b)(1). The CAA creates "a ****6**" federal framework for ensuring the nation's air quality." California v. United States, 215 F.3d 1005, 1007 (9th Cir. 2000). Congress, however, gave "[e]ach State . . . the primary responsibility for assuring air quality within the entire geographic area comprising such State." 42 U.S.C. § 7407(a). By requiring the Environmental Protection Agency ("EPA") to work with the states, the CAA sets up "a model of cooperative federalism to achieve the statute's environmental goals." Ass'n of Irrigated [*1104] Residents v. U.S. E.P.A., 790 F.3d 934, 937 (9th Cir. 2015).

The CAA requires EPA to formulate national ambient air quality standards ("NAAQS") for air pollutants. 42 U.S.C. §§ 7408-7409. EPA has thus far issued NAAQS for six pollutants: (1) particulate matter; (2) sulfur dioxide; (3) nitrogen oxides (with sulfur dioxide as the indicator); (4) carbon monoxide; (5) lead; and (6) ozone. Util. Air Regulatory Grp. v. E.P.A., 134 S. Ct. 2427, 2435, 189 L. Ed. 2d 372 (2014); 40 C.F.R. pt. 50 (2015). The NAAQS for ozone include ozone precursors, which are compounds that contribute to the formation of ozone in the atmosphere, such as non-methane organic gases and volatile organic compounds ("VOCs"). See 40 C.F.R. §§ 51.100(s), 52.21(b)(50). NAAQS set the maximum permissible airborne concentrations for the listed pollutants. 42 U.S.C. §§ 7408(a), 7409(a); Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 465, 121 S. Ct. 903, 149 L. Ed. 2d 1 (2001).

Each state has primary responsibility for implementing the NAAQS within its borders by

developing a State Implementation Plan ("SIP"), which is "subject to EPA review and, if inadequate, disapproval." ****7** Hall v. U.S. E.P.A., 273 F.3d 1146, 1153 (9th Cir. 2001); see 42 U.S.C. § 7410. Every SIP must "include enforceable emission limitations and other control measures, means, or techniques" to attain the NAAQS, "as well as schedules and timetables for compliance." 42 U.S.C. § 7410(a)(2)(A). If EPA approves a SIP, the SIP "has 'the force and effect of federal law.'" Safe Air for Everyone v. United States EPA, 488 F.3d 1088, 1097 (9th Cir. 2007) (quoting Trs. for Alaska v. Fink, 17 F.3d 1209, 1210 n.3 (9th Cir. 1994)).

1. PSD Program

The CAA also requires that states designate the areas within their borders that are in "attainment" and "nonattainment" of the NAAQS for each listed air pollutant. 42 U.S.C. § 7407(d)(1)(A). Attainment areas and nonattainment areas are subject to different regulations. For areas that do not meet the NAAQS (nonattainment areas), Congress created New Source Review ("NSR") to prevent the addition of new sources of pollution. Id. §§ 7501-7515. For areas that meet the NAAQS (attainment areas), Congress enacted the PSD program. See id. §§ 7470-79. The federal PSD program is designed "to assure that any decision to permit increased air pollution in [an attainment area] is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process." Id. § 7470(5).

As part of the program, "[n]o major emitting facility on which construction is commenced after ****8** August 7, 1977, may be constructed in any area to which this part applies unless—(1) a [PSD] permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part." Id. § 7475(a). EPA has clarified in its regulations: "No

new major stationary source or major modification . . . shall begin actual construction without a [PSD] permit." 40 C.F.R. § 52.21(a)(2)(iii). To "[b]egin actual construction means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature." Id. § 52.21(b)(11). A facility is "modified" when it undergoes "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." 42 U.S.C. § 7411(a); *see id. § 7479(2)(C)* (incorporating [*1105] the general definition of "modification" into the PSD statutory program).

The PSD program defines "major emitting facility," also known as a "major source," as a facility possessing the potential to emit either 100 tons per year or 250 tons per year of the regulated pollutant. The threshold depends [*9] on the facility's industry source category. Id. § 7479(1). Petroleum storage and transfer facilities with a total storage capacity exceeding 300,000 barrels are subject to the 100 tons per year threshold. Id. Major sources must obtain PSD permits and are subject to stricter regulatory controls than sources that do not fall under the definition of "major source." For example, major sources "must comply with technology-based emission standards requiring the maximum degree of reduction in emissions EPA deems achievable, often referred to as 'maximum achievable control technology' or MACT standards." National Mining Ass'n v. United States EPA, 59 F.3d 1351, 1353, 313 U.S. App. D.C. 363 (D.C. Cir. 1995) (citing 42 U.S.C. § 7412(d)(1)-(2)) (footnote omitted).

Sources may, however, avoid the requirement to obtain a PSD permit by limiting their potential to emit ("PTE"). When EPA promulgated rules under the CAA, EPA defined "PTE" as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design." 40

C.F.R. § 51.165(a)(1)(iii) (emphasis added).³ EPA treats as part of a source's design "[a]ny physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed." [*10] Id. The only caveat is that "the limitation or the effect it would have on emissions" must be "federally enforceable." Id. Under this rule, "[f]ederally enforceable means all limitations and conditions which are enforceable by the Administrator." Id. § 51.165(a)(1)(xiv). The D.C. Circuit has further clarified that these limitations and conditions must also include a state's or locality's controls when those controls are "effective as a practical matter." Nat'l Min. Ass'n, 59 F.3d at 1363. EPA's Environmental Appeals Board also has emphasized that a practically enforceable limitation is based on "technically-accurate" information. In re Peabody W. Coal Co., 2005 EPA App. LEXIS 2, 2005 WL 428833, at *8 (E.P.A. Feb. 18, 2005).

In both attainment and nonattainment areas, Congress also requires that major new sources in specific industries comply with New-Source Performance Standards ("NSPS"). These standards require use of the "best system of emission reduction" within the designated industry. 42 U.S.C. § 7411(a)(1). For new sources subject to NSPS, NSPS permitting requirements [*11] apply regardless of whether the sources must also comply with either NSR or PSD permitting requirements. See Env'tl. Def. v. Duke Energy Corp., 549 U.S. 561, 568, 127 S. Ct. 1423, 167 L. Ed. 2d 295 (2007) (describing the history of amendments and regulations to permit requirements in the CAA). Title V of the CAA consolidates the permitting requirements applicable to new major sources. See

³The U.S. Supreme Court explained, "The Clean Air Act regulates pollution-generating emissions from both stationary sources, such as factories and powerplants, and moving sources, such as cars, trucks, and aircraft." Util. Air Regulatory Grp. 134 S. Ct. at 2435. As in Utility Air Regulatory Group, this litigation concerns stationary sources.

42 U.S.C. §§ 7661-7661f. Although state permitting authorities issue the relevant permits, all permits for new major sources (collectively known as "Title V permits") are subject to EPA review and veto. See *id.* § 7661d; Sierra [*1106] Club v. Otter Tail Power Co., 615 F.3d 1008, 1011-12 (8th Cir. 2010); Romoland Sch. Dist. v. Inland Empire Energy Ctr., LLC, 548 F.3d 738, 742-43 (9th Cir. 2008).

2. Oregon's Implementation of the CAA and PSD Program

EPA conditionally approved Oregon's SIP on June 24, 1980, and then approved the SIP without conditions on November 5, 1981. 46 Fed. Reg. 54939-02; 45 Fed. Reg. 42265-01. DEQ administers Oregon's SIP. See Or. Admin. R. ("OAR") § 340-200-0040. As the CAA requires, Oregon has a PSD program. See *id.* § 340-202-0200(1) ("The purpose of [this Division] is to implement a program to prevent significant deterioration of air quality in the State of Oregon . . .").⁴ Under Oregon's SIP, a "federal major source" must go through the PSD permitting process. *Id.* § 340-224-0010. Oregon defines "federal major source" just as 42 U.S.C. § 7479(1) defines a "major emitting facility." See OAR § 340-200-0020(55)(y). Oregon separately defines a non-federal "major source" as "a source that emits, [*12] or has the potential to emit, any regulated air pollutant at a Significant Emission Rate" ("SER"). *Id.* § 340-2000020(72)(a). For VOCs in attainment areas, the SER is 40 tons per year. *Id.* § 340-216-0020, Tbl. 2.⁵ Major sources must obtain standard air contaminant discharge permits ("ACDPs"), and the requirements differ from those applicable to federal major sources. *Id.*

⁴Unless otherwise specified, citations to OARs are to the 2014 versions of regulations, which were applicable at the time DEQ issued the relevant permit to CPBR.

⁵Table 2 can be viewed at EPA, *EPA Approved Oregon Administrative Rules 44*, <http://yosemite.epa.gov> (last visited Dec. 30, 2015).

§ 340-216-0066.

The Oregon SIP also defines "PTE" in a way similar to the federal CAA. Under the Oregon SIP, PTE is "the lesser of: (a) The capacity of a stationary source; or (b) The maximum allowable emissions taking into consideration any physical or operational limitation . . . if the limitation is enforceable by the Administrator." *Id.* § 340-200-0020(100). The SIP clarifies, "This definition does not alter or affect the use of this term for any other purposes under the [Federal *Clean Air Act.*]" *Id.*

Oregon also assigns regulated facilities a plant site emission limit ("PSEL") to "[a]ssur[e] compliance with ambient air standards and Prevention [*13] of Significant Deterioration increments." *Id.* § 340-222-0020(2)(b). A facility's PSEL is "the total mass emissions per unit time of an individual air pollutant specified in a permit for a source." *Id.* § 340-200-0020(95). A facility's PSEL is "established on a rolling 12 consecutive month basis and will limit the source's potential to emit." *Id.* § 340-222-0043(3) (emphasis added). All ACDPs must contain a PSEL. *Id.* § 340222-0020(1). When an applicant has a "potential to emit greater than or equal to the SER" and must thus use a source-specific PSEL,⁶ the applicant's "initial source specific PSEL will be set equal to the source's potential to emit or netting basis, whichever is less." *Id.* § 340-2220041(2).⁷

⁶DEQ allows sources to adopt "generic" PSELs, which do not require information inputs from the site of the specific source, when the source will emit below the SER of a pollutant. DEQ sets the generic PSELs for pollutants at one ton below the SER. Ex. 297 at 14; see David Monroe, *Oregon Air Quality Permitting Fundamentals 2* (Dec. 7, 2012), http://www.nwec.org/2012/images/pdfs/Presentations/3A_Monro.pdf (last visited Dec. 29, 2015).

⁷"Netting Basis" is "the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, [*14] MINUS any unassigned emissions that are reduced from allowable under OAR 340-222-0045, MINUS any emission reduction credits transferred off site, PLUS any emission increases approved through the New Source Review regulations in OAR 340 division 224 MINUS any emissions reductions required by subsection (g) of this section."

[*1107] In DEQ's *Instructions for Using Air Contaminant Discharge Permit (ACDP) Application Forms*, DEQ also explains that applicants should include an "annual emission" based not on "the maximum capacity of the facility or the typical operating rate," but on "the maximum projected operating rate during the permit term." Ex. 297 at 11.⁸ Sources that adopt PSELs to limit their PTE are also known as "synthetic minor sources." OAR § 340-218-0020 ("[A] source which would otherwise be a major source subject to this division may choose to become a synthetic minor source by limiting its emissions below the emission level that causes it to be a major source through limits contained in an ACDP . . .").⁹

To ensure that a site does not exceed its PSEL,

OAR § 340-200-0020(76).

⁸DEQ's most recent regulations now state: "For sources with potential to emit greater than or equal to the SER, the source specific PSEL will be set equal to the source's potential to emit, netting basis or a level requested by the applicant, [**15] whichever is less, except as provided in section (3) or (4)." OAR 340-222-0041(2) (2015).

⁹Defendants argue that Oregon's SIP is unique because it allows sources to adopt PSELs that limit their potential to emit. Defendants also maintain that Oregon's PSEL provisions materially differ from other state programs that allow for "synthetic minor" permits. Defendants are incorrect. EPA regulations contemplate SIPs that allow sources to adopt synthetic caps on their potential to emit. Under 40 C.F.R. § 51.165(a)(1)(iii), a source may calculate its PTE in relation to "[a]ny physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed." See also Peabody, 2005 EPA App. LEXIS 2, 2005 WL 428833, at *7 ("In many cases, a source may seek to limit its PTE, if possible, to avoid potentially more burdensome regulation in the future. In order to accomplish this, a facility may ask the permitting authority to impose enforceable limits on the source's capacity to emit."). Oregon's regulations refer to "synthetic minor sources" that have adopted physical or operational limitations. See OAR § 340-218-0020. Although no other state calls these limitations [**16] "PSELs," SIPs in other states contain provisions very similar to Oregon's. See, e.g., 5 Colo. Code Regs. § 1001-5-3B.II ("A source that is voluntarily applying for a permit to create state-only or federally enforceable permit conditions, as appropriate, to limit the potential to emit criteria, pollutants, GHG or hazardous air pollutants may request to obtain such limits in a construction permit.").

"[t]he permittee must monitor pollutant emissions or other parameters that are sufficient to produce the records necessary for demonstrating compliance with the PSEL." OAR § 340-222-0080(1). When applying for a permit, "[t]he applicant must specify . . . the method(s) for determining compliance with the PSEL. The Department [DEQ] will review the method(s) and approve or modify, as necessary, to assure compliance with the PSEL." OAR § 340-222-0080(4). EPA reviewed Oregon's PSEL rule and found "that it establishes limits on a source's PTE that are Federally enforceable and enforceable as a practical matter (with adequate requirements for monitoring, recordkeeping, and reporting in [OAR § 340-222-0080]) in accordance with EPA's guidance for limiting PTE." 68 Fed. Reg. 2897 (Jan. 22, 2003).

3. Citizen Suits

The CAA contains a citizen suit provision at 42 U.S.C. § 7604, which states [**108] that "any [**17] person may commence a civil action on his own behalf . . . (3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) . . ." The purpose of a citizen suit provision "is to permit citizens to enforce [a statute] when the responsible agencies fail or refuse to do so." San Francisco Baykeeper v. Cargill Salt Div., 481 F.3d 700, 706 (9th Cir. 2007). When a state agency charged with administering a permit program determines that no permit is required for an activity, a citizen may still bring suit against a private party for the unpermitted activity; any finding to the contrary "would frustrate the purposes" of a statute's "empowerment of citizen suit." Ass'n to Protect Hammersley, Eld, & Totten Inlets v. Taylor Res., Inc., 299 F.3d 1007, 1012 (9th Cir. 2002).

As the Second Circuit has also noted: "[T]he very purpose of the citizens' liberal right of action is to

stir slumbering agencies and to circumvent bureaucratic inaction that interferes with the scheduled satisfaction of the federal air quality goals." *Friends of the Earth v. Carey*, 535 F.2d 165, 173 (2d Cir. 1976). In the enforcement of the CAA scheme, "citizen suits play an important role . . . The citizen suit provisions were designed not only to 'motivate government agencies' to take action themselves, [**18] . . . but also to make citizens partners in the enforcement of the Act's provisions." *Weiler v. Chatham Forest Products, Inc.*, 392 F.3d 532, 536 (2d Cir. 2004) (quoting *Wilder v. Thomas*, 854 F.2d 605, 613 (2d Cir. 1988)).

B. The Parties and the Permitting Process

Cascade Kelly Holdings LLC, doing business as CPBR, is a wholly-owned subsidiary of Global Operating LLC, which is a wholly-owned subsidiary of Global Partners LP. CPBR owns and operates the Facility located at 81200 Kallunki Road, Clatskanie, Oregon. At the Facility, CPBR transloads ethanol and Bakken crude oil¹⁰ from railcars through an above-ground pipe to internal floating-roof¹¹ storage tanks. The Facility currently has two 90,500-barrel internal floating-roof storage tanks. From the storage tanks, CPBR pumps crude oil through another above-ground pipe to barges on the Columbia River for transport. The Facility's dock currently has the capacity to accommodate only one barge at a time.

On August 23, 2013, CPBR applied to DEQ for a standard ACDP. CPBR indicated in its permit application that it intended to increase the Facility's capacity [**19] to transload crude oil. CPBR proposed constructing four new 108,000-barrel internal floating-roof storage tanks, two new 36,000-gallon closed-system process tanks, and

¹⁰ Bakken crude oil comes from the Bakken formation primarily in the Dakotas and Saskatchewan.

¹¹ Floating roofs are designed to always rest on the surface of the crude oil inside the tank in order to minimize vapor emissions.

additional equipment to support the new tanks. CPBR also proposed constructing a vapor combustion unit ("VCU") to control emissions from barge loading operations.

In its application, CPBR requested a PSEL for various regulated air pollutants, including VOCs. For VOCs, CPBR asked for a PSEL of 78 tons per year, applicable to any consecutive 12-month period. CPBR intended the PSEL to act as a cap on the Facility's operating capacity during the life of the permit, thus allowing CPBR to avoid the more stringent PSD requirements imposed on facilities emitting at least 100 tons [**1109] per year of VOCs.¹²

Because the Facility's VOC emissions are "fugitive" in nature (that is, VOCs are not emitted from a single source or via pipes or stacks), CPBR could not calculate a PSEL by directly conducting emissions testing or continuously measuring emissions to decide on an appropriate limit. CPBR thus had to rely on its own estimates [**20] and EPA AP-42 emissions factors and assumed emission control frequencies.¹³ For example, CPBR

¹² The Facility is located in an attainment zone, making PSD rather than NSR requirements applicable. See *OAR § 340-204-0010*; Ex. 25 at 7.

¹³ EPA AP-42 is EPA's multi-volume compilation of emissions factors for use by sources of pollutants and regulators to assess pollutant emissions, particularly [**21] in instances where direct measurement cannot be made. On EPA's website, it explains:

An emissions factor is a representative value that attempts to relate the quantity of a pollutant released to the atmosphere with an activity associated with the release of that pollutant. . . . Such factors facilitate estimation of emissions from various sources of air pollution. In most cases, these factors are simply averages of all available data of acceptable quality, and are generally assumed to be representative of long-term averages for all facilities in the source category (i.e., a population average).

The general equation for emissions estimation is:

$$E = A \times EF \times (1 - ER/100)$$

where:

E = emissions;

assumed that it would operate 8,760 hours per year (24 hours per day for 365 days) and process 1.8396 billion gallons of crude oil per year.¹⁴ CPBR also stated that it would accept crude oil with a maximum Reid Vapor Pressure ("RVP") of 12.75 pounds per square inch ("psi").¹⁵ CPBR further assumed 98.7 percent capture of emissions during barge loading based on AP-42, Chapter Five, Section Two ("AP-42 5.2"). For the crude oil in storage tanks, CPBR assumed a liquid molecular weight of 207 pounds per pound-mole ("lbs/lb-mole"), a vapor molecular weight of 50 lbs/lb-mole, and an average storage temperature of 53.57 degrees Fahrenheit. Additionally, CPBR relied on an EPA software program called "TANKS" to calculate air pollutant emissions expected from various parts of the crude oil transloading operation. In particular, CPBR used TANKS to calculate emissions from the storage and process tanks and from valves, pipes, fittings, and similar emission points.

In February 2014, DEQ presented a draft ACDP for public review and comment. On May 5, 2014, Plaintiffs, which are three environmental non-profit groups consisting of members who themselves have standing to bring this action, submitted comments

A = activity rate;

EF = emission factor, and

ER = overall emission reduction efficiency percentage

See EPA, *Emissions Factors & AP 42*, Compilation of Air Pollutant Emission Factors (Sept. 10, 2015), <http://www3.epa.gov/ttn/chief/ap42/index.html> (last visited Dec. 29, 2015).

¹⁴During the testimony, the parties at times rounded this number to 1.84 billion gallons per year. DEQ has also rounded this number to 1.84 billion gallons in some documents. See, e.g., Ex. 214 at 12.

¹⁵Vapor pressure indicates the volatility of a substance. RVP measures the absolute vapor pressure exerted by a liquid at 100 degrees Fahrenheit. By always measuring at the same temperature, RVP gives a basis for comparison among various liquids. In contrast, True Vapor Pressure ("TVP") measures the vapor pressure of a liquid under actual conditions. An RVP of 12.75 psi corresponds to a TVP of 11.12 psi at approximately 64 degrees Fahrenheit. Dkt. 30 at 20 n.38; Dkt. 38-1 at 12.

to DEQ. DEQ provided written responses to the public comments, finding that the comments did not identify any issues that would prevent CPBR from complying with air quality regulatory requirements [*1110] and regulatory limitations enforceable by DEQ. In its responses, DEQ stated that the proposed ACDP "include[d] appropriate and sufficient monitoring, recordkeeping and reporting requirements to allow CPBR and DEQ to verify the company's compliance status." DEQ further stated that "the PSELs being established in this permit in accordance with the PSEL rules in OAR 340 Division 222, [**23] are enforceable and establish that the facility will emit less than 100 tons per year of any regulated pollutant." Accordingly, DEQ concluded that the PSEL for VOCs contained in the ACDP application would prevent the Facility from qualifying as a new "federal major source," which is a source that emits more than 100 tons per year of VOCs and requires a separate permit.

C. The Permit

DEQ issued the ACDP to CPBR on August 19, 2014.¹⁶ The ACDP adopted CPBR's calculations and set the cap for VOCs at 78 tons per year. The permit prohibited CPBR from storing crude oil with a monthly average TVP of 11.12 psi or greater. The ACDP also set forth specific emissions standards, operation and maintenance requirements, compliance demonstration requirements, monitoring and recordkeeping requirements, reporting requirements, and applicable emissions factors. For example, the permit required CPBR to monitor the quantity of crude oil it received into storage and loaded onto barges, the number of roof landings for each tank,¹⁷ results of monthly leak detection evaluations, monthly compliance calculations for the PSEL, and the monthly average

¹⁶The ACDP issued by DEQ is 05-0023-ST-01. [**24]

¹⁷"Roof landings" occur when the floating roof of a storage tank lands on the legs of the tank due to emptying of the tank's contents. Dkt. 30 at 37.

TVP of the crude oil stored at the Facility.

In Condition 2.5, the permit also required CPBR to use a vapor collection system when loading barges. The permit gave CPBR four options for demonstrating that barges are "vapor tight" before loading. Under the permit, CPBR could: (1) maintain documentation showing a pressure test compliant with 40 C.F.R. § 63.565(c)(1) for determining vapor tightness of marine vessels loaded at positive pressure; (2) maintain documentation showing a leak test compliant with 40 C.F.R. § 63.565(c)(2) for determining vapor tightness of marine vessels loaded at positive pressure; (3) perform a leak test during loading using EPA Method 21 for determining vapor tightness of marine vessels loaded at positive pressure;¹⁸ or (4) ensure negative pressure during loading with a measured pressure vacuum of "no less than 1/2 inch of water." The permit stated that CPBR "must design and operate its marine vessel vapor collection system to collect displaced VOC vapors during the loading of marine tank vessels."

DEQ did not specifically state what **[**25]** emissions capture efficiency it assumed for barge loading. DEQ did, however, expressly adopt the emissions factor that CPBR used when CPBR assumed a 98.7 percent emissions capture during barge loading. CPBR used an emissions factor of 0.0172 lb/kgal for loadout fugitive leaks based on AP-42 5.2, and DEQ similarly used an emissions factor of 0.017 lb/kgal for loadout fugitive leaks.¹⁹

¹⁸ Plaintiffs' expert witness stated that EPA Method 21 refers to "VOC sniffers."

¹⁹ In a letter to Plaintiffs, one of CPBR's consultants stated that "[t]he inherent design of the facility is to capture 100% of barge vapors." CPBR, however, used 98.7 percent in its 2013 ACDP application. In its August 19, 2014 response to comments, DEQ indicated that it assumed "all barges loaded to be vapor tight and all vapor produced by vessel loading controlled by the John Zink vapor recovery unit (100% capture efficiency)." When questioned about the DEQ response, Defendants' expert witness at trial, Mr. Chad Darby, explained that he believed that "100% capture efficiency" referred to assumptions made in a previous permit issued to CPBR, not ACDP 05-0023-ST-01. The 100 percent efficiency may also refer to the efficiency of the vapor recovery unit itself rather than the collection

[*1111] DEQ also issued a report concerning the ACDP that discussed the requirements for barge loading and the applicable standards. The report stated:

Although 40 C.F.R. Part 63, Subpart Y—*"National Emission Standards for Marine Tank Vessel Loading Operations,"* is not applicable to the proposed source . . . all marine vessels loaded at the facility have and will meet the same vapor tightness requirements as specified in Subpart Y. The permittee will document and maintain records of vessel vapor tightness and/or negative pressure loading events.

Subpart Y specifies Maximum Achievable Control Technology ("MACT") standards. See 40 C.F.R. § 63.560. Subpart Y also defines a "vapor-tight marine vessel" as "a marine tank vessel that has demonstrated within the preceding 12 months to have no leaks." 40 C.F.R. § 63.561. DEQ concluded that other Subpart Y regulations generally did not apply to the Facility **[**27]** because the Facility was not a major source subject to the state's PSD program. DEQ, however, also concluded that NSPS Subpart Kb—setting forth federal performance standards for the emissions control technology used by volatile organic liquid storage vessels—applied to the Facility. See 42 U.S.C. § 7411(a)(1); 40 C.F.R. §§ 60.110b-60.117b.

On July 2, 2014, more than a month before the issuance of the ACDP, Plaintiffs commenced this lawsuit against Defendants. On October 17, 2014, Plaintiffs petitioned DEQ for reconsideration of its decision to issue the ACDP to Defendants. DEQ denied the petition. In denying the petition, DEQ explained: "The new permit includes PSELs that limit the PTE [Potential to Emit] and allowable

process as a whole. DEQ referred **[**26]** to a separate control efficiency of the vapor recovery unit in its report concerning the ACDP. In the report, DEQ noted that the facility would capture vapors from barge loading using "a vapor recovery unit or thermal oxidizer" and that "[t]he thermal oxidizer will operate with an operating temperature of 2,200 degrees Fahrenheit and rated control efficiency of 99.5%."

emissions of the new terminaling facility."²⁰

[*1112] D. Witness Testimony at Trial

Plaintiffs assert that CPBR should have calculated its maximum PTE regardless of any voluntary limits on operational capacity. This maximum PTE, argue Plaintiffs, is well in excess of 100 tons [**29] per year of VOCs and thus makes the Facility a federal major source that requires a PSD permit. To the extent the PSEL of 78 tons per year serves as the Facility's PTE, Plaintiffs argue that the PSEL is not technically accurate or practically enforceable. According to Plaintiffs, CPBR proposed and DEQ adopted an inaccurate, unenforceable PSEL because of errors CPBR made in calculating emissions for four primary sources: railcar unloading, tank storage, barge loading, and equipment leaks.²¹

²⁰ If the Facility operated at its full capacity without any physical or operational limitations, it could process 9.198 billion gallons of crude oil per year. See Ex. 19, App. B. No one disputes that at this level of throughput, the Facility's potential to emit would exceed 100 tons per year of VOCs. At the time Plaintiffs filed this lawsuit against Defendants, DEQ had not yet assigned a final, enforceable PSEL to the Facility, and thus, Plaintiffs were correct in asserting that [**28] the Facility constituted a federal major source of VOCs and thus required a PSD permit. Before DEQ issued the final permit containing the PSEL, Plaintiffs participated in several rounds of comments on multiple drafts of the permit. See Exs. 22-23, 210-214. The final permit limited the Facility to processing only 20 percent of its maximum throughput capacity and contained other restrictions on the Facility's operations. Thus, Plaintiffs already have accomplished a great deal. They have played the critical role of public watch-dog, helping to enforce what some have called the "social license," which is the "the extent to which a corporation is constrained to meet societal expectations and avoid activities that societies (or influential elements within them) deem unacceptable, whether or not those expectations are embodied in law." Neil Gunningham, Robert A. Kagan, and Dorothy Thornton, *Social License and Environmental Protection: Why Businesses Go Beyond Compliance*, 29 *Law & Soc. Inquiry* 307, 307 (2004).

²¹ Although Plaintiffs' expert witness, Dr. Ranajit Sahu, devoted most of his report and testimony to these four sources, he also discussed possible emissions from storage tank cleanings, missing components, startups and shutdowns of equipment, and malfunctions. Dr. Sahu stated that although he could not calculate an emissions estimate for these sources, he believed that the emissions were greater than zero.

1. Dr. Ranajit Sahu

In support of their arguments, Plaintiffs called Dr. Ranajit Sahu, Ph.D., to testify as an expert witness at trial. Dr. Sahu testified that he believed the facility had the potential to emit at least somewhere between 277.87 and 333.49 tons per year of VOCs. He separately discussed [**30] each of the potential sources of VOC emissions.

a. Railcar Unloading

Dr. Sahu testified that although he could not say exactly how many tons per year of VOCs the Facility emitted during railcar unloading, he believed the amount was greater than zero. Thus, CPBR wrongly omitted railcar unloading emissions from its calculations. Dr. Sahu based this conclusion on CPBR's standard operating procedures, which discuss venting railcars. He stated that he believed the standard operating procedures showed that CPBR vents VOCs to atmosphere when it unloads railcars. He also noted that he has never visited the Facility personally to observe railcar unloading.

b. Tank Storage

Dr. Sahu testified that he believed CPBR made many inaccurate assumptions and calculations regarding the emissions of the storage tanks at the facility. First, Dr. Sahu opined that CPBR should not have relied on the EPA software program TANKS to calculate emissions because the software is outdated and inaccurate. Instead, he asserted, CPBR should have used Differential Absorption Lidar ("DIAL"), which Dr. Sahu said was a new and more accurate technique for measuring emissions from storage tanks. Dr. Sahu acknowledged, however, [**31] that although EPA has accepted some DIAL reports, "EPA has not changed its methodology for TANKS yet."

Additionally, Dr. Sahu testified that even if CPBR

did not err in using TANKS, CPBR failed to use Facility-specific input parameters in its TANKS calculations and inputted inaccurate values for vapor pressure, liquid and vapor molecular weight, and average temperature. For vapor pressure, CPBR assumed an RVP of 12.75 psi. Dr. Sahu stated that although Bakken crude has a minimum RVP of 3.60 psi, Bakken crude can have an RVP as high as 15.37 psi. Dr. Sahu testified that nothing in the Facility inherently limited storage to crude with an RVP of 12.75 psi and that all PTE calculations for VOCs should have used an RVP of at least 15 psi and possibly 15.4 psi.

For molecular weight, Dr. Sahu stated that CPBR assumed a liquid molecular [*1113] weight of 207 lbs/lb-mole for crude oil with an RVP of 5 psi. According to Dr. Sahu, studies show Bakken crude can have a liquid molecular weight of between 250 and 284 lbs/lb-mole, particularly when the crude oil has a higher RVP. Dr. Sahu also stated that CPBR assumed a vapor molecular weight of 50 lbs/lb-mole. He testified that he believed CPBR should have [**32] taken samples of crude oil to confirm this value. He recommended using a range of 50 lbs/lb-mole to 110 lbs/lb-mole. Dr. Sahu did not cite literature supporting the 110 lbs/lb-mole alternative value.

Dr. Sahu further stated that CPBR used an inappropriate value for temperature. CPBR assumed an average storage temperature of 53.57 degrees Fahrenheit in its calculations, deriving this temperature from weather information for Astoria, Oregon, provided in AP-42. Dr. Sahu testified that CPBR should have used the temperatures for Portland in AP-42. He further testified that CPBR should have based its monthly average temperature calculations on the average of the highest temperature each day in Portland as opposed to daily average temperatures.

Dr. Sahu also discussed emissions during roof landings for storage tanks. He testified that CPBR underestimated the number of annual roof landings. CPBR assumed only two roof landings per year at

the facility. Dr. Sahu noted that although "it is CPBR's prerogative" to assume only two roof landings per, he found this limit "unenforceable" given the specifications in the permit.

c. Barge Loading

Dr. Sahu testified that CPBR made several errors regarding [**33] emissions during barge loading. Dr. Sahu stated that in CPBR's calculations, CPBR again used the same inaccurate values for vapor pressure, molecular weight, and temperature that it used when calculating emissions for the storage tanks. Moreover, Dr. Sahu emphasized that he believed CPBR overestimated the emissions capture efficiency percentage at barge loading. Dr. Sahu believed CPBR should have assumed 95 percent capture efficiency rather than 98.7 percent. This appears to be the most significant point in dispute. If Dr. Sahu is correct in using 95 percent as the capture efficiency, this change, by itself, would push the emissions calculations well past the threshold of 100 tons per year for being a federal major source. As will be shown below, CPBR's expert witness does not dispute this conclusion.

According to Dr. Sahu, the assumed capture efficiency of VOCs during barge loading constituted one of the biggest sources of error in CPBR's calculations. During barge loading, vapors from residual liquids are displaced as new liquid flows into the barge. New liquid also emits vapors. Under the Facility's operational plan, it is intended that these vapors will be collected or captured [**34] via a hose and taken to the VCU for destruction, but some vapors still may escape. Dr. Sahu testified that DEQ initially assumed a capture efficiency of 100 percent. He testified that he believed that the ACDP application ultimately submitted to DEQ assumed 98.7 percent efficiency and that DEQ adopted that assumption. Based on his review of the application, Dr. Sahu believed that the 98.7 percent capture efficiency assumption came from AP-42 5.2-6, which gives capture efficiencies for tanker trucks, not barge loading.

This section states:

Vapors can also be controlled through combustion in a thermal oxidation unit, with no product recovery. . . . Control efficiencies for the recovery units range from 90 to over 99 percent, depending on both the nature of the vapors and the type of equipment used. However, not all of the displaced [*1114] vapors reach the control device, because of leakage from both tank truck and collection system. The collection efficiency should be assumed to be 99.2 percent for tanker trucks passing the MACT-level annual leak test (not more than 1 inch water column pressure change in 5 minutes after pressurizing to 18 inches water followed by pulling a vacuum of 6 inches [**35] water). A collection efficiency of 98.7 percent (a 1.3 percent leakage rate) should be assumed for trucks passing the NSPS-level annual test (3 inches pressure change). A collection efficiency of 70 percent should be assumed for trucks not passing one of these annual leak tests.

Dr. Sahu testified that although measurements for barges are largely unavailable, assumptions for trucks do not translate perfectly to barges because trucks are much smaller. Additionally, he found no evidence that barges at the facility pass annual tests showing compliant levels of pressure loss. To the extent the permit requires CPBR to document that barges are "vapor tight," Dr. Sahu testified that the permit simply requires certificates issued in accordance with Coast Guard regulations and other EPA regulations dealing with safety and flammability. Dr. Sahu testified that the "vapor tightness" certificates do not indicate that barges cannot leak emissions into the atmosphere; "vapor tightness," according to Dr. Sahu, is a regulatory term of art that does not literally mean "vapor tight" in the engineering sense that would be applicable for measuring or controlling emissions. Dr. Sahu stated that he has seen [**36] no documentation demonstrating that a specified level of vacuum is maintained during barge loading.

Dr. Sahu also noted that in a 2011 document, EPA provides a table with capture efficiencies for vapor collection procedures and systems. The document states: "Capture efficiency for the vapor collection system can be applied based on the leak check conducted for the tanker truck, railcar, and marine vessel." The table gives loading characteristics and leak check frequencies for tankers and then gives corresponding capture efficiencies. For a tanker undergoing an annual leak check per 40 C.F.R. Part 60, Subpart XX (for nongasoline), the table gives an assumed capture efficiency of 95 percent. For a tanker undergoing an annual leak check per 40 C.F.R. Part 60, Subpart XX (for gasoline), the table gives an assumed capture efficiency of 98.7 percent. Dr. Sahu asserted that based on the table, 95 percent was the most appropriate value for capture efficiency during barge loading at the facility, which does not transload gasoline.

Using an RVP of 15 psi, a temperature of 62 degrees Fahrenheit, a vapor molecular weight of 110 lbs/lb-mole, a throughput of 1.8396 billion gallons, and a capture efficiency of 95 percent, Dr. Sahu [**37] calculated that the annual emissions for barge loading alone is 138.73 tons per year, well in excess of the threshold for a federal major source. Even using CPBR's vapor molecular weight of 50 lbs/lb-mole but all of Dr. Sahu's other numbers, Dr. Sahu calculated that barge loading results in 84.63 tons per year of VOCs, which would still make the Facility a federal major source when added to emissions from other points according to CPBR calculations. Dr. Sahu did not present at trial a calculation for barge loading emissions in which he used all of CPBR's other values but simply changed the capture efficiency to 95 percent.

d. Equipment Leaks

Dr. Sahu stated that CPBR calculated emissions from equipment leaks by counting each type of component (such as valves and flanges) in each type of service and [*1115] using an emissions

factor for each type of component. CPBR then summed the various emissions. Dr. Sahu testified that he believed CPBR's count omitted some sources. He pointed to a footnote in the permit application that stated the calculations for equipment leaks did "not include rupture disk PRVs,²² sealless design valves, welded connections, open-ended lines that are blind, capped, plugged [**38] or have a second valve, and closed-loop sampling equipment."

Dr. Sahu also pointed out a discrepancy between CPBR's component count in the permit application and the number of components checked in CPBR's monthly leak detection ("LDAR") reports. The ACDP application based emission calculations for equipment leaks on a count of 380 components, but a LDAR report included additional components, listing the component number as 1,458.

2. Mr. Chad Darby

To rebut Dr. Sahu's testimony regarding the accuracy of CPBR's calculations and the enforceability of the PSEL, Defendants presented as their expert witness Mr. Chad Darby, an associate and senior consultant at Golder Associates Inc. He discussed CPBR's calculations for the potential sources of emissions that Dr. Sahu criticized.²³

a. Railcar Unloading

Mr. Darby stated that railcars do not result in

²² "PRV" refers to "pressure relief valve." See Dkt. 30 at 17, 39; EPA, *Replace Burst Plates with Secondary Relief Valves*, 1 (2011), <http://www3.epa.gov/gasstar/documents/replaceburst.pdf> (last visited Dec. 29, 2015).

²³ For other miscellaneous potential sources of emissions, Mr. Darby stated that the VCU is started up and shut down with propane rather than crude oil and that there are no other pieces of equipment that have unique emissions associated with startups and shutdowns. [**39] Malfunctions are reported separately as excess emissions under Condition 7.1 of the ACDP.

emissions because the railcars are unloaded under neutral to negative (*i.e.* vacuum) pressure. If there is no positive pressure in the railcar, the railcars will not emit outward vapors. The Facility's standard operating procedures discuss venting a railcar by opening the pressure relief valve on the gauge, but this occurs only after a vacuum has developed in the head space of the railcar.

b. Tank Storage

For errors alleged in calculations of storage tank emissions, Mr. Darby discussed the TANKS software. He stated that EPA still allows emissions estimates based on TANKS and that DEQ still allows use of TANKS "as a compliance demonstration technique." The main functional concern with TANKS is simply that it does not function reliably on computers using certain operating systems such as Windows Vista or Windows 7. Additionally, Mr. Darby stated that he does not know of a single state that has completely disallowed use of TANKS. To the extent TANKS produces errors, he knows of only two ways the software does so: it generates some inaccurate [**40] information for heated tanks and uses an annual average temperature rather than a monthly average temperature. Mr. Darby stated that these inaccuracies did not affect CPBR's permit application because CPBR does not use heated tanks and calculated the potential to emit over an annual period rather than over a single month. Mr. Darby testified that EPA does not currently recommend DIAL for estimating emissions from a specific storage tank. Moreover, Mr. Darby testified that when he calculated emissions based on AP-42 emissions factors without using TANKS, he arrived at a slightly [*1116] lower emissions estimate than the one in the ACDP application and permit.

Mr. Darby also testified that CPBR only used some of the defaults in the TANKS software, such as estimates for deck seam losses with a bolted deck when in fact the facility has welded decks with no

stub drains. According to Mr. Darby, the use of these defaults resulted in higher estimates of emissions rather than lower estimates because the defaults essentially penalize those who do not have less conservative site-specific data. Furthermore, many of the instances in which CPBR appeared to use the default number were merely coincidences—CPBR [**41] tanks are very similar to many other tanks in the country.

