

Mark Friesenhahn

Jess, please take a hard look at my comments in the attached letter (WORD docx). My input, along with others associated with our TRAM organization, may be considered "pretty harsh", but we really do want to work with you and the APO industry to put reasonable BMPs in place. Thank you.

January 21, 2025

Texas Commission on Environmental Quality
Jess Robinson, MC 175
Office of Legal Services
P.O. Box 13087, Austin, TX 78711-3087

RE: APO BMP List Proposal

Dear Mr. Robinson,

I, along with a number of my TRAM and technical team colleagues have been in discussion with your group for over a year or so on your development of APO BMPs. While we appreciate the opportunity for the ongoing dialogue, we are extremely disappointed with your listing of BMPs published for comment. Despite significant experience-based input that we provided for inclusion in a workable set of APO BMPs, TCEQ's attempt at creating a usable list of Best Management Practices for the Aggregate Production Operations Industry in Texas is completely inadequate. The 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 saying nothing. It is a disservice to taxpayers and to the environment.

I am coming at this from a positive perspective: that detailed and meaningful, yet frank discussion is how difficult tasks are completed to achieve a reasonable consensus of all stakeholders involved. An energetic to and fro, data sharing and inputs based on experience almost always result in a synergistic solution.

My comments may be harsh but are true. Why are you proposing such an incomplete and inadequate set of BMPs? I ask that you incorporate our observations and recommendations outlined in this letter into revisions to the proposed APO BMPs. I believe that we both know that this is needed to move toward reasonable solutions to achieve equity among the stakeholders involved in/affected by the APO industry.

As always, we are available at any time to discuss our concerns and recommendations in more detail with you.

Background:

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.

TCEQ spent over three years (from September 2021 to December 2024) to produce a set of BMPs that didn't address all the Legislative charges and are so sparse, vague, and self-evident, as to be completely irrelevant and useless.

Issues:

- 1) **Inadequate Scope:** Failed to address issues identified by the Texas Legislature; water use, noise, and light pollution.
- 2) **Sparse:** 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 mandates and for that reason, among several others, their draft needs considerable improvement to become adequate.
- 3) **Vague:** 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, as TRAM’s BMP list includes, that speed limits of 10 or 15 mph should be posted and abided by on the 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”?
- 4) **Self-evident:** 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 dust-producing 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?

Suggestions for Meaningful BMPs:

Texans for Responsible Aggregate Mining (TRAM), a statewide coalition of member groups and their technical team of credentialed professionals created a vetted list of BMPs and presented it to TCEQ for their consideration.

These recommendations were not considered, and they should have been. A comprehensive list can be found here – www.tramtexas.org/calltoaction.

Here are some examples of those priorities for BMPs:

- 1) **Dust Control:** Roads and parking areas for vehicles that will leave the site should be paved.
- 2) **Light pollution:** Direct light properly and use perimeter barriers to eliminate sky glow, light trespass, and glare.
- 3) **Mine management and truck safety:** Clear roads for school buses by not loading trucks for 30 minutes before and after school bells.
- 4) **Noise:** APOs should monitor the noise exposure at their property line, keeping the noise level at their property line below 65 dB if the property line is within 880 yards of a residential area, school, or house of

worship, and 70 dB if not. Set criteria using MSHA on-site guidance and experience with noise level limits from municipalities (nearby if available) that have set noise limits.

- 5) **Blasting:** Blasting should be conducted with technology and operational practices to minimize air blast overpressure and seismic forces leaving the APO site. To ensure these practices are being achieved, blasting should be monitored with seismographs, located on the perimeter (corners) of the APO property (and in some instances, adjacent or near-by properties in multiple directions).
- 6) **Water quality:** Vegetation is an inexpensive and effective way to protect soil from erosion and filter contaminants, protecting water quality in nearby streams and aquifers. It also protects air quality by holding dust down and filtering the air. Vegetative controls should consist of native plants appropriate for the Texas ecoregion where the site is located and must not include any noxious or invasive species.
- 7) **Water use:** BMPs include identifying all potential sources and determining availability of regional water supplies to support large APO water use. Comprehensive hydrologic models should be developed to predict the impact, if any, that the consumption of water in mining and processing operations will have on long term viability of groundwater resources to support all competing uses in the area. Maximize the use of process wastewater, which cannot be discharged without treatment but can be reused in site operations. Managing fine tailings to reduce the amount of tailings in settling ponds with a tailings thickener system and/or flocculant and thickener are key BMPs that are 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.
- 8) **Riparian health and safety:** The following is a list of suggested BMPs for riparian areas. Incorporating these practices into your operations will preserve the quality of the land and water and reduce the risk of catastrophic “pit capture” (when a river breaks through the riverbank or constructed levy and merges with the mine pit, as has happened countless times in Texas, due to poor mining practices):
 - a. Maintain undisturbed setbacks 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. Quarry above the water table only.
 - e. Minimize use of heavy equipment in riparian areas to protect vegetation and reduce soil compaction.

TCEQ must improve this BMP list by adding several times more BMPs, addressing a broader array of issues—including, at minimum, the unaddressed issues identified by the Texas Legislature: water use, noise, and light pollution. Further, they must address each issue more completely, by describing more BMPs and providing more detail in their descriptions. TCEQ should make significant use of the vetted BMPs listed in the TRAM Recommendations.

Sincerely and respectfully,

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