

# William MCCABE

In the 2021 87th Legislative Session, Senate Bill (SB) 1 charged the TCEQ "to adopt and make accessible on the commission's internet website best management practices for aggregate production operations regarding nuisance issues relating to dust, noise, and light, and to conduct aerial observations at least twice per fiscal year to ensure enforcement of existing statutes and rules relating to aggregate operations." The 2023 88th Legislative Session reiterated that charge with SB 1397 and House Bill (HB) 1505. These companion bills charged the TCEQ to develop and make accessible on the commission's internet website recommended BMPs for APOs that operate under the jurisdiction of the commission. The BMPs must include operational issues related to dust, water use, and water storage. The TCEQ spent over three years (from September 2021 to December 2024) to produce a set of BMPs that is so sparse, vague, and self-evident, as to be completely irrelevant and useless.

The proposed BMP list fails to address many of the real issues associated with APOs, including issues they were directly charged with addressing. Their charge in 2023 was to "include operational issues related to dust, water use, and water storage." While they addressed dust and water storage (albeit inadequately) the TCEQ completely overlooked the "water use" portion of their 2023 charge. Their 2021 charge also directed them to address noise and light pollution, both of which the proposed BMPs completely ignore. TCEQ has simply failed to comply with their legislative mandates

The BMPs listed are not only too few, but many of them are also too vague to be useful. For instance, "Ensure vehicles are driven at reasonable speeds to reduce dust disturbance." Why not include that speed limits of 10 or 15 mph should be posted and abided by on unpaved haul roads within an APO? The value of a BMP list is in detailing out what a "reasonable speed" ought to be. Another example: "Use fuel-efficient and appropriately-sized equipment to reduce emissions, operation time, and the overall amount of dust you produce." Why not indicate what is meant by "appropriately sized"? How is anyone to assess when a BMP is being implemented, if they are described in completely subjective terms like "reasonable" and "appropriate"?

Other BMPs listed are simply reminders to follow permit requirements or are otherwise self-evident. For instance, "Be sure your stockpiles are only as high as your permit allows," or "the further dustproducing operations are from the site boundaries, the less likely they will create a nuisance for any neighbors." Who benefits from these self-evident recommendations and simple reminders to follow the permit requirements? This completely inadequate draft BMP list, three years in the making, only weakens TCEQ's effort to protect public health and natural resources by pretending to establish new guidelines while actually saying nothing. It is a disservice to taxpayers and to the environment. It is also important to recognize that whatever list of BMPs the TCEQ ultimately settles on will be neither required nor incentivized for industry implementation.

Some specific inclusions that need to be included in the next attempt at fulfilling the legislative mandate are:

- 1) Water use: Maximize the use of process wastewater, which cannot be discharged without treatment but can be reused in site operations. Managing fine tailings to reduce amount of fine tailings settling ponds with tailings thickener system and/or flocculant and thickener are key BMPs understood, accepted and utilized by many APOs, These facilities can provide additional recycled water to reduce overall APO water use, water loss and reduce land use.

- 2) Riparian health and safety: The following is a list of suggested BMPs for riparian areas.

- a. Maintain undisturbed setback from at least 50 feet from the water's edge and preferably 200 feet.

- b. Create a buffer between mining activities and the waterway.
- c. Leave large woody debris in the floodplain.
- d. Mine above the water table only.
- e. Minimize use of heavy equipment in riparian areas to protect vegetation and reduce soil compaction