Mr. Darby went on to address why CPBR selected the vapor pressure, liquid and vapor molecular weights, and temperature values that it used in the permit application. Mr. Darby emphasized that the permit limits CPBR to storing crude with a TVP of 11.12 psi (corresponding to a RVP of 12.75 psi) and that the permit requires CPBR to monitor the vapor pressure of the crude oil it stores. Thus, the facility will not store crude oil with an RVP higher than 12.75 psi. According to Mr. Darby, the facility has never stored crude oil with a monthly average RVP exceeding 12.2 psi.

For liquid molecular weight, Mr. Darby stated that CPBR used the TANKS default of 207 lbs/lb-mole. He asserted that Dr. Sahu's calculations for liquid molecular weight incorrectly looked at only the heaviest portion of crude oil, compounds with ten or more carbon atoms in their structure. Virtually all the compounds in crude oil, stated Mr. Darby, have lower molecular weights.

Mr. Darby also discussed why the ACDP application relied on a vapor molecular weight of 50 lbs/lb-mole, corresponding to an RVP of 5 psi. Mr. Darby stated that the 50 lbs/lb-mole value came [**42] from AP-42 7.1. The table gives one vapor molecular weight for crude oil and demonstrates how vapor molecular weight is inversely proportional to vapor pressure. Mr. Darby testified that contrary to Dr. Sahu's assertion, a higher vapor pressure corresponds to a lower vapor molecular weight. Mr. Darby also cited literature that supported an even lower vapor molecular weight than CPBR used.

Regarding temperature, Mr. Darby testified that an

applicant may use the values provided in AP-42 to estimate a tank's annual average storage temperature. Where AP-42 does not provide an average monthly temperature for the applicant's city, the applicant may choose the "most applicable city." Mr. Darby testified that CPBR chose to use the monthly average for Astoria of 53.57 degrees Fahrenheit rather than the monthly average for Portland of 62 degrees Fahrenheit. According to Mr. Darby, the lower temperature more closely corresponded to temperatures at the facility, located in Clatskanie, Oregon. He stated that the National Climate Data Center estimated that the annual average temperature in Clatskanie was 49.9 degrees Fahrenheit between 1971 and 2000.

Finally, Mr. Darby stated that Condition 12.0 in [**43] the ACDP contains an emissions factor for storage tank roof landings and tank degassing that CPBR must use to demonstrate compliance. If the facility had more than two roof landings per year, those events would become part of the compliance calculation. The more landings the facility has, the less of other emitting activities it could have in a twelve-month period. The permit also requires CPBR to monitor the number of roof landings that occur.

c. Barge Loading

For the errors alleged by Dr. Sahu in the calculation of emissions during barge [*1117] loading, Mr. Darby stated that he believed CPBR used appropriate assumptions, particularly with regard to capture efficiency. He testified that the ACDP imposes vapor-tightness conditions in Condition 2.5. Condition 2.5 requires the facility either to load barges under negative pressure or comply with testing standards in 40 C.F.R., Part 63, Subpart Y. According to Mr. Darby, these vapor-tightness standards, listed under *National Emission Standards for Hazardous Air Pollutants for Source Categories*, are MACT standards. He emphasized that—as the DEQ explained in its report—federal and state regulations do not require a particular

MACT standard for the facility, but DEQ nonetheless. [**44] incorporated MACT vapor-tightness conditions into the ACDP. Because the facility must meet MACT-testing standards for barge loading, Mr. Darby believed that CPBR could have assumed a capture efficiency as high as 99.2 percent pursuant to AP-42 5.2-6. He testified that when issuing permits to similar facilities, DEQ sometimes assumes even 100 percent capture efficiency for barge loading.

Regarding some of Dr. Sahu's other concerns, Mr. Darby testified that this annual MACT pressure test is distinct from the ACDP option to load barges under negative pressure, which CPBR does not do, unlike railcars. Additionally, Mr. Darby testified that although most of the available capture efficiency data is for tanker trucks, the tanker data can apply to marine vessels. Indeed, testified Mr. Darby, marine vessels might have higher capture efficiencies than trucks because of the "greater level of scrutiny" that goes into ensuring vapor tightness of marine vessels. Unlike leaks from a truck, leaks from a barge can flow directly into the river system, making regulators and workers more vigilant about emissions.

Mr. Darby went on to testify that even though CPBR could have assumed 99.2 percent capture [**45] efficiency, CPBR used the more conservative 98.7 percent from Table 9-5 of EPA's *Emissions Estimation Protocol for Petroleum Refineries*, the same table discussed by Dr. Sahu. Mr. Darby stated that he believed 98.7 percent was more appropriate than 95 percent because of the testing methods CPBR must use to ensure vapor tightness, the extensive checks used to ensure that barges are sealed, vapor sensors on barge decks, and the personal exposure monitors worn by barge workers to detect significant leaks.

Mr. Darby did, however, acknowledge the importance of the difference between using 98.7 percent and 95 percent as the capture efficiency. In response to a question from the Court, Mr. Darby calculated the emissions from barge loading when

he kept all of CPBR's values for vapor pressure, molecular weight, and temperature the same but changed the capture efficiency to 95 percent. Mr. Darby stated that at 95 percent capture efficiency, barge loading would result in VOC emissions of 70.15 tons per year. This is an increase of approximately 54 tons per year over CPBR's calculation of emissions from barge loading. Adding 54 tons to the 78 tons per year that CPBR is allowed results in 132 tons [**46] per year of VOC emissions, well over the 100 tons per year threshold for sources requiring PSD permits. Mr. Darby called the difference between 98.7 percent and 95 percent capture efficiency "the crux of the argument." The Court agrees: that is the crux of the dispute.

d. Equipment Leaks

For equipment leaks, Mr. Darby explained that the discrepancy between the component count and the number of points checked during the monthly LDAR tests arises because the LDAR tests check multiple points on each component. Use of the [**1118] whole component to calculate the number of components in a permit application conforms to EPA's recommended emission calculations: EPA bases the calculations on components as a whole, not their individual parts. EPA also allows for an estimate of emissions from a population of equipment rather than each individual component, and CPBR accordingly estimated emissions from a site-wide population of equipment. Mr. Darby further testified that DEQ increased the emissions factor CPBR had to use to calculate emissions from equipment leaks. While CPBR had requested an estimate of 0.15 tons of VOC emissions per year from component leaks, DEQ increased the factor to 33.3 pounds per [**47] month (0.2 tons per year). Mr. Darby stated that this increase likely overestimates the leaks from equipment.

3. Lay Witness Testimony

Defendants also called two lay witnesses: Dr. Brian Patterson, Ph.D., and Daniel Luckett. Dr. Patterson testified that he worked with CPBR and DEQ to ensure that CPBR satisfied any questions or concerns that DEQ had. Dr. Patterson discussed some of the inputs into the calculations for the permits. He testified that he reviewed the calculations that were performed by CPBR's consultant. According to Dr. Patterson, the molecular weight 50 lbs/lb-mole and the weather temperature for Astoria were both defaults in the TANKS program that CPBR selected. Dr. Patterson also testified that CPBR used the capture efficiency of 98.7 percent from AP-42 5.2. He further testified that at some point DEQ went from having a draft permit that did not include requirements for a full LDAR program and barge leak-tightness testing to a version that did include those requirements.²⁴

Mr. Luckett testified that he [**48] is the general manager of the Facility. He discussed its day-to-operations, his knowledge of the ACDP application process, and the monitoring, reporting, and record keeping that the Facility uses to ensure compliance with the ACDP. Mr. Luckett testified that the railcars at the Facility do not vent vapors into the atmosphere. Regarding barge loading, Mr. Luckett testified that CPBR checks for "negative pressure" not at the barge itself, but approximately 30 feet from the barge before the vapors go into the VCU. He confirmed that CPBR does not load barges under negative pressure. He also testified that CPBR does not report to DEQ information regarding the actual percentage of emissions capture at the barges.

Because the Court's findings regarding the practical enforceability of the PSEL, the technical accuracy of CPBR's calculations, and the ultimate and critical question whether the Facility emits more than 100 tons per year of VOCs rest partly on a

²⁴ Because Defendants did not provide pretrial disclosures for Dr. Patterson under either *Rule 26(a)(2)(B)* or *Rule 26(a)(2)(C)* of the *Federal Rules of Civil Procedure*, the Court did not allow Dr. Patterson to express at trial any expert opinions.

determination of the level of deference due the DEQ, the Court discusses these findings in that context in the next section.

CONCLUSIONS OF LAW

A. The Court's Jurisdiction under the CAA

1. Exhaustion of Administrative Remedies and Issue Preclusion [**49]

As an initial matter and contrary to Defendants' argument, Plaintiffs need not have exhausted their administrative remedies before bringing a citizen suit under the CAA, *42 U.S.C. § 7604*. The CAA does [**1119] not contain an express requirement that a plaintiff exhaust state remedies before bringing a citizen suit, and courts within the Ninth Circuit and elsewhere have not interpreted the CAA to require such exhaustion. *See, e.g., Weiler v. Chatham Forest Products, Inc.*, *392 F.3d 532, 537 (2d Cir. 2004)* ("[W]e fail to understand how the very existence of alternative enforcement mechanisms evinces congressional intent to prohibit use of *section 304(a)(3)* citizen suits in this context. The alternative mechanisms identified by the defendant [including appeal to state court] are not adequate substitutes for *section 304(a)(3)* suits."); *Ass'n of Irrigated Residents v. Fred Schakel Dairy*, *2008 U.S. Dist. LEXIS 25257, 2008 WL 850136, at *9 (E.D. Cal. Mar. 28, 2008)* ("Congress declined to require exhaustion of administrative remedies under the citizen suit act of the CAA, and provided more than one avenue for citizens to challenge alleged violations under the CAA.").

In the context of the Clean Water Act ("CWA"), the Ninth Circuit has expressly held that a plaintiff is not required to exhaust state remedies before bringing a citizen suit. *Citizens for a Better Env't v. Union Oil Co.*, *83 F.3d 1111, 1119 (9th Cir. 1996)*, *as amended* (July 16, 1996). In *Citizens for a Better*

Environment, the Ninth Circuit found that although procedures [**50] existed for the plaintiffs to appeal the regional water quality control board's cease-and-desist order within the state system, failure to use those procedures did not preclude the plaintiffs from bringing suit to enforce the requirements of the CWA. *Id.* The court based its decision on the text of the CWA, which "makes no mention of exhaustion of state remedies as a prerequisite for bringing a citizen suit." *Id.*

The Ninth Circuit also has determined that the citizen suit provisions of the CWA and the CAA are essentially identical and subject to the same analysis. *Taylor Res., Inc., 299 F.3d at 1014*; see also *Nat. Res. Def. Council, Inc. v. Train, 510 F.2d 692, 699, 166 U.S. App. D.C. 312 (D.C. Cir. 1974)* (noting that the CWA citizen suit provisions were modeled on the provisions of the CAA); *Sierra Club v. Portland GE, 663 F. Supp. 2d 983, 997 (D. Or. 2009)* ("The citizen suit provisions in both acts [the CWA and CAA] are nearly identical . . ."). Accordingly, while Plaintiffs could have appealed to the Oregon Court of Appeals DEQ's decision not to require a PSD permit, the availability of this appeal does not preclude other remedies under the CAA, including Plaintiffs' federal citizen suit.

Defendants also argue that Plaintiffs had the opportunity to litigate this case through the public hearing and comment period for the ACDP and Plaintiffs' petition for review by DEQ. Defendants [**51] now contend that the doctrine of issue preclusion bars Plaintiffs' citizen suit. The preclusive effect in this court of a decision by an Oregon state court or agency is determined by Oregon law. See *Olson v. Morris, 188 F.3d 1083, 1086 (9th Cir. 1999)*; *In re Russell, 76 F.3d 242, 244 (9th Cir. 1996)*; *Miller v. Cty. of Santa Cruz, 39 F.3d 1030, 1032 (9th Cir. 1994), as amended* (Dec. 27, 1994). In Oregon, issue preclusion applies when: (1) the issue in the two proceedings is identical; (2) the issue was actually litigated and was essential to a final decision on the merits in the prior proceeding; (3) the party sought to be precluded has had a full and fair opportunity to be

heard on that issue; (4) the party sought to be precluded was a party or was in privity with a party to the prior proceeding; (5) the prior proceeding was the type of proceeding to which a court will give preclusive effect. *Nelson v. Emerald People's Util. Dist., 318 Or. 99, 104, 862 P.2d 1293 (1993)*.

[*1120] Defendants have not pointed to Oregon case law establishing that the doctrine of issue preclusion applies in the scenario of when persons who are not in privity with the original parties advancing arguments on their own behalf in a proceeding because of their own interest in the questions to be decided. The Supreme Court, however, has decided that the doctrine of issue preclusion does not bar suits by such persons. *Stryker v. Goodnow's Adm'r, 123 U.S. 527, 540, 8 S. Ct. 203, 31 L. Ed. 194 (1887)* ("It is not an uncommon thing in this [**52] court to allow briefs to be presented by . . . persons who are not parties to the suit, . . . and it has never been supposed that the judgment in such a case would estop the intervenor in a suit of his own which presented the same questions."). The Court finds that Plaintiffs were not parties in a proceeding brought by or before DEQ and thus concludes that DEQ's decision not to require a PSD permit does not bar this case of Plaintiffs' arguments. Additionally, the Court finds that the opportunity to participate in a public hearing and comment period for a permit application is not the kind of proceeding to which an Oregon court would give preclusive effect. See *Oregon v. Ratliff, 304 Or. 254, 259, 744 P.2d 247 (1987)* (declining to apply the doctrine of issue preclusion to a hearing in which "litigation is not conducted as it would be in court with two adversary parties and a neutral judge"). Plaintiffs therefore are not collaterally estopped from challenging Defendants' failure to obtain a PSD permit.

2. Collateral Attack on a Facially Valid State Permit

As discussed above, the CAA's citizen suit

provision provides: "The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, [**53] to . . . apply any appropriate civil penalties . . ." 42 U.S.C. § 7604(a). The jurisdictional statement in the citizen suit provision of the CAA is separate and distinct from provisions of 42 U.S.C. § 7607, which requires that "[a] petition for review of . . . any . . . final action of the Administrator under this chapter . . . which is locally or regionally applicable . . . be filed only in the United States Court of Appeals for the appropriate circuit." See Nat. Res. Def. Council, Inc. v. Envtl. Prot. Agency, 512 F.2d 1351, 1355, 168 U.S. App. D.C. 111 (D.C. Cir. 1975) (holding that the section of the CAA authorizing citizen suits and the section concerning judicial review of agency action "contemplate distinct groups of cases"). The Ninth Circuit has unambiguously stated: "[A] citizen enforcement action against third parties for alleged violations of the Clean Air Act may be brought in the district courts." Grand Canyon Trust v. Tucson Elec. Power Co., 391 F.3d 979, 986 (9th Cir. 2004).

Some jurisdictions have found, however, that under the CAA, plaintiffs may not bring citizen suits in a district court to collaterally attack an agency's permitting decision. For example, the Ninth Circuit has held that where a defendant obtained a state PSD permit and the state had integrated the permitting requirements of Title V into its SIP, the plaintiffs' remedies in federal court were limited to the judicial review [**54] mechanisms in 42 U.S.C. § 7607. Romoland Sch. Dist. v. Inland Empire Energy Cir., LLC, 548 F.3d 738, 756 (9th Cir. 2008). The District of New Mexico also interpreted 42 U.S.C. § 7607 to mean that the court could not entertain a citizen suit against defendants for failing to obtain PSD permits where the EPA had determined that the defendants did not need the permits. Grand Canyon Trust v. Pub. Serv. Co. of New Mexico, 283 F. Supp. 2d 1249, 1253 (D.N.M. 2003). Similarly, the Eastern District of Arkansas held that "[t]he Clean Air Act does not authorize a collateral attack on a facially valid state [**1121] permit." Nucor Steel-Arkansas v. Big River Steel,

93 F. Supp. 3d 983, 990 (E.D. Ark. 2015); accord CleanCOALition v. TXU Power, 536 F.3d 469, 479 (5th Cir. 2008) ("Appellants interpret the phrase 'without a permit' to mean 'without a permit that complies with the CAA.' However, we decline to rewrite the plain language of the statute. Here, not only has [the defendant] applied for a permit, it has since successfully obtained one . . ."). The Eastern District of Tennessee has held that the citizen suit provision of the CAA does not allow for a collateral attack on a validly-issued state permit when such an attack amounts to a challenge to the state's SIP. Nat'l Parks Conservation Ass'n, Inc. v. Tenn. Valley Auth., 175 F. Supp. 2d 1071, 1079 (E.D. Tenn. 2001).

According to Defendants, these cases establish that the CAA grants only limited rights to bring federal citizen suits. Defendants further argue that these cases show that CAA citizen suits do not allow for district court review of whether the terms and conditions in a validly-issued [**55] state permit are deficient or otherwise not in compliance with the CAA. The cases finding that plaintiffs may not collaterally attack a validly-issued state permit through a citizen suit are, however, readily distinguishable. Romoland, Grand Canyon Trust, Nucor Steel-Arkansas, and CleanCOALition all involved challenges to permits subject to Title V permitting requirements. Pursuant to Title V § 7661d, state permitting authorities must submit permit applications for federal major sources to EPA for review. Under § 7661d(b)(1): "If any permit contains provisions that are determined by the [EPA] Administrator as not in compliance with the applicable requirements of this chapter, including the requirements of an applicable [state] implementation plan, the Administrator shall . . . object to its issuance." If EPA objects to a permit application, the state authority may not issue the permit unless the applicant revises the permit application to account for the objection. 42 U.S.C. §§ 7661d(b)(3), 7661d(c).

According to the Ninth Circuit, when states have incorporated the Title V requirement for EPA

review into their SIPs, a state Title V permit only issues after EPA has made a final decision not to object to that permit. *Romoland*, 548 F.3d at 742-43, 755. Title V requires **[**56]** any parties objecting to the issuance of such permits to "petition the Administrator" under § 7661d(b)(2) and provides for judicial review of such petitions in the courts of appeal under § 7607. Thus, explains the Ninth Circuit, "by creating in 42 U.S.C. § 7661d(b)(2) an avenue of judicial review that passes through 42 U.S.C. § 7607, Congress effectively foreclosed the alternative avenue of citizen suit enforcement through 42 U.S.C. § 7604." *Romoland*, 548 F.3d at 755.

The Ninth Circuit's holding in *Romoland* was narrow:

We do not opine upon the general contours or scope of the citizen suit provision of 42 U.S.C. 7604. We hold only that where a state or local air pollution control district has integrated the preconstruction requirements of Title I with the permitting requirements of Title V and a permit is issued under that integrated system, a claim that the terms of that permit are inconsistent with other requirements of the *Clean Air Act* may only be brought in accordance with the judicial review procedures authorized by Title V of that Act, 42 U.S.C. § 7661-7661f, and may not be brought in federal district court under the Act's citizen suit provision, 42 U.S.C. § 7604.

Id. at 756. The decisions in *Grand Canyon Trust, Nucor Steel-Arkansas*, and **[*1122]** *CleanCOALition* involved precisely the same scenario and reached the same conclusion. A source with a **[**57]** validly-issued state permit subject to Title V requirements is not susceptible to citizen suits, regardless of whether that permit actually complies with CAA provisions.

The decision in *National Parks Conservation Association* involved similar facts but rested on slightly different grounds. Although the case also

involved a state-issued Title V permit, the court analyzed the plaintiffs' challenge to the permit as a challenge to the state's SIP. Looking to the text of the CAA citizen suit provision, the court found no evidence that Congress allowed for challenges to validly-enacted emissions standards and limitations, embodied in validly-issued permits, through § 7604 in district court. *Nat'l Parks Conservation Ass'n*, 175 F. Supp. 2d at 1079. This decision is consistent with Ninth Circuit precedent establishing that the CAA does not provide for attacks on state SIPs in district court. *Cal. Dump Truck Owners Ass'n v. Nichols*, 784 F.3d 500, 502 (9th Cir. 2015).

Federal appellate courts, however, have allowed citizen suits to proceed in district court when the suits challenge state agencies' decisions not to require permits. In the analogous CWA context, the Ninth Circuit noted that although citizen suits often arise when persons violate existing permits, the CWA also allows citizen suits "where a party proceeds to discharge **[**58]** pollutants from a point source without a required permit." *Taylor Res., Inc.*, 299 F.3d at 1012 n.4 (9th Cir. 2002). A state agency's failure to require a permit "does not divest the federal courts of jurisdiction. The State may choose to sit on the sidelines, but state inaction is not a barrier to a citizen's otherwise proper federal suit to enforce the Clean Water Act." *Id.* at 1012. The Second Circuit similarly held that under the CAA citizen suit provision, when "[t]he plaintiffs have alleged that the proposed factory will be a major emitting facility within the meaning of the Act and that [the defendant] has not obtained permits required by Part D for major emitting facilities," the facts support a cause of action in district court. *Weiler*, 392 F.3d at 536 (2d Cir. 2004).

In the CAA context, another court in this district held that it had jurisdiction to review a defendant's failure to obtain an appropriate permit before commencing construction of a federal major source. *Portland Gen. Elec. Co.*, 663 F. Supp. 2d at 996. This case is somewhat inapposite to the claims

here because it involved a challenge to EPA's decision not to require a PSD permit before the enactment of the judicial review requirements in § 7607(b). The defendant had asked EPA whether the defendant's facility required a PSD permit, and EPA explicitly concluded that the facility [**59] was not subject to the PSD regulations. In concluding that the court nonetheless had jurisdiction, the court held that § 7607(b) did not operate retrospectively. *Id. at 997*. The case is still instructive, however, because the judicial review provisions of § 7607(b) do not apply to applications for non-PSD permits, such as the ACDP application in this case. The court in *Portland General Electric* emphasized that the citizen suit provision of the CAA "grant[s] citizens the right to challenge the actions of companies alleged to be in violation of the law, regardless of whether the government believes them to be in violation of the law." *Id.* This Court agrees.

As stated in 42 U.S.C. § 7604, "any person may commence a civil action on his own behalf . . . (3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality)" [**1123] Plaintiffs allege that Defendants propose to construct a new major emitting facility by substantially increasing the facility's capacity to process crude oil. Plaintiffs further allege that Defendants propose to construct this new facility without a PSD [**60] permit required by the CAA. Defendants never applied for a PSD permit, and EPA never reviewed any application submitted by Defendants. Instead, DEQ determined that Defendants did not require a PSD permit and could instead operate with a DEQ-issued synthetic minor permit that limits VOC emissions to 78 tons per year. Plaintiffs contend that the permit limits are neither practically effective nor enforceable.

Considering the plain text of § 7604(a)(3), the Court finds that it has jurisdiction to reach the merits of Plaintiffs' claims. This suit does not fall

within the category of cases subject only to judicial review under § 7607(b) because Defendants have not applied for a permit subject to Title V requirements. Moreover, Plaintiffs have not alleged that any enforceable provisions of the ACDP are unlawful, so their suit does not collaterally attack the Oregon SIP. Plaintiffs seek to fulfill precisely the goals contemplated by Congress in enacting the citizen suit provision of the CAA: to allow citizens to serve as "a useful instrument for detecting violations and bringing them to the attention of the enforcement agencies and courts alike." *Train, 510 F.2d at 700* (quoting Senate Debate on S. 4358, Sept. 22, 1970 (remarks of [**61] Senator Muskie)).

B. Practical Enforceability of the PSEL in the ACDP

1. Deference Due the DEQ's Permitting Decision

Before the Court can decide whether the PSEL is practically enforceable as a whole, the Court must first decide the appropriate level of deference it must give to the DEQ's permitting decision, also known as "the scope of review." The Ninth Circuit has recognized that if courts gave an agency's decision "conclusive deference, the citizen suit would be defeated" in instances where an agency has determined that no regulation is necessary. *Cargill Salt Div., 481 F.3d at 706*. The Ninth Circuit thus has held that a court may, in entertaining a citizen suit, decide whether a defendant's action requires a permit even though the regulating agency determined that the action was not subject to the requirement of a permit. *Id.* (citing *Taylor Res., Inc., 299 F.3d at 1012-13*).

Still, when a citizen suit involves determinations made by federal agencies, courts review the agency action deferentially. Where a statute empowering citizen suits omits a controlling standard of review, federal courts look to the Administrative Procedure Act ("APA"). For the citizen suit provision of the

Endangered Species Act ("ESA"), the Ninth Circuit explained: "Irrespective of [**62] whether an ESA claim is brought under the APA or the citizen-suit provision, the APA's 'arbitrary and capricious' standard applies." *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 481 (9th Cir. 2011); see *Oregon Nat. Res. Council v. Allen*, 476 F.3d 1031, 1036 (9th Cir. 2007) ("As the ESA does not itself specify a standard of review of its implementation, we apply the general standard of review of agency action established by the [APA].").²⁵ Here, however, we have a state agency's action, to which the APA standards of review do not apply in the same [*1124] way as they to federal agency actions.²⁶

In a case involving the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Ninth Circuit held that "where state [**63] agencies have environmental expertise they are entitled to 'some deference' with regard to questions concerning their area of expertise." *Arizona v. City of Tucson*, 761 F.3d 1005, 1014 (9th Cir. 2014). Similarly, in *Taylor Resources*, the Ninth Circuit stated that the state agency's decision that the defendant did not require a permit "warrant[ed] consideration" but nothing more. *299 F.3d at 1012*.

On the other hand, a state agency's technical determinations may require some higher level of deference in a statutory scheme that gives states a

principal role. The Ninth Circuit has concluded that when no federal or state statutes or regulations mandate that a state agency consider certain factors before issuing a permit, "discretion should properly repose in the responsible state officials to establish such . . . methods and analysis as they deem appropriate." *League to Save Lake Tahoe, Inc. v. Trounaday*, 598 F.2d 1164, 1174 (9th Cir. 1979). EPA's Environmental Appeals Board also has noted: "When a petitioner seeks review of a permit based on issues that are fundamentally technical in nature, the Board assigns a particularly heavy burden to the petitioner. This demanding standard . . . ensures that the locus of responsibility for important technical decisionmaking rests primarily with the permitting authority . . ." *Peabody*, 2005 EPA App. LEXIS 2, 2005 WL 428833, at *9. Relatedly, the Supreme Court has noted [**64] EPA's "need to accord appropriate deference" to state agencies' determinations about what constitutes best available control technology ("BACT") in PSD permits. *Alaska Dep't of Envtl. Conservation v. E.P.A.*, 540 U.S. 461, 490, 124 S. Ct. 983, 157 L. Ed. 2d 967 (2004). EPA intervenes only when a state agency's "determination is not based on a reasoned analysis." *Id.* (internal quotation marks omitted). EPA's "limited but vital role" in enforcing BACT requirements "is consistent with a scheme that 'places primary responsibilities and authority with the States, backed by the Federal Government.'" *Id. at 491* (quoting S. Rep. No. 95-127, at 29 (1977)).

Yale law professor Abbe Gluck has considered the complicated question of deference when state agencies implement federal law. See, e.g., Abbe R. Gluck, *Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond*, 121 *Yale L.J.* 534 (2011). In such cooperative federalism schemes, there are no "canons that advise courts to take into account Congress's use of state implementers when deciding how much to defer to federal agencies themselves, nor any canons that attempt to negotiate the critical state-federal interagency relationships to which these statutes

²⁵ Like the ESA, the CAA does not specify a standard of review for use in citizen suits.

²⁶ In issuing the ACDP, DEQ determined that the PSEL was enforceable. This involved a factual determination that the Facility would not emit more than 78 tons per year of VOCs. In making this determination, neither DEQ nor EPA interpreted the CAA, the Oregon SIP, or an agency regulation. Thus, neither *Chevron* nor *Auer* deference applies. See *Chevron, U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984); *Auer v. Robbins*, 519 U.S. 452, 117 S. Ct. 905, 137 L. Ed. 2d 79 (1997). The Court also notes that it would not defer to a state agency's interpretation of a purely federal statute or whether state law and regulations conform to federal law. See *Orthopaedic Hosp. v. Belshe*, 103 F.3d 1491, 1495-96 (9th Cir. 1997).

give rise." *Id.* at 542-53. Professor Gluck proposes new interpretative approaches [**65] to statutes in which Congress provides for stated implementation, approaches that recognize [**1125] the critical part played by state agencies. One such approach looks at "the specific ways that Congress utilizes state implementers to determine the level of deference the various concurrent implementers should receive." *Id.* at 599. In another article, Professor Gluck again suggests that courts consider that "Congress does sometimes intend to defer to state implementers." Abbe R. Gluck, *Our (National) Federalism*, 123 *Yale L.J.* 1996, 2025 (2014).

In enacting the CAA, Congress explicitly expressed its intent to give states "the primary responsibility for assuring air quality within the entire geographic area comprising such State." 42 *U.S.C. § 7407(a)*. In Oregon, DEQ shoulders some of that responsibility with its review of permit applications and work to ensure that facilities comply with CAA requirements. In this particular case, DEQ made many technical determinations about appropriate emissions factors and the monitoring requirements necessary to determine if CPBR complies with the relevant PSEL. In its response to public comments on the ACDP, DEQ explicitly found that "the PSELs being established in this permit in accordance with the PSEL rules in [**66] OAR 340 Division 222, are enforceable and establish that the facility will emit less than 100 tons per year of any regulated pollutant." At the very least, in accordance with *Arizona v. City of Tucson* and recognizing Oregon's role in implanting the CAA, the Court must give "some deference" to DEQ's factual determination that the PSEL for VOCs limits the facility's potential to emit to 78 tons per year. The Court notes, however, that "deference does not imply abandonment or abdication of judicial review." *Miller-El v. Cockrell*, 537 *U.S.* 322, 324, 123 *S. Ct.* 1029, 154 *L. Ed. 2d* 931 (2003).

2. Factual Support for the PSEL²⁷

Plaintiffs allege that the PSEL at issue is not practically enforceable because it relies on inaccurate calculations of emissions from railcar unloading, tank storage, barge loading, and equipment leaks. Plaintiffs' expert witness, Dr. Sahu, however, did not propose alternative emissions estimates for railcar unloading, and Defendants' expert witness, Mr. Darby, explained that CPBR does not vent vapors from railcars to the atmosphere. For tank storage and barge [**67] loading emissions, Dr. Sahu opined that CPBR used inaccurate numbers for vapor pressure, liquid and vapor molecular weight, and temperature. Mr. Darby rebutted this testimony by explaining why CPBR selected the values used in the permit. For equipment leaks, Mr. Darby also explained that the component count in the permit application does not mirror the number of points checked in LDAR because LDAR tests check multiple points on each component. Mr. Darby offered additional explanations for discrepancies Dr. Sahu identified in component counts and asserted that CPBR actually overestimated the emissions from equipment leaks. The Court finds that evidence supports CPBR's emissions estimates for railcars, tank storage, and equipment leaks. To the extent that DEQ adopted these emissions estimates for railcars, tank storage, and equipment leaks, with such modifications as noted above, the PSEL is practically enforceable.

It is a closer call, however, for the barge loading emissions estimates underlying the PSEL. The evidence supports the values used for vapor pressure, molecular weight, [**1126] and temperature in the barge loading emissions calculations. The parties conceded that the emissions capture [**68] efficiency percentage was the value that made the most difference in the case. A 3.7 percent difference in capture efficiency

²⁷ The Court now makes the following factual findings regarding the legal and practical enforceability of the PSEL in light of the Court's legal conclusions about the level of deference it must give to DEQ.

alone, from 95 percent to 98.7 percent, puts CPBR well above the threshold for being a federal major source. DEQ adopted the 98.7 percent capture efficiency assumption by including CPBR's proposed emission factor for barge loading in the final permit.

Defendants argue that CPBR and DEQ properly used 98.7 percent capture efficiency; Plaintiffs assert that CPBR should have used 95 percent capture efficiency. The Court considered the following evidence. In its report on the ACDP, DEQ stated that although 40 C.F.R. Part 63, Subpart Y does not apply to the facility, "all marine vessels loaded at the facility have and will meet the same vapor tightness requirements as specified in Subpart Y." Subpart Y imposes MACT-level testing and defines "vapor tight" not as a term of art that allows some emissions, but as "no leaks" within 12 months. 40 C.F.R. § 63.561. AP-42 5.2-6 allows facilities meeting a MACT-level annual leak test to assume 99.2 percent capture efficiency. Table 9-5 of EPA's *Emissions Estimation Protocol for Petroleum Refineries* allows facilities undergoing an annual leak check per 40 C.F.R. Part 60, Subpart XX (gasoline) [**69] to assume a capture efficiency of 98.7 percent. The 98.7 percent number is suggested for tanker trucks transporting gasoline, but the table gives no capture efficiency for marine vessels carrying crude oil. Mr. Darby stated his belief that 98.7 percent represented the most appropriate number because of the methods CPBR must use to ensure vapor tightness, the extensive checks used to ensure that barges are sealed, vapor sensors on barge decks, and the personal exposure monitors worn by barge workers to detect significant leaks. Dr. Sahu disagreed.

Giving DEQ the deference due a state agency charged with implementing a federal statute that has made technical determinations within its area of expertise, the Court finds that DEQ reasonably approved the use of 98.7 percent capture efficiency. The ACDP requires MACT-level testing for the facility, which allows the facility to assume a capture efficiency of at least 98.7 percent. Although

Plaintiffs dispute which tests the facility actually performs to check the vapor tightness of barges, this is a compliance issue rather than a permitting issue, and Plaintiffs have not pled that Defendants are violating the conditions of the ACDP.

Additionally, [**70] even without giving deference to DEQ, the burden of persuasion rests with Plaintiffs. Where the evidence is in equipoise in a civil case subject to a preponderance of the evidence standard, such as this case, the party bearing the burden of persuasion must tip the scales in its favor in order to prevail. See *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. California*, 508 U.S. 602, 622, 113 S. Ct. 2264, 124 L. Ed. 2d 539 (1993). Plaintiffs failed to tip the scale in favor of using the 95 percent capture efficiency, the "crux of the argument." Plaintiffs, therefore, have failed to prove by a preponderance of the evidence that the PSEL in the ACDP is not practically enforceable due to an inaccurate calculation of the emissions from barge loading or any other emissions point.²⁸ The

²⁸ The Court considered Plaintiffs' argument that the Facility has a razor-thin margin of error for complying with the 78 tons per year limit. The [**71] threshold of 100 tons per year of VOC emissions, the point at which the Facility becomes a federal major source, represents approximately 2/1000th of a percent of the Facility's annual throughput. As demonstrated by the importance of a 3.7 percent difference in emissions capture efficiency at barge loading, small variances in the level of emissions could quickly send the Facility over the 100 tons-per-year threshold. Moreover, although the permit imposes MACT-level annual vapor-tightness testing, the permit does not require CPBR to measure vapor tightness on a monthly basis or to report to DEQ information regarding the actual percentage of emissions capture at barge loading. DEQ could have imposed additional monitoring and recordkeeping requirements to ensure that CPBR complies with the obligations in the ACDP, and the Court takes seriously Plaintiffs concerns regarding DEQ's failure explicitly to articulate why it accepted certain emissions factors and assumptions in CPBR's permit application.

If there had been any less stringent monitoring or testing provisions or if CPBR had relied on any more generic or unverified emissions control assumptions in its calculations, the Court might [**72] have followed the EPA Environmental Appeals Board's determination in *Peabody*. There, the Board found that the uncertainties inherent in emissions factors and assumed control efficiencies made the Facility's PSEL unenforceable. See *Peabody*, 2005 EPA App. LEXIS

[*1127] monitoring and reporting requirements in the ACDP—including the three options given for ensuring vapor tightness on barges—allow DEQ to enforce the PSEL. The ACDP limits CPBR's potential to emit to 78 tons per year of VOCs, which is below the 100 tons-per-year threshold for constituting a federal major source. Thus, Defendants did not violate the CAA by failing to apply for a PSD permit.

CONCLUSION

Based on the evidence presented at trial and the record in this case, the Court finds that Defendants did not violate the *Clean Air Act*. Plaintiffs' request for relief enjoining Defendants from further construction and operation of the Facility without a Prevention of Significant Deterioration permit is denied.

IT IS SO ORDERED.

DATED this 30th day of December, 2015.

/s/ Michael H. Simon

Michael H. Simon

United States District Judge

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*2, 2005 WL 428833, at *10-13* (holding that the permit applicant had failed to establish that EPA committed clear error in declining to grant a PTE limit on the basis of calculations using emissions factors). Notwithstanding these concerns, the Court finds that Plaintiffs did not meet their burden of proving that DEQ cannot practically enforce the limit of 78 tons per year based on site-specific parameters.

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8 **BEFORE THE CLARK COUNTY**
9 **AIR POLLUTION CONTROL HEARING BOARD**

10 In re:

11 Appeal of Synthetic Minor Source Permit Issued
12 to Wells Cargo, Inc (Source: 12) by Lori
13 Headrick, Director, Environmental Services,
14 Clark County School District

15 **HEARING DATE:**
16 **FEBRUARY 8, 2018**

17 **INTERVENOR WELLS CARGO INC.'S WITNESS AND EXHIBIT LIST**

18 Intervenor Wells Cargo, Inc. hereby submits the list of witnesses it intends to call to give
19 oral testimony and exhibits it intends to introduce at the hearing in this matter scheduled for
20 February 8, 2018:

21 **WITNESSES**

22 Trent Scarlett
23 Vice President of Construction
24 Wells Cargo, Inc.
25 9127 W. Russell Rd.
26 Las Vegas, NV 89148

27 Scott McNulty
28 Principal Geologist/ Air Quality Division Manager
Broadbent & Associates
8 W. Pacific Ave
Henderson, NV 89015


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EXHIBITS

- Exhibit 1
Ambient Air Dispersion Modeling Analysis
- Exhibit 2
Photo of Wells Cargo, Inc. Odor Control System
- Exhibit 3
Photo of Wells Cargo, Inc. Truck Load Out Area

Respectfully submitted January 25, 2018.

Linda M. Bullen


Bullen Law, LLC
Attorney for Wells Cargo, Inc.

AMBIENT AIR DISPERSION MODELING ANALYSIS

1. Clark County Department of Air Quality Requirements for Modeling:

Wells Cargo, Inc. (WCI) owns and operates a facility which produces aggregate, hot mix asphalt, and lime-marinated materials in Las Vegas, Nevada. The primary emission sources associated with the facility are screens, crushers, conveyor belts, silos, and combustion equipment. Ambient air dispersion modeling has been performed at the request of the Clark County Department of Air Quality (DAQ). Modeling has been performed for the following pollutants: particulate matter less than 10 microns in diameter (PM₁₀), particulate matter less than 2.5 microns in diameter (PM_{2.5}), nitrogen dioxide (NO₂), carbon monoxide (CO), and sulfur dioxide (SO₂).

2. Preferred Regulatory Air Dispersion Model:

The current Air Quality-preferred/approved air dispersion model for determining short-range impacts from stationary sources is the U.S. EPA regulatory model AERMOD. As such, AERMOD has been used to model emissions for all of the pollutants. Model results and demonstration of compliance with National Ambient Air Quality Standards (NAAQS) are presented in Section 4 (Table 3).

3. Model Input Parameters:

There are four primary categories of source data required for the generation of an emissions model: source or stack data, receptor data, meteorological data, and terrain data. Source data includes parameters such as source type (point/area/etc.), stack height, stack diameter, exit velocity and temperature, and emissions concentration. Receptor data includes facility fence line location, receptor spacing, and receptor extent. Meteorological data includes ambient temperature as well as wind speed and direction. Terrain data provides receptor elevation and geographical features that may influence the model.

Tables 1a and 1b provide a summary of source input data for the AERMOD model. Each emission unit was modeled as a volume source with the exception of the combustion units, which were modeled as point sources. Table 2 provides information regarding generation of the receptor grid, meteorological data, and terrain data.

