

**Response Guide**

**for**

*EPA Final Rule – Limited Approval and Disapproval of Air Quality Implementation Plans; Nevada; Clark County Stationary Source Permits (77 FR 64039, October 18, 2012)*

**Proposed Revisions to the Clark County Air Quality Regulations Related to the New Source Review Permitting Program, Including Minor Source, NSR, and PSD Programs, and Associated Supporting Air Quality Regulations with EPA Review Comments**

**Distributed by:**

**Clark County (Nevada) Department of Air Quality**

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## PREFACE

This guide was created primarily to facilitate the review of proposed revisions to the Clark County Air Quality Regulations that were the subject of EPA's October 18, 2012, rule-making (77 FR 64039). It is based on the final rule *Federal Register* Notice and the Technical Support Document that EPA Region 9 prepared as part of the proposed rule *Federal Register* Notice in July 2012 (77 FR 43206). EPA did a thorough job of identifying each issue, defining the basis in federal law for its disapproval, and suggesting a solution. Since DAQ is not contesting any of the disapproval issues, this guide tracks the issues in the order they appear in the TSD and offers proposed corrective language. There were slight differences in what EPA proposed to disapprove in the initial FR notice and what was ultimately acted upon in the final notice; therefore, the issues listed in this document are not identical to those listed in the TSD because EPA ultimately elected not to disapprove some of the rule sections that it indicated in the TSD that would be disapproved.

To organize the issues and responses, this document summarizes each EPA-identified issue and synthesizes the revision DAQ will propose to correct the deficiency. The reader may review the attached strikeout/underlined versions of the draft rules to verify the exact change(s). In areas where EPA indicated that the proposed changes did not adequately address the issue; or where DAQ indicated it might pursue different options or where EPA indicated it needed headquarters guidance or approval, this document has been updated. Those areas have three response sections. Instead of the "Proposed Change-EPA Response" structure, there is a third "DAQ Response" subsection.

EPA also made recommendations in the TSD on a number of issues that did not rise to the level of formal disapproval. These are listed separately with proposed revisions. There are also a number of relatively minor clarifying revisions included that DAQ staff have identified based on their experience in implementing the rules. Finally, the document includes a number of issues related to the Section 12 rules that are key to ensuring Clark County has a complete set of permitting rules in place in the near future, but that were not the subject of EPA's October 2012 rulemaking.

**SIP ISSUES: Disapproval List, TSD Recommendations, and  
Associated Proposed Regulatory Amendments  
February 19, 2013**

**Section 12.1: Minor Source New Source Review**

***MS Disapproval Issue #1 (TSD page 11-12):***

Subsection 12.1.4.1(c) requires that each minor source permit issued by Clark County include emission limitations that ensure “[t]he ambient air quality standards will be attained or maintained” (12.1.4.1(c)) and appears to depend upon DAQ’s definition of “ambient air quality standards in Section 11,” which does not include the 2006 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup> or the 2008 Pb NAAQS of 15 µg/m<sup>3</sup> (rolling 3-month average). EPA also advised that revisions addressing the revised NAAQS for NO<sub>2</sub> and SO<sub>2</sub> were due in 2013.

**PROPOSED CHANGE:** Revised Section 0 as follows: ① “Air Quality Standard” incorporates by reference all NAAQS in CFR, Part 50, Title 40 including definitions, scope, reference conditions and appendices as of the most recent CFR codification (July 1 of most recent year). ② Revised Section 12.1.4.1(c) (“Permit Content”) to require emission limitations that ensure the National Ambient Air Quality Standards are attained and maintained. ③ Added Permitting and Significant thresholds for PM<sub>2.5</sub> to Sections 12.1.1(c) and (g); ④ thresholds for Pb, NO<sub>x</sub>, and SO<sub>2</sub> are in those sections of 12.1 already. ⑤ There is regulatory language in each table that reflects the federally defined precursor relationship between NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>2.5</sub> and their precursors.

**EPA RESPONSE:** The proposed revisions described in items ①, ②, ③ and ④ are acceptable to correct the deficiency. For item ⑤, the purpose and intent of the new language is unclear. The following language has been added for subsection 12.1.1(c): “...SO<sub>2</sub> and NO<sub>2</sub> are PM<sub>2.5</sub> precursors and will also be considered on a case by case basis to determine if an emissions increase in PM<sub>2.5</sub> equals or exceeds the thresholds listed in this table.” Similar language is added for subsection 12.1.1(g). Rather than specifying a case-by case determination, for which the rule currently provides no specific criteria for evaluating, EPA suggests simply relying on the existing SO<sub>2</sub> and NO<sub>x</sub> thresholds listed in each subsection to provide the necessary threshold for PM<sub>2.5</sub> precursors.

**DAQ RESPONSE(Updated 10/10/13):** Since Section 12.0.1(b) states that Section 12.1 is applicable to any source that has the potential to emit a regulated air pollutant equal to or greater than the thresholds listed in 12.1.1(c) and given the fact that the Section 0 definition of “Regulated Air Pollutant” includes, at subsection (e), any substance that is also a “Regulated NSR Pollutant as defined in Section 12. 2” and since the definition of “Regulated NSR Pollutant” in Section 12.2 will, after the proposed revision, include all the federal precursor language, we deleted the draft” foot note” precursor language out of Sections 12.1.1(c) and (g). Further, in order to avoid creating de facto thresholds for NO<sub>x</sub> and SO<sub>x</sub> in 12.1 that are lower than the current listed thresholds, the term “precursor” was deleted from the proposed PM<sub>2.5</sub> threshold in the same two subsections of Section 12.1. Finally, since the definition of “Regulated NSR Pollutant” will also include the federal condensable language, it is not necessary to include that requirement in the definitions of PM<sub>2.5</sub> and PM<sub>10</sub> in Section 0. The draft definition of “Regulated NSR Pollutant” has also been updated in Sections 12.2 and 12.3 to identically track the federal statutes.