Table 1a: Volume Source Summary

Description	UTM E (m)	UTM N (m)	Equip Length (ft)*	Equip Width (ft)*	Release Height (ft)*	PM ₁₀ Emission Rate (lb/hr)
3-Compartment Bin	657040	3999377	16	10	15	0.12
Stockpile Feed Belt	657133	3999380	3	3	5	0.06
Loader to Feed Bins	657139	3999371	16	10	15	0.06
Belt Feeders	657139	3999380	3	3	10	0.06
Cold Feed Conveyor Belt	657161	3999381	3	3	15	0.12
Fines Bins	657135	3999380	16	10	15	0.12
Lime Silo	657178	3999392	2	2	32	0.003
Pug Mill	657175	3999385	12	7	20	0.12

Description	UTM E (m)	UTM N (m)	Equip Length (ft)*	Equip Width (ft)*	Release Height (ft)*	PM ₁₀ Emission Rate (lb/hr)
Scalping Screen	657183	3999385	12	4	20	0.95
Conveyor Belt	657193	3999382	3	3	15	0.06
RAP Loader/Feeder 1	657188	3999399	14	8	15	0.04
Recycle Screen	657199	3999396	12	4	15	0.32
Fines Hopper/Silo/Loadout	657229	3999379	2	2	50	0.03
Screw Conveyor	657222	3999380	3	3	20	0.06
Silo Loading Belts	657216	3999357	3	3	79	0.06
Storage Silos	657210	3999361	2	2	79	0.01
Truck Loadout	657207	3999362	1	1	20	0.01
Reject Flow Splitter	657214	3999370	2	2	20	0.006
Loader to Hopper	656938	3999349	16	10	15	0.06
Hopper to Belt/Belt to Belt/Belt to Splitter	656938	3999353	3	3	15	0.18
Pug Mill	656940	3999357	12	7	20	0.08
Belt to Stacking Systems	656941	3999362	3	3	15	0.07
Belt to Stacker/Stacker to Stockpile	656945	3999363	3	3	25	0.14
Splitter to Belt/Belt to Stacker/Stacker to Stockpile	656941	3999365	3	3	20	0.21
Lime Silo	656945	3999367	2	2	47.5	0.001
Loader to VGF	656988	3999403	15	12	15	0.06
Jaw Crusher	656984	3999401	10	5	20	0
Belt 1 to Belt 2/Belt 2 to Belt 3/Recirc to Belt 3	656981	3999399	3	3	15	0.13
Screen S-2/Crusher	656978	3999396	10	5	20	1.35
Stacker System 1	656972	3999396	3	3	20	0.07
Stacker System 2	656974	3999393	3	3	20	0.07
Stacker System 3	656977	3999390	3	3	20	0.03
Loader to Bins	656942	3999090	16	10	15	0.07
Bins to Belt	656941	3999099	16	10	15	0.07
Screen	656941	3999109	18	5	20	1.15
Loader to RAP Bin	656907	3999113	14	8	15	0.02
RAP Bin to Belt	656907	3999109	14	8	15	0.02
RAP Screen	656907	3999103	12	4	20	0.38
Belt to Asphalt Silos	656928	3999140	3	3	89	0.09
Loader to Pug Mill Bin	656916	3999108	14	8	15	0.001
Pug Mill Bin to Pug Mill Belt	656919	3999108	14	8	15	0.001
Mini Pug Mill	656922	3999108	10	5	20	0.008
Belt to Stockpile	656920	3999112	3	3	20	0.004
Silo Loading Belt System	656928	3999143	3	3	89	0.09
Asphalt Silos	656928	3999146	2	2	89	0.02
Truck Loading	656926	3999146	1	1	20	0.02
Quarry Loading Bin	657082	3999581	15	12	15	0.09
5 Belt System	657076	3999579	3	3	15	0.47
VGF/Jaw	657069	3999577	10	5	20	0.77

Description	UTM E (m)	UTM N (m)	Equip Length (ft)*	Equip Width (ft)*	Release Height (ft)*	PM ₁₀ Emission Rate (lb/hr)
Belt 1 to Surge Pile	657028	3999411	3	3	35	0.09
2 Belt System	657042	3999415	3	3	20	0.25
Splitter 1	657061	3999423	3	3	20	0.26
2-Deck Screen	657092	3999441	20	10	25	1.1
Reversible Belt	657083	3999439	3	3	20	0.03
Cone Crusher	657088	3999438	10	5	20	0.37
Conveyor Belt D to Splitter	657086	3999428	3	3	20	0.03
Splitter to Main Feed Belt (Type II) or Belt 16	657088	3999441	3	3	20	0.03
3-Deck Screen	657093	3999434	20	10	25	1.22
Belt to Stacker/Stacker to Nat. Sand Stockpile	657111	3999444	3	3	20	0.08
Belt 16 to Belt 17	657085	3999432	3	3	20	0.06
3-Deck Screen	657095	3999430	20	10	25	1.15
Cone Crusher	657089	3999428	10	5	20	0.13
Belt from Cone Crusher to Belt 17	657083	3999435	3	3	20	0.01
Belt A to Collector Belt	657079	3999435	3	3	20	0.03
Belt to 3/4 in Stockpile	657078	3999380	3	3	35	0.01
3 Belt System	657083	3999424	3	3	20	0.08
VSI Crusher	657088	3999421	10	5	20	0.39
Belt to Belt	657087	3999424	3	3	20	0.05
3-Bin Feeder to 2 Belt System	657052	3999410	16	10	15	0.06
2 Belt System to Belt Feeding Screen AG56	657092	3999423	3	3	20	0.06
2-Deck Screen	657099	3999425	20	10	25	1.27
Stacker to 1/2 in Stockpile	657094	3999380	3	3	35	0.02
Stacker to Chips Stockpile	657058	3999377	3	3	35	0.003
Collector Belt (Belt from AG35 and AG56)	657103	3999429	3	3	20	0.05
2-Deck Screen	657110	3999429	20	10	20	0.76
Reversible Belt to Man. Sand Stacker or to Fines Belt/Man. Sand Stacker to Stockpile	657102	3999448	3	3	20	0.06
Stacker to Coarse Sand Stockpile	657107	3999382	3	3	35	0.02
Fines Belt to Fines Wash/Fines Wash to Wash Sand Stacker	657132	3999432	3	3	20	0.03
Wash Sand Stacker to Wash Sand Stockpile	657132	3999419	3	3	20	0
Landfill	656998	3999103	5	5	5	0.08
Haul Road*	See Model	See Model	15	15	16	0.0069

*Equipment dimensions listed in Table 1a do not represent actual physical dimensions; they are parameters utilized for volume source generation based on estimated dimensions of the emissions at the area of emissions generation. The release heights provided are estimates. The haul roads were modeled as a line of volume sources.

Table 1b: Point Source Summary

Source and Description	UTM E (m)	UTM N (m)	Stack Height (ft)	Stack Dia. (ft)	Flow Rate (acfm)	Temp. (°F)
Drum Dryer HMA I	657237	3999377	40	3.4	56,000	275
Asphalt Heater HMA I	657216	3999399	9	1	14,137	100
Drum Dryer HMA II	656929	3999107	89	4	79,000	300
Asphalt Heater HMA II	656919	3999103	9	1	14,137	100

Other AERMOD Modeling Considerations

Table 2: Input Data Summary

Parameter	Description	Source
Receptor Grid	Receptors every 50 meters along fence line extending 100 meters from fence line in each direction, spacing of every 100 meters to a distance of 1,000 meters, and spacing every 500 meters to a distance of 5,000 meters for a total of 1,239 points	Based on general DAQ guidelines
Meteorological Data	Las Vegas: Calendar Years 2011-2015	Clark County DAQ
Terrain Data	File type: NED, NAD83, Zone 11	USGS

Other AERMOD Modeling Considerations

In addition to source data, fence line coordinates and building parameters are required. Coordinates for the property fence line and building corners were obtained from Google Earth. BPIP-Prime was used to incorporate the effects of building downwash into the model.

4. Summary of Model Results:

Results of AERMOD modeling are presented in Table 3. The maximum modeled concentration is compared against its respective NAAQS limit and Clark County ambient air increments for each pollutant modeled. Please note the background concentrations for PM₁₀, PM_{2.5}, NO₂, CO, and SO₂, were obtained from the 2013-2015 annual averages from the Paul Mayer, JD Smith, Sunrise Acres, JD Smith, and Jerome Mack monitoring stations, respectively, for each pollutant. All model results and supporting documentation are attached. In addition, the AERMOD model has been provided electronically on an enclosed disk.

Table 3: Summary of AERMOD Model Results against Ambient Air Quality Standards

Pollutant	Averaging Period	Primary NAAQS	Secondary NAAQS	Background Concentrations	Model Results	Total Concentration	Pass/Fail
Particulate Matter (PM₁₀)	24-hour (not to be exceeded more than once per year on average over 3 years)	150 µg/m ³	150 µg/m ³	73 µg/m ³	75.6 µg/m ³	149 µg/m ³	Pass
Particulate Matter (PM_{2.5})	Annual (annual mean, averaged over 3 years)	12.0 µg/m ³	15.0 µg/m ³	9.5 µg/m ³	0.5 µg/m ³	10.0 µg/m ³	Pass
	24-hour (98 th percentile, averaged over 3 years)	35 µg/m ³	35 µg/m ³	20.1 µg/m ³	6.8 µg/m ³	26.9 µg/m ³	Pass
Nitrogen Dioxide (NO₂)	Annual (annual mean)	53 ppb (100 µg/m ³)	53 ppb (100 µg/m ³)	26.9 µg/m ³	6.3 µg/m ³	33.2 µg/m ³	Pass
	1-hour (98 th percentile of 1-hour daily max concentrations, averaged over 3 years)	100 ppb (188 µg/m ³)	NA	94.5 µg/m ³	47.8 µg/m ³	142 µg/m ³	Pass
Carbon Monoxide (CO)	8-hour (not to be exceeded more than once per year)	9 ppm (10,310 µg/m ³)	NA	2,630 µg/m ³	22.1 µg/m ³	2,851 µg/m ³	Pass
	1-hour (not to be exceeded more than once per year)	35 ppm (40,000 µg/m ³)	NA	3,320 µg/m ³	257 µg/m ³	3,577 µg/m ³	Pass
Sulfur Dioxide (SO₂)	1-hour (99 th percentile of 1-hour daily max concentrations, averaged over 3 years)	75 ppb (197 µg/m ³)	NA	18.3 µg/m ³	6.3 µg/m ³	24.6 µg/m ³	Pass



Exhibit 2

000213

Exhibit 3

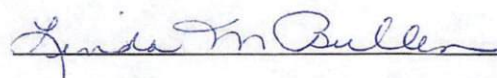


000214

CERTIFICATE OF SERVICE

I hereby certify that the attached Intervenor Wells Cargo, Inc.'s Witness And Exhibit List was sent to the following on January 25, 2018:

PARTY OR ATTORNEY OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director Environmental Services Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 Headrle@nv.ccsd.net	Appellant	Electronic Mail
Carlos McDade, Esq. Clark County School District Office of the General Counsel 5100 West Sahara Avenue Las Vegas, 89146 mcdadcl@nv.ccsd.net	Clark County School District	Electronic Mail
Leslie A. Nielson, Esq. Deputy District Attorney 500 S. Grand Parkway, 5 th FL. Las Vegas, NV 89106 Leslie.Nielson@clarkcountyda.com	Clark County Department of Air Quality	Electronic Mail



1 **BEFORE THE CLARK COUNTY**

2 **AIR POLLUTION CONTROL HEARING BOARD**

3 In re:

4 Appeal of Synthetic Minor Source Permit Issued
5 to Wells Cargo, Inc. (Source: 12) by Lori
6 Headrick, Director, Environmental Services,
Clark County School District.

Date of Hearing: February 8, 2018

7 **CLARK COUNTY DEPARTMENT OF AIR QUALITY'S**
8 **WITNESS AND EXHIBIT LIST**

9 The Clark County Department of Air Quality (**Air Quality**), by and through its counsel Clark
10 County District Attorney Steven B. Wolfson and Leslie A. Nielsen, Deputy District Attorney, submits
11 its list of witnesses who will offer direct oral testimony at the hearing on February 8, 2018, and the
12 exhibits that Air Quality intends to offer as evidence at the hearing.

13 **WITNESSES**

- 14 1. Marci Henson, Director, Department of Air Quality
15 2. Ted Lendis, Air Quality Supervisor, Department of Air Quality
16 3. Paul Fransioli, CCM, Senior AQ Monitoring Tech/Meteorologist, Department of Air
17 Quality
18 4. Vasant Rajagopalan, P.E., CEM, Air Quality Modeler, Department of Air Quality
19 5. Yousaf Hameed, Air Quality Monitoring Supervisor, Department of Air Quality
20 6. Mike Sword, P.E., CEM, Planning Manager, Department of Air Quality
21 7. Shibi Paul, Compliance and Enforcement Manager, Department of Air Quality

22 **EXHIBITS (attached)**

- 23 A. Synthetic Minor Source Permit issued on December 1, 2017
24 B. Technical Support Document
25 C. Wind Rose Graphic for Paul Meyer Monitoring Station
26 D. Aerial photo showing location of Paul Meyer Monitoring Station
27 E. Wells Cargo Modeling Memorandum dated October 18, 2017
28 F. Modeling data CCDAQ pages 3177 through 3186

- 1 G. Demonstrative exhibit showing Wells Cargo modeling conclusions for PM₁₀
- 2 H. Demonstrative exhibit showing Wells Cargo modeling conclusions for PM_{2.5}
- 3 I. Agenda Item Showing Approval of 2017 Annual Monitoring Network Plan on June 6, 2017
- 4 J. Figure 20: Continuous PM₁₀ Monitors
- 5 K. Figure 21: Continuous PM_{2.5} Monitors
- 6 L. Interlocal Agreement dated August 15, 2017 (school site lease)

7 Dated this 25th day of January, 2018.

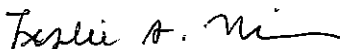
8 STEVEN B. WOLFSON
9 DISTRICT ATTORNEY

10 By: Leslie A. Nielsen
11 LESLIE A. NIELSEN, ESQ.
12 Deputy District Attorney
13 500 S. Grand Central Pkwy. 5th Flr.
14 Las Vegas, NV 89106
15 Leslie.Nielsen@clarkcountyda.com
16 Attorneys for Department of Air Quality
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2018, I served a copy of the foregoing **CLARK COUNTY DEPARTMENT OF AIR QUALITY'S WITNESS AND EXHIBIT LIST** as follows:

PARTY OR ATTORNEYS OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director, Environmental Services, Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net		<input type="checkbox"/> US Mail <input checked="" type="checkbox"/> Email
Carlos L. McDade, Esq. Clark County School District Office of the General Counsel 5100 West Sahara Avenue Las Vegas, Nevada 89146 clmcdade@interact.ccsd.net	<i>Clark County School District</i>	<input checked="" type="checkbox"/> US Mail <input checked="" type="checkbox"/> Email
Linda Bullen, Esq. Bullen Law, LLC 8635 W. Sahara Ave., #454 Las Vegas, NV 89117 linda@bullenlaw.com	<i>Wells Cargo, Inc.</i>	<input checked="" type="checkbox"/> US Mail <input checked="" type="checkbox"/> Email
Trent Scarlett Phil Groff Guy Wells Wells Cargo, Inc. 9127 West Russell Road, Ste. 210 Las Vegas, NV 89148-1240 TScarlett@wcilv.com PGroff@wcilv.com GWells@wcilv.com		<input type="checkbox"/> US Mail <input checked="" type="checkbox"/> Email


An Employee of the Clark County District
Attorney's Office – Civil Division

CLARK COUNTY
DEPARTMENT OF AIR QUALITY
4701 West Russell Road, Suite 200, Las Vegas, Nevada 89118
Synthetic Minor Source Permit
Source: 12
Issued in accordance with the
Clark County Air Quality Regulations (Section 12.1)

ISSUED TO: **Wells Cargo, Inc.**
9127 West Russell Road, Suite 210
Las Vegas, Nevada 89148-1240

SOURCE: **Wells Cargo, Inc.**
7770 West Spring Mountain Road
Las Vegas, Nevada 89117

RESPONSIBLE OFFICIAL:

Name: Guy Wells
Title: President
Phone: (702) 876-5090
Fax Number: (702) 871-7008
E-Mail Address: gwells@wcilv.com

Permit Issuance: December 1, 2017

Expiration Date: November 30, 2022

ISSUED BY: CLARK COUNTY DEPARTMENT OF AIR QUALITY



Theodore A. Lendis
Acting Permitting Manager, Clark County Department of Air Quality

EXHIBIT A

SOURCE DESCRIPTION

Wells Cargo, Inc. is a producer of asphalt and aggregate products that is located in Hydrographic Area 212. The source falls under the following SIC Codes: 2951: Asphalt Paving Mixture and Block; 1442: Construction Sand and Gravel; and 4953: Refuse System. The source also falls under the following NAICS Codes: 342121: Asphalt Paving and Block Manufacturing; 212321: Construction Sand and Gravel Mining; and 562212: Solid Waste Landfill. The Source consists of a quarry, aggregate crushing and processing operations, hot mix asphalt plants, lime marination processes, stockpiles and haul roads. The source is subject to 40 CFR 60, Subparts I and OOO and 40 CFR 63, Subpart CCCCCC.

The source has taken operational limits that constitute a VAEL to avoid major source status. The source is classified as a synthetic minor for PM₁₀, NO_x, CO and VOC. In addition, the source is an SM80 source for CO and a true minor source for PM_{2.5} and SO₂.

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I ACRONYMS

Table I-1: Acronyms

Acronym	Term
Air Quality	Clark County Department of Air Quality
AQR	Clark County Air Quality Regulations
CFR	United States Code of Federal Regulations
CO	Carbon Monoxide
EPA	United States Environmental Protection Agency
EU	Emission Unit
GDO	Gasoline Dispensing Operation
gr/dscf	Grains per Dry Standard Cubic Foot
H ₂ S	Hydrogen Sulfide
MMBtu	Millions of British Thermal Units
NAICS	North American Industry Classification System
NO _x	Nitrogen Oxides
NOV	Notice of Violation
NSPS	New Source Performance Standards
NSR	New Source Review
OP	Operating Permit
Pb	Lead
PM _{2.5}	Particulate Matter less than 2.5 microns
PM ₁₀	Particulate Matter less than 10 microns
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
RAP	Recycled Asphalt Product
SIC	Standard Industrial Classification
SO ₂	Sulfur Dioxide
VMT	Vehicle Miles Traveled
VOC	Volatile Organic Compound

II GENERAL CONDITIONS

A. ADMINISTRATIVE REQUIREMENTS

1. The Permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the regulations and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. *[AQR 12.1.4.1(r)]*
2. If any term or condition of this permit becomes invalid as a result of a challenge to a portion of this permit, the other terms and conditions of this permit shall not be affected and shall remain valid. *[AQR 12.1.4.1(i)]*
3. The terms and conditions of this permit apply to any part or activity of the stationary source that emits or has the potential to emit any regulated air pollutant for which operating authority has been granted by this permit, including all third parties (i.e. lessees, contractors, etc.) conducting such activities. *[AQR 12.1.4.1(c) and AQR 12.1.4.1(w)]*
4. The Permittee shall pay fees to the Control Officer consistent with the approved fee schedule in AQR Section 18. *[AQR 12.1.4.1(k)]*
5. The permit does not convey any property rights of any sort, or any exclusive privilege. *[AQR 12.1.4.1(s)]*
6. Any person who has been issued a permit pursuant to AQR Section 12 shall post such permit in compliance with the requirements of AQR Section 12.13. *[AQR 12.1.4.1(u)]*
7. The permit shall not waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the Nevada SIP, or that are otherwise federally enforceable. *[AQR 12.1.4.1(v)]*
8. Except as provided in AQR Section 12.1.6, the Permittee shall not commence construction of, operate, or make a modification to the source except in compliance with a minor source permit that authorizes such construction, operation or modification. *[AQR 12.1.3.1]*
9. The Permittee's commencement of operation constitutes an acknowledgment that the Permittee assumes the responsibility of ensuring that the source's emission units and emission control equipment have been constructed and will be operated in compliance with all applicable requirements. *[AQR 12.1.4.2]*
10. It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. *[AQR 12.1.4.1(o)]*

B. MODIFICATION, REVISION, RENEWAL REQUIREMENTS

1. The permit may be modified, revoked, reopened and reissued, or terminated for cause by the Control Officer. The filing of a request by the Permittee for a permit modification, termination, or of a notification of planned changes or anticipated noncompliance, does not stay any permit condition. *[AQR 12.1.4.1(p)]*
2. Any revision of an emission limitation, monitoring, testing, reporting, or

recordkeeping requirement shall be made consistent with the permit revision requirements in AQR Section 12.1.6. [AQR 12.1.4.1(e)]

3. A permit may be reopened and revised under any of the following circumstances: [AQR 12.1.4.1(q)]
 - a. Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Control Officer, excess emissions offset plans shall be deemed to be incorporated into the permit.
 - b. The Control Officer determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
 - c. The Control Officer determines that the permit must be revised or revoked to assure compliance with the applicable requirements.
 - d. Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
4. The Permittee shall submit a timely application for a permit renewal to the Control Officer at least one hundred twenty (120) days, but no more than two hundred seventy (270) days, before the date of permit expiration. [AQR 12.1.3.2(b)]
5. The Permittee shall submit a complete application for a permit renewal to the Control Officer that contains all information required under AQR 12.1.3.6. If, while processing an application that is deemed complete, the Control Officer determines that additional information is necessary to evaluate or take final action on the application, he or she may request such information in writing and set a reasonable deadline for submission. Failure to provide the information by the deadline can result in denial of the application. [AQR 12.1.3.3]
6. Upon receipt of a timely and complete renewal application, failure to have the renewal issued prior to the permit expiration is not a violation of the regulations until the Control Officer takes final action on the application. This application shield shall cease to apply if, after a completeness determination, the Permittee fails to submit any additional information identified as needed to process the application by a deadline the Control Officer has specified in writing. [AQR 12.1.3.4]

C. REPORTING/NOTIFICATIONS/PROVIDING INFORMATION REQUIREMENTS

1. The Permittee is responsible for the applicable notification and reporting requirements of 40 CFR Part 60 and 40 CFR Part 63.
2. Any new minor source or any existing source that requires a significant permit revision shall provide a written notice to the Control Officer no later than thirty (30) days prior to commencing operation that: [AQR 12.1.4.1(n)]
 - a. The source as constructed or modified is the same as the source or modification authorized by the permit or revision; or

- b. The source as constructed or modified differs from the source or modification authorized by the permit or revision issued, and the differences are listed and described.
 - c. Where a new or revised permit requires no additional construction, the thirty (30) day written notice requirement has been met at the time the application is deemed complete.
3. The Permittee shall submit to the Control Officer within fifteen days (15) days after commencing operation any outstanding identification and description that was not previously available for new emission unit(s), as noted in this permit with "TBD". [AQR 12.1.3.6(a)(3)(B)]
4. The Permittee shall furnish to the Control Officer, within a reasonable time, any information that the Control Officer may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the Permittee shall also furnish to the Control Officer copies of records required to be kept by the permit or, for information claimed to be confidential. For records deemed confidential, the Permittee may furnish such records to the Control Officer along with a claim of confidentiality pursuant to AQR Section 12.6. [AQR 12.1.4.1(t)]
5. As a condition of the issuance of the permit, the owner or operator agrees to permit inspection of the premises to which the permit relates, including the location where records must be kept under the conditions of the permit, by any authorized representative of the Control Officer at any time during the Permittee's hours of operation without prior notice to perform the following: [AQR 12.1.4.1(m)(2)]
 - a. Have access to and copy any records that must be kept under the conditions of the permit;
 - b. Inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
 - c. Sample or monitor substances or parameters for the purpose of assuring compliance with the permit or applicable requirements; and
 - d. Document alleged violations using devices such as cameras or video equipment.
6. The Permittee shall be required to submit an annual emission inventory report to the Control Officer, Compliance Division in accordance with the following: [AQR 12.1.4.1(d)(3)(A)]
 - a. reports shall be based on the preceding calendar year;
 - b. submitted on or before March 31 each year, even if there was no activity (if March 31st falls on a Saturday or Sunday, the submittal is due on the next regularly scheduled business day); and
 - c. reports shall include the calculated actual annual emissions from each emission unit, even if there was no activity, and the total calculated actual annual emissions for the source based on the emissions calculation methodology used to establish the PTE in the permit.

7. The Permittee shall be required to submit semi-annual (i.e. twice annually) reports to the Control Officer, Compliance Division in accordance with the following: *[AQR 12.1.4.1(d)(3)(A)]*
 - a. reports shall be based on the preceding semi-annual calendar period, which includes partial periods;
 - b. reports shall be submitted within 30 calendar days after the semi-annual calendar period (i.e. July 30 or January 30), even if there was no activity.
 - c. reports shall include a summary of each recorded item listed in Section IV-E-2 of this document that is noted for semi-annual reporting purposes.
8. The Permittee shall report to the Control Officer (4701 West Russell Road, Suite 200, Las Vegas, Nevada 89118) any upset, breakdown, malfunction, emergency or deviation which cause emissions of regulated air pollutants in excess of any limits set by regulation or by this permit. The report shall be in two parts as specified below: *[AQR 25.6.1 and AQR 12.1.4.1(d)(3)(B)]*
 - a. within twenty-four (24) hours of the time the Permittee learns of the event, the report shall be communicated by phone (702) 455-5942, fax (702) 383-9994, or email.
 - b. within seventy-two (72) hours of the notification required by paragraph (a) above, the detailed written report containing the information required by AQR Section 25.6.3 shall be submitted.
9. The Permittee shall report deviations from permit requirements that do not result in excess emissions, including those attributable to upset conditions as defined in the permit, with the annual report. Such reports shall include the probable cause of such deviations, and any corrective actions or preventive measures taken. *[AQR 12.1.4.1(d)(3)(B)]*
10. Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification, and any other certification required under this section, shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. *[AQR 12.1.4.1(m)(3)]*

D. RECORD KEEPING REQUIREMENTS

1. All records, logs, etc. shall be made available to the Control Officer during regular business hours. *[AQR 12.1.4.1(m)(2)(A)]*
2. All records, logs, etc., or a copy thereof, shall be kept on site or at the main office for a minimum of 5 years from the date the measurement, or data was entered. *[AQR 12.1.4.1(d)(2)(B)]*
3. Records and data required by this permit to be maintained by Permittee may be audited at any time by a third party selected by the Control Officer. *[AQR 4.4]*

III SOURCE-WIDE PTE SUMMARY

- A. The source is a synthetic minor source of PM₁₀, NO_x, CO and VOC and a minor source of PM_{2.5} and SO₂.

Table III-A-1: Source Allowable Emissions¹ (tons per year)

Pollutant	PM ₁₀	PM _{2.5}	NO _x	CO	SO ₂	VOC
Total	38.37	8.15	18.06	84.32	2.14	31.32

¹ The allowable emissions include worst case operating scenario of South Pit Crushing Operation.

IV EMISSION UNITS AND APPLICABLE REQUIREMENTS

A EMISSION UNITS AND LIMITS

1. Emission Units

- a. The stationary source consists of the emission units listed in Table IV-A-1. [AQR 12.1.4.1(b)]

Table IV-A-1: Summary of Emission Units

EU	Rating	Description	Make	Model	Serial
Construction Debris Area					
LF94		Truck Unloading			
		Transfer Over Edge			
North Pit Quarry and Aggregate Plant					
TT2	600 TPH	VGF	Thunderbird	4218G4VGFCZ729	10079-1
		Jaw Crusher	Pioneer	Rock Eater 3042	400571
AG1		Quarry Loading Bin (Feed Hopper)			
AG75		Feed Hopper and Belt (Alternate Operating Scenario)			
AG2		Conveyor System (5 Belts and Stacker)			
AG11		Belt Feeder System (5 belts)			
AG17		Splitter 2			
AG19	432 TPH	2-Deck Screen	Pioneer	6 x 16	402716
AG68		Reversible Conveyor belt			
AG64		Conveyor System (1 belt & stacker)			
AG39		Conveyor System; Alternate (1 belt and stacker)			
AG20	200 TPH	Cone Crusher	Nordberg	4 ¼ Standard	41086
AG21		Belt D			
AG69		Splitter 1			
AG28	480 TPH	3-Deck Screen	Pioneer	6 x16	616226BG130
AG34		Conveyor System (2 belts)			
AG35	450 TPH	3-Deck Screen	Pioneer	6 x16	616226BG136
AG36	70 TPH	Cone Crusher	Nordberg	4 short head	40816
AG37		Conveyor Belt (Recirculation)			

EU	Rating	Description	Make	Model	Serial
AG38		Belt A			
AG43		Stacker Belt (3/4" stockpile)			
AG52		Conveyor System (3 Belts)			
AG53	300 TPH	VSI Crusher (with baghouse)	ISC	66	66122
AG54		Conveyor System (2 belts)			
AG72		3-Compartment Feed Bins			
AG73		Conveyor System (2 belts)			
AG56	500 TPH	3-Deck Screen	Trio	TIO6163	TIO6163-277
AG45		Stacker Belt (1/2" stockpile)			
AG61		Stacker Belt (chips stockpile)			
AG46		Conveyor System (2 belts)			
AG48	300 TPH	2-Deck Screen	Pioneer	6 x 20	620332BG214
AG49		Conveyor System (1 belt & stacker)			
AG51		Stacker Belt (coarse sand)			
AG70		Fine Material Conveyor			
AG71		Bucket Wheel Wash and Stacker (fines wash – wet)			
Hot Mix Asphalt Plant I					
HM102		3-Compartment Feed Bin			
HM69		Stockpile Feed Belt			
HM95		4-Compartment Cold Feed Bin			
HM103		Cold Feed Bin			
HM70		Feeders (4) to Cold Feed Belt			
HM96		Belt 2			
HM73		Fines Bins Loading (Manufactured and Natural Sand)			
LM1/7		Lime Silo			
LM3		Pugmill			
HM79	375 TPH	Screen	Kolberg	10-4810	23364810851
HM80		Belt 5			
HM97		RAP Feeder			
RAP8	125 TPH	Recycle Screen	Kolberg	1D-366	2341366851D
HM81	400 TPH	Asphalt Drum Mixer	Gencor Ind.	Skidded Ultradrum	5642
HM98		Fines Silo (with Baghouse)			
HM85		Screw Conveyor Belt			
HM77		Silo Loading Belt System (4 belts)			
HM86		5-Asphalt Storage Silos System/Truck Loadout			
HM99		Reject Material Truck Loading			
HM92	1.2 MMBtu/hr	Asphalt Heater (Natural Gas)	Power Flame	HC120	H86141
Hot Mix Asphalt Plant II					
HA01		Loader to 14-Bin Cold Feed System			
HA02		2- Deck Screen	Astec	SS-616-2	TBD
HA03		RAP Feed Bins			

EU	Rating	Description	Make	Model	Serial
HA04	150 TPH	RAP Screen	Astec	SS-412-1	TBD
HA05	600 TPH	Drum Mixer (with Baghouse)	Astec	DDC-1040C	TBD
HA06		Belt 5			
HA07		Silo Loading Belt System			
HA08		6-Asphalt Storage Silo System/Truck Loadout			
HA09		2-Compartment Mini Pugmill Feed Bin			
HA10		Mini Pugmill	Fisher	3 x 10	36-10-PM32606144
HA11		Stacker (waste)			
HA12	3.0 MMBtu/hr	Asphalt Heater (Natural Gas)	Heatec	HC300	TBD
Lime Marination Plant					
LM1B		Hopper			
LM2B		Conveyor System (2 belts)			
LM7B		Lime Silo Loading			
LM4B		Pug Mill			
LM5B		Conveyor System (1 belt & stacker)			
LM9B		Conveyor System (2 belts & stacker)			
Rocky Mountain Crushing Plant (Type II)					
TT2	600 TPH	VGF	Thunderbird	4218G4VGFCZ729	10079-1
		Jaw Crusher	Pioneer	Rock Eater 3042	400571
RAP1		RAP Hopper (Alternate Operating Scenario)			
TT6		Conveyor System (3 belts)			
TT8	475 TPH	Portable Screen	JCI	6163-32	98H05A32
	75 TPH	Portable Crusher	Crush Boss	400	4156-514
TT10		Conveyor System (2 belts & stacker)			
TT13		Conveyor System (2 belts & stacker)			
TT18		Conveyor System (2 belts & stacker)			
Stockpiles					
AG66	51 Acres	Stockpiles			
Haul Roads					
MB02	40,000 VMT/yr	Haul Roads, paved			
Storage Tanks					
TK1	20,000 gallon	WCI Split Tank (5,000 gal gasoline/15,000 gal diesel)			

- b. The following units or activities are present at this source, but are insignificant units or activities pursuant to AQR Section 12.1. The emissions from these units or activities, when added to the PTE of the source, will not make the source a major emitter for any regulated air pollutant.

Table IV-A-2: Insignificant Activities

Description	Rating	Manufacturer	Model No.	Serial No.
Hot Oil Tank	35,000 gallons	Heatec		
Oil Tank	30,000 gallons	Hyway		
Oil Tank	15,000 gallons			
Oil Tank	15,000 gallons			
Asphaltic Concrete Tank	35,000 gallons			
Asphaltic Concrete Tank	15,000 gallons			
Asphaltic Concrete Tank	15,000 gallons			
Asphaltic Concrete Tank	15,000 gallons			
Light Tower	6 kW	Ingersoll-Rand	L6-4MH	301369UEJ822
Light Tower	6 kW	Ingersoll-Rand	L6-4MH	296107ULI822
Light Tower	6 kW	Marathon Electric	332CSA5201	601324

2. Emission Limitations

- a. The Permittee shall not discharge into the atmosphere, from any emission unit, any air contaminant in excess of an average of 20 percent opacity for a period of more than 6 consecutive minutes. *[AQR 26.1.1]*
- b. The Permittee shall not allow actual stack emissions from the lime marination and asphalt plants to exceed the rates as listed in Table IV-A-3. *[40 CFR 60, Subpart I §60.92(a)(1) and AQR 12.1.4.1(c)]*

Table IV-A-3: Emission Rate

EU	PM	NO _x	CO
HM81	0.04 gr/dscf (90 mg/dscm)	10.40 lbs/hour	52.00 lbs/hour
HM86	0.04 gr/dscf (90 mg/dscm)		
HM98	0.04 gr/dscf (90 mg/dscm)		
HA05	0.04 gr/dscf (90 mg/dscm)		
LM7B	0.04 gr/dscf (90 mg/dscm)		

- c. The Permittee shall not exhibit fugitive emissions with an instantaneous opacity in excess of 50 percent from paved roads accessing or located on the site. *[AQR 12.1.4.1(c)]*
- d. The Permittee shall not discharge into the atmosphere fugitive dust emissions from screens, conveyors and transfer points that commenced construction, modification or reconstruction after August 31, 1983 but before April 22, 2008 (EUs: AG19, AG28, AG35, AG48, AG49, AG53, AG64, RAP1, TT6, TT8, TT13, and TT18) in excess of 10 percent opacity based on the average of five 6-minute averages. *[40 CFR 60, Subpart OOO §60.672(b) and AQR 12.1.4.1(c)]*
- e. The Permittee shall not discharge into the atmosphere fugitive dust emissions from screens, conveyors and transfer points that commenced construction, modification or reconstruction after April 22, 2008 in excess of 7.0 percent opacity based on the

average of five 6-minute averages (EUs: AG1, AG56, AG2, AG61, AG68, AG69, AG70, AG72, AG73, AG75 TT2, TT10). [40 CFR 60, Subpart 000 §60.672(b) and AQR 12.1.4.1(c)]

- f. The Permittee shall not discharge into the atmosphere fugitive dust emissions from any applicable hot mix asphalt emission unit that commenced construction or modification after June 11, 1973 in excess of 20 percent opacity (EUs: EUs: LM1B, LM2B, LM4B, LM5B, LM7B, LM9B, LM1/7, LM3, HM70, HM73, HM77, HM79, HM80, HM81, HM85, HM86, HM95, HM96, HM97, HM98, HM99, HM102, HM103 RAP8, and HA01 through HA11). [40 CFR 60, Subpart I §60.92(a)(2) and AQR 12.1.4.1(c)]

3. Operational Limitations

Construction Debris

- a. The Permittee shall limit the total amount of material unloaded to the Construction Debris Area to 700,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]

North Pit and Aggregate Plant

- b. The Permittee shall limit the total material processed in the North Pit and Aggregate Plant to 950,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f)]
- c. The Permittee shall not exceed, neither continuously nor intermittently, nine (9) hours per day for all operations of the North Pit and Aggregate Plant. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]

Rocky Mountain Crushing Plant

- d. The Permittee shall limit the total material processed in the Rocky Mountain Crushing Plant to 450,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]
- e. The Permittee shall not exceed, neither continuously nor intermittently, 16 hours per day for all operations of the Rocky Mountain Crushing Plant. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]

Hot Mix Asphalt Plant I

- f. The Permittee shall limit the fine and coarse aggregate throughputs in the Hot Mix Asphalt Plant I to a combined total of 507,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]
- g. The Permittee shall limit the RAP throughput in the Hot Mix Asphalt Plant I to 172,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]
- h. The Permittee shall limit the lime throughput in the Hot Mix Asphalt Plant I to 11,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]

Hot Mix Asphalt Plant II

- i. The Permittee shall limit the fine and coarse aggregate throughputs in the Hot Mix Asphalt Plant II to a combined total of 420,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]
- j. The Permittee shall limit the RAP throughput in the Hot Mix Asphalt Plant II to 140,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]
- k. The Permittee shall limit the RAP throughput in the Mini Pugmill (EU: HA10) to 6,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]

Lime Marination Plant

- l. The Permittee shall limit the aggregate throughput in the Lime Marination Plant to 180,000 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]
- m. The Permittee shall limit the lime throughput in the Lime Marination Plant to 3,050 tons per any consecutive 12 month period. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]
- n. The Permittee shall not exceed, neither continuously nor intermittently, 12 hours per day for all operations of the Lime Marination Plant. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]

Ancillary Emission Units

- o. The Permittee shall limit the total area of disturbed surfaces and stockpiles (EU: AG66) to 51.0 acres at any given time. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]
- p. The Permittee shall limit the VMT by haul trucks on paved roads (EU: MB02) to 40,000 miles per any consecutive 12 months. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]
- q. The Permittee shall limit the amount of gasoline throughput in the storage tank (EU: TK1) to 50,000 gallons per any consecutive 12 months. [AQR 12.1.4.1(c)&(f) and 12.1.7(a) (VAEL)]

B CONTROL REQUIREMENTS

Mineral Processing Equipment [AQR 12.1.4.1(c)&(f)]

- 1. The Permittee shall not cause or permit the handling, transporting, or storage of any material in a manner which allows or may allow controllable particulate matter to become airborne. [AQR Section 41.1.2]
- 2. The Permittee shall not cause or allow the discharge of fugitive dust in excess of 100.0 yards from the point of origin or beyond the lot line of the property on which the emissions originate, whichever is less.
- 3. The Permittee shall incorporate, and maintain in good operating condition at all times, adequate water sprays at pertinent locations, as needed, where moisture is required to insure compliance with opacity and moisture content limits.

4. The Permittee shall maintain a moisture content of no less than 3.0 percent by weight on materials less than 0.25 inches in diameter that are loaded into the North Pit Quarry and Aggregate Plant, and the Rocky Mountain Crushing Plant.
5. The Control Officer at any time may require additional water sprays at pertinent locations if an inspection indicated an opacity limit is being exceeded, or if moisture testing indicated the minimal moisture content in raw materials is not being maintained.
6. The Permittee shall combust natural gas as the primary fuel for the Drum Mixers (EUs: HM81 and HA05). The Permittee shall only use diesel fuel in the Drum Mixer for the Hot Mix Asphalt Plant I when disruptions of natural gas service occur, for which the source has no control.
7. The Permittee shall operate and maintain a bin vent to effectively control particulate matter emissions from the lime silo (EU: LM1/7) at all times the equipment is operating for loading purposes.
8. The Permittee shall operate and maintain a baghouse to effectively control particulate matter emissions from the lime silo (EU: LM7B) and fines silo (HM98) at all times the equipment is operating for loading purposes.
9. The Permittee shall operate each drum mixer (EUs: HM81 and HA05), asphalt truck loadout (EU: HM86), and VSI Crusher (EU: AG53) with a baghouse to effectively control particulate emissions at all times the processing equipment is operating.
10. The Permittee shall maintain the pressure drop across each baghouse within the range of 3 to 6 inches of water column.
11. The Permittee shall use a partial enclosure on the asphalt storage silos (EU: HM86) to control particulate emissions at all times the processing equipment is operating.
12. The Permittee shall maintain an oil coating on RAP in the South Pit to maintain compliance with the opacity limits of this permit while its being processed (EUs: RAP1, TT6, TT8, TT10, TT13, and TT18).
13. The Permittee shall effectively cover all loaded trucks leaving the site and carrying loose materials to reduce emissions of dust. This condition applies to trucks regardless of whether they are owned and operated by the owner/operator.