**MS Disapproval Issue #2 (TSD page 13, Section (c)):**

Subsection 12.1.3.6(a)(5) provides that an applicant may identify specific portions of a permit that it wants to be federally enforceable. This is not consistent with CAA requirements, as all conditions of a permit issued pursuant to a SIP-approved permit program are federally enforceable.

**PROPOSED CHANGE:** Deleted subsection 12.1.3.6(a)(5).

**EPA RESPONSE:** The proposed revision is acceptable to correct the deficiency.

**MS Disapproval Issue #3 (TSD page 14):**

Neither Section 12.1 nor Section 12.4 contain a provision addressing, for minor stationary sources, the requirement in 40 CFR 51.160(d) to “provide that approval of any construction or modification must not affect the responsibility on the owner or operator to comply with applicable portions of the control strategy.”

**PROPOSED CHANGE:** ① Added new subsection (12.0.4) that states: “No approval of an Authority to Construct or authority to operate permit . . . shall affect the responsibility of the permittee to comply with the requirements of 40 CFR § 51.160(d).” ② Added subsection (E) to 12.4.3.1(e)(10) (“Permit Content”): “(E) Such conditions as necessary to ensure compliance with the requirements of 40 CFR §51.160(d).”

**EPA RESPONSE:** The citation used here in both item 1 and 2 are not correct. For item ①, it is Clark’s rules that must contain this specific language so that the rule complies with the requirements of 40 CFR 51.160(d). This can be satisfied by added the proposed language in Section 12.0.4, but revise the requirements the source must comply with to the applicable portions of the Nevada SIP, not 40 CFR 51.160(d). If this additional edit is made to Section 12.0.4, the correction would be acceptable. For item ②, the same type of error appears. The permit must contain a condition stating the same fact stated in proposed 12.0.4, not conditions to comply with 40 CFR 51.160(d). This language still needs to be revised to address the noted disapproval issue.

**DAQ RESPONSE:** In both sections the language has been revised to state “...the applicable portions of the Nevada SIP.”

**MS Disapproval Issue #4 (TSD page 15, Section (e)):**

Section 12.1 provides (in subsection 12.1.2(a)) an exemption from permitting requirements “for construction and operation of any emission units or performance of any of the activities listed in Sections 12.1.2(c) or 12.5.2.5.” Section 12.5 addresses the operating permit requirements of Title V of the CAA. Because Section 12.5 is neither approved into the SIP nor included in the NSR SIP submittal, we cannot conclude that this exemption is appropriate for minor NSR purposes.

**PROPOSED CHANGE:** Revised the language of 12.1.2(a) to incorporate the “Insignificant Activities” list from 12.5 “as in effect on September 1, 2010,” which was the effective date of Section 12.5. As part of the revisions, DAQ will either submit the Section 12.5 “Insignificant Activities” list for SIP incorporation and approval or revise Section 12.1 to include the list as an appendix submitted with the revised rule for SIP incorporation and approval.

**EPA RESPONSE:** Either approach is acceptable to address the disapproval issue. Official copies of all documents IBR’d (excluding CFR sections) will need to be provided with the SIP submittal.

**DAQ RESPONSE:** The Section 12.1 draft has been revised to include an “Appendix A,” which is the “Insignificant Activities” list also found in Section 12.5.2.5. The reference to Section 12.5.2.5 in Section 12.1.2(a) has been revised to reference Appendix A.

**EPA Comment (TSD page 15):** EPA recommended that DAQ revise Section 12.1.6(d)(5) to clarify that the provisions of that section do not cover changes that may increase a source's PTE by significant amounts (i.e., as defined in Section 12.1.1(g)). EPA also pointed out a typo in a reference to paragraph (2)(E) in Section 12.1.6(b), where the correct reference was (2)(D).

**PROPOSED CHANGE:** Added a clarifying clause in Section 12.1.6(d)(5) and changed the section reference to (2)(D), as suggested.

**EPA RESPONSE:** The proposed revisions address our recommendations.

**MS Disapproval Item #5 (TSD page 15-16):**

The applicability provisions in Section 12.1 (in particular the definition of "minor source" in subsection 12.1.1(c)) are deficient, as they do not address sources of PM<sub>2.5</sub> or PM<sub>2.5</sub> precursor emissions.

**PROPOSED CHANGE:** ① Inserted thresholds for PM<sub>2.5</sub> and its precursors into the Section 12.1.1(c) definition of "Minor Source" and the Section 12.1.1(g) definition of "Significant." ② Addressed condensables in the Section 0 definitions of PM<sub>2.5</sub> and PM<sub>10</sub>, ③ and defined NO<sub>2</sub> and SO<sub>2</sub> as precursors to PM<sub>2.5</sub> within the definitions of "Minor Source" and "Significant" in Sections 12.1.1(c) and 12.1.1(g). ④ In a separate but related issue, inserted thresholds for PM<sub>2.5</sub> and H<sub>2</sub>S into the public participation (notice) requirements of Section 12.1.5.3.