Asphalt Heaters (EUs: HM92 and HA12) [AQR 12.1.4.1(c)&(f)]

14. The Permittee shall combust only natural gas as the fuel for each the asphalt heater.
15. The Permittee shall operate and maintain each asphalt heater in accordance with the manufacturer's specifications.

Stockpiles [AQR 12.1.4.1(c)&(f)]

16. The Permittee shall not track out onto a paved road mud or dirt that extends 50.0 feet or more in cumulative length from the point of origin or allow any trackout to accumulate to a depth greater than 0.25 inches. Notwithstanding the preceding, all accumulations of mud or dirt on curbs, gutters, sidewalks or paved roads including trackout less than 50.0 feet in length and 0.25 inches in depth, shall be cleaned of all observable deposits and maintained to eliminate emissions of fugitive dust.
17. The Permittee shall control fugitive dust emissions from any disturbed open area or disturbed vacant lot that are owned or operated by the Permittee by paving, applying

gravel, applying a dust palliative or applying water to form a crust.

18. The Permittee shall implement long-term stabilization of disturbed surfaces when the stationary source, or a portion thereof, is to be closed or idled for a period of 30 days or more, within 10 days following the cessation of active operations. Long-term stabilization includes, but is not limited to one or more of the following: applying water to form a crust, applying palliatives, applying gravel, paving, and denying unauthorized access, or other effective control measure to prevent fugitive dust from becoming airborne.
19. The Permittee shall control particulate matter emissions from any unpaved parking lot owned or operated by the Permittee by paving, applying a dust palliative or by an alternate method approved by the Control Officer regardless of the number of days of use.

GDO (EU: TK1) [AQR 12.1.4.1(c)&(f)]

20. The Permittee shall implement control technology requirements on gasoline dispensing equipment as follows: *[40 CFR 63 Subpart CCCCCC]*
 - a. The Permittee shall not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Preventative measures to be taken include, but are not limited to, the following: *[40 CFR 63.11116]*
 - i. Minimize gasoline spills;
 - ii. Clean up spills as expeditiously as practicable;
 - iii. Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use;
 - iv. Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators; and
 - v. Only load gasoline into storage tanks a using submerged filling where the greatest distance from the bottom of the storage tank to the point of opening of the fill tube is no more than 6 inches.

Other [AQR 12.1.4.1(c)&(f)]

21. The Permittee shall operate emissions control devices for individual emission units as indicated in Table IV-B-1, and in accordance with the control efficiencies listed elsewhere in this section.

Table IV-B-1: Summary of Add-On Control Devices

EU	Device Type	Manufacturer	Model No.	Serial No.	Pollutant
HM81	Baghouse	Astec	SBH-51-11	85-174	PM
AG53	Baghouse	Donaldson Torit	DLMV 45/15	10892312L1	PM
HA05	Baghouse	TBD	TBD	TBD	PM

22. The Permittee shall not cause, suffer or allow the discharge from any source whatsoever such quantities of air contaminants or other material which cause a nuisance, including excessive odors. *[AQR Sections 40 and 43]*

C MONITORING

Visible Emissions [AQR 12.1.4.1(d)]

1. The Permittee shall conduct a daily visual emissions check for visible emissions of the facility while it is in operation.
2. If the Permittee, during the visible emissions check, does not see any plume that, on an instantaneous basis, appears to exceed the opacity standard, then the observer shall keep a record of the name of the observer, the date on which the observation was made, the location, and the results of the observation.
3. If the Permittee sees a plume that, on an instantaneous basis, appears to exceed the opacity standard, the Permittee shall:
 - a. Take immediate action to correct causes of fugitive/stack emissions that appear to exceed allowable opacity limits; or
 - b. If practical, have a certified VE observer take an EPA Method 9 observation of the plume and record the results, and take immediate action to correct causes of fugitive emissions in excess of allowable opacity limits in accordance with 40 CFR 60 Appendix A: Reference Method 9.
4. Visible emissions checks do not require a certified VE observer, except where visible emissions appear to exceed the allowable opacity limit and exceed 30 seconds in duration, and an EPA Method 9 observation is made to establish it does not exceed the standard.
5. The Permittee shall demonstrate compliance with the opacity limitations for the paved roads contained within this permit with one of the following, as applicable:
 - a. 40 CFR 60 Reference Method 9
 - b. The test method set forth in AQR Subsection 94.12.4: Instantaneous Method

Mineral Processing Equipment [AQR 12.1.4.1(d)]

6. The Permittee shall monitor the tonnage of material processed through each plant, as listed in Table IV-A-1 of this permit. Throughputs shall be calculated as consecutive 12-month totals to ensure compliance with the operational limitations defined in Section IV-A-3 of this permit.
7. The Permittee shall monitor the gallons of diesel fuel through the asphalt plant on a monthly basis. The nature of fuel interruption leading to the use of diesel fuel rather than natural gas shall be documented.
8. The Permittee shall monitor the daily hours of operation separately for the North Pit Quarry and Aggregate Plant, Rock Mountain Crushing Plant, and the Lime Marination Plant.
9. The Permittee shall demonstrate compliance with the minimum moisture control requirement by conducting moisture testing and recording the results on materials less than 0.25 inches in diameter as follows:
 - a. Moisture testing shall be in accordance with either the American Society for Testing and Materials (ASTM) Standard C 566-97; Standard Test Method for

Total Moisture Content of Aggregate by Drying, or the American Association of State and Highway Transportation Officials (AASHTO) method T265; Standard Test Method for Laboratory Determination of Moisture Content of Soils.

- b. Moisture testing shall be conducted at least once daily when the aggregate processing plant is in operation.
- c. Moisture testing shall be conducted separately on materials directly loaded from the pit into the North Pit Quarry and Aggregate Plant, and the Rocky Mountain Crushing Plant.

Baghouses/Bin Vents [AQR 12.1.4.1(d)]

10. The Permittee shall conduct daily monitoring of the pressure drop across the baghouse cell with the installation and operation of a pressure differential gauge (e.g. magnehelic, monometer).
11. The Permittee shall visually inspect the baghouse interior and bin vents at least monthly for air leaks. Defective compartments shall be sealed off and repairs completed within 5 working days of the discovery of the malfunction. Should the malfunction cause the baghouse or bin vents to be ineffective in controlling particulate emissions, the processing of material shall cease until such repairs to the baghouse or bin vents are completed.
12. The Permittee shall have a standard operating procedures (SOP) manual for the baghouse and bin vents. The procedures specified in the manual for maintenance shall, at a minimum, include a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

Haul Roads/Disturbed Surfaces/Construction Debris [AQR 12.1.4.1(d)]

13. The Permittee shall monitor the total length of each haul road in miles on a monthly basis.
14. The Permittee shall monitor the number of miles traveled onsite by haul trucks (EU: MB02) and calculate, on a monthly basis, the VMT as a consecutive 12-month total.
15. The Permittee shall monitor the total area of disturbed surfaces and stockpiles in acres on a monthly basis.
16. The Permittee shall determine whether an area is disturbed, for the purposes of this permit, in accordance with the Drop Ball Test in AQR Section 90.
17. The Permittee shall monitor the tonnage of material unloaded to the Construction Debris Area and calculate, on a monthly basis, the throughputs as consecutive 12-month totals.

Gasoline Dispensing [AQR 12.1.4.1(d)]

18. The Permittee shall monitor the combined throughput of gasoline (EU: TK1) and calculate, on a monthly basis, the total of the last 365 days of gasoline throughput divided by 12. [40 CFR 63, Subpart CCCCCC]
19. The Permittee shall monitor the fuel storage and dispensing system to determine if components of the system are in compliance with the control requirements of this permit. The monitoring shall consist of, but not be limited to:

- a. The Permittee shall inspect daily for gasoline spills. The Permittee shall record the times and dates the source became aware of a spill and when the spill was cleaned up.
- b. The Permittee shall inspect covers on gasoline containers and fill-pipes after each respective delivery. The Permittee shall record the date of fuel deliveries and corresponding inspections.
- c. The Permittee shall record the date and approximate volume of gasoline sent to open waste collection systems that collect recyclable gasoline.

D TESTING

Aggregate Processing [AQR 12.1.4.1(d)&(m)]

1. The Permittee shall demonstrate compliance with the opacity standards for aggregate processing in Section IV-A-2 of this permit in accordance with 40 CFR 60 Subpart A, and 40 CFR 60 Subpart OOO.
2. The Permittee shall conduct performance testing on the aggregate processing plants according to the following conditions: [AQR 12.1.4.1(m)(1)]
 - a. Performance tests shall be conducted in accordance with 40 CFR 60 Reference Method 9 (Standards for Opacity).
 - b. Initial performance tests on affected emission units shall be conducted within 60 days after achieving the maximum production rate at which the source will be operated but no later than 180 days after initial start-up (EU: AG75).
 - c. Subsequent Method 9 performance testing shall be conducted upon written notification from the Control Officer. [AQR 4.5]

Asphalt Plant [AQR 12.1.4.1(d)&(m)]

3. The Permittee shall demonstrate compliance with the opacity and concentration standards for lime marination and asphalt concrete production in Section IV-A-2 of this permit in accordance with 40 CFR 60 Subpart A, and 40 CFR 60 Subpart I.
4. The Permittee shall conduct performance testing on the lime marination and asphalt plants to demonstrate compliance with opacity standards according to the following conditions: [AQR 12.1.4.1(m)(1)]
 - a. Performance tests shall be conducted in accordance with 40 CFR 60 Reference Method 9 (Standards for Opacity).
 - b. Initial performance tests on affected emission units shall be conducted within 60 days after achieving the maximum production rate at which the source will be operated but no later than 180 days after initial start-up (EUs: HM102, LM9B, and HA01 through HA11).
 - c. Subsequent Method 9 performance testing shall be conducted upon written notification from the Control Officer. [AQR 4.5]
5. The Permittee shall conduct performance testing on the lime marination and asphalt plants (EUs: HA05, HM81, and HM86) to demonstrate compliance with the

particulate matter concentration standards for stack emissions according to the following conditions [AQR 12.1.4.1(m)(1)]:

- a. The Permittee shall utilize the performance testing methodologies as indicated in Table IV-D-1. The Control Officer will consider approving a request for alternative performance test methods if proposed in writing in the performance test protocol. [AQR 12.1.4.1(m)(1)]
- b. Initial performance tests on affected emission units shall be conducted within 60 days after achieving the maximum production rate at which the source will be operated but no later than 180 days after initial start-up (EU: HA05).
- c. Subsequent performance testing shall be conducted on all applicable emission units once every five years within 90 days from the date of the previous performance test. [40 CFR 60, Subpart I (60.93)]

Table IV-D-1: Performance Testing Methods of EU: HA05, HM81 and HM86

Test Point	Pollutant	Method
Exhaust Outlet Stack	PM	EPA Method 5
Stack Gas Parameters		EPA Methods 1, 2, 3A and 4

6. The Permittee shall conduct performance testing on the asphalt plant drum mixer (EU: HM81) to demonstrate compliance with the short-term mass emission standard for stack emissions according to the following conditions: [AQR 12.1.4.1(m)(1)]
 - a. The Permittee shall utilize the performance testing methodologies as indicated in Table IV-D-2. The Control Officer will consider approving a request for alternative performance test methods if proposed in writing in the performance test protocol. [AQR 12.1.4.1(m)(1)]
 - b. Subsequent performance testing shall be conducted on the drum mixer (EU: HM81) once every five years within 90 days from the date of the previous performance test.

Table IV-D-2: Performance Testing Methods of EU: HM81

Test Point	Pollutant	Method
Exhaust Outlet Stack	NO _x	EPA Method 7E (Chemiluminescence Analyzer)
	CO	EPA Method 10
Stack Gas Parameters		EPA Methods 1, 2, 3A and 4

General [AQR 12.1.4.1(d)&(m)]

7. Performance testing is subject to 40 CFR 60 (as amended), and Air Quality Guideline for Source Testing (as amended). Performance testing shall be the instrument for determining initial and subsequent compliance with emission limitations set forth in Table IV-A-3 of this permit.
8. The Permittee shall submit for approval a performance testing protocol which contains test, reporting, and notification schedules, test protocols, and anticipated test dates to the Control Officer at least 45 days prior to the anticipated test date but not more than 90 days prior to the anticipated test date. [AQR 12.1.4.1(m)(1)]

9. The Permittee shall submit a report describing the results of the performance test to the Control Officer within 60 days from the end of the performance test. *[AQR 12.1.4.1(m)(1)]*
10. The Permittee of any stationary source that fails to demonstrate compliance with the emissions standards or limitations during any performance test shall submit a compliance plan to the Control Officer within 90 days from the end of the performance test. *[AQR 10.1]*
11. The Control Officer may require additional performance testing when operating conditions appear to be inadequate to demonstrate compliance with the limitations in this permit. *[AQR 4.5]*

E RECORD KEEPING

1. The Permittee shall maintain on-site the following records: *[AQR 12.1.4.1(d)(2)]*
 - a. Dates and time when visible emissions observations are taken and the steps taken to make any necessary corrections to bring opacity into compliance;
 - b. Daily production of materials processed;
 - c. Emission unit and control device inspections, maintenance or repair;
 - d. Baghouse differential pressure readings;
 - e. Date and time gasoline storage and distribution equipment was taken out-of-service (EU: TK1);
 - f. Daily results of moisture testing for pit run materials;
 - g. Areas of disturbed surfaces and stockpiles;
 - h. Length of the on-site haul road(s); and
 - i. Performance test results;
2. The Permittee shall maintain onsite the following records for reporting: *[AQR12.1.4.1(d)(2) & (3)]*
 - a. Monthly, total consecutive 12-month throughput of materials unloaded to the construction debris area;
 - b. Monthly, total consecutive 12-month throughput of materials processed in each plant (reported semi-annually);
 - c. Monthly, total consecutive 12-month throughput of materials processed in the asphalt plant while operating on diesel fuel (reported semi-annually);
 - d. Monthly, length of each on-site haul road (reported semi-annually);
 - e. Monthly, total consecutive 12-month VMT on paved haul roads (reported semi-annually);
 - f. Monthly, total consecutive 12-month throughput of gasoline (EU: TK1) (reported semi-annually);
 - g. Deviations from permit requirements resulting in excess emissions (reported as required in Section II-C);

- h. Deviations from permit requirements not resulting in excess emissions (reported semi-annually); and
- i. Annual emissions calculated for each emission unit and the entire source (reported annually).

Technical Support Document

Clark County Department of Air Quality

EXHIBIT B

LIST OF ACRONYMS AND ABBREVIATIONS

Acronym	Term
Air Quality	Clark County Department of Air Quality
AQR	Clark County Air Quality Regulations
CE	Control Efficiency
CF	Control Factor
CFR	United States Code of Federal Regulations
CO	Carbon Monoxide
DEM	Digital Elevation Model
EF	Emission Factor
EI	Emission Increase
EU	Emission Unit
GDO	Gasoline Dispensing Operation
H ₂ S	Hydrogen Sulfide
HMA	Hot Mix Asphalt
MMBtu	Millions of British Thermal Units
NAICS	North American Industry Classification System
NO _x	Nitrogen Oxides
OP	Operating Permit
PM _{2.5}	Particulate Matter less than 2.5 microns
PM ₁₀	Particulate Matter less than 10 microns
Pb	Lead
PTE	Potential to Emit
RAP	Recycled Asphalt Product
SCC	Source Classification Codes
SIC	Standard Industrial Classification
SM80	Synthetic Minor Source that emits one or more pollutants that are within 20 percent of major source thresholds after applying a VAEL
SO ₂	Sulfur Dioxide
TSD	Technical Support Document
USGS	United States Geological Survey
UTM	Universal Transverse Mercator
VAEL	Voluntary Accepted Emission Limit
VGf	Vibrating Grizzly Feeder
VMT	Vehicle Miles Traveled
VOC	Volatile Organic Compound

The PTE and allowable operational condition for each emission unit in the permit are summarized in the table below. This table can be used to prepare *Annual Emissions Inventory Reports* with forms available on Air Quality's Website at <http://www.clarkcountynv.gov>. The values below should be entered as the PTE for each respective emission unit when using the annual emission inventory reporting forms provided by Air Quality.

Source-Wide Emission Unit PTE Summary (tons per year)

EU	Condition	PM _{2.5}	PM ₁₀	NO _x	CO	SO ₂	VOC	H ₂ S	Pb
LF94	700,000 tons/yr	0.08	0.08	0	0	0	0	0	0
TT2	950,000 tons/yr	0.06	0.62	0	0	0	0	0	0
AG1	950,000 tons/yr	0.02	0.15	0	0	0	0	0	0
AG75	950,000 tons/yr	Alternate Operating Scenario							
AG2	950,000 tons/yr	0.06	0.46	0	0	0	0	0	0
AG11	950,000 tons/yr	0.03	0.23	0	0	0	0	0	0
AG17	950,000 tons/yr	0.01	0.08	0	0	0	0	0	0
AG19	513,000 tons/yr	0.02	0.65	0	0	0	0	0	0
AG68	213,000 tons/yr	0.01	0.02	0	0	0	0	0	0
AG64	270,000 tons/yr	0.01	0.04	0	0	0	0	0	0
AG39	213,000 tons/yr	Alternate Operating Scenario							
AG20	238,000 tons/yr	0.02	0.22	0	0	0	0	0	0
AG21	238,000 tons/yr	0.01	0.02	0	0	0	0	0	0
AG69	238,000 tons/yr	0.01	0.02	0	0	0	0	0	0
AG28	570,000 tons/yr	0.02	0.73	0	0	0	0	0	0
AG34	451,000 tons/yr	0.01	0.04	0	0	0	0	0	0
AG35	534,000 tons/yr	0.02	0.68	0	0	0	0	0	0
AG36	83,000 tons/yr	0.01	0.08	0	0	0	0	0	0
AG37	83,000 tons/yr	0.01	0.01	0	0	0	0	0	0
AG38	194,000 tons/yr	0.01	0.01	0	0	0	0	0	0
AG43	90,000 tons/yr	0.01	0.01	0	0	0	0	0	0
AG52	228,000 tons/yr	0.01	0.05	0	0	0	0	0	0
AG53	356,000 tons/yr	0.03	0.33	0	0	0	0	0	0
AG54	356,000 tons/yr	0.01	0.03	0	0	0	0	0	0
AG72	238,000 tons/yr	0.01	0.04	0	0	0	0	0	0
AG73	238,000 tons/yr	0.01	0.04	0	0	0	0	0	0
AG56	594,000 tons/yr	0.02	0.76	0	0	0	0	0	0
AG45	180,000 tons/yr	0.01	0.01	0	0	0	0	0	0
AG61	20,000 tons/yr	0.01	0.01	0	0	0	0	0	0
AG46	389,000 tons/yr	0.01	0.03	0	0	0	0	0	0
AG48	356,000 tons/yr	0.01	0.45	0	0	0	0	0	0
AG49	210,000 tons/yr	0.01	0.03	0	0	0	0	0	0
AG51	180,000 tons/yr	0.01	0.01	0	0	0	0	0	0

EU	Condition	PM _{2.5}	PM ₁₀	NO _x	CO	SO ₂	VOC	H ₂ S	Pb
AG70	210,000 tons/yr	0.01	0.02	0	0	0	0	0	0
AG71	210,000 tons/yr	Wet Process							
HM102	405,600 tons/yr	0.01	0.06	0	0	0	0	0	0
HM69	405,600 tons/yr	0.01	0.03	0	0	0	0	0	0
HM95	101,400 tons/yr	0.01	0.01	0	0	0	0	0	0
HM103	101,400 tons/yr	0.01	0.01	0	0	0	0	0	0
HM70	101,400 tons/yr	0.01	0.01	0	0	0	0	0	0
HM96	405,600 tons/yr	0.01	0.05	0	0	0	0	0	0
HM73	101,400 tons/yr	0.01	0.02	0	0	0	0	0	0
LM1/7	11,000 tons/yr	0.03	0.03	0	0	0	0	0	0
LM3	507,000 tons/yr	0.01	0.08	0	0	0	0	0	0
HM79	507,000 tons/yr	0.02	0.65	0	0	0	0	0	0
HM80	507,000 tons/yr	0.01	0.04	0	0	0	0	0	0
HM97	172,000 tons/yr	0.01	0.03	0	0	0	0	0	0
RAP8	172,000 tons/yr	0.01	0.22	0	0	0	0	0	0
HM81	690,000 tons/yr	2.42	3.45	8.97	44.85	1.17	11.04	0	0
HM98	69,000 tons/yr	0.01	0.01	0	0	0	0	0	0
HM85	690,000 tons/yr	0.01	0.06	0	0	0	0	0	0
HM77	676,200 tons/yr	0.01	0.05	0	0	0	0	0	0
HM86	676,200 tons/yr	0.01	0.01	0	0.40	0	4.10	0	0
	676,200 tons/yr	0.01	0.01	0	0.45	0	1.40		
HM99	13,800 tons/yr	0.01	0.01	0	0	0	0	0	0
HM92	8,760 hours/yr	0.04	0.04	0.52	0.43	0.01	0.03	0	0
HA01	420,000 tons/yr	0.01	0.07	0	0	0	0	0	0
HA02	420,000 tons/yr	0.01	0.54	0	0	0	0	0	0
HA03	140,000 tons/yr	0.01	0.02	0	0	0	0	0	0
HA04	140,000 tons/yr	0.01	0.18	0	0	0	0	0	0
HA05	560,000 tons/yr	4.51	6.44	7.28	36.40	0.95	8.96	0	0
HA06	560,000 tons/yr	0.01	0.05	0	0	0	0	0	0
HA07	560,000 tons/yr	0.01	0.04	0	0	0	0	0	0
HA08	560,000 tons/yr	0.02	0.02	0	0.72	0	4.58	0	0
HA09	6,000 tons/yr	0.01	0.01	0	0	0	0	0	0
HA10	26,000 tons/yr	0.01	0.01	0	0	0	0	0	0
HA11	26,000 tons/yr	0.01	0.01	0	0	0	0	0	0
HA12	8,760 hours/yr	0.10	0.10	1.29	1.08	0.01	0.07	0	0
LM1B	180,000 tons/yr	0.01	0.03	0	0	0	0	0	0
LM2B	180,000 tons/yr	0.01	0.03	0	0	0	0	0	0
LM7B	3,050 tons/yr	0.01	0.01	0	0	0	0	0	0
LM4B	183,050 tons/yr	0.01	0.04	0	0	0	0	0	0
LM5B	180,000 tons/yr	0.01	0.04	0	0	0	0	0	0
LM9B	183,050 tons/yr	0.01	0.04	0	0	0	0	0	0

EU	Condition	PM_{2.5}	PM₁₀	NO_x	CO	SO₂	VOC	H₂S	Pb
TT2	450,000 tons/yr	0.04	0.43	0	0	0	0	0	0
RAP1	450,000 tons/yr	Alternative Operating Scenario							
TT6	450,000 tons/yr	0.01	0.08	0	0	0	0	0	0
TT8	534,000 tons/yr	0.02	0.76	0	0	0	0	0	0
TT10	169,000 tons/yr	0.01	0.04	0	0	0	0	0	0
TT13	169,000 tons/yr	0.01	0.04	0	0	0	0	0	0
TT18	113,000 tons/yr	0.01	0.03	0	0	0	0	0	0
AG66	51 Acres	0	15.45	0	0	0	0	0	0
MB02	40,000 VMT/yr	0	3.02	0	0	0	0	0	0
TK1	50,000 gallons/yr	0	0	0	0	0	1.14	0	0
Totals		8.15	38.37	18.06	84.32	2.14	31.32	0	0

Technical Support Document

This TSD establishes the methodology related to the terms and conditions of its Minor Source Permit issued pursuant to AQR 12.1. The TSD shall not serve as the operating authority.

Preparer: Scott Chappell
Action Received: August 15, 2016
TSD Date: October 6, 2017
Company: Wells Cargo, Inc.
Responsible Official: Guy Wells
Consultant: Broadbent & Associates
Source: 12
Source Name: Wells Cargo, Inc.
Source Address: 7770 West Spring Mountain Road
Las Vegas, Nevada 89117
T21S, R60E, S15

Source Description

Wells Cargo, Inc. is a producer of asphalt and aggregate products that is located in Hydrographic Area 212. The source falls under the following SIC Codes: 2951: Asphalt Paving Mixture and Block; 1442: Construction Sand and Gravel; and 4953: Refuse System. The source also falls under the following NAICS Codes: 342121: Asphalt Paving and Block Manufacturing; 212321: Construction Sand and Gravel Mining; and 562212: Solid Waste Landfill. The Source consists of a quarry, aggregate crushing and processing operations, hot mix asphalt plants, lime marination processes, stockpiles and haul roads. The source is subject to 40 CFR 60, Subparts I and OOO and 40 CFR 63, Subpart CCCCCC.

Due to the fact that the source has taken a VAEL that causes them to avoid major source status, it is classified as a synthetic minor for PM₁₀, NO_x, CO and VOC. In addition, the source is an SM80 source for CO and a true minor source for PM_{2.5} and SO₂.

Permitting Action

This permitting action was initiated by an application for a significant revision. The Permittee proposed the addition of a new hot mix asphalt plant, increases to the production limitations for the existing hot mix asphalt and aggregate processing plants, and various changes to equipment configurations.

Additionally, this permitting action is for the renewal of an operating permit that expired on August 7, 2017. The Permittee submitted a request to initiate a permit renewal within the acceptable time frame specified in AQR 12.1.3.2. As a result, the source is able to operate under the authority of the expired permit by way of an application shield. The

renewal of the operating permit is being processed concurrently with the modifications proposed in the initial application.

The application and supplemental information requested the following revisions:

- Change of name from South Pit Crushing Operation to Rocky Mountain Crushing Plant (RMC).
- Addition of a second Hot Mix Asphalt plant (EUs: HA01 through HA12).
- Source-wide revision to all emission factors. These changes are detailed in the "Attachments" section of this document.
- Increased production limits for the existing Hot Mix Asphalt Plant.
- Additional feed bins for the existing Hot Mix Asphalt Plant (EU: HM102).
- Additional hopper and conveyor, as an alternate operating scenario, for the North Pit Quarry and Aggregate Plant (EU: AG75).
- Additional conveyors for the Lime Marination Plant (EU: LM9B).
- Addition of a baghouse to the crusher identified as EU: AG53. There are no applicable performance standards for the baghouse due to the fact that the VSI crusher was manufactured and installed prior to August 31, 1983.
- The VGF/Crusher unit identified as EU: TT2 be permitted to operate at the Rocky Mountain Crushing Plant or at the North Pit Quarry and Aggregate Plant.
- Increase the VMT for the paved haul roads (EU: MB02).
- Removal of all diesel-powered generators, previously identified as EUs: A01, A02, A03, and A04.
- Removal of the jaw crusher and scalping screen previously identified as EUs: AG8 and AG9.
- Removal of the emission units identified as HM100 (2 belt conveyor system) and HM101 (2-Belt Conveyor System) from the Hot Mix Asphalt Plant.
- Removal of the unpaved haul road identified as EU: MB01. All haul roads have been paved.
- Removal of a 17,500 gallon diesel tank from the insignificant unit list.

Revisions to the permit, not requested by the Permittee, include the following:

- A condition specifying the instantaneous opacity as 50 percent is being reintroduced into the operating permit as Condition IV-A-2(c). A condition specifying the instantaneous opacity was last included in the operating permit issued on September 16, 2009. It should have been included with the initial AQR 12.1 operating permit issued on August 8, 2012, but was inadvertently omitted. It has been omitted from all subsequent permits that have been issued.
- Permit conditions for Control and Monitoring have been added which require the source to conduct moisture testing for the North Pit Quarry and the Rocky Mountain Crushing Plant. The 3.0 percent moisture requirement is based on the moisture

content of the samples during the performance testing conducted in March, 2017. The results of this test are the basis of the revised emission factors. A detailed analysis of the aforementioned testing can be found in the Attachment section of this document.

- EU AG10 (Stacker to Surge Pile) has been combined with AG2 (Conveyor System). The stacker is part of the conveyor system defined in EU: AG2.
- EU: TT1 (Loader to VGF) has been combined with EU: TT2 (VGF/Crusher), only for the North Pit Quarry and Aggregate Plant. EU: TT1 is defined as the drop into the VGF. The standard practice for Air Quality is to include the drop into the VGF as a single emission unit with the actual VGF unit. The source PTE is not affected by this revision.
- EU: RAP1a (Loader to RAP Hopper) has been combined with RAP1 (RAP Hopper). The standard practice for Air Quality is to include the drop into the hopper as a single emission unit with the actual hopper. The source PTE is not affected by this revision.
- EU: TT24 (Hopper Belt to Conveyor 2) has been combined with EU: TT6 (Conveyor 2 to Conveyor 3). These two emission units comprise a conveyor system. The standard practice for Air Quality is to include conveyor systems directly within the same product stream as a single emission unit.
- The RMC Plant Alternative Operating scenario has been removed as a separate emission unit list. With the exception of RAP1, described in the paragraph above, the emission units and throughputs for the alternate scenario are identical to the RMC Plant emission units and throughputs, making the RMC Alternate emission list redundant. EUs: RAP1 has been added to the RMC Plant emission unit list with a notation that this emission unit operates as an alternate scenario.
- Previous permits, and the renewal application, list the emission unit described as “Bucket Wheel Fines Wash to Stacker” in both the emission unit list (as EU: AG70) and in the Insignificant Activities list. Since it cannot be listed in both tables, it has been removed from the Insignificant Activity list. It remains in the emission unit list for continuity of the flow process. As a wet process, it is not subject to fees.
- The asphalt storage silo (EU: HM86) and the asphalt loadout (EU: HM87) for the existing and proposed HMA plants are being combined as EU: HM86. Although these activities are separate points of emissions, silo loading/venting versus truck loading, Air Quality has determined that the equipment is common to both. Therefore, the separate emission points should be associated with one emission unit.
- The original language in Condition IV-B-1, “The Permittee shall not cause or allow fugitive dust to become airborne without taking reasonable precautions” has been revised as follows: “The Permittee shall not cause or permit the handling, transporting, or storage of any material in a manner which allows or may allow controllable particulate matter to become airborne.” AQR Section 41.1.2 is used as the authority for this condition.
- The window of time allowed for 5-year subsequent performance testing from the date of the previous performance test has been revised from “within 30 days” to “within 90 days.” This change is consistent with current standard practice for all subsequent performance testing of sources of this type and size.

Revisions to the permit following source review:

The source clarified an error with the flow diagram for the Hot Mix Asphalt Plant 1. The flow diagram depicts the new feed bin being added for this permitting action as being part of the existing 4-compartment feed bin identified as EU: HM95. The new feed bin is a separate unit that has a working capacity that is equal to the existing 4-compartment bin. This new emission unit is identified as EU: HM103. The source PTE has been updated accordingly.

Emission Units

Table 1: Emission Units List

EU	Rating	Description	Make	Model	Serial	SCC
Construction Debris Area						
LF94		Truck Unloading				30502503
		Transfer Over Edge				30502503
North Pit Quarry and Aggregate Plant						
TT2 ¹	200 TPH	VGF	Thunderbird	4218G4VGFCZ729	10079-1	30502505
	400 TPH	Jaw Crusher	Pioneer	Rock Eater 3042	400571	30502510
AG1		Quarry Loading Bin (Feed Hopper)				30502505
AG75 (new)		Feed Hopper and Belt (Alternate Operating Scenario)				30502505
AG2		Conveyor System (5 Belts and Stacker)				30502503
AG11		Belt Feeder System (5 belts)				30502503
AG17		Splitter 2				30502503
AG19	432 TPH	2-Deck Screen	Pioneer	6 x 16	402716	30502511
AG68		Reversible Conveyor belt				30502503
AG64		Conveyor System (1 belt & stacker)				30502503
AG39		Conveyor System; Alternate (1 belt and stacker)				30502503
AG20	200 TPH	Cone Crusher	Nordberg	4 ¼ Standard	41086	30502510
AG21		Belt D				30502503
AG69		Splitter 1				30502503
AG28	480 TPH	3-Deck Screen	Pioneer	6 x16	616226BG130	30502511
AG34		Conveyor System (2 belts)				30502503
AG35	450 TPH	3-Deck Screen	Pioneer	6 x16	616226BG136	30502511
AG36	70 TPH	Cone Crusher	Nordberg	4 short head	40816	30502510
AG37		Conveyor Belt (Recirculation)				30502503
AG38		Belt A				30502503
AG43		Stacker Belt (3/4" stockpile)				30502505
AG52		Conveyor System (3 Belts)				30502503
AG53	300 TPH	VSI Crusher (with baghouse)	ISC	66	66122	30502510
AG54		Conveyor System (2 belts)				30502503
AG72		3-Bin Feeder				30502505
AG73		Conveyor System (2 belts)				30502503
AG56	500 TPH	3-Deck Screen	Trio	TIO6163	TIO6163-277	30502511
AG45		Stacker Belt (1/2" stockpile)				30502505
AG61		Stacker Belt (chips stockpile)				30502505
AG46		Conveyor System (2 belts)				30502503
AG48	300 TPH	2-Deck Screen	Pioneer	6 x 20	620332BG214	30502511

EU	Rating	Description	Make	Model	Serial	SCC
AG49		Conveyor System (1 belt & stacker)				30502503
AG51		Stacker Belt (coarse sand)				30502505
AG70		Fine Material Conveyor				30502503
AG71		Bucket Wheel Wash and Stacker (fines wash – wet)				30502505
Hot Mix Asphalt Plant I						
HM102 (new)		Loader to 3-Compartment Bin				30500216
HM69		Stockpile Feed Belt				30500204
HM95		4-Compartment Cold Feed Bin				30500216
HM103 (new)		Cold Feed bin				30500216
HM70		Feeders (4) to Cold Feed Belt				30500204
HM96		Belt 2				30500217
HM73		Fines Bins Loading (Manufactured and Natural Sand)				30500216
LM1/7		Lime Silo				30500213
LM3		Pugmill				30500204
HM79	375 TPH	Screen	Kolberg	10-4810	23364810851	30500202
HM80		Belt 5				30500217
HM97		RAP Feeder				30500204
RAP8	125 TPH	Recycle Screen	Kolberg	1D-366	2341366851D	30500202
HM81	400 TPH	Asphalt Drum Mixer	Gencor Ind.	Skidded Ultradrums	5642	30500242
HM98		Fines Silo (with Baghouse)				30500213
HM85		Screw Conveyor Belt				30500217
HM77		Silo Loading Belt System (4 belts)				30500217
HM86		5-Storage Silos System				30500213
		Truck Loadout System				30500214
HM99		Reject Material Truck Loading				30500214
HM92	1.2 MMBtu/hr	Asphalt Heater (Natural Gas)	Power Flame	HC120	H86141	30500206
Hot Mix Asphalt Plant II						
HA01 (new)		Loader to 14-Bin Cold Feed System				30500216
HA02 (new)	450 TPH	2- Deck Screen	Astec	SS-616-2	TBD	30500202
HA03 (new)		RAP Feed Bins				30500204
HA04 (new)	150 TPH	RAP Screen	Astec	SS-412-1	TBD	30500202
HA05 (new)	600 TPH	Drum Mixer (with Baghouse)	Astec	DDC-1040C	TBD	30500242
HA06 (new)		Belt 5				30500217

EU	Rating	Description	Make	Model	Serial	SCC
HA07 (new)		Silo Loading Belt System				30500217
HA08 (new)		6-Asphalt Storage Silo System/Truck Loadout				30500213 30500214
HA09 (new)		Pugmill Bin Loading				30500204
HA10 (new)		Mini Pugmill	Fisher	3 x 10	36-10-PM32606144	30500204
HA11 (new)		Stacker (waste)				30500217
HA12 (new)	3.0 MMBtu/hr	Asphalt Heater (Natural Gas)	Heatec	HC300	TBD	30500206
Lime Marination Plant						
LM1B		Hopper				30500204
LM2B		Conveyor System (2 belts)				30500217
LM7B		Lime Silo Loading				30500213
LM4B		Pug Mill				30500204
LM5B		Conveyor System (1 belt & stacker)				30500217
LM9B (new)		Conveyor System (2 belts & stacker)				30500217
Rocky Mountain Crushing Plant (Type II)						
TT2	600 TPH	VGFC	Thunderbird	4218G4VGFCZ729	10079-1	30502505
		Jaw Crusher	Pioneer	Rock Eater 3042	400571	30502510
RAP1		RAP Hopper				30500204
TT6		Conveyor System (3 belts)				30500217
TT8	475 TPH	Portable Screen	JCI	6163-32	98H05A32	30502511
	75 TPH	Portable Crusher	Crush Boss	400	4156-514	30502510
TT10		Conveyor System (2 belts & stacker)				30502503
TT13		Conveyor System (2 belts & stacker)				30502503
TT18		Conveyor System (2 belts & stacker)				30502503
Stockpiles						
AG66	51 Acres	Stockpiles				30502507
Haul Roads						
MB02	40,000 VMT/yr	Haul Roads, paved				30502504
Storage Tanks						
TK1	20,000 gallon	WCI Split Tank (5,000 gal gasoline/15,000 gal diesel)				40600306

¹This unit can be positioned in various locations between belts 4 through 8, as needed.

The following units or activities are present at this source, but are insignificant activities pursuant to AQR Section 12.1. The emissions from these units or activities, when added to the PTE of the source, will not make the source a major emitter of any pollutant.

Table 2: Insignificant Activities

Description	Rating	Manufacturer	Model No.	Serial No.
Hot Oil Tank	35,000 gallons	Heatec		
Oil Tank	30,000 gallons	Hyway		
Oil Tank	15,000 gallons			
Oil Tank	15,000 gallons			
Asphaltic Concrete Tank	35,000 gallons			
Asphaltic Concrete Tank	15,000 gallons			
Asphaltic Concrete Tank	15,000 gallons			
Asphaltic Concrete Tank	15,000 gallons			
Light Tower	6 kW	Ingersoll-Rand	L6-4MH	301369UEJ822
Light Tower	6 kW	Ingersoll-Rand	L6-4MH	296107ULI822
Light Tower	6 kW	Marathon Electric	332CSA5201	601324

Calculation of Applicability Emissions, PTE and Emission Increases

Due to the fact that this action is for the renewal of an Operating Permit, the source is being reassessed for AQR Section 12.1 permitting applicability. This is determined by calculating the PTE for all proposed emission units using 8,760 hours of operation and emission factors without controls. The AQR Section 12 applicability calculations are shown in Tables 3 and 4. Fugitive emissions from stockpiles and haul roads are not included with the applicability determination.

Table 3: Source Permit Applicability (PM_{2.5} and PM₁₀)

EU	Description	Throughput		EF (lbs/ton)		PTE (tons/yr)	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
Construction Debris Area							
LF94	Truck Unloading	350	3,066,000	0.0001	0.0001	0.15	0.15
	Transfer over edge	350	3,066,000	0.0001	0.0001		
North Pit Quarry and Aggregate Plant							
TT2	Conveyor to VGF/Jaw	600	5,256,000	0.00002	0.00006	0.31	14.62
	VGF	600	5,256,000				
	Jaw Crusher	600	5,256,000	0.00015	0.008256		
	VGF/Jaw to Various Belts (4 - 8)	600	5,256,000				
AG1	Loader to Quarry Loading Bin (Feed Hopper)	600	5,256,000	0.00002	0.003784	0.11	19.89
	Feed Hopper to Belt 8	600	5,256,000	0.00002	0.003784		
AG75	Loader to Alternate Quarry Loading Bin (Feed Hopper)	600	5,256,000	Alternate Operation (PTE included in AG1)		0	0
	Alternate Feed Hopper to Belt 9						
	Belt 9 to Belt 6						
AG2	Belt 8 to Belt 7	600	5,256,000	0.00002	0.003784	0.32	59.67
	Belt 7 to Belt 6	600	5,256,000	0.00002	0.003784		
	Belt 6 to Belt 5	600	5,256,000	0.00002	0.003784		
	Belt 5 to Belt 4	600	5,256,000	0.00002	0.003784		
	Belt 4 to Belt Stacker 1	600	5,256,000	0.00002	0.003784		
	Stacker 1 to Surge Pile	600	5,256,000	0.00002	0.003784		
AG11	Feeder System; 3 belts	800	7,008,000	Enclosed		0.14	26.52
	Feeder Belt 3 to Belt 31	800	7,008,000	0.00002	0.003784		
	Belt 31 to Splitter 2	800	7,008,000	0.00002	0.003784		

EU	Description	Throughput		EF (lbs/ton)		PTE (tons/yr)	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
AG17	Splitter 2 to Main Feed Belt (Type II)	320	2,803,000	0.00002	0.003784	0.07	13.25
	Splitter 2 to Belt 19	480	4,205,000	0.00002	0.003784		
AG19	Main Feed Belt to Screen	340	2,978,400	0.000073	0.029928	0.14	56.62
	2-Deck Screen	432	3,784,320				
	Screen to Enclosed Belt	200	1,750,000				
	Screen to Reversible Belt	180	1,576,800				
AG68	Reversible Belt (to EU: AG64 or EU: AG39)	180	1,576,800	0.00002	0.003784	0.02	2.98
AG64	Belt to Stacker	228	1,997,280	0.00002	0.003784	0.04	7.56
	Stacker to Stockpile	228	1,997,280	0.00002	0.003784		
AG39	Alternate Belt to Stacker	180	1,576,800	Alternate Operation (PTE included in AG64)		0	0
	Alternate Stacker to Stockpile						
AG20	Enclosed Belt to Crusher	200	1,750,000	0.00015	0.008256	0.13	7.22
	Belt C to Cone Crusher	40	350,400				
	Cone Crusher	200	1,750,000				
	Crusher to Belt D	200	1,750,000				
AG21	Belt D to Splitter 1	200	1,750,000	0.00002	0.003784	0.02	3.31
AG69	Splitter 1 to Main Feed Belt	200	1,750,000	0.00002	0.003784	0.03	6.29
	Splitter 1 to Belt 16	180	1,576,800	0.00002	0.003784		
AG28	Belt 19 to Screen	480	4,204,800	0.000073	0.029928	0.15	26.19
	3-Deck Screen	480	4,204,800				
	Screen to Conveyor Belt 16	200	1,750,000				
	Screen to VSI Belt 1	192	1,681,920				
	Screen to Conveyor Belt C	40	350,400				
	Screen to Belt (Natural Sand)	48	420,480				
AG34	Belt 16 to Belt 17	380	3,328,800	0.00002	0.003784	0.03	6.30
AG35	Belt 17 to Screen	450	3,942,000	0.000073	0.029928	0.14	58.99
	Pioneer 3-Deck Screen	450	3,942,000				
	Screen to Cone Crusher	70	613,200				
	Screen to VSI Belt 3	140	1,226,400				
	Screen to Belt A	164	1,436,640				
	Screen to Belt (3/4" Aggregate)	76	665,760				
AG36	Nordberg Cone Crusher	70	613,200	0.00015	0.008256	0.04	2.56
	Crusher to Recirculation Belt						
AG37	Recirculation Belt to Belt 17	70	613,200	0.00002	0.003784	0.01	1.16
AG38	Belt A to Sand Circuit Belt 1	164	1,436,640	0.00002	0.003784	0.01	2.72
AG43	Stacker to 3/4" Stockpile	76	665,760	0.00002	0.003784	0.01	1.26
AG52	VSI Belt 3 to Belt B	140	1,226,400	0.00002	0.003784	0.04	8.29
	VSI Belt 1 to Belt B	192	1,681,920	0.00002	0.003784		
	VSI Belt 2 to Belt B	168	1,471,680	0.00002	0.003784		
AG53	Belt B to Crusher	500	4,380,000	0.00015	0.008256	0.19	10.85
	VSI Crusher (with Baghouse)	300	2,628,000				
	Crusher to VSI Belt 4	300	2,628,000				
AG54	VSI Belt 4 to VSI Belt 5	300	2,628,000	0.00002	0.003784	0.03	4.97
AG72	Loader to 3-Bin Feeder	200	1,750,000	0.00002	0.003784	0.04	6.62
	3-Bin Feeder to Belt AG721	200	1,750,000	0.00002	0.003784		
AG73	Belt AG721 to Belt AG722	200	1,750,000	0.00002	0.003784	0.04	6.62
	Belt AG722 to VSI Belt 5	200	1,750,000	0.00002	0.003784		
AG56	VSI Belt 5 to Screen	500	4,380,000	0.000073	0.029928	0.16	65.54
	Pioneer 3-Deck Screen	500	4,380,000				

EU	Description	Throughput		EF (lbs/ton)		PTE (tons/yr)	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
	Screen to 1/2" Stacker	151	1,322,760				
	Screen to Chips Stacker	17	148,920				
	Screen to VSI Belt 2	168	1,471,680				
	Screen to Sand Circuit Belt 1	164	1,436,640				
AG45	Stacker to 1/2" Stockpile	151	1,322,760	0.00002	0.003784	0.01	2.50
AG61	Stacker to Chips Stockpile	17	148,920	0.00002	0.003784	0.01	0.28
AG46	Sand Circuit Belt 1 to Sand Circuit Belt 2	328	2,873,280	0.00002	0.003784	0.03	5.44
AG48	Sand Circuit Belt 2 to Screen	328	2,873,280	0.000073	0.029928	0.10	39.32
	Pioneer 2-Deck Screen	300	2,628,000				
	Screen to Stacker (Coarse Sand)	151	1,322,760				
	Screen to Reversible Belt (Manufactured Sand)	177	1,550,520				
AG49	Reversible Belt to Stacker (Manufactured Sand) or to Fine Material Belt	177	1,550,520	0.00002	0.003784	0.03	5.87
	Stacker Belt to Manufactured Sand Stockpile	177	1,550,520	0.00002	0.003784		
AG51	Stacker to Stockpile (Coarse Sand)	151	1,322,760	0.00002	0.003784	0.02	2.50
AG70	Fine Material Belt to Bucket Wheel Fines Wash	177	1,550,520	0.00002	0.003784	0.02	2.93
AG71	Bucket Wheel Fines Wash to Stacker	177	1,550,520	Wet Process		0	0
	Stacker to Stockpile (Wash Sand)						
Hot Mix Asphalt Plant I							
HM102	Loader to 3-Compartment Feed Bin	375	3,285,000	0.00002	0.003784	0.07	12.43
	3-Compartment Feed Bin to Stockpile Feed Belt	375	3,285,000	0.00002	0.003784		
HM69	Stockpile to Stockpile Feed Belt	375	3,285,000	0.00002	0.003784	0.03	6.21
HM95	Loader to 4-Compartment Feed Bin	375	3,285,000	0.00002	0.003784	0.03	6.21
HM103	Loader to Feed Bin	375	3,285,400	0.00002	0.003784	0.03	6.21
HM70	Feed Bin Belt Feeders to Cold Feed Belt	375	3,285,000	0.00002	0.003784	0.03	6.21
HM96	Stockpile Feed Belt to Belt 2	375	3,285,000	0.00002	0.003784	0.10	18.64
	Cold Feed Conveyor Belt to Belt 2 (EU: HM70)	375	3,285,000	0.00002	0.003784		
	Single Feed Bin (EU: HM103)	375	3,285,400	0.00002	0.003784		
HM73	Fines Bins Loading (Manufactured & Natural Sand)	375	3,285,000	0.00002	0.003784	0.07	12.43
	Fines Bins to Belt 2	375	3,285,000	0.00002	0.003784		
LM1/7	Lime Silo (loading)	10	87,600	1.10	1.10	48.18	48.18
LM3	Lime Silo screw conveyor to Pug Mill	10	87,600	Enclosed		0.07	12.43
	Conveyor Belt 2 to Pug Mill	375	3,285,000	0.00002	0.003784		
	Pug Mill	375	3,285,000				
	Pug Mill to Belt 3	375	3,285,000	0.00002	0.003784		

EU	Description	Throughput		EF (lbs/ton)		PTE (tons/yr)	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
HM79	Belt 3 to Screen	375	3,285,000	0.000073	0.029928	1.20	49.16
	Kolberg Scalping Screen						
	Screen to Belt 4						
HM80	Belt 4 to Belt 5	375	3,285,000	0.00002	0.003784	0.03	6.21
HM97	Loader to Feeder 1 or Feeder 2 (RAP)	125	1,095,000	0.00002	0.003784	0.02	4.14
	Feeder 1 or 2 to Feeder Belt	125	1,095,000	0.00002	0.003784		
RAP8	Feeder Belt to Recycle Screen	125	1,095,000	0.000073	0.029928	0.04	16.39
	Kolberg Recycle Screen						
	Screen to RAP Belt						
HM81	Belt 5 to Drum Mixer	375	3,285,000	0.007	0.01	12.26	17.52
	RAP Belt to Drum Mixer	125	1,095,000				
	Asphalt Drum Mixer	400	3,504,000				
	Drum Mixer screw conveyor to Storage Silos	400	3,504,000	Enclosed			
	Drum Mixer screw conveyor to Fines Silo	40	350,400	Enclosed			
HM98	Fines Hopper (Enclosed with baghouse control and enclosed recirculation to drum mixer)	40	350,400	0.00002	0.003784	0.01	1.99
	Fines Silo (Baghouse control)	40	350,400	0.00002	0.003784		
	Fines Silo Truck Loadout	40	350,400	0.00002	0.003784		
HM85	Silo to Loading Belts	400	3,504,000	0.00002	0.003784	0.04	6.63
HM77	Silo Loading Belt System (enclosed)	390	3,416,400	0.00002	0.003784	0.03	6.46
HM86	5 Storage Silos	390	3,416,400	0.000586	0.000586	1.00	1.00
	5 Truck Loadouts	390	3,416,400	0.000522	0.000522	0.89	0.89
HM99	Screw Conveyor to Reject Flow Chute	10	87,600	0.00002	0.003784	0.01	0.50
	Reject Material Truck Loading	10	87,600	0.00002	0.003784		
	Reject Material Stockpiling	10	87,600	0.00002	0.003784		
Hot Mix Asphalt Plant II							
HA01	Loader to 14-Bin Cold Feed System	450	3,942,000	0.00002	0.003784	0.08	14.92
	Cold Feed Belts to Belt 1	450	3,942,000	0.00002	0.003784		
HA02	Belt 1 to Screen	450	3,942,000	0.000073	0.029928	0.14	58.98
	Screen						
	Screen to Belt 2						
HA03	Loader to 2-Bin RAP Feeder	150	1,314,000	0.00002	0.003784	0.03	4.97
	2-Bin RAP to Belt 4	150	1,314,000	0.00002	0.003784		
HA04	Belt 4 to Screen	150	1,314,000	0.000073	0.029928	0.05	19.66
	RAP Screen						
	Screen to Belt 3						
HA05	Belt 2 to Drum Mixer	600	5,256,000	0.0161	0.023	42.31	60.44
	Belt 3 to Drum Mixer						
	Drum Mixer (with Baghouse)						
	Drum Mixer to Fines Hopper						
	Drum Mixer to Fines Silo						
Drum Mixer to Belt 5							
HA06	Belt 5 to Asphalt Silos	600	5,256,000	0.00002	0.003784	0.05	10.29
	Belt 5 to Screw Conveyor	21	183,960	0.00002	0.003784		

EU	Description	Throughput		EF (lbs/ton)		PTE (tons/yr)	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
HA07	Silo Loading Belt System (enclosed)	600	5,256,000	0.00002	0.003784	0.05	9.94
HA08	Asphalt Silos #1 – #6 and Truck Loadout	600	5,256,000	0.000586	0.000586	1.54	1.54
				0.000522	0.000522	1.37	1.37
HA09	Loader to Pug Mill Bin	6	52,560	0.00002	0.003784	0.01	0.20
	Pugmill Bin to Belt 7	6	52,560	0.00002	0.003784		
HA10	Screw Conveyor to Pug Mill	21	183,960	0.00002	0.003784	0.01	0.89
	Belt 7 to Pug Mill	6	52,560	0.00002	0.003784		
	Mini Pug Mill	27	236,520				
	Pug Mill to Stacker 1	27	236,520	0.00002	0.003784		
HA11	Stacker 1 to Stockpile (Waste)	27	236,520	0.00002	0.003784	0.01	0.45
Lime Marination Plant							
LM1B	Loader to Hopper	375	3,285,000	0.00002	0.003784	0.07	12.43
	Hopper to Belt 1	375	3,285,000	0.00002	0.003784		
LM2B	Belt 1 to Belt 2	375	3,285,000	0.00002	0.003784	0.07	12.43
	Belt 2 to Splitter	375	3,285,000	0.00002	0.003784		
LM7B	Lime Silo Loading	38	322,880	1.10	1.10	177.58	177.58
LM4B	Splitter to Pug Mill	375	3,285,000	0.00002	0.003784	0.07	13.69
	Lime Silo to Pug Mill	38	322,880	0.00002	0.003784		
	Pug Mill	413	3,617,880				
	Pug mill to Belt 4	413	3,617,880	0.00002	0.003784		
LM5B	Splitter to Belt 3	375	3,285,000	0.00002	0.003784	0.10	18.65
	Belt 3 to Stacker	375	3,285,000	0.00002	0.003784		
	Stacker to Stockpile (Unmarinated Aggregate)	375	3,285,000	0.00002	0.003784		
LM9B	Belt 4 to Belt 5	413	3,617,880	0.00002	0.003784	0.11	20.53
	Belt 5 to Stacker	413	3,617,880	0.00002	0.003784		
	Stacker to Stockpile (Marinated Aggregate)	413	3,617,880	0.00002	0.003784		
Rocky Mountain Crushing Plant (Type II)							
TT2	Loader to VGF	400	3,504,000	0.00002	0.00015	0.31	14.56
	VGF						
	Jaw Crusher						
	VGF/Jaw Crusher to Belt 1						
RAP1	Loader to RAP Hopper	400	3,504,000	Alternate Operation for RAP. (PTE included with EU: TT2)		0	0
	RAP Hopper to Hopper Belt						
	Hopper Belt to Conveyor 2						
TT6	Belt 1 to Belt 2	400	3,504,000	0.00002	0.003784	0.08	14.50
	Belt 2 to Belt 3	400	3,504,000	0.00002	0.003784		
	Recirculation Belt to Belt 3	75	657,000	0.00002	0.003784		
TT8	Belt 3 to Screen	475	4,161,000	0.000073	0.029928	0.20	64.97
	Screen S-2	475	4,161,000				
	Screen to Underbelt	75	657,000				
	Screen to Belt 4	150	1,314,000				
	Screen to Belt 6	150	1,314,000				
	Screen to Belt 8	100	1,314,000				
	Underbelt to Crusher	75	657,000	0.000146	0.008256		
	Crusher	75	657,000				
Crusher to Recirculation Belt	75	657,000					
TT10	Belt 4 to Belt 5	150	1,314,000	0.00002	0.003784	0.39	7.46
	Belt 5 to Stacker 1	150	1,314,000	0.00002	0.003784		

EU	Description	Throughput		EF (lbs/ton)		PTE (tons/yr)	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
	Stacker 1 to Stockpile 1	150	1,314,000	0.00002	0.003784		
TT13	Belt 6 to Belt 7	150	1,314,000	0.00002	0.003784	0.39	7.46
	Belt 7 to Stacker	150	1,314,000	0.00002	0.003784		
	Stacker 2 to Stockpile 2	150	1,314,000	0.00002	0.003784		
TT18	Belt 8 to Belt 9	100	876,000	0.00002	0.003784	0.03	4.97
	Belt 9 to Stacker 3	100	876,000	0.00002	0.003784		
	Stacker 3 to Stockpile 3	100	876,000	0.00002	0.003784		
Total						291.79	1,271.70

Table 4: Source Applicability Emissions (other pollutants)

EU	Description	Throughput		Pollutant	EF (lbs/ton)	PTE (tons/yr)
		tons/hour	tons/yr			
HM81	Asphalt Drum Mixer	400	3,504,000	NO _x	0.026	45.55
				CO	0.13	227.76
				SO ₂	0.0034	5.96
				VOC	0.032	56.06
HM86	5 Storage Silos	390	3,416,400	CO	0.00118	2.02
	5 Truck Loadouts	390	3,416,400	VOC	0.0122	20.84
				CO	0.00135	2.31
				VOC	0.00416	7.11
HA05	Asphalt Drum Mixer	600	5,256,000	NO _x	0.026	68.33
				CO	0.13	341.64
				SO ₂	0.0034	8.94
				VOC	0.032	84.10
HA08	Asphalt Silos 1 – 6	600	5,256,000	CO	0.00118	3.10
	Truck Loading	600	5,256,000	VOC	0.0122	32.06
				CO	0.00135	3.55
				VOC	0.00416	10.93
EU	Description	Rating	Operation	Pollutant	EF (lbs/MMBtu)	PTE
HM92	Natural Gas-Fired Asphalt Heater	1.2 MMBtu/hr	8,760 hrs/year	PM ₁₀	0.0075	0.04
				PM _{2.5}	0.0075	0.04
				NO _x	0.098	0.52
				CO	0.0824	0.43
				SO ₂	0.0006	0.01
HA12	Natural Gas-Fired Asphalt Heater	3.0 MMBtu/hr	8,760 hrs/year	VOC	0.0054	0.03
				PM ₁₀	0.0075	0.10
				PM _{2.5}	0.0075	0.10
				NO _x	0.098	1.29
				CO	0.0824	1.08
TK1	Gasoline Portion of Tank (5,000 gallons)		50,000 gallons/yr	SO ₂	0.0006	0.01
				VOC	0.0054	0.07
				VOC	TANKS 4.09	1.14

Table 5: AQR Section 12.1.1(c) Applicability Thresholds (tons per year)

	PM ₁₀	PM _{2.5}	NO _x	CO	SO ₂	VOC
Applicability Thresholds	5	5	5	25	25	5
Applicability Emissions	1,271.84	291.93	115.69	581.89	14.92	212.34

As indicated in Table 5, the uncontrolled source emissions for PM_{2.5}, PM₁₀, NO_x, CO, and VOC pollutants exceed the AQR 12.1.1(c) permitting threshold. As a result, the source qualifies as a stationary source and is subject to all applicable permitting regulations thereof.

The source classification (major, SM80, synthetic minor, minor) is determined by calculating the unlimited production for each emission unit using emission factors with controls. The results of this determination are shown in Tables 6 and 7.

Table 6: Emission Calculations with Maximum Throughputs using Controlled EF (PM)

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
Construction Debris Area							
LF94	Truck Unloading	350	3,066,000	0.0001	0.0001	0.15	0.15
	Transfer over edge	350	3,066,000	0.0001	0.0001		
North Pit Quarry and Aggregate Plant							
TT2	Conveyor to VGF/Jaw	600	5,256,000	0.00002	0.00006	0.31	3.42
	VGF	600	5,256,000				
	Jaw Crusher	400	3,504,000	0.00015	0.00186		
	VGF/Jaw to Various Belts (4 - 8)	600	5,256,000				
AG1	Loader to Quarry Loading Bin (Feed Hopper)	600	5,256,000	0.00002	0.00016	0.11	0.84
	Feed Hopper to Belt 8	600	5,256,000	0.00002	0.00016		
AG75	Loader to Alternate Quarry Loading Bin (Feed Hopper)	600	5,256,000	Alternate Operation (PTE included in AG1)		0	0
	Alternate Feed Hopper to Belt 9 Belt 9 to Belt 6						
AG2	Belt 8 to Belt 7	600	5,256,000	0.00002	0.00016	0.32	2.52
	Belt 7 to Belt 6	600	5,256,000	0.00002	0.00016		
	Belt 6 to Belt 5	600	5,256,000	0.00002	0.00016		
	Belt 5 to Belt 4	600	5,256,000	0.00002	0.00016		
	Belt 4 to Belt Stacker 1	600	5,256,000	0.00002	0.00016		
	Stacker 1 to Surge Pile	600	5,256,000	0.00002	0.00016		
AG11	Feeder System; 3 belts	800	7,008,000	Enclosed		0.14	1.12
	Feeder Belt 3 to Belt 31	800	7,008,000	0.00002	0.00016		
	Belt 31 to Splitter 2	800	7,008,000	0.00002	0.00016		
AG17	Splitter 2 to Main Feed Belt	320	2,803,000	0.00002	0.00016	0.07	0.56
	Splitter 2 to Belt 19	480	4,205,000	0.00002	0.00016		
AG19	Main Feed Belt to Screen	340	2,978,400	0.00007	0.00255	0.13	4.83
	2-Deck Screen	432	3,784,320				
	Screen to Enclosed Belt	200	1,750,000				
	Screen to Reversible Belt	180	1,576,800				
AG68	Reversible Belt (to EU: AG64 or EU: AG39)	180	1,576,800	0.00002	0.00016	0.02	0.13
AG64	Belt to Stacker	228	1,997,280	0.00002	0.00016	0.04	0.32
	Stacker to Stockpile	228	1,997,280	0.00002	0.00016		
AG39	Alternate Belt to Stacker	180	1,576,800	Alternate Operation (PTE included in AG64)		0	0
	Alternate Stacker to Stockpile						
AG20	Enclosed Belt to Crusher	200	1,750,000	0.00015	0.00186	0.13	1.63
	Belt C to Cone Crusher	40	350,400				
	Cone Crusher	200	1,750,000				
	Crusher to Belt D	200	1,750,000				

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
AG21	Belt D to Splitter 1	200	1,750,000	0.00002	0.00016	0.02	0.14
AG69	Splitter 1 to Main Feed Belt	200	1,750,000	0.00002	0.00016	0.03	0.27
	Splitter 1 to Belt 16	180	1,576,800	0.00002	0.00016		
A28	Belt 19 to Screen	480	4,204,800	0.00007	0.00255	0.15	5.36
	3-Deck Screen	480	4,204,800				
	Screen to Conveyor Belt 16	200	1,750,000				
	Screen to VSI Belt 1	192	1,681,920				
	Screen to Conveyor Belt C	40	350,400				
	Screen to Belt (Natural Sand)	48	420,480				
AG34	Belt 16 to Belt 17	380	3,328,800	0.00002	0.00016	0.03	0.27
AG35	Belt 17 to Screen	450	3,942,000	0.00007	0.00255	0.14	5.03
	Pioneer 3-Deck Screen	450	3,942,000				
	Screen to Cone Crusher	70	613,200				
	Screen to VSI Belt 3	140	1,226,400				
	Screen to Belt A	164	1,436,640				
	Screen to Belt (3/4" Aggregate)	76	665,760				
AG36	Nordberg Cone Crusher	70	613,200	0.00015	0.00186	0.05	0.57
	Crusher to Recirculation Belt						
AG37	Recirculation Belt to Belt 17	70	613,200	0.00002	0.00016	0.01	0.05
AG38	Belt A to Sand Circuit Belt 1	164	1,436,640	0.00002	0.00016	0.01	0.11
AG43	Stacker to 3/4" Stockpile	76	665,760	0.00002	0.00016	0.01	0.05
AG52	VSI Belt 3 to Belt B	140	1,226,400	0.00002	0.00016	0.04	0.35
	VSI Belt 1 to Belt B	192	1,681,920	0.00002	0.00016		
	VSI Belt 2 to Belt B	168	1,471,680	0.00002	0.00016		
A53	Belt B to Crusher	500	4,380,000	0.00015	0.00186	0.20	2.44
	VSI Crusher (with Baghouse)	300	2,628,000				
	Crusher to VSI Belt 4	300	2,628,000				
A54	VSI Belt 4 to VSI Belt 5	300	2,628,000	0.00002	0.00016	0.03	0.21
AG72	Loader to 3-Bin Feeder	200	1,750,000	0.00002	0.00016	0.04	0.28
	3-Bin Feeder to Belt AG721	200	1,750,000	0.00002	0.00016		
AG73	Belt AG721 to Belt AG722	200	1,750,000	0.00002	0.00016	0.04	0.28
	Belt AG722 to VSI Belt 5	200	1,750,000	0.00002	0.00016		
AG56	VSI Belt 5 to Screen	500	4,380,000	0.00007	0.00255	0.15	5.58
	Pioneer 3-Deck Screen	500	4,380,000				
	Screen to 1/2" Stacker	151	1,322,760				
	Screen to Chips Stacker	17	148,920				
	Screen to VSI Belt 2	168	1,471,680				
	Screen to Sand Circuit Belt 1	164	1,436,640				
AG45	Stacker to 1/2" Stockpile	151	1,322,760	0.00002	0.00016	0.01	0.11
AG61	Stacker to Chips Stockpile	17	148,920	0.00002	0.00016	0.01	0.01
AG46	Sand Circuit Belt 1 to Sand Circuit Belt 2	328	2,873,280	0.00002	0.00016	0.03	0.23
AG48	Sand Circuit Belt 2 to Screen	328	2,873,280	0.00007	0.00255	0.09	3.35
	Pioneer 2-Deck Screen	300	2,628,000				
	Screen to Stacker (Coarse Sand)	151	1,322,760				
	Screen to Reversible Belt (Manufactured Sand)	177	1,550,520				
AG49	Reversible Belt to Stacker (Manufactured Sand) or to Fine Material Belt	177	1,550,520	0.00002	0.00016	0.03	0.25

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
	Stacker Belt to Manufactured Sand Stockpile	177	1,550,520	0.00002	0.00016		
AG51	Stacker to Stockpile (Coarse Sand)	151	1,322,760	0.00002	0.00016	0.01	0.11
AG70	Fine Material Belt to Bucket Wheel Fines Wash	177	1,550,520	0.00002	0.00016	0.02	0.12
AG71	Bucket Wheel Fines Wash to Stacker	177	1,550,520	Wet Process		0	0
	Stacker to Stockpile (Wash Sand)						
Hot Mix Asphalt Plant I							
HM102	Loader to 3-Compartment Feed Bin	375	3,285,000	0.00002	0.00016	0.07	0.53
	3-Compartment Feed Bin to Stockpile Feed Belt	375	3,285,000	0.00002	0.00016		
HM69	Stockpile to Stockpile Feed Belt	375	3,285,000	0.00002	0.00016	0.03	0.26
HM95	Loader to 4-Compartment Feed Bin	375	3,285,000	0.00002	0.00016	0.03	0.26
HM103	Loader to Feed Bin	375	3,285,000	0.00002	0.00016	0.03	0.26
HM70	Feed Bin Belt Feeders to Cold Feed Belt	375	3,285,000	0.00002	0.00016	0.03	0.26
HM96	Stockpile Feed Belt to Belt 2	375	3,285,000	0.00002	0.00016	0.10	0.79
	Cold Feed Conveyor Belt to Belt 2 (EU: HM70)	375	3,285,000	0.00002	0.00016		
	Single Feed Bin (EU: HM103)	375	3,285,000	0.00002	0.00016		
HM73	Fines Bins Loading (Manufactured & Natural Sand)	375	3,285,000	0.00002	0.00016	0.07	0.53
	Fines Bins to Belt 2	375	3,285,000	0.00002	0.00016		
LM1/7	Lime Silo (loading)	10	87,600	0.0049	0.0049	0.21	0.21
LM3	Lime Silo screw conveyor to Pug Mill	10	87,600	Enclosed		0.07	0.53
	Conveyor Belt 2 to Pug Mill	375	3,285,000	0.00002	0.00016		
	Pug Mill	375	3,285,000				
	Pug Mill to Belt 3	375	3,285,000	0.00002	0.00016		
HM79	Belt 3 to Screen	375	3,285,000	0.00007	0.00255	0.11	4.19
	Kolberg Scalping Screen						
	Screen to Belt 4						
HM80	Belt 4 to Belt 5	375	3,285,000	0.00002	0.00016	0.03	0.26
HM97	Loader to Feeder 1 or Feeder 2 (RAP)	125	1,095,000	0.00002	0.00016	0.02	0.09
	Feeder 1 or 2 to Feeder Belt	125	1,095,000	0.00002	0.00016		
RAP8	Feeder Belt to Recycle Screen	125	1,095,000	0.00007	0.00255	0.04	1.40
	Kolberg Recycle Screen						
	Screen to RAP Belt						
HM81	Belt 5 to Drum Mixer	375	3,285,000	0.007	0.01	12.26	17.52
	RAP Belt to Drum Mixer	125	1,095,000				
	Asphalt Drum Mixer	400	3,504,000				
	Drum Mixer screw conveyor to Storage Silos	400	3,504,000	Enclosed			
	Drum Mixer screw conveyor to Fines Silo	40	350,400	Enclosed			

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
HM98	Fines Hopper (Enclosed with baghouse control and enclosed recirculation to drum mixer)	40	350,400	0.00002	0.00016	0.01	0.08
	Fines Silo (Baghouse control)	40	350,400	0.00002	0.00016		
	Fines Silo Truck Loadout	40	350,400	0.00002	0.00016		
HM85	Silo to Loading Belts	400	3,504,000	0.00002	0.00016	0.04	0.28
HM77	Silo Loading Belt System (enclosed)	390	3,416,400	0.00002	0.00016	0.03	0.27
HM86	5 Storage Silos	390	3,416,400	0.0000293 ¹	0.0000293 ¹	0.05	0.05
	5 Truck Loadouts	390	3,416,400	0.0000261 ¹	0.0000261 ¹	0.05	0.05
HM99	Screw Conveyor to Reject Flow Chute	10	87,600	0.00002	0.00016	0.01	0.01
	Reject Material Truck Loading	10	87,600	0.00002	0.00016		
	Reject Material Stockpiling	10	87,600	0.00002	0.00016		
Hot Mix Asphalt Plant II							
HA01	Loader to 14-Bin Cold Feed System	450	3,942,000	0.00002	0.00016	0.08	0.63
	Cold Feed Belts to Belt 1	450	3,942,000	0.00002	0.00016		
HA02	Belt 1 to Screen	450	3,942,000	0.00007	0.00255	0.14	5.03
	Screen						
	Screen to Belt 2						
HA03	Loader to 2-Bin RAP Feeder	150	1,314,000	0.00002	0.00016	0.03	0.21
	2-Bin RAP to Belt 4	150	1,314,000	0.00002	0.00016		
HA04	Belt 4 to Screen	150	1,314,000	0.00007	0.00255	0.05	1.68
	RAP Screen						
	Screen to Belt 3						
HA05	Belt 2 to Drum Mixer	600	5,256,000	0.0161	0.023	42.31	60.44
	Belt 3 to Drum Mixer						
	Drum Mixer (with Baghouse)						
	Drum Mixer to Fines Hopper						
	Drum Mixer to Fines Silo						
Drum Mixer to Belt 5							
HA06	Belt 5 to Asphalt Silos	600	5,256,000	0.00002	0.00016	0.05	0.44
	Belt 5 to Screw Conveyor	21	183,960	0.00002	0.00016		
HA07	Silo Loading Belt System (enclosed)	600	5,256,000	0.00002	0.00016	0.05	0.42
HA08	Asphalt Silos #1 – #6 and Truck Loadout	600	5,256,000	0.0000293 ¹	0.0000293 ¹	0.08	0.08
				0.0000261 ¹	0.0000261 ¹	0.07	0.07
HA09	Loader to Pug Mill Bin	6	52,560	0.00002	0.00016	0.01	0.01
	Pugmill Bin to Belt 7	6	52,560	0.00002	0.00016		
HA10	Screw Conveyor to Pug Mill	21	183,960	0.00002	0.00016	0.01	0.04
	Belt 7 to Pug Mill	6	52,560	0.00002	0.00016		
	Mini Pug Mill	27	236,520				
	Pug Mill to Stacker 1	27	236,520	0.00002	0.00016		
HA11	Stacker 1 to Stockpile (Waste)	27	236,520	0.00002	0.00016	0.01	0.02
Lime Marination Plant							
LM1B	Loader to Hopper	375	3,285,000	0.00002	0.00016	0.07	0.53
	Hopper to Belt 1	375	3,285,000	0.00002	0.00016		
LM2B	Belt 1 to Belt 2	375	3,285,000	0.00002	0.00016	0.07	0.53
	Belt 2 to Splitter	375	3,285,000	0.00002	0.00016		
LM7B	Lime Silo Loading	38	322,880	0.0049	0.0049	0.79	0.79
LM4B	Splitter to Pug Mill	375	3,285,000	0.00002	0.00016	0.07	0.58

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
	Lime Silo to Pug Mill	38	322,880	0.00002	0.00016		
	Pug Mill	413	3,617,880				
	Pug mill to Belt 4	413	3,617,880	0.00002	0.00016		
LM5B	Splitter to Belt 3	375	3,285,000	0.00002	0.00016	0.10	0.79
	Belt 3 to Stacker	375	3,285,000	0.00002	0.00016		
	Stacker to Stockpile (Unmarinated Aggregate)	375	3,285,000	0.00002	0.00016		
LM9B	Belt 4 to Belt 5	413	3,617,880	0.00002	0.00016	0.11	0.87
	Belt 5 to Stacker	413	3,617,880	0.00002	0.00016		
	Stacker to Stockpile (Marinated Aggregate)	413	3,617,880	0.00002	0.00016		
Rocky Mountain Crushing Plant (Type II)							
TT2	Loader to VGF	400	3,504,000	0.00002	0.00006	0.30	3.36
	VGF						
	Jaw Crusher						
	VGF/Jaw Crusher to Belt 1						
RAP1	Loader to RAP Hopper	400	3,504,000	Alternate Operation for RAP. (PTE included with EU: TT2)		0	0
	RAP Hopper to Hopper Belt						
	Hopper Belt to Conveyor 2						
TT6	Belt 1 to Belt 2	400	3,504,000	0.00002	0.00016	0.04	0.61
	Belt 2 to Belt 3	400	3,504,000	0.00002	0.00016		
	Recirculation Belt to Belt 3	75	657,000	0.00002	0.00016		
TT8	Belt 3 to Screen	475	4,161,000	0.00007	0.00255	0.09	5.92
	Screen S-2	475	4,161,000				
	Screen to Underbelt	75	657,000				
	Screen to Belt 4	150	1,314,000				
	Screen to Belt 6	150	1,314,000	0.00015	0.00186		
	Screen to Belt 8	100	1,314,000				
	Underbelt to Crusher	75	657,000				
	Crusher	75	657,000				
Crusher to Recirculation Belt	75	657,000					
TT10	Belt 4 to Belt 5	150	1,314,000	0.00002	0.00016	0.04	0.11
	Belt 5 to Stacker 1	150	1,314,000	0.00002	0.00016		
	Stacker 1 to Stockpile 1	150	1,314,000	0.00002	0.00016		
TT13	Belt 6 to Belt 7	150	1,314,000	0.00002	0.00016	0.04	0.11
	Belt 7 to Stacker	150	1,314,000	0.00002	0.00016		
	Stacker 2 to Stockpile 2	150	1,314,000	0.00002	0.00016		
TT18	Belt 8 to Belt 9	100	876,000	0.00002	0.00016	0.03	0.21
	Belt 9 to Stacker 3	100	876,000	0.00002	0.00016		
	Stacker 3 to Stockpile 3	100	876,000	0.00002	0.00016		
Total						61.00	152.00

¹This emission factor includes a control factor of 0.05 which equates to 95 percent control for a baghouse.

No additional controls have been proposed for the emission units listed in Table 4. Therefore, the emissions calculated for those unit remain the same for the determination of the source classification. The results of this determination are shown in Table 7. The fact that the emission for PM₁₀, NOX, CO and VOC exceed the major source threshold makes the source a synthetic minor source for these pollutants, while being a true minor source for PM_{2.5} and SO₂.