**EPA RESPONSE:** The proposed revisions described in items ① and ② are acceptable to correct a portion of the deficiency. For item ③, see previous comment on same item. For item ④, Clark will need to justify the choice of 15 tpy as the public notice threshold for PM<sub>2.5</sub>. EPA notes that that PSD significance threshold for PM<sub>2.5</sub> is only 10 tpy.

**DAQ RESPONSE:** For Item ③, see previous discussion under *MS Disapproval Issue #3* for revision. For Item ④, ~~in order~~ to avoid a tedious justification exercise, we revised the notice threshold to be consistent with the PSD significance threshold of 10 tpy. (DAQ is aware it will still need to provide a justification for that threshold in its SIP submittal.)

**MS Disapproval Issue #6 (TSD page 19):**

Section 12.1 does not contain any provisions designed to ensure that the air quality impacts of stationary sources are not underestimated due to stack heights that exceed good engineering practice or air dispersion modeling techniques that do not satisfy the criteria in 40 CFR 51.118(b), as required by 40 CFR 51.164.

**PROPOSED CHANGE:** Added Section 12.0.5 ("Stack Height") to apply to all Section 12 permits. This will address the 40 CFR 51.118/51.164 requirements for sources permitted under any provision of Section 12, including but not limited to 12.1, 12.2, and 12.3. (We recognize a bit of redundancy, as 12.2 already has the requisite language.)

**EPA RESPONSE:** The proposed revision is acceptable to correct the deficiency. Official copies of all documents IBR'd (excluding CFR sections) will need to be provided with the SIP submittal.

## **Section 12.2: Prevention of Significant Deterioration**

**PSD Disapproval Issue #1 (TSD page 21):**

The definition of "allowable emissions" in subsection 12.2.2(b) provides for calculation of emissions rates based on "practically enforceable" permit limits, in lieu of federally enforceable limits, but it does not provide criteria by which a limit will be judged to be "practically enforceable"

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by DAQ. This definition also allows for permit conditions with “future compliance dates” to be used to determine allowable emissions, which is not consistent with EPA’s definition of the term in 40 CFR 51.166(b)(16).

**PROPOSED CHANGE:** The draft reflects two approaches, either of which should address the first issue. ① We added a definition of “Enforceable as a Practical Matter” to Section 0 that tracks the term as it appears in Section 12.1.7. ② In Section 12.2.2(b), the definition of “Allowable Emissions,” the term “practically” was replaced with the term “federally.” Either approach works, and DAQ will choose one based on further discussions with staff and EPA. ③ As to the second issue, the future compliance date language was deleted from Section 12.2.2(b)(3). DAQ notes, however, that EPA is proposing to approve Placer County APCD’s definition of allowable emissions, which includes the same language EPA disapproved in Clark County’s rule.

**EPA RESPONSE:** The proposed revisions described in items ① or ② are acceptable to correct the deficiency. For item ③, Clark may choose to retain this wording, since it is included in the 40 CFR 51.166 definition of “allowable emissions.”

**DAQ RESPONSE:** For Items ①/②, we elected to define “Enforceable as a Practical Matter” in Section 0 and use that term in the regulation. For Item ③, we reinserted the deleted “future compliance date” language into the regulation, as suggested.

***PSD Disapproval Issue #2 (TSD pages 21-22 and Final Rule FR Notice page 64044):***

The definition of “baseline actual emissions” for non-EUSGUs in 12.2.2(c)(2)(D) is internally inconsistent and confusing. The subsection uses the terms “must currently comply” and “comply as of the particular date” interchangeably, which EPA disapproves.

**PROPOSED CHANGE:** ① Revised Section 12.2.2(c)(2)(D) by deleting “currently” and inserting “as of the particular date” after “comply.” This is how the term is defined in Section 12.3.2(c)(2)(D). ② We also incorporated EPA’s suggestion to renumber subsection 12.2.2(c)(1)(B)(i), changing it to 12.2.2(c)(1)(C).

**EPA RESPONSE:** The proposed revisions described in items ① and ② are acceptable to correct the deficiency and EPA’s suggestion.

***PSD Disapproval Issue #3 (TSD pages 22-23):***

The definition of “net emissions increase” (NEI) in subsection 12.2.2(ii) contains several provisions in subparagraph (1)(C) for calculating “actual emissions after the contemporaneous project” which are not consistent with EPA’s definition of NEI in 40 CFR 51.166(b)(3). EPA’s definition of NEI allows for consideration of those emission increases and decreases that are “contemporaneous” with the project under review but does not call for any assessment of actual emissions after a contemporaneous project. See 40 CFR 51.166(b)(3). Additionally, subparagraph (1)(C)(ii) allows for the calculation of NEI to be based on “projected actual emissions” in certain cases, which is not allowed under EPA’s definition of NEI in 40 CFR 51.166(b)(3).

**PROPOSED CHANGE:** Deleted the three paragraphs under 12.2.2(ii)(1)(C).

**EPA RESPONSE:** The proposed revision is acceptable to correct this deficiency.

***PSD Disapproval Issue #4: (TSD page 23):***

The definition of “major modification” in subsection 12.2.2(dd) is not consistent with EPA’s current approach to the treatment of fugitive emissions in applicability determinations for major modifications.

**PROPOSED CHANGE:** Deleted the word “not” from the definition along with the categorical source language, i.e., “...unless the major stationary source is a categorical stationary source...” now reads “...fugitive emissions *shall* be included...”(editor’s emphasis).

**EPA RESPONSE:** The proposed revision is acceptable to correct this deficiency.

**EPA Comment, Definition of PSD Permit, Section 12.2.2(II); (TSD page 23-24):**

The last sentence in the federal definition of PSD permit is missing.

**PROPOSED CHANGE:** Added the sentence from 40 CFR 51.166(b)(42) that EPA suggested we include.

**EPA RESPONSE:** The proposed revision is acceptable to correct the deficiency.

**PSD Disapproval Issue #5 (TSD page 24-25):**

The definition of “regulated NSR pollutant” in subsection 12.2.2(pp) does not satisfy current requirements regarding identification of precursors and treatment of “condensable particular matter” in PSD applicability determinations.

**PROPOSED CHANGE:** ① Inserted missing 40 CFR 51.166(b)(49)(a)-(d) language defining precursors; ② added federal condensable language to Section 0 definitions of “PM<sub>2.5</sub>” and “PM<sub>10</sub>.”

**EPA RESPONSE:** The proposed revisions described in items ① and ② are acceptable to correct the deficiency and EPA’s suggestion.

**EPA Comment: PM<sub>2.5</sub> SILs and SMCs (TSD page 25-26):**

EPA pointed out that the rule lacked SILs and SMCs for PM<sub>2.5</sub>, as required by an October 2010 rulemaking (75 FR 64864). Since the deadline for incorporating these requirements had not yet passed when EPA wrote its TSD, this was not the disapproval issue. However, now that the deadline has passed, EPA would be obligated to raise it to a disapproval issue as part of its review if left unaddressed.

**PROPOSED CHANGE:** Revised definitions of ① “baseline area” (12.2.2(d)), ② “major source baseline date” (12.2.2(ee)), and ③ “minor source baseline date” (12.2.2(gg)) in accordance with the requirements of the referenced rulemaking. We note the recent D.C. Circuit Court decision on SILs/SMCs, since it resulted in remand of federal regulation to EPA, makes the current requirements somewhat unclear. DAQ chose to both include the new SILs/SMCs and leave the current SILs/SMCs in place within Section 12.2.

**EPA RESPONSE:** The proposed revisions described in items ① and ② are acceptable to address the comment. For item ③, it does not appear that the language in subsection (gg) has been revised to address this issue. We note that the D.C Circuit Court case was specific to PM<sub>2.5</sub>, and therefore only affects that pollutant at this time. HQ is in the process of determining the best way to address the issues related to this court case. Additional language may need to be added to your rules to provide clarification consistent with the court ruling. When we have guidance from HQ we will share it with Clark or as you get closer to the actual rule adoption process we will work with you to ensure the wording you adopt is approvable as a SIP revision.

**DAQ RESPONSE:** The missing revision to the definition of “minor source baseline date” was inserted. It remains for EPA to provide SIL/SMC guidance and appropriate regulatory language.

**DAQ DECEMBER 9, 2013 UPDATE:** After further discussion with EPA Region IX, DAQ chose to remove the SILs/SMCs for PM<sub>2.5</sub> from Tables 12.2-2 and 12.2.3(b). Table 12.2.3(b) was removed entirely and Table 12.2.3(a) was re-titled Table 12.2.3, since there are no longer two tables in that proposed subsection. The thresholds for PM<sub>2.5</sub> were removed from the draft

tables in direct response to the January 22, 2013 DC Circuit Court of Appeals decision on *Sierra Club vs. EPA*, Case # 10-1413.

**EPA Comment (TSD page 26):**

EPA pointed out that subsections 12.2.3 (“Ambient Air Increments”) and 12.2.4 (“Ambient Air Ceilings”) would have to be revised to reflect the PM<sub>2.5</sub> requirements, again citing the October 2010 final rulemaking at 75 FR 64864. (At the time EPA made the comment, the effective date of July 20, 2012, had not yet passed.)

**PROPOSED CHANGE:** Revised Table 12.2-1, “Increment Limits,” in Section 12.2.3 to add annual and 24-hour PM<sub>2.5</sub> limits for Class I, II, and III airsheds. Section 12.2.4 is adequate as is. Revised Table 12.2-2, “Air Quality Impact Limits,” in Section 12.2.8.4 to include a 24-hour average for PM<sub>2.5</sub>. Added new Table 12.2-3b, “PM<sub>2.5</sub> Significance Levels,” to Section 12.2.10.2. Revised Table 12.2-4, “Maximum Allowable Pollutant Increases,” in Section 12.2.15.4 to include annual and 24-hour limits for PM<sub>2.5</sub>.

**EPA RESPONSE:** The proposed revision is acceptable to correct the comments related to everything except PM<sub>2.5</sub> SIL and SMC. See EPA response above regarding PM<sub>2.5</sub> and court case status.

**EPA Comment (TSD page 29):**

EPA suggested that Section 12.2.15.1 be revised to require that the Nevada Division of Environmental Protection be provided copies of PSD permit applications.

Discussions with NDEP indicated that they were comfortable that the current language achieves the same result.