Table 7: Source Classification Emissions (tons per year)

	PM ₁₀	PM _{2.5}	NO _x	CO	SO ₂	VOC
Major Source Thresholds	100	100	100	100	100	100
Classification Emissions	152.14	60.64	115.69	581.89	14.92	212.34

Table 8: Source PTE (PM_{2.5} and PM₁₀)

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
Construction Debris Area							
LF94	Truck Unloading	350	700,000	0.0001	0.0001	0.08	0.08
	Transfer over edge	350	700,000	0.0001	0.0001		
North Pit Quarry and Aggregate Plant							
TT2	Conveyor to VGF/Jaw	600	950,000	0.00002	0.00006	0.06	0.62
	VGF	600	950,000				
	Jaw Crusher	400	633,000	0.00015	0.00186		
	VGF/Jaw to Various Belts (4 - 8)	600	950,000				
AG1	Loader to Quarry Loading Bin (Feed Hopper)	600	950,000	0.00002	0.00016	0.02	0.15
	Feed Hopper to Belt 8	600	950,000	0.00002	0.00016		
AG75	Loader to Alternate Quarry Loading Bin (Feed Hopper)	600	950,000	Alternate Operation (PTE included in AG1)		0	0
	Alternate Feed Hopper to Belt 9						
	Belt 9 to Belt 6						
AG2	Belt 8 to Belt 7	600	950,000	0.00002	0.00016	0.06	0.46
	Belt 7 to Belt 6	600	950,000	0.00002	0.00016		
	Belt 6 to Belt 5	600	950,000	0.00002	0.00016		
	Belt 5 to Belt 4	600	950,000	0.00002	0.00016		
	Belt 4 to Belt Stacker 1	600	950,000	0.00002	0.00016		
	Stacker 1 to Surge Pile	600	950,000	0.00002	0.00016		
AG11	Feeder System; 3 belts	800	950,000	Enclosed		0.03	0.23
	Feeder Belt 3 to Belt 31	800	950,000	0.00002	0.00016		
	Belt 31 to Short Feed Belt	800	950,000	0.00002	0.00016		
	Short Feed Belt to Splitter 2	800	950,000	0.00002	0.00016		
AG17	Splitter 2 to Main Feed Belt	320	380,000	0.00002	0.00016	0.01	0.08
	Splitter 2 to Belt 19	480	570,000	0.00002	0.00016		
AG19	Main Feed Belt to Screen	340	404,000	0.00007	0.00255	0.02	0.65
	2-Deck Screen	432	513,000				
	Screen to Enclosed Belt	200	238,000				
	Screen to Reversible Belt	180	213,000				
AG68	Reversible Belt (to EU: AG64 or EU: AG39)	180	213,000	0.00002	0.00016	0.01	0.02
AG64	Belt to Stacker	228	270,000	0.00002	0.00016	0.01	0.04
	Stacker to Stockpile	228	270,000	0.00002	0.00016		
AG39	Alternate Belt to Stacker	180	213,000	Alternate Operation (PTE included in AG64)		0	0
	Alternate Stacker to Stockpile						
AG20	Enclosed Belt to Crusher	200	238,000	0.00015	0.00186	0.02	0.22
	Belt C to Cone Crusher	40	47,000				
	Cone Crusher	200	238,000				
	Crusher to Belt D	200	238,000				
AG21	Belt D to Splitter 1	200	238,000	0.00002	0.00016	0.01	0.02
AG69	Splitter 1 to Main Feed Belt	200	238,000	0.00002	0.00016	0.01	0.02
	Splitter 1 to Belt 16	180	213,000				

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
A28	Belt 19 to Screen	480	570,000	0.00007	0.00255	0.02	0.73
	3-Deck Screen	480	570,000				
	Screen to Conveyor Belt 16	200	238,000				
	Screen to VSI Belt 1	192	228,000				
	Screen to Conveyor Belt C	40	47,000				
	Screen to Belt (Natural Sand)	48	57,000				
AG34	Belt 16 to Belt 17	380	451,000	0.00002	0.00016	0.01	0.04
AG35	Belt 17 to Screen	450	534,000	0.00007	0.00255	0.02	0.68
	Pioneer 3-Deck Screen	450	534,000				
	Screen to Cone Crusher	70	83,000				
	Screen to VSI Belt 3	140	166,000				
	Screen to Belt A	164	194,000				
	Screen to Belt (3/4" Aggregate)	76	90,000				
AG36	Nordberg Cone Crusher	70	83,000	0.00015	0.00186	0.01	0.08
	Crusher to Recirculation Belt						
AG37	Recirculation Belt to Belt 17	70	83,000	0.00002	0.00016	0.01	0.01
AG38	Belt A to Sand Circuit Belt 1	164	194,000	0.00002	0.00016	0.01	0.01
AG43	Stacker to 3/4" Stockpile	76	90,000	0.00002	0.00016	0.01	0.01
AG52	VSI Belt 3 to Belt B	140	166,000	0.00002	0.00016	0.01	0.05
	VSI Belt 1 to Belt B	192	228,000	0.00002	0.00016		
	VSI Belt 2 to Belt B	168	200,000	0.00002	0.00016		
AG53	Belt B to Crusher	500	594,000	0.00015	0.00186	0.03	0.33
	VSI Crusher (with Baghouse)	300	356,000				
	Crusher to VSI Belt 4	300	356,000				
AG54	VSI Belt 4 to VSI Belt 5	300	356,000	0.00002	0.00016	0.01	0.03
AG72	Loader to 3-Bin Feeder	200	238,000	0.00002	0.00016	0.01	0.04
	3-Bin Feeder to Belt AG721	200	238,000	0.00002	0.00016		
AG73	Belt AG721 to Belt AG722	200	238,000	0.00002	0.00016	0.01	0.04
	Belt AG722 to VSI Belt 5	200	238,000	0.00002	0.00016		
AG56	VSI Belt 5 to Screen	500	594,000	0.00007	0.00255	0.02	0.76
	Pioneer 3-Deck Screen	500	594,000				
	Screen to 1/2" Stacker	151	180,000				
	Screen to Chips Stacker	17	20,000				
	Screen to VSI Belt 2	168	200,000				
	Screen to Sand Circuit Belt 1	164	194,000				
AG45	Stacker to 1/2" Stockpile	151	180,000	0.00002	0.00016	0.01	0.01
AG61	Stacker to Chips Stockpile	17	20,000	0.00002	0.00016	0.01	0.01
AG46	Sand Circuit Belt 1 to Sand Circuit Belt 2	328	389,000	0.00002	0.00016	0.01	0.03
AG48	Sand Circuit Belt 2 to Screen	328	389,000	0.00007	0.00255	0.01	0.45
	Pioneer 2-Deck Screen	300	356,000				
	Screen to Stacker (Coarse Sand)	151	180,000				
	Screen to Reversible Belt (Manufactured Sand)	177	210,000				
AG49	Reversible Belt to Stacker (Manufactured Sand) or to Fine Material Belt	177	210,000	0.00002	0.00016	0.01	0.03
	Stacker Belt to Manufactured Sand Stockpile	177	210,000	0.00002	0.00016		
AG51	Stacker to Stockpile (Coarse Sand)	151	180,000	0.00002	0.00016	0.01	0.01

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
AG70	Fine Material Belt to Bucket Wheel Fines Wash	177	210,000	0.00002	0.00016	0.01	0.02
AG71	Bucket Wheel Fines Wash to Stacker	177	210,000	Wet Process		0	0
	Stacker to Stockpile (Wash Sand)						
Hot Mix Asphalt Plant I							
HM102	Loader to 3-Compartment Feed Bin	375	405,600	0.00002	0.00016	0.01	0.06
	3-Compartment Feed Bin to Stockpile Feed Belt	375	405,600	0.00002	0.00016		
HM69	Stockpile to Stockpile Feed Belt	375	405,600	0.00002	0.00016	0.01	0.03
HM95	Loader to 5-Compartment Feed Bin	375	101,400	0.00002	0.00016	0.01	0.01
HM103	Loader to Feed Bin	375	101,400	0.00002	0.00016	0.01	0.01
HM70	Feed Bin Belt Feeders to Cold Feed Belt	375	101,400	0.00002	0.00016	0.01	0.01
HM96	Stockpile Feed Belt to Belt 2	375	405,600	0.00002	0.00016	0.01	0.05
	Cold Feed Conveyor Belt to Belt 2 (EU: HM70)	375	101,400	0.00002	0.00016		
	Single Feed Bin (EU: HM103)	375	101,400	0.00002	0.00016		
HM73	Fines Bins Loading (Manufactured & Natural Sand)	375	101,400	0.00002	0.00016	0.01	0.02
	Fines Bins to Belt 2	375	101,400	0.00002	0.00016		
LM1/7	Lime Silo (loading)	10	11,000	0.0049	0.0049	0.03	0.03
LM3	Lime Silo screw conveyor to Pug Mill	10	11,000	Enclosed		0.01	0.08
	Conveyor Belt 2 to Pug Mill	375	507,000	0.00002	0.00016		
	Pug Mill	375	507,000				
	Pug Mill to Belt 3	375	507,000	0.00002	0.00016		
HM79	Belt 3 to Screen	375	507,000	0.00007	0.00255	0.02	0.65
	Kolberg Scalping Screen						
	Screen to Belt 4						
HM80	Belt 4 to Belt 5	375	507,000	0.00002	0.00016	0.01	0.04
HM97	Loader to Feeder 1 or Feeder 2 (RAP)	125	172,000	0.00002	0.00016	0.01	0.03
	Feeder 1 or 2 to Feeder Belt	125	172,000	0.00002	0.00016		
RAP8	Feeder Belt to Recycle Screen	125	172,000	0.00007	0.00255	0.01	0.22
	Kolberg Recycle Screen						
	Screen to RAP Belt						
HM81	Belt 5 to Drum Mixer	375	507,000	0.007	0.01	2.42	3.45
	RAP Belt to Drum Mixer	125	172,000				
	Asphalt Drum Mixer	400	690,000				
	Drum Mixer screw conveyor to Storage Silos	400	690,000	Enclosed			
	Drum Mixer screw conveyor to Fines Silo	40	69,000	Enclosed			
HM98	Fines Hopper (Enclosed with baghouse control and enclosed recirculation to drum mixer)	40	69,000	0.00002	0.00016	0.01	0.01
	Fines Silo (Baghouse control)	40	69,000	0.00002	0.00016		

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
	Fines Silo Truck Loadout	40	5,520	0.00002	0.00016		
HM85	Silo to Loading Belts	400	690,000	0.00002	0.00016	0.01	0.06
HM77	Silo Loading Belt System (enclosed)	390	676,200	0.00002	0.00016	0.01	0.05
HM86	5 Storage Silos	390	676,200	0.0000293 ¹	0.0000293 ¹	0.01	0.01
	5 Truck Loadouts	390	676,200	0.0000261 ¹	0.0000261 ¹	0.01	0.01
HM99	Screw Conveyor to Reject Flow Chute	10	13,800	0.00002	0.00016	0.01	0.01
	Reject Material Truck Loading	10	13,800	0.00002	0.00016		
	Reject Material Stockpiling	10	13,800	0.00002	0.00016		
Hot Mix Asphalt Plant II							
HA01	Loader to 14-Bin Cold Feed System	450	420,000	0.00002	0.00016	0.01	0.07
	Cold Feed Belts to Belt 1	450	420,000	0.00002	0.00016		
HA02	Belt 1 to Screen	450	420,000	0.00007	0.00255	0.01	0.54
	2-Deck Screen						
	Screen to Belt 2						
HA03	Loader to 2-Bin RAP Feeder	150	140,000	0.00002	0.00016	0.01	0.02
	2-Bin RAP to Belt 4	150	140,000	0.00002	0.00016		
HA04	Belt 4 to Screen	150	140,000	0.00007	0.00255	0.01	0.18
	RAP Screen						
	Screen to Belt 3						
HA05	Belt 2 to Drum Mixer	600	560,000	0.0161	0.023	4.51	6.44
	Belt 3 to Drum Mixer						
	Drum Mixer (with Baghouse)						
	Drum Mixer to Fines Hopper						
	Drum Mixer to Fines Silo						
Drum Mixer to Belt 5							
HA06	Belt 5 to Asphalt Silos	600	560,000	0.00002	0.00016	0.01	0.05
	Belt 5 to Screw Conveyor	21	20,000	0.00002	0.00016		
HA07	Silo Loading Belt System (enclosed)	600	560,000	0.00002	0.00016	0.01	0.04
HA08	Asphalt Silos #1 – #6 and Truck Loadout	600	560,000	0.0000293 ¹ 0.0000261 ¹	0.0000293 ¹ 0.0000261 ¹	0.02	0.02
HA09	Loader to Pug Mill Bin	6	6,000	0.00002	0.00016	0.01	0.01
	Pugmill Bin to Belt 7	6	6,000	0.00002	0.00016		
HA10	Screw Conveyor to Pug Mill	21	20,000	0.00002	0.00016	0.01	0.01
	Belt 7 to Pug Mill	6	6,000	0.00002	0.00016		
	Mini Pug Mill	27	26,000				
	Pug Mill to Stacker 1	27	26,000	0.00002	0.00016		
HA11	Stacker 1 to Stockpile (Waste)	27	26,000	0.00002	0.00016	0.01	0.01
Lime Marination Plant							
LM1B	Loader to Hopper	375	180,000	0.00002	0.00016	0.01	0.03
	Hopper to Belt 1	375	180,000	0.00002	0.00016		
LM2B	Belt 1 to Belt 2	375	180,000	0.00002	0.00016	0.01	0.03
	Belt 2 to Splitter	375	180,000	0.00002	0.00016		
LM7B	Lime Silo Loading	38	3,050	0.0049	0.0049	0.01	0.01
LM4B	Splitter to Pug Mill	375	180,000	0.00002	0.00016	0.01	0.04
	Lime Silo to Pug Mill	38	3,050	0.00002	0.00016		
	Pug Mill	413	183,050				
	Pug mill to Belt 4	413	183,050	0.00002	0.00016		
LM5B	Splitter to Belt 3	375	180,000	0.00002	0.00016	0.01	0.04

EU	Description	Throughput		EF (lbs/ton)		PTE	
		tons/hr	tons/year	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
	Belt 3 to Stacker	375	180,000	0.00002	0.00016		
	Stacker to Stockpile (Unmarinated Aggregate)	375	180,000	0.00002	0.00016		
LM9B	Belt 4 to Belt 5	413	183,050	0.00002	0.00016	0.01	0.04
	Belt 5 to Stacker	413	183,050	0.00002	0.00016		
	Stacker to Stockpile (Marinated Aggregate)	413	183,050	0.00002	0.00016		
Rocky Mountain Crushing Plant (Type II)							
TT2	Loader to VGF	400	450,000	0.00002	0.00015	0.04	0.43
	VGF						
	Jaw Crusher	400	450,000	0.00006	0.00186		
	VGF/Jaw Crusher to Belt 1						
RAP1	Loader to RAP Hopper	400	450,000	Alternate Operation for RAP. (PTE included with EU: TT2)		0	0
	RAP Hopper to Hopper Belt						
	Hopper Belt to Conveyor 2						
TT6	Belt 1 to Belt 2	400	450,000	0.00002	0.00016	0.01	0.08
	Belt 2 to Belt 3	400	450,000	0.00002	0.00016		
	Recirculation Belt to Belt 3	75	84,000	0.00002	0.00016		
TT8	Belt 3 to Screen	475	534,000	0.00007	0.00255	0.02	0.76
	Screen S-2	475	534,000				
	Screen to Underbelt	75	84,000				
	Screen to Belt 4	150	169,000				
	Screen to Belt 6	150	169,000	0.00015	0.00186		
	Screen to Belt 8	100	113,000				
	Underbelt to Crusher	75	84,000				
	Crusher	75	84,000				
Crusher to Recirculation Belt	75	84,000					
TT10	Belt 4 to Belt 5	150	169,000	0.00002	0.00016	0.01	0.04
	Belt 5 to Stacker 1	150	169,000	0.00002	0.00016		
	Stacker 1 to Stockpile 1	150	169,000	0.00002	0.00016		
TT13	Belt 6 to Belt 7	150	169,000	0.00002	0.00016	0.01	0.04
	Belt 7 to Stacker	150	169,000	0.00002	0.00016		
	Stacker 2 to Stockpile 2	150	169,000	0.00002	0.00016		
TT18	Belt 8 to Belt 9	100	113,000	0.00002	0.00016	0.01	0.03
	Belt 9 to Stacker 3	100	113,000	0.00002	0.00016		
	Stacker 3 to Stockpile 3	100	113,000	0.00002	0.00016		
Stockpiles							
AG66	Stockpiles	51 Acres			1.66 lbs/acre-day		15.45
Haul Roads							
MB02	Haul Roads; Paved	12.57 VMT/hr	40,000 VMT/yr		0.151 lbs/VMT ²		3.02

¹This emission factor includes a control factor of 0.05 which equates to 95 percent control for a baghouse.

²This emission factor includes a control factor of 0.02 for paved roads.

Table 9: Source PTE for Other Criteria Pollutants (tons per year)

EU	Description	Throughput		Pollutant	EF (lbs/ton)	PTE
		tons/hour	tons/yr			
HM81	Asphalt Drum Mixer (Natural Gas)	400	690,000	NO _x	0.026	8.97
				CO	0.13	44.85
				SO ₂	0.0034	1.17

EU	Description	Throughput		Pollutant	EF (lbs/ton)	PTE
		tons/hour	tons/yr			
				VOC	0.032	11.04
HM86	5 Storage Silos	390	672,200	CO	0.00118	0.40
				VOC	0.0122	4.10
HM86	5 Truck Loadouts	390	672,000	CO	0.00135	0.45
				VOC	0.00416	1.40
HA05	Asphalt Drum Mixer (Natural Gas)	600	560,000	NO _x	0.026	7.28
				CO	0.13	36.40
				SO ₂	0.0034	0.95
				VOC	0.032	8.96
HA08	Asphalt Silos 1 – 5	600	560,000	CO	0.00118	0.33
				VOC	0.0122	3.42
	Truck Loading	600	560,000	CO	0.00135	0.38
				VOC	0.00416	1.16
EU	Description	Rating	Operation	Pollutant	EF (lbs/MMBtu)	PTE
HM92	Asphalt Heater (Natural Gas)	1.2 MMBtu/hr	8,760 hrs/year	PM ₁₀	0.0075	0.04
				PM _{2.5}	0.0075	0.04
				NO _x	0.098	0.52
				CO	0.0824	0.43
				SO ₂	0.0006	0.01
				VOC	0.0054	0.03
HA12	Asphalt Heater (Natural Gas)	3.0 MMBtu/hr	8,760 hrs/year	PM ₁₀	0.0075	0.10
				PM _{2.5}	0.0075	0.10
				NO _x	0.098	1.29
				CO	0.0824	1.08
				SO ₂	0.0006	0.01
				VOC	0.0054	0.07
TK1	Gasoline Portion of Tank (5,000 gallons)		50,000 gallons/yr	VOC	TANKS 4.09	1.14

Table 10: EI for All Pollutants Except PM₁₀ (tons per year)

	PM _{2.5}	NO _x	CO	SO ₂	VOC
New Source PTE	8.15	18.06	84.32	2.14	31.32
Previous Source PTE (05/12/2016)	8.58	53.07	47.32	3.06	22.07
Difference	-0.43	-35.01	37.00	-0.92	9.25
Emission Increase	0	0	37.00	0	9.25
Significance Thresholds AQR 12.1.1(g)	7.5	20	35	40	20
Major Source Thresholds AQR 12.2.2(ff)	100	100	100	100	100

Calculating the EI for particulate matter is complicated by the revisions to the emission factors for the aggregate handling and processing operations. The PTE for PM_{2.5} for aggregate handling and processing was not included with previous permitting actions. As a result, they are not addressed with this derivation. The PM_{2.5} values shown in Table 10 are correct for this permitting action.

In order to accurately calculate the EI for PM₁₀ emissions, the PTE must be compared to previous permitting actions on an equal basis. To accomplish this, the permitted throughputs identified in the May 12, 2016 permit have been recalculated using the

revised emission factors for this permitting action. This recalculation is limited to those emission units affected by the emission factor revisions.

Table 11 describes the methods used to determine EI for PM₁₀.

Table 11: EI for PM₁₀ (tons per year)

Description	PTE
PTE for Current Permitting Action (affected units)	11.62
Recalculated PTE for Permit Issued 5/12/2016 (affected units)	-10.48
PTE for Emission Units Removed for this Permitting Action	-3.11
PTE for New Emission Units for Current Permitting Action	+8.21
Revised PTE for Haul Roads (all roads paved since issuance of 5/12/2016 permit)	-1.90
EI for PM₁₀	4.34
PM ₁₀ Significance Threshold AQR 12.1.1(g)	7.5

Each pollutant listed in Tables 10 and 11 is below its corresponding major source threshold. Therefore, when compared with the values in Table 7, the source is a synthetic minor for PM₁₀, NO_x, CO and VOC. The PTE for CO is within 20 percent of the major source threshold, which results in a source classification of SM80 for CO.

Operational Limits

The operational limits for all processes/emission units were proposed by the applicant. The aggregate plants and lime plant are also being limited to daily hours of operation as proposed. These daily limits are necessary to comply with the NAAQS when conducting dispersion modeling.

- a. The Permittee shall limit the total amount of material unloaded to the Construction Debris Area to 700,000 tons per any consecutive 12 month period.
- b. The Permittee shall limit the total material processed in the North Pit and Aggregate Plant to 950,000 tons per any consecutive 12 month period.
- c. The Permittee shall limit the operation of the North Pit and Aggregate Plant to 9 hours per day.
- d. The Permittee shall limit the total material processed in the Rocky Mountain Crushing Plant to 450,000 tons per any consecutive 12 month period.
- e. The Permittee shall limit the operation of the Rocky Mountain Crushing Plant to 16 hours per day.
- f. The total throughput of minerals in the Hot Mix Asphalt Plant I is 690,000 tons per year. This includes fine and coarse aggregate, lime and RAP. The Permittee shall limit the throughputs as follows:
 - i. The Permittee shall limit the lime throughput in the Hot Mix Asphalt Plant I to 11,000 tons per any consecutive 12 month period.
 - ii. The Permittee shall limit the fine and coarse aggregate throughputs in the Hot Mix Asphalt Plant I to 507,000 tons per any consecutive 12 month period.

- iii. The Permittee shall limit the RAP throughput in the Hot Mix Asphalt Plant I to 172,000 tons per any consecutive 12 month period.
- g. The Permittee shall limit the asphalt produced in the Hot Mix Asphalt Plant II to 560,000 tons per any consecutive 12 month period.
- h. The Permittee shall limit the aggregate throughput in the Lime Marination Plant to 180,000 tons per any consecutive 12 month period.
- i. The Permittee shall limit the lime throughput in the Lime Marination Plant to 3,050 tons per any consecutive 12 month period.
- j. The Permittee shall limit the operation of the Lime Marination Plant to 12 hours per day.
- k. The Permittee shall limit the total area of disturbed surfaces and stockpiles (EU: AG66) to 51.0 acres at any given time.
- l. The Permittee shall limit the VMT on paved roads (EU: MB02) to 40,000 miles per any consecutive 12 months.
- m. The Permittee shall limit the amount of gasoline through the storage tank (EU: TK1) to 50,000 gallons per any consecutive 12 months.

Review of Applicable Regulations

1. Pursuant to Section 43 of the AQR, this facility shall be operated in a manner such that odors will not cause a nuisance
2. Pursuant to Section 25 of the AQR, any upset/breakdown or malfunction which causes emissions of regulated air pollutants in excess of any limits set by the AQR shall be reported to the Control Officer, by phone, within twenty four (24 hours) hours of the time the Permittee learns of the event.
3. The Source is subject to the requirements of 40 CFR 60, Subpart I: *Standards of Performance for Hot Mix Asphalt Facilities* (EUs: LM1B, LM2B, LM4B, LM5B, LM7B, LM9B, LM1/7, LM3, HM70, HM73, HM77, HM79, HM80, HM81, HM85, HM86, HM95, HM96, HM97, HM98, HM99, HM102, RAP8, and HA01 through HA11).
4. The following units were constructed prior to August 31, 1983 and have not undergone modification or reconstruction. As a result, they are not applicable to 40 CFR 60, Subpart OOO per §60.670(e): EUs: AG11, AG17, AG20, AG21, AG34, AG36, AG37, AG38, AG39, AG43, AG45, AG46, AG51, AG52, AG54, and LF94.
5. The Source is subject to the requirements of 40 CFR 60, Subpart OOO: *Standards of Performance for Nonmetallic Mineral Processing Plants* (EUs: AG1, AG2, AG19, AG28, AG35, AG48, AG49, AG53, AG56, AG61, AG64, AG68, AG69, AG70, AG72, AG73, AG75, TT2, TT6, TT8, TT10, TT13, TT18, and RAP1)
6. The Source is subject to the requirements of 40 CFR 63, Subpart CCCCC: *National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities* (EU: TK1).

Control Technology

The control methods described below are specific to new emission units, only. All BACT/RACT requirements established with previous permitting actions remain enforceable for the unaffected emission units.

Particulate Matter

The Permittee shall maintain a moisture content of no less than 3.0 percent by weight on materials less than 0.25 inches in diameter that are loaded into the North Pit Quarry and Aggregate Plant, and the Rocky Mountain Crushing Plant.

The proposed drum mixer shall be operated with baghouse control. These measures meet RACT standards for particulate emissions control.

Carbon Monoxide

The emission increase for CO exceeds the significant threshold defined in AQR 12.1.1(g). As a result, a RACT analysis is required for this pollutant. CO emissions are mainly associated with the combustion process in the drum mixers (HM81 and HA05). These emissions can increase when the combustion is incorrect. CO emissions are also dependent on the fines content in the aggregate, the moisture content of the aggregates and the use of RAP. The use of natural gas can reduce CO emissions.

The source has proposed the sole use of natural gas for combustion for the operation of the mixers. The source shall also conduct procedures for burner maintenance and calibration to ensure optimal combustion conditions. These methods meet RACT requirements.

Monitoring

1. The Permittee shall conduct a daily visual emissions check for visible emissions of the facility while it is in operation.
2. The Permittee shall monitor the tonnage of material processed through each plant and calculate, on a monthly basis, the throughputs as 12-month rolling totals.
3. The Permittee shall conduct daily monitoring of the pressure drop across the baghouse cell with the installation and operation of a pressure differential gauge (e.g. magnehelic, monometer).
4. The Permittee shall monitor the number of miles traveled onsite by haul trucks (EU: MB02) and calculate, on a monthly basis, the VMT as a 12-month rolling total.
5. The Permittee shall monitor the total area of stockpiles in acres on a monthly basis.
6. The Permittee shall monitor the combined throughput of gasoline (EU: TK1) and calculate, on a monthly basis, the total of the last 365 days of gasoline throughput divided by 12.

7. The Permittee shall monitor the fuel storage and dispensing system to determine if components of the system are in compliance with the control requirements of this permit.

Testing

1. The Permittee is subject to the performance testing requirements of 40 CFR 60, Subpart I: EPA Method 5 for particulate matter concentration and Method 9 for opacity determination (EUs: LM1/7, LM3, HM81, HM86, HM98, LM4B, LM7B, HA05, HA06, HA07, and HA08). Subsequent performance testing shall be conducted once every five years, within 30 days from the date of the previous performance test.
2. The Permittee is subject to the performance testing requirements of 40 CFR 60, Subpart OOO: EPA Method 9 for opacity determination (EUs: AG2, AG61, AG64, AG65, HM95, HM96, HM97, RAP8, HM99, LM1B, LM2B, LM5B, TT2, TT6, TT8, TT10, TT13, TT16, TT18, RAP11, LM9B, HA01, HA02, HA03, HA04, HA09, HA10, and HA11)
3. The Permittee shall conduct performance testing on the lime marination and asphalt plants to demonstrate compliance with the particulate matter concentration standards as specified in 40 CFR 60, Subpart I for stack emissions (EUs: HA05, HM81, and HM86).
4. The Permittee shall test the drum mixer (EU: HM81) to demonstrate compliance with the emission limits specified in the Operating Permit. Table 11 identifies the required testing protocols. Subsequent performance testing shall be conducted once every five years, within 30 days from the date of the previous performance test.

Table 11: Performance Testing Methods for EU: HM81

Test Point	Pollutant	Method
Exhaust Outlet Stack	NO _x	EPA Method 7E (Chemiluminescence Analyzer)
	CO	EPA Method 10
Stack Gas Parameters		EPA Methods 1, 2, 3A and 4

Modeling

Wells Cargo is a minor source in the Hydrographic Area 212 (Las Vegas Valley). Permitted emission units include aggregate processing and asphalt manufacturing operations. Wells Cargo submitted modeling analysis to Air Quality.

INCREMENT ANALYSIS

Since minor source baseline dates for NO_x (October 21, 1988) and SO₂ (June 29, 1979) have been triggered in HA 212, Prevention of Significant Deterioration (PSD) increment analysis is required.

Air Quality reviewed the modeling submitted by Broadbent & Associates on behalf of Wells Cargo. Air Quality modeled the source with the information provided in the submittal

using AERMOD to track the increment consumption. Five years (2011 to 2015) of meteorological data from the McCarran station were used in the model. United States Geological Survey (USGS) National Elevation Data (NED) terrain data was used to calculate elevations. Table 12 shows the location of the maximum impact and the potential PSD increment consumed by the source at that location. The impacts are below the PSD increment limits.

Table 12: PSD Increment Consumption

Pollutant	Averaging Period	PSD Increment Consumption by the Source ($\mu\text{g}/\text{m}^3$)	Location of Maximum Impact	
			UTM X (m)	UTM Y (m)
SO ₂	3-hour	6.20 ¹	657300	3999500
SO ₂	24-hour	3.47 ¹	657283	3999501
SO ₂	Annual	0.74	657281	3999548
NO _x	Annual	6.25	657281	3999548

¹Second High Concentration

NAAQS ANALYSIS

Air Quality also reviewed the NAAQS modeling submitted by Broadbent & Associates on behalf of Wells Cargo. Using the information from the submittal, Air Quality modeled the source with AERMOD to evaluate the impacts with NAAQS. Table 13 shows that the source will be in compliance with the NAAQS.

Table 13: NAAQS Analysis

Pollutant	Averaging Period	Source Impact ($\mu\text{g}/\text{m}^3$)	Background Concentration ($\mu\text{g}/\text{m}^3$)	Total Impact ($\mu\text{g}/\text{m}^3$)	NAAQS ($\mu\text{g}/\text{m}^3$)
NO ₂	1-hour	47.25 ¹	94.5 ⁴	141.75	188
NO ₂	Annual	6.25	26.9 ⁴	33.15	100
SO ₂	1-hour	6.21 ²	18.3 ⁵	24.51	196
CO	1-hour	252.51	3320 ⁶	3572.51	40000
CO	8-hour	215.94	2630 ⁶	2845.94	10000
PM _{2.5}	24-hour	6.74 ¹	20.1 ⁶	26.84	35
PM _{2.5}	Annual	0.59	9.6 ⁶	10.19	12
PM ₁₀	24-hour	71.98 ³	73 ⁷	144.98	150

¹ Eighth high concentration

² Fourth high concentration

³ Sixth high concentration

⁴ 2013-15 data from Sunrise Acres monitoring station

⁵ 2013-15 data from Jerome Mack monitoring station

⁶ 2013-15 data from JD Smith monitoring station

⁷ 2013-15 data from Paul Meyer monitoring station

Public Notice

The emission increase for CO pollutants exceeds the significance level defined in AQR 12.1.1(g). As a result, the source is subject to a newspaper public note in accordance with AQR 12.5.1.3(a)(1)(3).

Permitting History

1. The last permit was issued on May 12, 2016.
2. An application for a significant revision was received on August 15, 2016.
3. On March 31, 2017, the Permittee requested to convert the August, 2016 application to a renewal application.
4. On July 25, 2017, the Permittee submitted revised emission factors based on performance test results.
5. The application was deemed complete on August 1, 2017.
6. The application was assigned to a secondary Permit Writer on September 29, 2017.
7. The draft permit and TSD were sent for internal review on October 6, 2017

Attachments

Emission Factors

The Permittee proposed the use of revised emission factors for all existing emission units. These factors were derived using performance test results in conjunction with emission factors from AP-42.

The first test, conducted on January 26 and 28, 2015, was performed on the baghouse that controls emissions from the asphalt drum mixer (EU: HM81). The test, conducted by Broadbent & Associates and witnessed by Air Quality staff, was completed to comply with a permit-required compliance demonstration. The tests included PM, NO_x and CO pollutants. Only the PM results are of significance for this permitting action.

Three separate test runs were conducted with an average result of 1.00 lb/hour, for particulate matter, at a feed rate of 400 tons/hour (0.0025 lbs/ton). The proposed PM₁₀ emission factor, 0.01 lbs/ton, is increased by a factor of four to allow for operating variances while ensuring compliance with emission limitations.

The second test, conducted on March 21 and 22, 2017, was performed on a VGF and jaw crusher. These tests, also conducted Broadbent & Associates and witnessed by Air Quality staff, were performed for the sole purpose of obtaining accurate emission factors for the aggregate processing and handling operations.

The results of three separate tests were averaged to obtain emission rates of 0.00186 lbs/ton for PM₁₀ and 0.00015 lbs/ton for PM_{2.5} from the crusher. These results were then compared against the controlled emission factors for Tertiary Crushing from Table 11.19.2-2 of AP-42 (0.00054 lbs/ton for PM₁₀ and 0.00010 lbs/ton for PM_{2.5}). The performance test results proved to be greater than the AP-42 emission factor by a factor of 3.44 for PM₁₀ and 1.46 for PM_{2.5}.

On June 16, 2017, representatives of Well Cargo met with Air Quality staff to discuss the results of the performance tests and propose the use of revised emission factors. After

review of the performance testing and supplemental data, Air Quality accepted the Permittee’s proposals on July 10, 2017.

The emission factors used for this permitting action were obtained as follows:

As previously mentioned, the difference between performance test results and AP-42 emission factors varied by a factor of 3.44 for PM₁₀ and 1.46 for PM_{2.5}. These values were used as multipliers to obtain emission factors for calculating both controlled and uncontrolled PTE. AP-42 does not list uncontrolled emission factors for PM_{2.5}. Therefore, controlled emission factors have been used. Also, AP-42 does not list controlled emission factors for VGF and Truck Loading. As a result, the uncontrolled factor were used to calculate controlled and uncontrolled PTE. Table 13 shows how the final emission factors were obtained.

Table 14: Emission Factors for PM₁₀ and PM_{2.5}

Process	AP42 EF (lbs/ton)		Multiplier		Final EF (lbs/ton)	
	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀	PM _{2.5}	PM ₁₀
Uncontrolled Emissions						
Crushing	N/A	0.0024	1.46	3.44	0.00015	0.008256
Screening	N/A	0.0087			0.00007	0.029928
Transfer Point	N/A	0.0011			0.00002	0.003784
VGF and Truck Loading	N/A	0.000016			0.00002	0.00006
Controlled Emissions						
Crushing	0.00010	0.00054	1.46	3.44	0.00015	0.00186
Screening	0.00005	0.00074			0.00007	0.00255
Transfer Point	0.000013	0.000046			0.00002	0.00016
VGF and Truck Loading	N/A	0.000016			0.00002 ¹	0.00006

¹No AP-42 emission factor. Used Transfer Point EF.

Aggregate Flow Rates

The following page contains an excerpt from the flow diagram for the North Pit Quarry and Aggregate Plant. It has been included here to address some discrepancies with flow rates. The pertinent flow rates, as proposed by the Permittee and included in the application, have been entered for reference purposes.

The discrepancies start with the “Main Feed Belt” and extend through “Cone AG20”. Note that the Main Feed Belt transports 340 TPH to the screen (AG19). However, the screen indicates an input rate of 413 TPH. This is further distorted by the fact that the screen is shown to discharge 380 TPH (200 TPH to the cone crusher and 180 TPH to the reversible belt). It should also be noted that the total input to the cone crusher is 240 TPH (20 TPH from the screen and 40 TPH from Belt C) while only discharging 200 TPH.

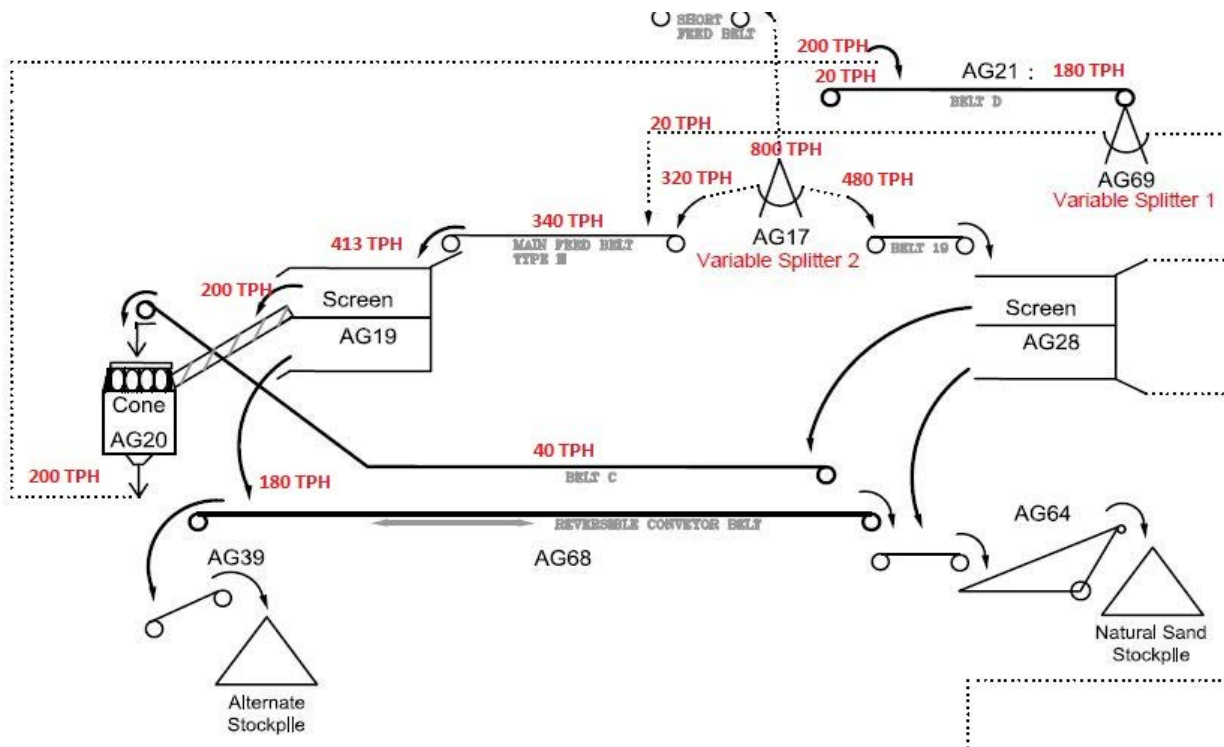
These discrepancies were brought to the attention of the staff at Broadbent & Associates, the consulting firm for Wells Cargo, Inc. The explanation by the B & A staff was as follows: “The material balance is based on desired production limits by production type.” It was explained that the desired production of each product was determined, after which back-calculations were performed to determine throughputs to individual emission units. It was

further explained that these discrepancies were addressed in a face-to-face meeting with Air Quality Staff.

B & A staff contended that part of the discrepancies are a direct result of the Air Quality policy of limiting the input flows for screens and crushers to the manufacturer's rating. The screen and cone crusher represented in the diagram have manufacturer ratings of 413 TPH and 200 TPH, respectively, which is the stated reason for not including the additional 40 TPH entering the crusher via Belt C. It was also emphasized that, under certain conditions, screens and crushers can exceed manufacturer's ratings (the inclusion of finer aggregates was cited as one example).

The discrepancies addressed in the excerpt aren't limited, solely, to the section of the plant represented. Note that "Variable Splitter 1" sends a portion of the aggregate material received from the cone crusher to other portions of the quarry (see the complete flow diagram to view other emission units impacted). In this instance, the flow into the splitter should be 220 TPH, but, as shown, it is only 180 TPH. The additional 40 TPH is being transferred to other units within the quarry, unaccounted for.

This explanation is provided in the event that this issue is addressed with future permitting actions.