**EPA RESPONSE:** Acceptable, since this was only a suggestion.

**PSD Disapproval Issue #6 (TSD page 30):**

One provision governing “Plantwide Applicability Limits” (PALs) in subsection 12.2.19 is not entirely consistent with EPA’s requirement regarding the time frame for adjustment of a PAL to address compliance dates that occur during the PAL effective period.

**PROPOSED CHANGE:** Revised Section 12.2.19.10(e) to read: “... the PAL shall be adjusted at the time of the PAL permit renewal or Part 70 Operating Permit renewal, whichever occurs first.”

**EPA RESPONSE:** The proposed revision is acceptable to correct this deficiency.

**EPA Comment (TSD page 30):**

EPA suggested that the order of use of definitions be clarified.

**PROPOSED CHANGE:** Revised the second sentence in Section 12.2.19(a) to require that terms not otherwise defined in 12.2.19.2 have the meaning as defined in Section 12.2.2 applied first.

**EPA RESPONSE:** The proposed revision addresses EPA’s suggestion.

**PSD Disapproval Issue #7 (TSD page 53):**

Neither Section 12.2 nor Section 12.4 contains a provision addressing the requirement of 40 CFR § 51.160(d) to provide that approval of any construction or modification will not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

**PROPOSED CHANGE:** Minor Source Disapproval Issue #3, “Proposed Change,” (see above) addresses this issue.

**EPA RESPONSE:** The proposed revision corrects this deficiency.

### **Nonattainment New Source Review (Section 12.3)**

#### ***NNSR Disapproval Issue #1 and 2 (TSD page 31-32):***

The requirements for offsets in subsection 12.3.6 do not contain adequate provisions, consistent with CAA Section 173(a)(1), to assure that emission offset calculations are based on the same emissions baseline used in the demonstration of reasonable further progress for the relevant NAAQS pollutant (where applicable) and also fail to satisfy EPA's NSR criteria for offset calculations, as required by CAA Section 173(a)(1)(A) and 40 CFR 51.165(a)(3).

**PROPOSED CHANGE:** Revised Section 12.3.6.5 ("Quantity") to add subsection (d), which requires that the baseline for determining credit for emissions reductions be based on the emission limit under the SIP, including the demonstration of Reasonable Further Progress in effect when the application was filed, except where the demonstration is based on actual emissions or there is no emission limitation for that source category in the SIP, in which case actuals shall be used. Using the federal language allows the greatest latitude even though, as EPA pointed out, current SIP provisions require the use of actuals.

**NOTE:** The 2<sup>nd</sup> issue is tied to the non-SIP rule reference and interpollutant trading requirements, which are discussed in Issues #4 and #5 below.

**EPA RESPONSE:** The proposed revision corrects this deficiency. (EPA NOTE: Awaiting ORC concurrence.)

#### ***NNSR Disapproval Issue #3 (TSD page 32):***

The offset ratios listed in Table 12.3-1 do not include a ratio for a marginal ozone nonattainment area, which was Clark County's designation when EPA wrote its TSD; the term "Nonattainment without Designation" is confusing; and the NO<sub>x</sub>/VOC offset ratio listed in the table should be at least 1.1:1.

**PROPOSED CHANGE:** EPA's redesignation of Clark County to attainment for the 1997 8-hour ozone NAAQS took effect on February 7, 2013 (78 FR 1149). Arguably, this moots the disapproval issue. However, DAQ ① revised Table 12.3-1 to include a 1.1:1 offset ratio for a marginal ozone nonattainment area (for NO<sub>x</sub> and VOCs) and ② deleted the "Nonattainment without Designation" term. Inserting the offset ratios for a marginal area ensures Section 12.3 will be able to address the required offsets without a rule revision should Clark County revert to a marginal designation for the 2008 8-hour ozone NAAQS in the future.

**EPA RESPONSE:** The proposed revisions (Items ① and ②) correct this deficiency.

**DAQ RESPONSE:** Subsequent to the EPA review, the table was revised, deleting the serious CO area offset ratio; but leaving the serious PM<sub>10</sub> ratio in place, since Clark County has not yet officially been redesignated.

#### ***NNSR Disapproval Issue #4 (TSD page 33):***

Section 12.3 does not contain provisions to assure that emissions increases from new or modified major stationary sources are offset by real reductions in "actual emissions," as required by CAA Section 173(c)(1), because it does not contain adequate criteria for determining whether certain emission reductions may qualify for use as offsets. Subsection 12.3.6 references a separate rule (Section 12.7) for important criteria related to this determination, but Section 12.7 is neither approved into the SIP nor included in the NSR SIP submittal; therefore, it cannot provide an ap-

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appropriate basis for evaluating emission reductions to satisfy the requirements in CAA Section 173(c)(1).

**PROPOSED CHANGE:** ① Revised Sections 12.3.6.2(b) and (c) to incorporate by reference Section 12.7.5, and ② will submit Section 12.7.5 separately, as was discussed, for incorporation into the Nevada SIP.

**EPA RESPONSE:** The proposed revisions (Item ①) and proposed submittal (Item ②) will correct this deficiency.

***NNSR Disapproval Issue #5 (TSD page 33-34):***

Section 12.3.6.3 allows for interpollutant trades between VOC and NO<sub>x</sub> emission reductions to satisfy offset requirements for ozone and interpollutant trades among PM<sub>2.5</sub>, SO<sub>2</sub>, and NO<sub>x</sub> emission reductions to satisfy offset requirements for PM<sub>2.5</sub>. These provisions do not satisfy EPA's regulatory and policy criteria for approval of such interpollutant trades or interprecursor trading hierarchies.