2017 annual wind speed and direction summary for Paul Meyer site

Eight primary wind directions, five speed categories

Frequency of occurrence by directions

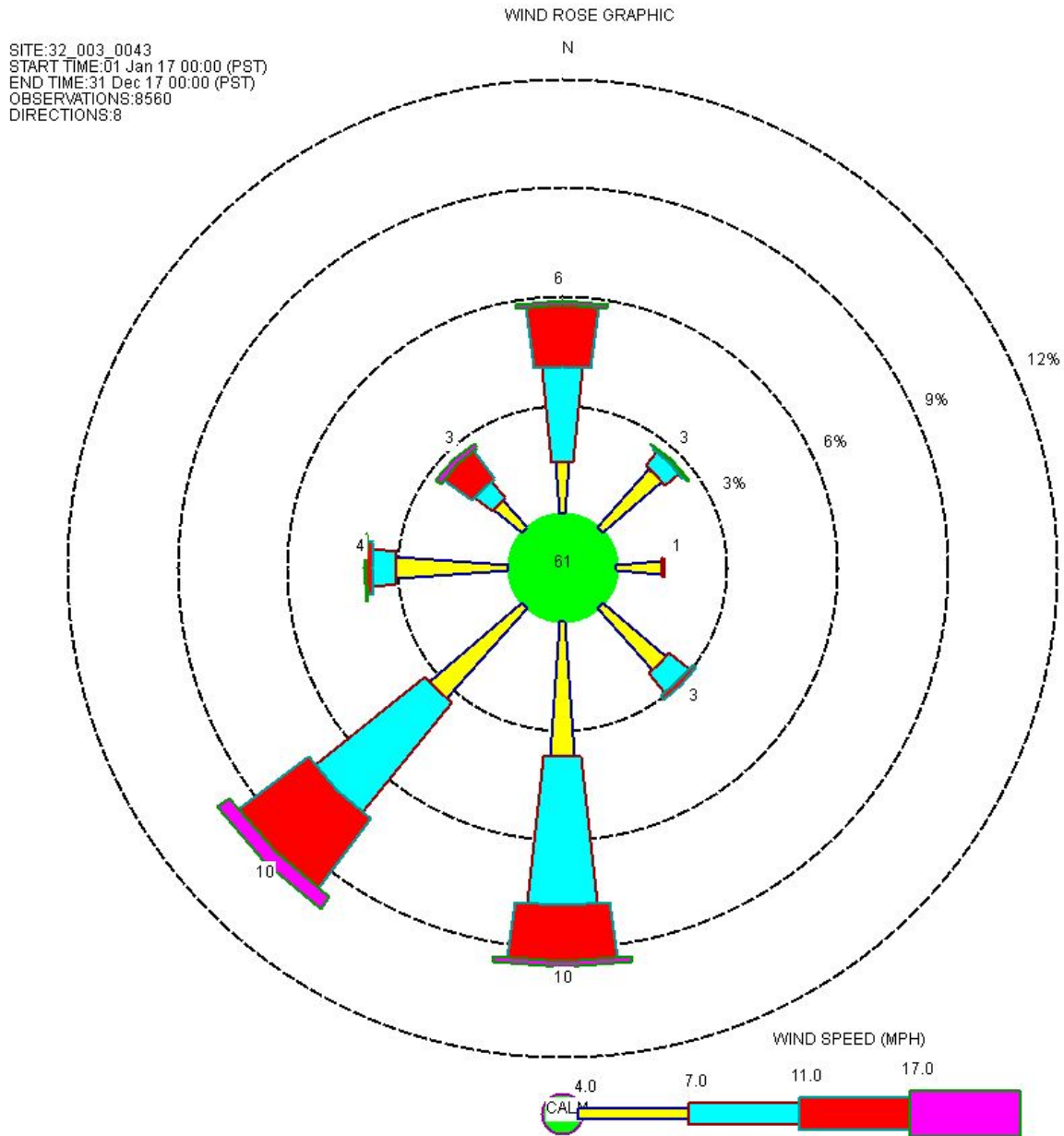


EXHIBIT C

PAUL MEYER PARK MONITORING STATION

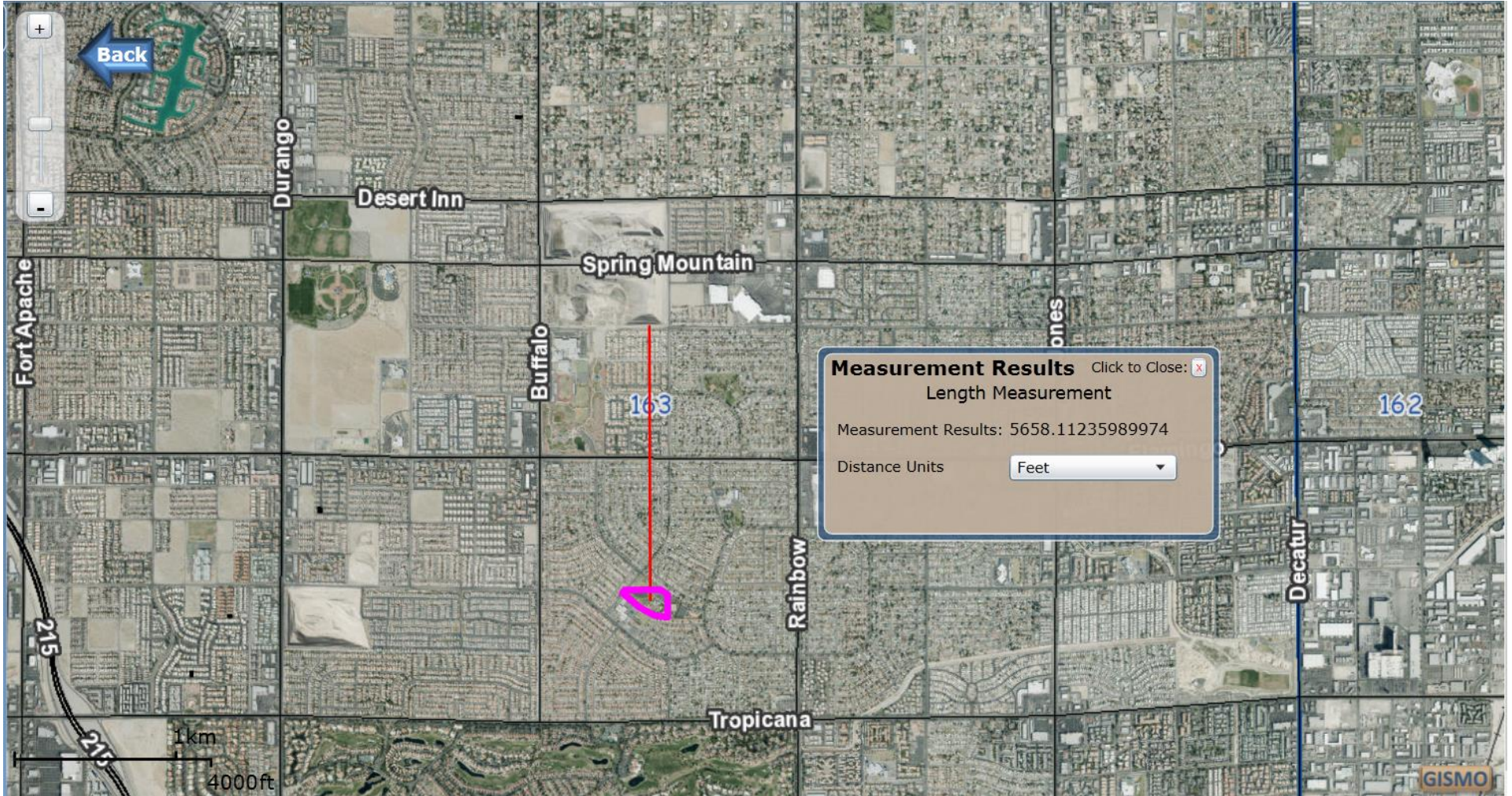


EXHIBIT D

MEMORANDUM

Department of Air Quality

Marci Henson
Director

TO: File 12 – Wells Cargo

FROM: Vasant Rajagopalan

SUBJECT: Modeling

DATE: October 18, 2017

Facility Location: 656900, 3999290 (Universal Transverse Mercator (UTM) NAD83)

Wells Cargo is a minor source in the Hydrographic Area 212 (Las Vegas Valley). Permitted emission units include aggregate processing and asphalt manufacturing operations. Wells Cargo submitted modeling analysis to Air Quality.

INCREMENT ANALYSIS

Since minor source baseline dates for NO_x (October 21, 1988) and SO₂ (June 29, 1979) have been triggered in HA 212, Prevention of Significant Deterioration (PSD) increment analysis is required.

Air Quality reviewed the modeling submitted by Broadbent & Associates on behalf of Wells Cargo. Air Quality modeled the source with the information provided in the submittal using AERMOD to track the increment consumption. Five years (2011 to 2015) of meteorological data from the McCarran station were used in the model. United States Geological Survey (USGS) National Elevation Data (NED) terrain data was used to calculate elevations. Table 1 shows the location of the maximum impact and the potential PSD increment consumed by the source at that location. The impacts are below the PSD increment limits.

Table 1: PSD Increment Consumption

Pollutant	Averaging Period	PSD Increment Consumption by the Source ($\mu\text{g}/\text{m}^3$)	Location of Maximum Impact	
			UTM X (m)	UTM Y (m)
SO ₂	3-hour	6.20 ¹	657300	3999500
SO ₂	24-hour	3.47 ¹	657283	3999501
SO ₂	Annual	0.74	657281	3999548
NO _x	Annual	6.25	657281	3999548

¹Second High Concentration

EXHIBIT E

NAAQS ANALYSIS

Air Quality also reviewed the NAAQS modeling submitted by Broadbent & Associates on behalf of Wells Cargo. Using the information from the submittal, Air Quality modeled the source with AERMOD to evaluate the impacts with NAAQS. Table 2 shows that the source will be in compliance with the NAAQS.

Table 2: NAAQS Analysis

Pollutant	Averaging Period	Source Impact ($\mu\text{g}/\text{m}^3$)	Background Concentration ($\mu\text{g}/\text{m}^3$)	Total Impact ($\mu\text{g}/\text{m}^3$)	NAAQS ($\mu\text{g}/\text{m}^3$)
NO ₂	1-hour	47.25 ¹	94.5 ⁴	141.75	188
NO ₂	Annual	6.25	26.9 ⁴	33.15	100
SO ₂	1-hour	6.21 ²	18.3 ⁵	24.51	196
CO	1-hour	252.51	3320 ⁶	3572.51	40000
CO	8-hour	215.94	2630 ⁶	2845.94	10000
PM _{2.5}	24-hour	6.74 ¹	20.1 ⁶	26.84	35
PM _{2.5}	Annual	0.59	9.6 ⁶	10.19	12
PM ₁₀	24-hour	71.98 ³	73 ⁷	144.98	150

¹ Eighth high concentration

² Fourth high concentration

³ Sixth high concentration

⁴ 2013-15 data from Sunrise Acres monitoring station

⁵ 2013-15 data from Jerome Mack monitoring station

⁶ 2013-15 data from JD Smith monitoring station

⁷ 2013-15 data from Paul Meyer monitoring station

*** Recombined BEEST Partitioned Run ***
 **BEE-Line Software: (Version 11.08a) data input file
 ** Model: AERMOD.EXE Input File Creation Date: 10/17/2017 Time: 1:29:13 PM
 NO ECHO

CO STARTING
 CO TITLEONE Wells Cargo - Spring Mountain
 CO MODELOPT DFAULT CONC NODRYDPLT NOWETDPLT
 CO AVERTIME 24
 CO URBANOPT 100000 Lasvegas 1
 CO POLLUTID PM10
 CO RUNORNOT RUN
 CO FINISHED

SO STARTING
 SO ELEVUNIT METERS
 ** Drum Dryer HMA I
 SO LOCATION HM81 POINT 657239.19 3999376.74 740.37
 SO SRCPARAM HM81 0.5039915222162 12.192 408.15 31.3349913 1.0363
 SO BUI LDHGT HM81 0.00 0.00 0.00 0.00 17.98 17.98
 SO BUI LDHGT HM81 17.98 17.98 0.00 0.00 0.00 7.32
 SO BUI LDHGT HM81 7.32 0.00 0.00 0.00 0.00 0.00
 SO BUI LDHGT HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDHGT HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDHGT HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDHGT HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDWI D HM81 0.00 0.00 0.00 0.00 12.67 12.22
 SO BUI LDWI D HM81 11.36 10.28 0.00 0.00 0.00 7.27
 SO BUI LDWI D HM81 6.70 0.00 0.00 0.00 0.00 0.00
 SO BUI LDWI D HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDWI D HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDWI D HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDWI D HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDLEN HM81 0.00 0.00 0.00 0.00 8.30 8.55
 SO BUI LDLEN HM81 9.87 11.02 0.00 0.00 0.00 6.37
 SO BUI LDLEN HM81 7.02 0.00 0.00 0.00 0.00 0.00
 SO BUI LDLEN HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDLEN HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO BUI LDLEN HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO XBADJ HM81 0.00 0.00 0.00 0.00 -39.65 -41.15
 SO XBADJ HM81 -42.07 -41.77 0.00 0.00 0.00 -39.61
 SO XBADJ HM81 -39.76 0.00 0.00 0.00 0.00 0.00
 SO XBADJ HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO XBADJ HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO XBADJ HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO XBADJ HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO YBADJ HM81 0.00 0.00 0.00 0.00 11.04 4.70
 SO YBADJ HM81 -1.77 -8.19 0.00 0.00 0.00 2.20
 SO YBADJ HM81 -4.15 0.00 0.00 0.00 0.00 0.00
 SO YBADJ HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO YBADJ HM81 0.00 0.00 0.00 0.00 0.00 0.00
 SO YBADJ HM81 0.00 0.00 0.00 0.00 0.00 0.00

** Asphalt Heater HMA I
 SO LOCATION HM92 POINT 657216.227 3999398.93 741.01
 SO SRCPARAM HM92 0.001133980925 2.7432 310.93 91.4399997 0.3048
 SO BUI LDHGT HM92 17.98 17.98 17.98 7.32 7.32 7.32
 SO BUI LDHGT HM92 7.32 7.32 7.32 7.32 7.32 7.32
 SO BUI LDHGT HM92 7.32 0.00 0.00 0.00 0.00 0.00
 SO BUI LDHGT HM92 0.00 0.00 7.32 7.32 7.32 7.32
 SO BUI LDHGT HM92 7.32 7.32 7.32 7.32 7.32 7.32
 SO BUI LDHGT HM92 7.32 0.00 0.00 0.00 0.00 17.98
 SO BUI LDWI D HM92 13.13 13.12 13.27 7.02 7.55 7.93
 SO BUI LDWI D HM92 8.20 8.30 8.28 8.08 7.75 7.27
 SO BUI LDWI D HM92 6.70 0.00 0.00 0.00 0.00 0.00
 SO BUI LDWI D HM92 0.00 0.00 6.37 7.02 7.55 7.93
 SO BUI LDWI D HM92 8.20 8.30 8.28 8.08 7.75 7.27
 SO BUI LDWI D HM92 6.70 0.00 0.00 0.00 0.00 13.26

EXHIBIT F

PM10_5yrs_PM10

SO BUI LDLEN	HM92	9.17	9.17	9.02	6.70	6.01	5.23
SO BUI LDLEN	HM92	4.41	3.55	4.02	4.85	5.65	6.37
SO BUI LDLEN	HM92	7.02	0.00	0.00	0.00	0.00	0.00
SO BUI LDLEN	HM92	0.00	0.00	7.27	6.70	6.01	5.23
SO BUI LDLEN	HM92	4.41	3.55	4.02	4.85	5.65	6.37
SO BUI LDLEN	HM92	7.02	0.00	0.00	0.00	0.00	9.01
SO XBADJ	HM92	-42.55	-42.81	-41.83	-9.74	-10.06	-10.12
SO XBADJ	HM92	-9.94	-9.50	-9.49	-9.43	-9.14	-8.62
SO XBADJ	HM92	-7.91	0.00	0.00	0.00	0.00	0.00
SO XBADJ	HM92	0.00	0.00	1.90	3.04	4.05	4.90
SO XBADJ	HM92	5.53	5.95	5.47	4.58	3.49	2.26
SO XBADJ	HM92	0.89	0.00	0.00	0.00	0.00	-41.06
SO YBADJ	HM92	0.60	-1.86	-8.47	4.40	3.22	1.95
SO YBADJ	HM92	0.61	-0.74	-2.07	-3.34	-4.50	-5.53
SO YBADJ	HM92	-6.39	0.00	0.00	0.00	0.00	0.00
SO YBADJ	HM92	0.00	0.00	-5.44	-4.40	-3.22	-1.95
SO YBADJ	HM92	-0.61	0.74	2.07	3.34	4.50	5.53
SO YBADJ	HM92	6.39	0.00	0.00	0.00	0.00	7.48

** Drum Dryer HMA II

SO LOCATION	HA05	POINT	656928.786	3999106.88	738.46		
SO SRCPARAM	HA05	1.738770751646	27.1272	422.04	31.9360309	1.2192	
SO BUI LDHGT	HA05	0.00	19.20	0.00	0.00	0.00	0.00
SO BUI LDHGT	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDHGT	HA05	0.00	0.00	0.00	19.20	19.20	19.20
SO BUI LDHGT	HA05	19.20	19.20	0.00	0.00	0.00	0.00
SO BUI LDHGT	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDHGT	HA05	0.00	0.00	0.00	19.20	0.00	0.00
SO BUI LDWI D	HA05	0.00	14.13	0.00	0.00	0.00	0.00
SO BUI LDWI D	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDWI D	HA05	0.00	0.00	0.00	14.13	13.99	13.26
SO BUI LDWI D	HA05	13.99	14.13	0.00	0.00	0.00	0.00
SO BUI LDWI D	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDWI D	HA05	0.00	0.00	0.00	14.13	0.00	0.00
SO BUI LDLEN	HA05	0.00	12.04	0.00	0.00	0.00	0.00
SO BUI LDLEN	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDLEN	HA05	0.00	0.00	0.00	12.04	10.75	9.26
SO BUI LDLEN	HA05	10.75	12.04	0.00	0.00	0.00	0.00
SO BUI LDLEN	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDLEN	HA05	0.00	0.00	0.00	12.04	0.00	0.00
SO XBADJ	HA05	0.00	27.26	0.00	0.00	0.00	0.00
SO XBADJ	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO XBADJ	HA05	0.00	0.00	0.00	-39.85	-40.68	-40.34
SO XBADJ	HA05	-40.40	-39.30	0.00	0.00	0.00	0.00
SO XBADJ	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO XBADJ	HA05	0.00	0.00	0.00	27.81	0.00	0.00
SO YBADJ	HA05	0.00	12.96	0.00	0.00	0.00	0.00
SO YBADJ	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO YBADJ	HA05	0.00	0.00	0.00	11.47	5.42	-0.80
SO YBADJ	HA05	-6.98	-12.96	0.00	0.00	0.00	0.00
SO YBADJ	HA05	0.00	0.00	0.00	0.00	0.00	0.00
SO YBADJ	HA05	0.00	0.00	0.00	-11.47	0.00	0.00

** Asphalt Heater HMA II

SO LOCATION	HA13	POINT	656919.293	3999102.61	738.98		
SO SRCPARAM	HA13	0.0028349523125	2.7432	310.93	91.4399997	0.3048	
SO BUI LDHGT	HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDHGT	HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDHGT	HA13	0.00	0.00	0.00	0.00	0.00	19.20
SO BUI LDHGT	HA13	19.20	19.20	19.20	0.00	0.00	0.00
SO BUI LDHGT	HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDHGT	HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDWI D	HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDWI D	HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDWI D	HA13	0.00	0.00	0.00	0.00	0.00	13.26
SO BUI LDWI D	HA13	13.99	14.43	14.49	0.00	0.00	0.00
SO BUI LDWI D	HA13	0.00	0.00	0.00	0.00	0.00	0.00

PM10_5yrs_PM10

SO BUI LDWI D HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDLEN HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDLEN HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDLEN HA13	0.00	0.00	0.00	0.00	0.00	9.26
SO BUI LDLEN HA13	10.75	12.04	13.09	0.00	0.00	0.00
SO BUI LDLEN HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO BUI LDLEN HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO XBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO XBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO XBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO XBADJ HA13	0.00	0.00	0.00	0.00	0.00	-44.61
SO XBADJ HA13	-46.26	-46.56	-45.52	0.00	0.00	0.00
SO XBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO XBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO XBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO YBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO YBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO YBADJ HA13	0.00	0.00	0.00	0.00	0.00	8.70
SO YBADJ HA13	1.62	-5.50	-12.46	0.00	0.00	0.00
SO YBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00
SO YBADJ HA13	0.00	0.00	0.00	0.00	0.00	0.00

** 3-Compartment Bin

SO LOCATION HM102 VOLUME 657127.781 3999378.58 743.08
 SO SRCPARAM HM102 0.0151197456665 4.572 4.88 3.05

** Stockpile Feed Belt

SO LOCATION HM69 VOLUME 657132.575 3999380.07 743.01
 SO SRCPARAM HM69 0.0075598728332 1.524 0.91 0.91

** Loader to Feed Bins

SO LOCATION HM95 VOLUME 657139.039 3999371.48 742.97
 SO SRCPARAM HM95 0.0075598728332 4.572 4.88 3.05

** Belt Feeders

SO LOCATION HM70 VOLUME 657155.693 3999380.98 742.55
 SO SRCPARAM HM70 0.0075598728332 3.048 0.91 0.91

** Cold Feed Conveyor Belt

SO LOCATION HM96 VOLUME 657161.122 3999380.75 742.43
 SO SRCPARAM HM96 0.0151197456665 4.572 0.91 0.91

** Fines Bins

SO LOCATION HM73 VOLUME 657145.959 3999369.12 742.85
 SO SRCPARAM HM73 0.0151197456665 4.572 4.88 3.05

** Lime Silo

SO LOCATION LM1/7 VOLUME 657178.203 3999391.94 741.96
 SO SRCPARAM LM1/7 0.0061738961471 9.7536 0.61 0.61

** Pug Mill

SO LOCATION LM3 VOLUME 657175.466 3999384.94 742.06
 SO SRCPARAM LM3 0.0151197456665 6.096 3.66 2.13

** Scalping Screen

SO LOCATION HM79 VOLUME 657183.375 3999384.94 741.85
 SO SRCPARAM HM79 0.1204539738097 6.096 3.66 1.22

** Conveyor Belt

SO LOCATION HM80 VOLUME 657192.805 3999381.59 741.62
 SO SRCPARAM HM80 0.0075598728332 4.572 0.91 0.91

** RAP Loader/Feeder 1

SO LOCATION HM97 VOLUME 657197.672 3999399.84 741.49
 SO SRCPARAM HM97 0.0050399152222 4.572 4.27 2.44

** Recycle Screen

SO LOCATION RAP8 VOLUME 657205.581 3999395.89 741.27
 SO SRCPARAM RAP8 0.0403193217773 4.572 3.66 1.22

** Fines Hopper/Silo/Loadout

SO LOCATION HM98 VOLUME 657229.108 3999379.46 740.67
 SO SRCPARAM HM98 0.0023939597305 15.24 0.61 0.61

** Screw Conveyor

SO LOCATION HM85 VOLUME 657212.29 3999366.08 741.15
 SO SRCPARAM HM85 0.0080638643555 24.0792 0.91 0.91

** Silo Loading Belts

SO LOCATION HM77 VOLUME 657215.619 3999356.65 741.06
 SO SRCPARAM HM77 0.0078118685944 24.0792 0.91 0.91

** Storage Silos

SO LOCATION HM86 VOLUME 657210.448 3999360.6 741.2
 SO SRCPARAM HM86 0.0013859766861 24.0792 0.61 0.61
 ** Truck Loadout
 SO LOCATION HM87 VOLUME 657207.102 3999360.3 741.29
 SO SRCPARAM HM87 0.0012599788055 6.096 0.3 0.3
 ** Reject Flow Splitter
 SO LOCATION HM99 VOLUME 657206.798 3999357.56 741.3
 SO SRCPARAM HM99 6.299894028E-04 6.096 0.61 0.61
 ** Loader to Hopper
 SO LOCATION LM1B VOLUME 656937.583 3999349.19 745.88
 SO SRCPARAM LM1B 0.0151197456665 4.572 4.88 3.05
 ** Hopper to Belt/Belt to Belt/Belt to Splitter
 SO LOCATION LM2B VOLUME 656938.359 3999353.07 745.9
 SO SRCPARAM LM2B 0.0151197456665 4.572 0.91 0.91
 ** Pug Mill
 SO LOCATION LM4B VOLUME 656939.522 3999357.33 745.92
 SO SRCPARAM LM4B 0.0166317202331 6.096 3.66 2.13
 ** Belt to Stacking Systems
 SO LOCATION LM9B_1 VOLUME 656941.46 3999361.6 745.89
 SO SRCPARAM LM9B_1 0.0085678558777 4.572 0.91 0.91
 ** Belt to Stacker/Stacker to Stockpile
 SO LOCATION LM9B_2 VOLUME 656945.336 3999362.76 745.79
 SO SRCPARAM LM9B_2 0.016379724472 6.096 0.91 0.91
 ** Splitter to Belt/Belt to Stacker/Stacker to Stockpile
 SO LOCATION LM5B VOLUME 656941.46 3999365.47 745.83
 SO SRCPARAM LM5B 0.0226796184997 6.096 0.91 0.91
 ** Lime Silo
 SO LOCATION LM7B VOLUME 656944.561 3999366.64 745.74
 SO SRCPARAM LM7B 0.0234356057831 14.478 0.61 0.61
 ** Loader to VGF
 SO LOCATION TT1 VOLUME 656987.589 3999403.744.5
 SO SRCPARAM TT1 0.0390593429718 4.572 4.57 3.66
 ** Belt 1 to Belt 2/Belt 2 to Belt 3/Recirc to Belt 3
 SO LOCATION TT6 VOLUME 656980.999 3999398.73 744.69
 SO SRCPARAM TT6 0.0176397032776 4.572 0.91 0.91
 ** Screen S-2/Crusher
 SO LOCATION TT8 VOLUME 656977.898 3999396.41 744.79
 SO SRCPARAM TT8 0.170097138748 6.096 3.05 1.52
 ** Stacker System 1
 SO LOCATION TT10 VOLUME 656972.084 3999395.63 744.87
 SO SRCPARAM TT10 0.0090718473999 6.096 0.91 0.91
 ** Stacker System 2
 SO LOCATION TT13 VOLUME 656974.022 3999392.92 744.94
 SO SRCPARAM TT13 0.0090718473999 6.096 0.91 0.91
 ** Stacker System 3
 SO LOCATION TT18 VOLUME 656977.123 3999390.21 744.96
 SO SRCPARAM TT18 0.0060478982666 6.096 0.91 0.91
 ** Loader to Bins
 SO LOCATION HA01_1 VOLUME 656941.72 3999090.737.48
 SO SRCPARAM HA01_1 0.0090718473999 4.572 4.88 3.05
 ** Bins to Belt
 SO LOCATION HA01_2 VOLUME 656941.365 3999098.58 737.63
 SO SRCPARAM HA01_2 0.0090718473999 4.572 4.88 3.05
 ** Screen
 SO LOCATION HA02 VOLUME 656941.365 3999109.26 737.8
 SO SRCPARAM HA02 0.0090718473999 6.096 5.49 1.52
 ** Loader to RAP Bin
 SO LOCATION HA03_1 VOLUME 656906.951 3999113.05 740.42
 SO SRCPARAM HA03_1 0.0030239491333 4.572 4.27 2.44
 ** RAP Bin to Belt
 SO LOCATION HA03_2 VOLUME 656906.951 3999108.54 740.24
 SO SRCPARAM HA03_2 0.0030239491333 4.572 4.27 2.44
 ** RAP Screen
 SO LOCATION HA04 VOLUME 656907.188 3999103.32 740.02
 SO SRCPARAM HA04 0.0481311903716 6.096 3.66 1.22

** Belt to Asphalt Silos
 SO LOCATION HA06 VOLUME 656927.99 3999140.09 738.84
 SO SRCPARAM HA06 0.0125997880554 27.1272 0.91 0.91
 ** Loader to Pug Mill Bin
 SO LOCATION HA09_1 VOLUME 656916.207 3999108.31 739.36
 SO SRCPARAM HA09_1 1.259978806E-04 4.572 4.27 2.44
 ** Pug Mill Bin to Pug Mill Belt
 SO LOCATION HA09_2 VOLUME 656918.818 3999108.07 739.12
 SO SRCPARAM HA09_2 1.259978806E-04 4.572 4.27 2.44
 ** Mini Pug Mill
 SO LOCATION HA10 VOLUME 656921.666 3999108.31 738.87
 SO SRCPARAM HA10 0.0016379724472 6.096 3.05 1.52
 ** Belt to Stockpile
 SO LOCATION HA11 VOLUME 656919.768 3999111.87 739.09
 SO SRCPARAM HA11 5.039915222E-04 6.096 0.91 0.91
 ** Silo Loading Belt System
 SO LOCATION HA07 VOLUME 656928.074 3999142.72 738.87
 SO SRCPARAM HA07 0.0120957965332 27.1272 0.91 0.91
 ** Asphalt Silos
 SO LOCATION HA08 VOLUME 656928.074 3999145.81 738.99
 SO SRCPARAM HA08 0.00226796185 27.1272 0.61 0.61
 ** Truck Loading
 SO LOCATION HA12 VOLUME 656926.176 3999145.81 739.01
 SO SRCPARAM HA12 0.0020159660889 6.096 0.3 0.3
 ** Quarry Loading Bin
 SO LOCATION AG1 VOLUME 657081.6 3999581.23 739.8
 SO SRCPARAM AG1 0.0241915930664 4.572 4.57 3.66
 ** 5 Belt System
 SO LOCATION AG2 VOLUME 657075.765 3999578.89 739.69
 SO SRCPARAM AG2 0.0725747791991 4.572 0.91 0.91
 ** Belt 1 to Surge Pile
 SO LOCATION AG10 VOLUME 657027.91 3999411.23 744.21
 SO SRCPARAM AG10 0.0390593429718 6.096 0.91 0.91
 ** 2 Belt System
 SO LOCATION AG11 VOLUME 657042.099 3999415.28 744.23
 SO SRCPARAM AG11 0.0483831861328 6.096 0.91 0.91
 ** Splitter 1
 SO LOCATION AG17 VOLUME 657061.017 3999423.39 744.22
 SO SRCPARAM AG17 0.0161277287109 6.096 0.91 0.91
 ** 2-Deck Screen
 SO LOCATION AG19 VOLUME 657092.119 3999440.83 744.22
 SO SRCPARAM AG19 0.1385976686095 6.096 6.1 3.05
 ** Reversible Belt
 SO LOCATION AG68 VOLUME 657082.933 3999438.78 744.32
 SO SRCPARAM AG68 0.0036539385361 6.096 0.91 0.91
 ** Cone Crusher
 SO LOCATION AG20 VOLUME 657087.642 3999437.67 744.22
 SO SRCPARAM AG20 0.046619215805 6.096 3.05 1.52
 ** Conveyor Belt D to Splitter
 SO LOCATION AG21 VOLUME 657086.116 3999428.1 743.96
 SO SRCPARAM AG21 0.0040319321777 6.096 0.91 0.91
 ** Splitter to Main Feed Belt (Type II) or Belt 16
 SO LOCATION AG69 VOLUME 657087.93 3999440.84 744.31
 SO SRCPARAM AG69 0.0075598728332 4.572 0.91 0.91
 ** 3-Deck Screen
 SO LOCATION AG28 VOLUME 657092.917 3999434.07 744.
 SO SRCPARAM AG28 0.1537174142759 6.096 6.1 3.05
 ** Belt to Stacker/Stacker to Nat. Sand Stockpile
 SO LOCATION AG64 VOLUME 657110.5 3999443.91 743.84
 SO SRCPARAM AG64 0.0091978452804 6.096 0.91 0.91
 ** Belt 16 to Belt 17
 SO LOCATION AG34 VOLUME 657085.227 3999431.84 744.08
 SO SRCPARAM AG34 0.0075598728332 6.096 0.91 0.91
 ** 3-Deck Screen
 SO LOCATION AG35 VOLUME 657094.686 3999430.03 743.83

SO SRCPARAM AG35 0.1448975626372 6.096 6.1 3.05
 ** Cone Crusher
 SO LOCATION AG36 VOLUME 657088.88 3999427.5 743.89
 SO SRCPARAM AG36 0.016379724472 6.096 3.05 1.52
 ** Belt from Cone Crusher to Belt 17
 SO LOCATION AG37 VOLUME 657082.507 3999434.9 744.22
 SO SRCPARAM AG37 0.0013859766861 6.096 0.91 0.91
 ** Belt A to Collector Belt
 SO LOCATION AG38 VOLUME 657079.372 3999434.99 744.27
 SO SRCPARAM AG38 0.0032759448944 6.096 0.91 0.91
 ** Belt to 3/4 in Stockpile
 SO LOCATION AG43 VOLUME 657078.19 3999379.51 743.87
 SO SRCPARAM AG43 0.0015119745666 6.096 0.91 0.91
 ** 3 Belt System
 SO LOCATION AG52 VOLUME 657083.318 3999423.64 743.9
 SO SRCPARAM AG52 0.0100798304443 6.096 0.91 0.91
 ** VSI Crusher
 SO LOCATION AG53 VOLUME 657088.202 3999420.99 743.81
 SO SRCPARAM AG53 0.0703068173492 6.096 3.05 1.52
 ** Belt to Belt
 SO LOCATION AG54 VOLUME 657087.083 3999424.15 743.82
 SO SRCPARAM AG54 0.0060478982666 6.096 0.91 0.91
 ** 3-Bin Feeder to 2 Belt System
 SO LOCATION AG72 VOLUME 657051.558 3999409.88 744.28
 SO SRCPARAM AG72 0.0080638643555 4.572 4.88 3.05
 ** 2 Belt System to Belt Feeding Screen AG56
 SO LOCATION AG73 VOLUME 657091.533 3999423.28 743.74
 SO SRCPARAM AG73 0.0080638643555 6.096 0.91 0.91
 ** 2-Deck Screen
 SO LOCATION AG56 VOLUME 657098.74 3999425.08 743.58
 SO SRCPARAM AG56 0.1600173083037 6.096 6.1 3.05
 ** Stacker to 1/2 in Stockpile
 SO LOCATION AG45 VOLUME 657094.346 3999380.19 743.63
 SO SRCPARAM AG45 0.0030239491333 6.096 0.91 0.91
 ** Stacker to Chips Stockpile
 SO LOCATION AG61 VOLUME 657058.222 3999376.82 744.08
 SO SRCPARAM AG61 3.779936417E-04 6.096 0.91 0.91
 ** Collector Belt (Belt from AG35 and AG56)
 SO LOCATION AG46 VOLUME 657103.4 3999428.91 743.58
 SO SRCPARAM AG46 0.0065518897888 6.096 0.91 0.91
 ** 2-Deck Screen
 SO LOCATION AG48 VOLUME 657109.55 3999428.68 743.42
 SO SRCPARAM AG48 0.0957583892211 6.096 6.1 3.05
 ** Reversible Belt to Man. Sand Stacker or to Fines Belt/Man. Sand Stacker to Stockpile
 SO LOCATION AG49 VOLUME 657102.344 3999447.6 744.16
 SO SRCPARAM AG49 0.0071818791916 6.096 0.91 0.91
 ** Stacker to Coarse Sand Stockpile
 SO LOCATION AG51 VOLUME 657107.135 3999381.53 743.41
 SO SRCPARAM AG51 0.0030239491333 6.096 0.91 0.91
 ** Fines Belt to Fines Wash/Fines Wash to Wash Sand Stacker
 SO LOCATION AG70 VOLUME 657131.815 3999432.46 743.11
 SO SRCPARAM AG70 0.0035279406555 6.096 0.91 0.91
 ** Landfill
 SO LOCATION LF94 VOLUME 656997.805 3999103.38 736.09
 SO SRCPARAM LF94 0.0088198516388 4.572 1.52 1.52
 SO LOCATION HR1_0001 VOLUME 656625.438 3999294.47 754.63
 SO SRCPARAM HR1_0001 8.693853758E-04 5.46 4.5
 SO LOCATION HR1_0002 VOLUME 656644.288 3999309.38 754.39
 SO SRCPARAM HR1_0002 8.693853758E-04 5.46 4.5
 SO LOCATION HR1_0003 VOLUME 656674.287 3999309.16 753.47
 SO SRCPARAM HR1_0003 8.693853758E-04 5.46 4.5
 SO LOCATION HR1_0004 VOLUME 656704.287 3999308.94 752.58
 SO SRCPARAM HR1_0004 8.693853758E-04 5.46 4.5
 SO LOCATION HR1_0005 VOLUME 656734.105 3999311.27 751.82
 SO SRCPARAM HR1_0005 8.693853758E-04 5.46 4.5

SO	LOCATI ON	HR1_0006	VOLUME	656763.866	3999314.56	751.06
SO	SRCPARAM	HR1_0006		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0007	VOLUME	656793.864	3999314.9	750.01
SO	SRCPARAM	HR1_0007		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0008	VOLUME	656823.862	3999315.24	749.08
SO	SRCPARAM	HR1_0008		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0009	VOLUME	656853.86	3999315.57	748.16
SO	SRCPARAM	HR1_0009		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0010	VOLUME	656883.859	3999315.91	747.
SO	SRCPARAM	HR1_0010		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0011	VOLUME	656913.857	3999316.25	745.87
SO	SRCPARAM	HR1_0011		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0012	VOLUME	656943.815	3999315.02	745.04
SO	SRCPARAM	HR1_0012		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0013	VOLUME	656973.759	3999313.18	744.71
SO	SRCPARAM	HR1_0013		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0014	VOLUME	657003.702	3999311.34	744.3
SO	SRCPARAM	HR1_0014		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0015	VOLUME	657033.697	3999310.76	744.07
SO	SRCPARAM	HR1_0015		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0016	VOLUME	657063.691	3999310.19	743.95
SO	SRCPARAM	HR1_0016		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0017	VOLUME	657093.69	3999310.29	743.4
SO	SRCPARAM	HR1_0017		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0018	VOLUME	657123.689	3999310.53	742.74
SO	SRCPARAM	HR1_0018		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0019	VOLUME	657152.362	3999314.38	742.24
SO	SRCPARAM	HR1_0019		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0020	VOLUME	657156.623	3999341.	742.56
SO	SRCPARAM	HR1_0020		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0021	VOLUME	657147.333	3999369.53	742.81
SO	SRCPARAM	HR1_0021		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0022	VOLUME	657144.973	3999399.28	742.69
SO	SRCPARAM	HR1_0022		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0023	VOLUME	657149.267	3999428.97	742.71
SO	SRCPARAM	HR1_0023		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0024	VOLUME	657130.089	3999450.	743.65
SO	SRCPARAM	HR1_0024		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0025	VOLUME	657102.301	3999454.28	744.36
SO	SRCPARAM	HR1_0025		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0026	VOLUME	657073.212	3999448.28	744.72
SO	SRCPARAM	HR1_0026		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0027	VOLUME	657044.294	3999440.68	744.38
SO	SRCPARAM	HR1_0027		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0028	VOLUME	657015.017	3999434.21	743.72
SO	SRCPARAM	HR1_0028		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0029	VOLUME	656986.102	3999426.34	743.77
SO	SRCPARAM	HR1_0029		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0030	VOLUME	656959.423	3999412.62	744.44
SO	SRCPARAM	HR1_0030		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0031	VOLUME	656932.344	3999399.76	745.22
SO	SRCPARAM	HR1_0031		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0032	VOLUME	656918.633	3999375.92	745.92
SO	SRCPARAM	HR1_0032		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0033	VOLUME	656917.648	3999345.94	746.19
SO	SRCPARAM	HR1_0033		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR1_0034	VOLUME	656916.711	3999315.96	745.76
SO	SRCPARAM	HR1_0034		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR2_0001	VOLUME	657150.141	3999432.58	742.8
SO	SRCPARAM	HR2_0001		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR2_0002	VOLUME	657176.613	3999445.51	742.61
SO	SRCPARAM	HR2_0002		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR2_0003	VOLUME	657206.479	3999445.67	741.82
SO	SRCPARAM	HR2_0003		8.693853758E-04	5.4.6	4.5
SO	LOCATI ON	HR2_0004	VOLUME	657236.015	3999440.88	740.72