**PROPOSED CHANGE:** Added the following to Sections 12.3.6.3 ① (b) and ② (c): "The trading of such offsets shall comply with the requirements of 40 CFR 51.165 in effect July 1, 2012, and the interprecursor hierarchy and offset ratios submitted and approved by the Control Officer and the Administrator on a case-by-case basis." This is consistent with the correction EPA identified in the Section 3 discussion on page 34 of the TSD.

**EPA RESPONSE:** The proposed revision (Item ①) will correct this deficiency for all pollutants except PM<sub>2.5</sub>, since EPA allows a case-by-case determination with EPA approval. However for item ②, the wording will need to be revised to allow PM<sub>2.5</sub> precursor trading only if Clark provides specific offset ratios based on local modeling and those values are approved into the Clark portion of the Nevada SIP, either as part of an attainment plan or NSR rule. Otherwise, such PM<sub>2.5</sub> trading is prohibited.

**DAQ RESPONSE:** EPA provided suggested language to address Issue ② in a margin comment, which can be seen in the draft regulation. DAQ incorporated that suggested language into the draft regulation.

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***NNSR Disapproval Issue #6 (TSD page 34):***

The definition of "surplus" must be revised to ensure that emission reductions required by CAA Sections 111 or 112 standards are not treated as surplus.

**PROPOSED CHANGE:** Added subsection (d) to Section 12.3.6.6 ("Emission Reduction Requirements") to clarify that the difference between a SIP limit and an NSPS/NESHAPS limit cannot be used as an offset.

**EPA RESPONSE:** The proposed revision does not really address the approval issue identified in EPA's TSD, which stated that credit cannot be given for emissions reductions that would otherwise be required by a NSPS or NESHAP. EPA suggests addressing this issue by making a small edit to the definition of Surplus, rather than adding subsection (d) Section 12.3.6.6. Please see EPA's suggested edit to the definition of the term Surplus. This disapproval issue is not resolved by the proposed changes.

**DAQ RESPONSE:** As suggested, draft Section 12.3.6.6(d) was deleted. A clarifying clause consistent with EPA's suggestion was inserted into both the Section 0 and 12.3.2(qq) definitions of "Surplus."

***NNSR Disapproval Issue #7 (TSD Page 36-37):***

The definition of “major modification” in subsection 12.3.2(x) requires exclusion of two specific types of physical or operational changes that EPA’s definition of “major modification” in 40 CFR 51.165(a)(1)(v) does not exclude: (1) the installation or operation of a permanent Clean Coal Technology Demonstration Project that constitutes repowering; and (2) the reactivation of a very clean coal-fired electric utility steam generating unit. Although such exemptions are acceptable for purposes of PSD review (see 40 CFR 51.166(b)(2)(iii) and (b)(36)), such exemptions are not permissible for nonattainment NSR purposes.

The definition of “major modification” in subsection 12.3.2(x) is not consistent with EPA’s current approach to the treatment of fugitive emissions in applicability determinations for major modifications. As discussed above with respect to the definition of this same term in Section 12.2, EPA has administratively stayed 40 CFR 51.165(a)(1)(v)(G), effective March 30, 2011 (76 FR 17548), which had the effect of reverting the treatment of fugitive emissions in applicability determinations to the approach that applied prior to the Fugitive Emissions Rule, thus requiring that fugitive emissions be included in “major modification” applicability determinations for all source categories.

**PROPOSED CHANGE:** ① Deleted subsections (I) and (J) from the definition of “major modification” in 12.3.2(x). In Subsection (5) of the same definition, ② removed the word “not” to change the meaning to require fugitives to be counted in major modification determinations.

**EPA RESPONSE:** The proposed revisions (Items ① and ②) correct this deficiency.

***EPA Comment (TSD page 37):***

The definition of “major stationary source” contains a typo, in that subsections (2)(A) and (2)(B) should be renumbered as paragraphs (3) and (4), since they are not subsections of Section (2).

**PROPOSED CHANGE:** Revised the section as suggested.

**EPA RESPONSE:** The proposed revision is acceptable to address EPA’s comment.

***NNSR Disapproval Issue #8 (TSD page 37):***

The definition of “regulated NSR pollutant” in subsection 12.3.2(ii) does not satisfy current requirements regarding “condensable particulate matter” in NSR applicability determinations.

EPA’s definition of “regulated NSR pollutant” in 40 CFR 51.165(a)(xxxvii) includes a paragraph stating that on or after January 1, 2011, “gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures” (i.e., condensable particulate matter) must be accounted for in applicability determinations and in establishing emissions limitations for PM, PM<sub>2.5</sub>, and PM<sub>10</sub> in NSR permits.

**PROPOSED CHANGE:** Refer to PSD Issue #5 to see how this was addressed in Sections 0 and 12.3.2(ii).

**EPA RESPONSE:** See EPA response to PSD Issue #5, the proposed revisions are acceptable.

***EPA Comment (TSD page 38):***

The threshold of 50 tpd for municipal incinerators within the categorical stationary source definition is in error (see 40 CFR 51.165(a)(1)(iv)(C)(8)).

**DAQ RESPONSE:** We agree that the cited statute lists the threshold at 250 tpd. However, DAQ’s definition of “categorical stationary source,” and specifically the 50 tpd capacity threshold for municipal incinerators, are correct; it is EPA’s rule that is in error. The definition of “major emitting facility” at § 169(1) of the Clean Air Act (42 U.S.C. § 7479(1)) was amended by § 305(b) of the Clean Air Act Amendments of 1990 (P.L. 101-549) to reduce the size threshold

from 250 tpd to 50 tpd. As EPA has been aware for twenty years or more, this change took effect immediately upon passage of the 1990 Amendments, notwithstanding EPA's continued failure to revise its rules accordingly. See attached 8/3/1993 U.S. EPA letter.

**EPA RESPONSE:** EPA agrees the proper value is 50 tpd.

***NNSR Disapproval Issue #9 (TSD page 38, listed in TSD as Item #11):***

Section 12.3 does not contain provisions, pursuant to 40 CFR 51.118(a), to assure that the degree of emission limitation required of any source for control of any air pollutant must not be affected by a stack height that exceeds good engineering practice. Provisions to meet these requirements and 40 CFR 51.164 are missing.

**PROPOSED CHANGE:** Refer to Minor Source Disapproval Issue #6 to see how DAQ proposes to address this issue.

**EPA RESPONSE:** See EPA response to Minor Source Disapproval Issue #6, the proposed revision is acceptable.

***NNSR Disapproval Issue #10 (TSD page 39-40, listed as Item #14):***

The definition of “major modification” in Subsection 12.3.2(x) is not consistent with the current federal requirement that fugitive emissions be included in applicability determinations for all source categories.

**PROPOSED CHANGE:** See response under NNSR Disapproval Issue #7: DAQ revised the definition by deleting the word “not” from subsection 12.3.2(x)(5). The sentence now reads, “The fugitive emissions of a major stationary source shall be included in determining....” As in the identical definition in Section 12.2, we deleted the categorical language, which serves no purpose.

**EPA RESPONSE:** See EPA response to NNSR Disapproval Issue #7, the proposed revision is acceptable.

***EPA Comment (TSD page 40, listed as Item #16):***

The offset requirements for NO<sub>x</sub> and VOC should reflect the requirements of Subpart 2 of Part D of the CAA, including an offset ratio of at least 1.1:1.

**DAQ RESPONSE:** Refer to response under NNSR Disapproval Issue #3.

**EPA RESPONSE:** See EPA response to NNSR Disapproval Issue #3, the proposed revision is acceptable.

**Authority to Construct Application and Permit Requirements for Part 70 Sources  
(Section 12.4)**

***EPA Comment (TSD page 42-43, Section 1(b), “Legally Enforceable Procedures”):***

Section 12.4 does not contain a provision that explicitly authorizes Clark County to prevent construction if the submitted documents do not adequately make the specified demonstrations.

**DAQ RESPONSE:** Propose adding subsection (3) to Section 12.4.3.1(d) (“Application Processing Procedures”), as follows: “(3) If, after the date an application is determined to be complete, the Control Officer determines that the new or modified source will not meet all applicable requirements of Section 12, the Control Officer shall not issue an authority to construct or permit to operate.”

**EPA RESPONSE:** While this wording is acceptable, EPA suggests revising the statement to read as a prohibition, i.e., “The Control Officer shall not issue an authority to construct or permit to operate, unless the Control Officer determines that the new or modified source will meet all applicable requirements of Section 12.” **(DAQ made this change.)**

***EPA Section 12.4 Disapproval Issue #1 (TSD page 43, Section 1(d), “Legally Enf. Procedures”):***

Section 12.4 does not contain a provision to satisfy the 40 CFR 51.160(d) requirement that approval of any construction or modification not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

**DAQ RESPONSE:** We propose two revisions. In Section 12.4.3.1(e), “Permit Content,” we propose ① adding a Subsection (E) to Section 12.4.3.1(e)(10), as follows: “(E) Such conditions as are necessary to ensure compliance with the requirements of 40 CFR § 51.160(d).” Additionally, we propose ② adding a Section 12.0.4 to Section 12.0, which would state the same thing and thereby clarify that this requirement applies to any permit issued under any provision of Section 12.

**EPA RESPONSE:** The proposed language citing to 40 CFR § 51.160(d) in both item 1 and 2 are not correct. For item ①, it is Clark’s rules that must contain this specific language so that the rule complies with the requirements of 40 CFR 51.160(d). This can be satisfied by added the proposed language in Section 12.0.4, but revise the requirements the source must comply with to the applicable portions of the Nevada SIP, not 40 CFR 51.160(d). If this additional edit is made to Section 12.0.4, the correction would be acceptable. For item ②, the same type of error appears. The permit must contain a condition stating the same fact stated in proposed 12.0.4, not conditions to comply with 40 CFR 51.160(d). This language still needs to be revised to address the noted disapproval issue.

**DAQ RESPONSE:** Similar to the issue listed in *MS Disapproval Issue #3*, the rule language in 12.0.4 and 12.4.3.1(e) was revised to require “...compliance with applicable requirements of the Nevada SIP.”

***EPA Section 12.4 Disapproval Issue #2 (TSD page 46, Section 5):***

Neither Section 12.3 nor Section 12.4 contain a provision for satisfying the stack height procedures of 40 CFR 51.164.