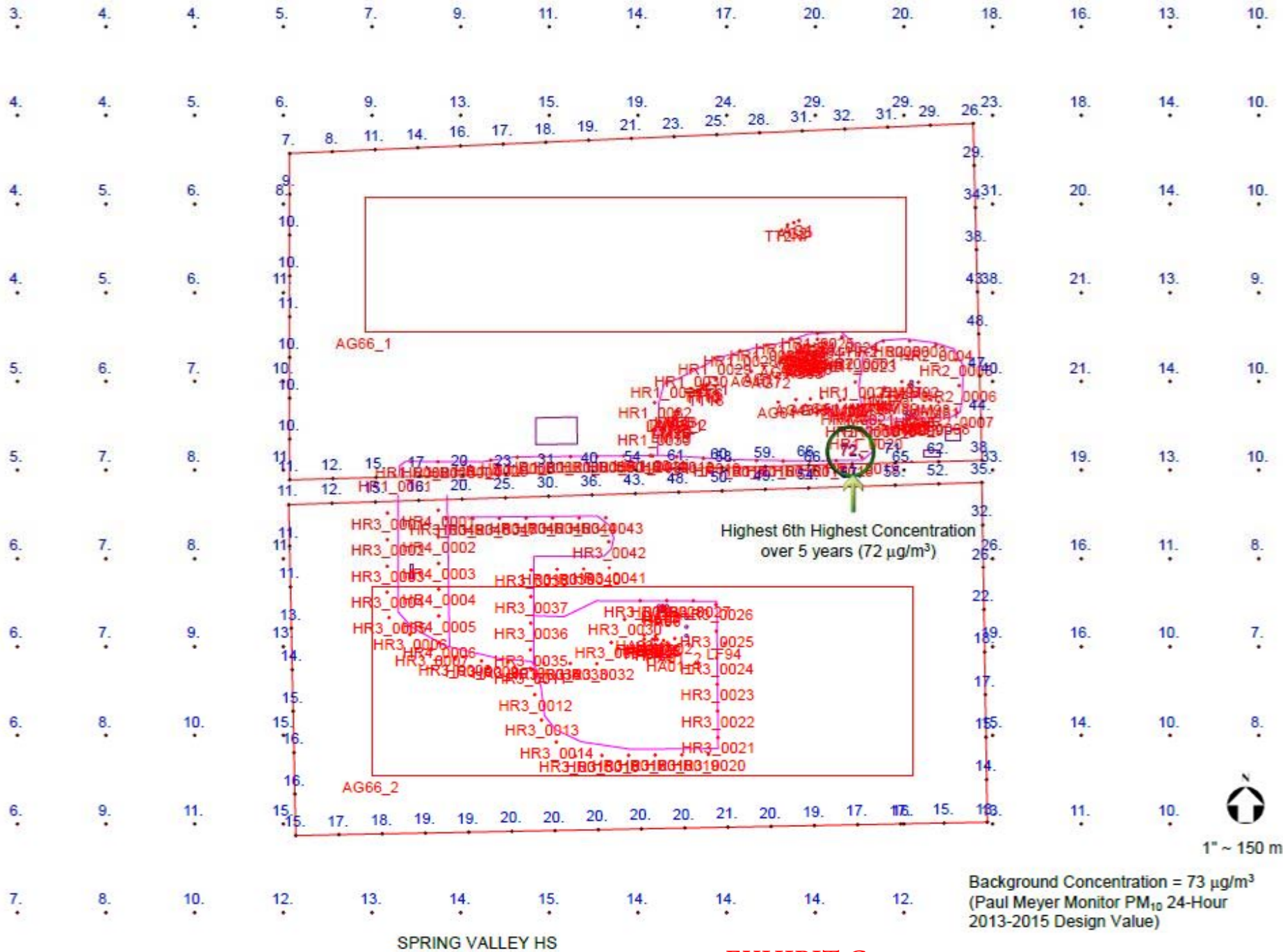
SO	SRCPARAM	HR2_0004	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR2_0005	VOLUME 657258.518	3999424.24	739.69			
SO	SRCPARAM	HR2_0005	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR2_0006	VOLUME 657262.223	3999395.33	739.77			
SO	SRCPARAM	HR2_0006	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR2_0007	VOLUME 657259.646	3999365.48	739.71			
SO	SRCPARAM	HR2_0007	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR2_0008	VOLUME 657232.109	3999357.69	740.52			
SO	SRCPARAM	HR2_0008	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR2_0009	VOLUME 657202.125	3999356.71	741.42			
SO	SRCPARAM	HR2_0009	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR2_0010	VOLUME 657172.141	3999355.73	742.22			
SO	SRCPARAM	HR2_0010	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR2_0011	VOLUME 657152.016	3999355.07	742.71			
SO	SRCPARAM	HR2_0011	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0001	VOLUME 656617.37	3999251.6	753.93			
SO	SRCPARAM	HR3_0001	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0002	VOLUME 656617.257	3999221.6	752.99			
SO	SRCPARAM	HR3_0002	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0003	VOLUME 656617.145	3999191.6	751.98			
SO	SRCPARAM	HR3_0003	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0004	VOLUME 656617.032	3999161.6	751.14			
SO	SRCPARAM	HR3_0004	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0005	VOLUME 656619.143	3999132.67	751.2			
SO	SRCPARAM	HR3_0005	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0006	VOLUME 656642.632	3999114.01	751.26			
SO	SRCPARAM	HR3_0006	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0007	VOLUME 656667.049	3999096.6	751.22			
SO	SRCPARAM	HR3_0007	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0008	VOLUME 656693.539	3999085.7	750.91			
SO	SRCPARAM	HR3_0008	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0009	VOLUME 656723.495	3999084.07	749.94			
SO	SRCPARAM	HR3_0009	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0010	VOLUME 656753.451	3999082.45	748.4			
SO	SRCPARAM	HR3_0010	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0011	VOLUME 656778.649	3999075.5	747.84			
SO	SRCPARAM	HR3_0011	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0012	VOLUME 656783.58	3999045.91	749.05			
SO	SRCPARAM	HR3_0012	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0013	VOLUME 656791.149	3999017.36	749.69			
SO	SRCPARAM	HR3_0013	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0014	VOLUME 656807.791	3998992.4	748.55			
SO	SRCPARAM	HR3_0014	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0015	VOLUME 656829.405	3998976.84	746.99			
SO	SRCPARAM	HR3_0015	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0016	VOLUME 656859.403	3998977.15	743.27			
SO	SRCPARAM	HR3_0016	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0017	VOLUME 656889.401	3998977.46	738.73			
SO	SRCPARAM	HR3_0017	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0018	VOLUME 656919.4	3998977.77	736.9			
SO	SRCPARAM	HR3_0018	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0019	VOLUME 656949.398	3998978.07	735.09			
SO	SRCPARAM	HR3_0019	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0020	VOLUME 656979.397	3998978.38	734.18			
SO	SRCPARAM	HR3_0020	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0021	VOLUME 656990.182	3998997.42	734.07			
SO	SRCPARAM	HR3_0021	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0022	VOLUME 656989.726	3999027.41	734.28			
SO	SRCPARAM	HR3_0022	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0023	VOLUME 656989.269	3999057.41	734.42			
SO	SRCPARAM	HR3_0023	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0024	VOLUME 656988.812	3999087.41	735.19			
SO	SRCPARAM	HR3_0024	8.693853758E-04	5.4	6	4	5	
SO	LOCATI ON	HR3_0025	VOLUME 656988.355	3999117.4	737.12			
SO	SRCPARAM	HR3_0025	8.693853758E-04	5.4	6	4	5	

SO LOCATION HR3_0026 VOLUME 656987.898 3999147.4 738.16
 SO SRCPARAM HR3_0026 8.693853758E-04 5.4.6 4.5
 SO LOCATION HR3_0027 VOLUME 656962.477 3999152.05 739.07
 SO SRCPARAM HR3_0027 8.693853758E-04 5.4.6 4.5
 SO LOCATION HR3_0028 VOLUME 656932.477 3999152.05 739.22
 SO SRCPARAM HR3_0028 8.693853758E-04 5.4.6 4.5
 SO LOCATION HR3_0029 VOLUME 656902.477 3999152.05 743.31
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RE DI SCCART 656747.9 3999667.6 753.91 753.91

Wells Cargo Source Impacts - PM₁₀ 24-Hour Concentration in Micrograms/Cubic Meter($\mu\text{g}/\text{m}^3$)

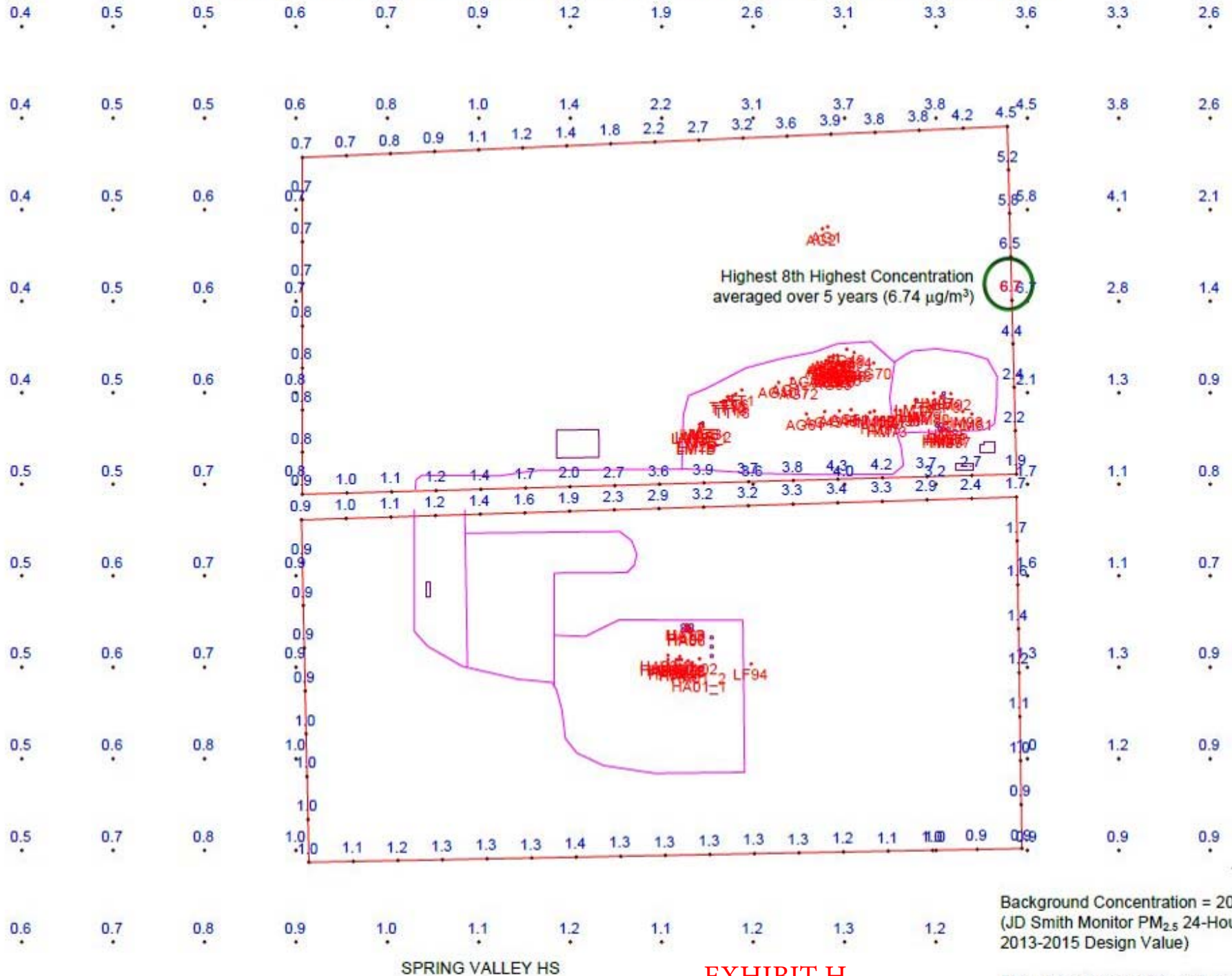


Background Concentration = 73 $\mu\text{g}/\text{m}^3$
 (Paul Meyer Monitor PM₁₀ 24-Hour
 2013-2015 Design Value)

PM₁₀ 24-Hour NAAQS = 150 $\mu\text{g}/\text{m}^3$

EXHIBIT G

Wells Cargo Source Impacts - PM_{2.5} 24-Hour Concentration in Micrograms/Cubic Meter (µg/m³)



Background Concentration = 20.1 µg/m³
 (JD Smith Monitor PM_{2.5} 24-Hour
 2013-2015 Design Value)

PM_{2.5} 24-Hour NAAQS = 35 µg/m³

SPRING VALLEY HS

EXHIBIT H

000293

**CLARK COUNTY BOARD OF COMMISSIONERS
AGENDA ITEM**

Petitioner: Marci D. Henson, Director of Air Quality

Recommendation:

That the Board of County Commissioners approve and adopt the 2017 Annual Monitoring Network Plan and authorize the director of the Department of Air Quality or her designee to submit the Plan to the United States Environmental Protection Agency; or take other action as appropriate. (For possible action)

(The Annual Monitoring Plan is available for public viewing in the County Clerk's Office, Commission Division and the Department of Air Quality.)

FISCAL IMPACT:

Fund #: N/A	Fund Name: N/A
Fund Center: N/A	Funded Program/Grant: N/A
Description: N/A	Amount: N/A
Added Comments: N/A	

BACKGROUND:

As a requirement of 40 CFR Part 58.10, Clark County must adopt and submit an annual monitoring network plan to the United States Environmental Protection Agency (EPA).

The attached 2017 Annual Monitoring Network Plan (Plan) reports the status of the Clark County air monitoring network in 2016. It also describes changes planned for 2017–2018 and the ways in which network data is disseminated to the public in a timely manner.

The Department of Air Quality provided a 30-day period for the public to comment on the Plan from April 5, 2017 through May 5, 2017. The comment period was advertised on the Department's website and at the Department's front counter, and was emailed to the Department's distribution list. No public comments were received.

Staff recommends that the Board approve and adopt the 2017 Annual Monitoring Network Plan and authorize its submission to EPA.

The Annual Monitoring Network Plan is available for public viewing in the County Clerk's Office, Commission Division and the Department of Air Quality.

Respectfully submitted,


Marci Henson, Director of Air Quality

APPROVED AS RECOMMENDED

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY OF
THE DOCUMENT OR DATA ON FILE
MINUS ANY REDACTED PORTIONS

JAN 22 2018


CLERK

Cleared for Agenda

6/6/17 HD

Agenda Item #

EXHIBIT I

31
000294

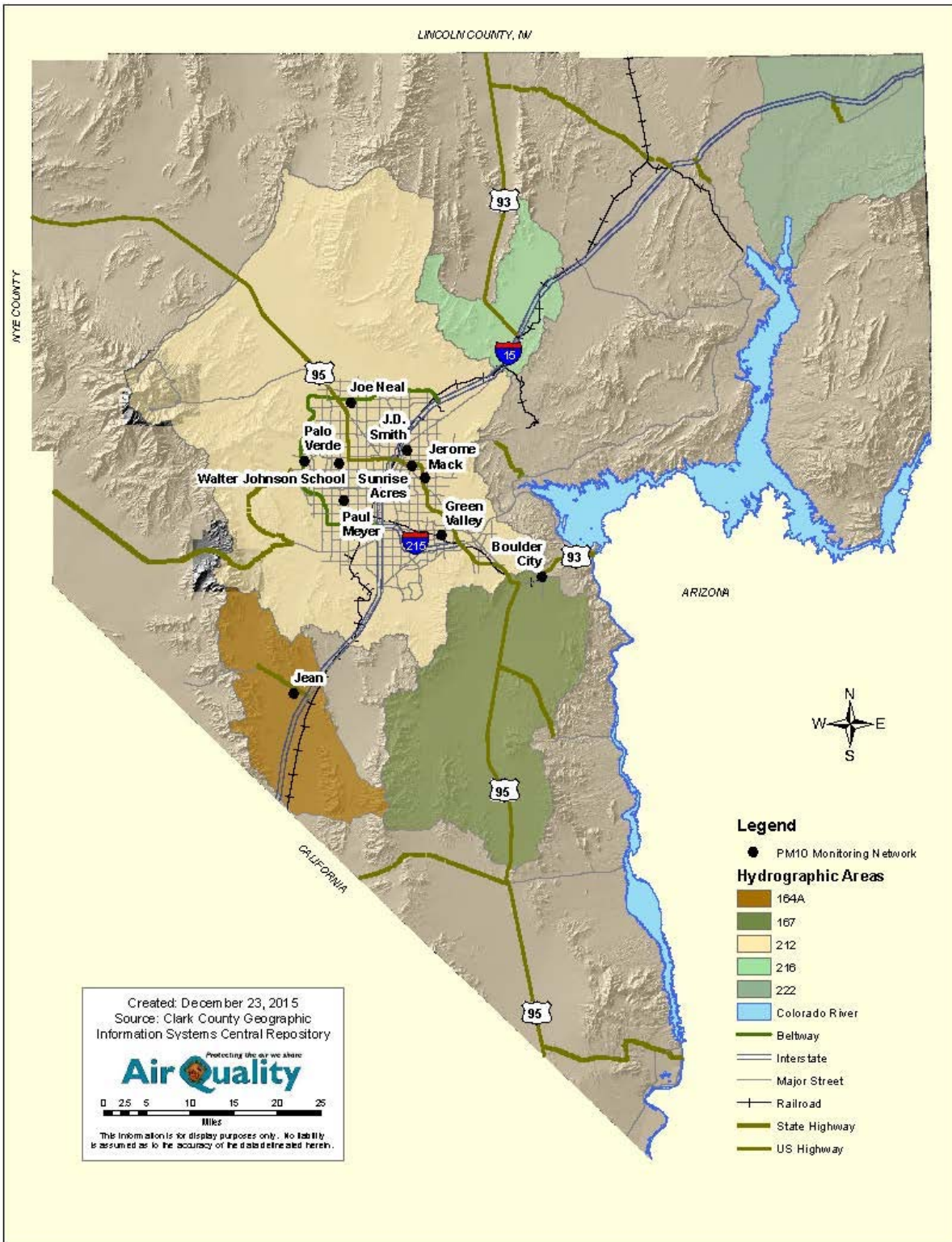


Figure 20: Continuous PM₁₀ Monitors.

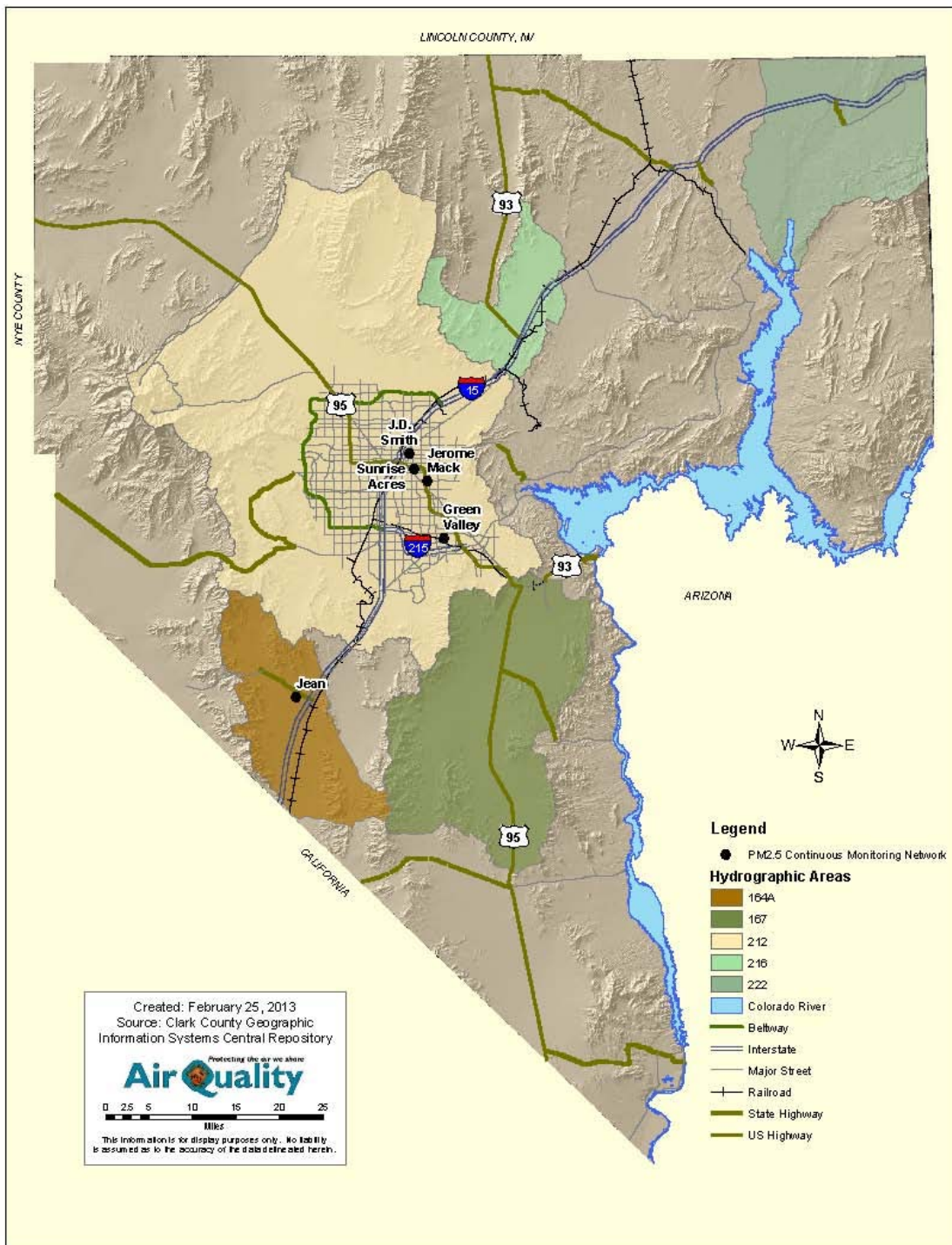


Figure 21: Continuous PM_{2.5} Monitors.

**INTERLOCAL AGREEMENT
BETWEEN THE CLARK COUNTY SCHOOL DISTRICT
CLARK COUNTY
AND THE UNIVERSITY OF NEVADA LAS VEGAS**

This Interlocal Agreement (the "Agreement"), is made and entered into this 15 day of AUGUST, 2017, by and between Clark County School District, a political subdivision of the State of Nevada ("District"), Clark County, also a political subdivision of the State of Nevada ("County"), and the Board Of Regents Of The Nevada System Of Higher Education On Behalf Of The University Of Nevada, Las Vegas ("UNLV"). The District, County and UNLV may be individually known as "Party" or collectively as the "Parties."

RECITALS

WHEREAS, pursuant to Nevada Revised Statutes ("NRS") 277.180 any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, the District owns real property in various locations ("Sites") whereby the County and UNLV have placed air quality monitoring equipment and would like to continue to maintain and monitor said equipment and add additional Sites; and

WHEREAS, pursuant to a master interlocal agreement dated March 1, 2011(now expired) between the County and the District, the District authorized the County to enter onto specific District Sites to install, operate and maintain air quality monitoring stations and towers ("County Equipment") for the purpose of monitoring air quality; and

WHEREAS, District, County and UNLV previously entered into an interlocal agreement dated April 7, 2015 (now expired) to allow UNLV to enter onto Sites and utilize County Equipment and to install air monitoring equipment ("UNLV Equipment") for the purpose of obtaining air and pollen samples; and

WHEREAS, the Parties would like to include additional Sites and continue to allow the County and UNLV to install, operate and monitor the County and UNLV Equipment.

NOW, THEREFORE, in consideration of the mutual promises herein contained, above recitals, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms, conditions and covenants set forth herein as follows.

Term and Conditions

1. **Intent and Purpose.** The purpose of this Agreement sets forth the conditions and responsibilities whereby County and UNLV and their employees, authorized agents, and contractors may enter upon the following Sites as listed on Exhibit "A" in order to install, operate and maintain County Equipment and UNLV Equipment and collect air quality readings utilizing County Equipment and UNLV Equipment.

2. **Responsibilities.**

COUNTY Agrees to:

- Obtain any permits as required by the County, State, District or other governing agencies.
- Maintain and repair all County Equipment, at no expense to the District.

- Provide a list of authorized County maintenance personnel to Districts' Operational Services Division Operations Manager (hereinafter referred to as "OM") who will obtain and have access to the Sites.
- Notify the respective appropriate OM prior to accessing the Sites and coordinate a time not to conflict with or disrupt school class instruction.
- Travel, when practicable, on existing trails or roads.
- No property of the District will be disturbed without prior District approval.
- At County's sole expense, replace and/or repair any damage caused to Sites by County activity.
- Ensure power remains at the Site available for sampler from County meters currently servicing the sites.
- Not to exclude the UNLV's lock from the daisy chain.
- Not handle the Department of Homeland Security, (hereinafter referred to as "DHS"), sampler.
- Inform UNLV if County observes problems with the UNLV sampler.
- Inform UNLV if County sees or encounters conditions that could impact sampling.
- Obtain written approval from District to enter new sites with monitoring equipment.

UNLV Agrees to:

- Provide a list of authorized UNLV maintenance personnel to the OM who will obtain and have access to the Sites.
- Notify the respective OM prior to accessing the Sites and coordinate a time not to conflict with or disrupt school class instruction.
- Travel, when practicable, on existing trails or roads.
- No property of the District will be disturbed without prior District approval.
- At UNLV's sole expense, replace and/or repair any damage caused to the Sites by UNLV activity.
- Provide UNLV a padlock and daisy chain and not to exclude the County's lock from the daisy chain.
- Not to handle or manipulate the sampling tower.
- Always leave County Equipment locked and secured.
- Abide by access, use policies and practices of District.
- Inform County if UNLV observes problems with air quality monitoring Sites.
- Inform County if UNLV sees conditions that could impact their sampling.
- Maintain and repair all County Equipment and UNLV Equipment, at no expense to the District.
- Obtain written approval from District to enter new sites with monitoring equipment.

DISTRICT Agrees to:

- Provide access to County and UNLV for the maintenance of County Equipment and UNLV Equipment.
- Provide an OM as a contact person for the purpose of communication and coordination at the Sites.
- District's OM agrees to coordinate access and all on-site activities with County and UNLV.

3. Duration And Term. This Agreement is effective for five (5) years and shall commence after receipt of approval by the governing bodies of all Parties and the official commencement date shall be the date of the last signing by an authorized representative of the governing bodies of the Parties hereto.

This Agreement shall remain and continue in full force and effect for the term of five (5) years unless terminated by any Party. Any Party may terminate this Agreement at any time by providing written notice to the other Parties within sixty (60) calendar days prior to the desired date of termination. The terminating Party will not incur any liability to the other Parties for terminating this Agreement. Upon termination of this Agreement, County and UNLV shall cease use of Sites and return the Sites to their original condition, reasonable wear and tear excepted.

4. Modification Or Amendment. No amendment, change, or modification of this Agreement shall be valid except by express written agreement, duly authorized and executed by the authorized representatives of each Party in writing and signed by all Parties. Any other attempt at modification, amendment, or extension of this Agreement shall have no force or effect and shall not be relied upon by any of the Parties. This Agreement is the entire agreement between the Parties with respect to the use, and supersedes all prior and contemporaneous oral and written agreements and discussions.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable for whatever reason, the remaining provisions not so declared shall, nevertheless, continue in full force and effect, without being impaired in any manner whatsoever.

Each Party or responsible representative thereof, has read this Agreement and understands the contents thereof. The person(s) executing this Agreement on behalf of each Party is empowered to do so and thereby binds the respective Party.

5. Notices. All notices, legal and otherwise, required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed effective and delivered as follows: (i) if hand or courier delivered, upon personal delivery to the Party to whom addressed; (ii) if telecopied, upon receipt of confirmation that successful facsimile transmission has occurred; and (iii) if mailed, three (3) business days following deposit in the U.S. Mail, provided such mailing is mailed registered or certified, return receipt requested, postage prepaid. For purposes hereof, the Party's notice information is set forth below:

District Representative: For the purpose of communication, negotiation, or other notices and to resolve issues and concerns and for construction and operation communication, the following will be considered the following District representatives:

Clark County School District
Real Property Management
Attn: Director
1180 Military Tribute Place
Henderson, NV 89074
Phone: (702) 799-5214
Email: lkperri@interact.ccsd.net

With a Copy To: Clark County School District Legal Office
Attn: General Counsel
5100 W. Sahara Avenue, 3rd Floor
Las Vegas, Nevada 89146
Phone: (702) 799-5373
Email: clmcdade@interact.ccsd.net

District Maintenance Representative: For the purpose of site coordination, communication and access, the following will be considered the following District representatives:

Clark County School District, Maintenance Division
Attn: Josh Chesnik, Director
1180 Military Tribute Place
Henderson, Nevada 89074
Phone: (702) 799-5204 (702) 799-5265 (Office)

Email: jchesnik@interact.ccsd.net

County Representative: For the purpose of communication, negotiation, or other notices the following will be considered the County representative.

Clark County Real Property Management
Attn: Director
500 S. Grand Central Parkway, 4th Floor
Post Office Box 551825
Las Vegas, Nevada 89155
Phone: (702) 455-4616
Email: LisaK@ClarkCountyNV.gov

With a Copy To: Clark County Department of Air Quality
Attn: Director
4701 W. Russell Road, Suite 200
Las Vegas, Nevada 89118
Phone: (702) 455-5942
Email: jerry.stueve@ClarkCountyNV.gov

UNLV Representative: For the purpose of communication, negotiation, or other notices the following will be considered the UNLV representative.

Nevada State Public Health Laboratory, UNLV Branch
Attn: Associate Director
4505 S. Maryland Parkway
P.O. Box 453064
Las Vegas, Nevada 89154
Phone: (702) 895-1418
Email: mark.buttner@unlv.edu

With a Copy To: Nevada State Public Health Laboratory, UNLV Branch
Attn: Laboratory Lead Scientist
4505 S. Maryland Parkway, P.O. Box 453064
Las Vegas, Nevada 89154
Phone: (702) 895-1418
Email: patricia.cruz@unlv.edu

6. Entire Agreement. This executed Agreement constitutes the entire agreement among the Parties hereto relating to rights granted and obligations assumed by the Parties and intended as a complete and exclusive statement of the promises, representations, discussions, and other agreement that may have been made in connection with the subject matter hereof. Any prior agreement, contract, promise, negotiation, or representation, either oral or written, relating to the subject matter for this Agreement not expressly set forth in this Agreement is superseded by this Agreement and is of no further force or effect.

7. Execution In Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

8. Insurance & Indemnification. Up to the limitation of law, including, but not limited to, NRS Chapter 41 liability limitations, each Party shall be responsible for all liability, claims, actions, damages, losses, and expenses, caused by the negligence, errors, omissions, recklessness or intentional misconduct of its own officers and

employees. The Parties do not waive and intent to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of the Parties shall not be subject to punitive damages. The Parties hereto shall carry commercial general liability and workers compensation insurance, or shall self-insure, in accordance with NRS. Such insurance shall be written by a company licensed by the state of Nevada, and shall respond in tort in accordance with NRS Chapter 41. The Parties shall also maintain protection (insurance or approved self-insurance) for liability arising in other legal jurisdictions, including federal courts, in which the statutory tort caps of NRS Chapter 41 would not apply.

9. General Conditions. The laws of the State of Nevada will govern as to the interpretation, validity and effect of this Agreement. This Agreement is intended only to benefit the Parties hereto and does not create any rights, benefits or causes of action for any other person, entity or member of the general public.

The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement, and in respect to performance of services pursuant to this Agreement, the Parties are and shall be a public agency separate and distinct from the other. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other.

Pursuant to NRS 239.010, information or documents in connection with this Agreement may be open to public inspection and copying. The Parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

Should any part of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such determination shall not render void, invalid, or unenforceable, under any other part of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGES]

CLARK COUNTY SCHOOL DISTRICT
BOARD OF SCHOOL TRUSTEES' DESIGNEE


Blake Cumbers, Associate Superintendent

7-10-17
Date

APPROVED AS TO FORM:


Carlos McDade, General Counsel

June 15, 2017
Date

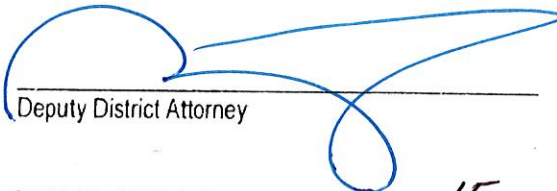
PASSED, ADOPTED and approved this 15 day of August, 2017.

CLARK COUNTY on behalf of the DEPARTMENT OF AIR QUALITY



8/30/17
Date

APPROVED AS TO FORM:
DISTRICT ATTORNEY
STEVEN B. WOLFSON



Deputy District Attorney

8-28-17
Date

PASSED, ADOPTED and approved this 15 day of AUGUST, 2017.

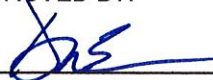
BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS

RECOMMENDED BY:


Shawn Gerstenberger, Dean
School of Community Health Sciences


5/5/17
Date

APPROVED BY:


Diane Chase
Executive Vice President and Provost

5/5/17
Date

APPROVED AS TO FORM:


Elda L. Sidhu
General Counsel

5/9/17
Date

EXHIBIT 'A'

Sunrise Acres Elementary School Principal: Margarita Gamboa	211 N. 28 th Street, Las Vegas, NV 89101 Operations Manager: Mark Mills	702-799-7912
J.D. Smith Middle School Principal: Henry Rodda	1301 E. Tonopah Avenue, N. Las Vegas, NV 89030 Operations Manager: David Kelly	702-799-7080
Jerome D. Mack Middle School Principal: Roxanne Kelley	4250 Karen Avenue, Las Vegas, NV 89121 Operations Manager: David Kelly	702-799-2005
Joseph M. Neal Elementary School Principal: Denise Murray	6651 W. Azure Drive, Las Vegas, NV 89130 Operations Manager Eddie Giron	702-799-2200
Walter Johnson School Principal: George Anas	7701 Ducharme, Las Vegas, NV 89145 Operations Mgr: Bob Brekke	702-799-4480
Palo Verde High School Principal: Darren Sweikert	333 S. Pavillion Center Drive, Las Vegas, NV 89144 Operations Manager: Roy Hansen	702-799-1450
Garrett Middle School Principal: Jamey Hood	1200 Avenue "G", Boulder City, NV 89005 Operations Manager: Doug Diaz	702-799-8290
Liberty High School Principal: Derek Bellow	3700 Liberty Heights Avenue, Henderson, NV 89052 Operations Mgr: John Lyons	702-799-2270
Virgin Valley High School Principal: Clifford Hughes	820 Valley View Drive, Mequite, NV 89027 Operations Manager: Kirk Guier	702-346-2780

1 Carlos L. McDade, Esq.
2 Nevada Bar No. 11205
3 CLARK COUNTY SCHOOL DISTRICT
4 OFFICE OF THE GENERAL COUNSEL
5 5100 West Sahara Avenue
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7 Telephone: (702) 799-5373
8 Facsimile: (702) 799-5505
9 *Attorneys for Appellant*


7 **BEFORE THE CLARK COUNTY**
8 **AIR POLLUTION CONTROL HEARING BOARD**

9)
10 In re:)
11) **APPELLANT'S AMENDED**
12 Appeal of Synthetic Minor Source Permit Issued) **DISCLOSURES**
13 to Wells Cargo, Inc. (Source: 12) by Lori)
14 Headrick, Director, Environmental Services,)
15 Clark County School District.)
16)
17)

18 The Clark County School District ("CCSD" or "Appellant") hereby amends its disclosures
19 by withdrawing Lung-Wen Antony Chen, Ph.D., as its expert witness and Exhibits 6 through 8 as
20 evidence.

21 DATED this 7th day of February, 2018.

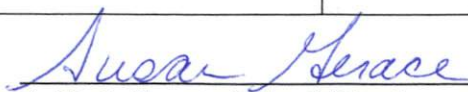
22 **CLARK COUNTY SCHOOL DISTRICT**


23 By: 
24 Carlos L. McDade, General Counsel
25 5100 West Sahara Avenue
26 Las Vegas, Nevada 89146
27 *Attorneys for Appellant, Clark County School District*
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of CLARK COUNTY SCHOOL DISTRICT and that on this 7th day of February, 2018, I served a true and correct copy of **Appellant's Amended Disclosures** as follows:

PARTY OR ATTORNEY OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director Environmental Services Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net	<i>Appellant</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
Linda Bullen, Esq. Bullen Law, LLC 8635 W. Sahara Avenue #454 Las Vegas, NV 89117 linda@bullenlaw.com	<i>Wells Cargo, Inc.</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
Trent Scarlett Phil Groff Guy Wells Wells Cargo, Inc. 9127 West Russell Road Suite 210 Las Vegas, NV 89148-1240 TScarlett@wcilv.com PGroff@wcilv.com GWells@wcilv.com		<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
Leslie A. Nielsen, Esq. Deputy District Attorney 500 S. Grand Parkway, 5 th FL. Las Vegas, NV 89106 Leslie.Nielsen@clarkcountyda.com Attorneys for Department of Air Quality	<i>Department of Air Quality</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email


A Clark County School District employee

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9 *Attorneys for Appellant*

7 **BEFORE THE CLARK COUNTY**
8 **AIR POLLUTION CONTROL HEARING BOARD**

9)
10 In re:) **APPELLANT'S OPPOSITION TO**
11) **CLARK COUNTY DEPARTMENT OF**
12 Appeal of Synthetic Minor Source Permit Issued) **AIR QUALITY'S MOTION TO**
13 to Wells Cargo, Inc. (Source: 12) by Lori) **DISMISS APPEAL OR TO EXCLUDE**
14 Headrick, Director, Environmental Services,) **CERTAIN EVIDENCE AND**
15 Clark County School District.) **INTERVENOR WELLS CARGO,**
16) **INC.'S JOINDER TO CLARK**
17) **COUNTY DEPARTMENT OF AIR**
18) **QUALITY'S MOTION TO DISMISS**
19) **APPEAL OR TO EXCLUDE**
20) **CERTAIN EVIDENCE**

18 The Clark County School District, by and through its counsel Clark County School
19 District General Counsel (the "District") Carlos McDade, hereby opposes the Motion to Dismiss
20 Appeal or to Exclude Certain Evidence (the "Motion") and Intervenor Wells Cargo's similar
21 motions. The Motion by the Clark County Department of Air Quality (the "Department"), and
22 Intervenor Wells Cargo, should be denied as the District appropriately raised its concerns in its
23 Appeal to the Revised Permit issued by the Department to Wells Cargo that is the subject matter
24 of this proceeding and properly alleged facts and law establishing a proper subject for a hearing
25 before this Clark County Air Pollution Control Hearing Board (the "Board").
26
27
28

1 The Department's Motion argues that the District's Appeal should be dismissed because
2 the District did not meet its burden to show the Control Officer abused her discretion by violating
3 any applicable law. The Motion also asserts that it is necessitated by new arguments raised for
4 the first time in the District's Reply Brief that responded to arguments made in the Department's
5 Responsive Brief. The Intervenor made similar arguments. However, both arguments fail to
6 support the Motion and this matter should be allowed to proceed to hearing.

7
8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 The District's pleadings raised the issue at bar, providing fair notice to the Department of
10 the District's concerns regarding the Revised Permit.

11 The District's Appeal raised concerns with PM10 and Volatile Organic Compounds.
12 "Based on recent results from continuous indoor air quality monitoring (conducted from
13 November 17, 2017 to December 4, 2017) out of the Dean's office showed concentrations for
14 Volatile Organic Compounds (VOCs) and Particulate Matter less than 10 microns (PM10) that
15 are above industry guidelines and Federal standards." See Appeal, page 1.

16 The District in its Opening Brief asked this Board to consider whether the source is
17 meeting NAAQS specifically for particulate matter and hazardous air pollutants (HAP)
18 emissions. The Opening Brief also contains an explanation of its concerns regarding particulates
19 beginning on page 3 of 7 and volatile organic compounds beginning on page 4 of 7. It explained
20 that indoor air testing was accomplished and the maximum reading for VOCs was 1,312 parts per
21 billion and maximum reading for PM10 was 53.6 microgram/cubic meter. The monitoring results
22 caused the District to examine the permit process and ultimately file its appeal

23 In its Motion, the Department assumes "CCSD is now focused solely on the PM10 and
24 PM2.5 emissions from the source." In an explanatory footnote 5, the Department states "[t]he
25 Reply Brief having not mentioned VOC emissions, we presume the Responsive Brief put those
26 issues to rest." To the contrary, the Reply Brief responded to issues raised in the Responsive
27 Brief. The District's Reply Brief did not waive or withdraw any of its concerns that the amount
28 of additional hazardous air pollutants that will be released from the expanded asphalt operations

1 may be harmful. That issue remains an appropriate subject for consideration by this Board and
2 for an appropriate remedy, a modification to the permit to require an emissions monitor.

3 The District's Opening Brief states on page 5 of 7 that with regards to VOCs "the
4 administrative record does not indicate that monitoring of actual VOC emissions has ever been
5 accomplished." Additionally, the District noted on that same page that a "...significant permit
6 revision should include a description and quantification of actual emissions of all regulated air
7 pollutants before and after the modification. Therefore, appellant requests that a requirement of
8 appropriate on-site monitoring of actual emissions be included in the permit." See Section
9 12.1.3.6, Application Contents, subsection (c).


10 The District contends this Board does have authority under AQ Section 7.10.2 to "order
11 affirmance, modification or reversal of any action taken by the Control Officer which is the
12 subject of the appeal." The Department and Intervenor cite no authority contrary to the plain
13 language of the regulation. The Board may grant the relief the District seeks.

14 The District asserted in both the Appeal and Opening Brief it had concern that the
15 administrative record has no evidence of proven compliance with the NAAQS for VOCs and PM.
16 Therefore, it has raised a justiciable allegation that the decision that NAAQS were met was
17 arbitrary and capricious.

18 Based on the foregoing, the District respectfully requests that the Motion be denied

19 DATED this 7th day of February, 2018.


20 **CLARK COUNTY SCHOOL DISTRICT**

21
22 By: 
23 Carlos L. McDade, General Counsel
24 5100 West Sahara Avenue
25 Las Vegas, Nevada 89146
26 *Attorneys for Appellant, Clark County School District*
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the CLARK COUNTY SCHOOL DISTRICT and that on this 7th day of February, 2018, I served a true and correct copy of **Appellant's Opposition To Clark County Department Of Air Quality's Motion To Dismiss Appeal Or To Exclude Certain Evidence And Intervenor Wells Cargo, Inc.'s Joinder To Clark County Department Of Air Quality's Motion To Dismiss Appeal Or To Exclude Certain Evidence** as follows:

PARTY OR ATTORNEY OF RECORD	PARTIES REPRESENTED	SERVICE METHOD
Lori Headrick, Director Environmental Services Clark County School District 4828 S. Pearl Street Las Vegas, NV 89121 headrle@nv.ccsd.net	<i>Appellant</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email
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Leslie A. Nielsen, Esq. Deputy District Attorney 500 S. Grand Parkway, 5 th FL. Las Vegas, NV 89106 Leslie.Nielsen@clarkcountyda.com Attorneys for Department of Air Quality	<i>Department of Air Quality</i>	<input type="checkbox"/> Mail Service <input checked="" type="checkbox"/> Email



 A Clark County School District employee