**DAQ RESPONSE:** DAQ proposes to add Section 12.0.5 (“Stack Height”) to Section 12.0 as applicable to all Section 12 permits to essentially restate the 40 CFR § 51.164 language, and to include public notice and public hearing opportunity requirements by incorporating 40 CFR § 51.118 by reference.

**EPA RESPONSE:** The proposed revision will correct this deficiency.

**Additional EPA Recommendations for Rule Revisions**

All of the proposed revisions are acceptable to EPA. We have no further comment.

1. ***Section 0 definition of Potential To Emit (TSD page 51, Recommendation #1):*** Establish criteria for determining what constitutes “enforceable as a practical matter.”

**DAQ RESPONSE:** A Section 0 definition of “enforceable as a practical matter” using the Section 12.1.7 criteria is proposed as a revision.

2. ***Section 0 definition of ambient air quality standard (TSD page 51, Recommendation #2):*** Clarify that the term means National Ambient AQ Standard.

**DAQ RESPONSE:** Term revised in Sections 0 and ~~Section 12.1.4.1(c)~~ per EPA recommendation.

3. ***Section 12.1.6(d) (TSD page 52, Recommendation #3):*** Revise subsection (d)(5) to ensure that the change allowed under the section does not allow changes that result in emission increases at or above the significant level. Also, correct the typo in 12.1.6(b).

**DAQ RESPONSE:** Added the phrase “...and less than a significant amount as defined in Section 12.1.1(g);” and corrected the subsection reference in 12.1.6(b) to “(D)” as recommended.

4. ***Section 12.2 definition of baseline actual emissions (TSD page 52, Recommendation #4):*** Reletter subsection to ensure clarity.

**DAQ RESPONSE:** Relettered subsection in accordance with suggestion.

5. **Section 12.2.15.1, “Notice to EPA” (TSD page 52, Recommendation #5):** Revise to provide that NDEP be sent the same copy of the draft permit application this subsection requires be sent to EPA.  
**DAQ RESPONSE:** DAQ discussed the issue with NDEP. The consensus was that each agency knows the issues well enough to consult with the other when circumstances warrant, so incorporating this notification into Section 12.2 was unnecessary.
  
6. **Section 12.2.19.2(a), “Definitions” (TSD page 52, Recommendation #6):** Revise the introductory paragraph to clarify the order of use of the applicable definitions.  
**DAQ Response:** Revised the section by adding language ~~that states stating~~ that a given term will be used as defined in Section 12.2.2, Section 0, Section 12.4, or the CAA. Deleted references to Clark County Code and the Nevada Revised Statutes to eliminate potential non-SIP references.
  
7. **Section 12.3, Table 12.3-1 (TSD page 52, Recommendation #7):** This issue was discussed previously as part of the offset discussion in Section 12.3. Essentially, we incorporated EPA’s recommendation.

### Additional Issues

**I-SIP problem related to requirements of FCAA Section 110(a)(2)(F)(iii):** Although not related to this disapproval, we can fix it within the same rulemaking and ensure the FIP clock is shut off.

**FIX: (REVISED SEPTEMBER 2013):** Added proposed Section 12.0.6 that contains the 110(a)(2)(F)(iii) requirements. Since it is in Section 12.0, it applies to any permit issued under any provision of Section 12.

**EPA RESPONSE:** We are reviewing the proposed with our planning group to ensure they will satisfy the Section 110(a)(2)(F)(iii) requirements. Some editing to specify these requirements, rather than just refer to Section 110(a)(2)(F)(iii) will likely be required. (EPA has not yet reviewed that change and will need to indicate its position.)

**Repealing Remaining Section 1 Definitions:** EPA’s 2004 SIP action recognized the replacement of Section 1 with Section 0. However, EPA left 33 terms listed in Section 1 in the SIP. Most of those terms have been incorporated into Section 0 or other sections of the AQRs, or are no longer useful. Of the 33 remaining terms, the following have potential use and could be incorporated into Section 0: “commercial off-road vehicle racing,” “dust,” “fumes,” “smoke,” and “standard conditions.” DAQ will determine whether to close out Section 1 as part of this rule submittal or do it separately in the future.

**EPA RESPONSE:** Either approach is acceptable to EPA, though we encourage the cleanup of SIP Rule 1, sooner rather than later.

**DAQ RESPONSE:** DAQ will propose ~~to repealing~~ all of the remaining Section 1 definitions and include the repeal in its SIP submittal.

**Repealing Section 11:** Section 11 has been repealed, but DAQ elected not to submit the repeal as a SIP revision until EPA had dealt with Clark County’s previous rule SIPs. DAQ will determine whether to include the repeal documentation in this SIP submittal.

**EPA RESPONSE:** If Clark no longer has authority to implement and/or enforce Section 11 locally, then Clark should also remove the rule from the SIP. In order to remove the rule from the SIP, Clark will need to verify that no other existing SIP rules rely on Section 11.

**DAQ RESPONSE:** DAQ will submit the repeal in its SIP submittal.

**EPA Authorization of Revised Title V Program:** In order to have a complete set of permitting rules, EPA must authorize DAQ's 2010 Title V Revision package, which reflects Section 12.5.

**EPA RESPONSE:** Section 12.5 is currently under review by EPA.