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Utah Asphalt Pavement Association



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The Utah Asphalt Pavement Association (UAPA) Comments to Utah Division of Air Quality (UDAQ) on Proposed New Rule R307-313: VOC and Blue Smoke Controls for Hot Mix Asphalt Plants

Dear Members of the Air Quality Board:

Thank you for this opportunity to comment on **Proposed New Rule R307-313: VOC and Blue Smoke Controls for Hot Mix Asphalt Plants**. The Utah Asphalt Pavement Association (UAPA) is a state-wide organization comprised of one-hundred and sixty (160) members that design, engineer, construct, maintain, rehabilitate, or own the large share of roads in Utah. To that same end, UAPA's mission is to promote the quality and use of asphalt mixtures as the material of choice for Utah's roads.

Upon review of the Utah Division of Air Quality's (UDAQ) proposed rule R307-313, UAPA would like to offer the following comments for review and consideration:

R307-313-2 Applicability

Unfortunately, areas of non-attainment typically do not fall neatly within county lines or other designations that allow for the alignment of rules along such borders. For this proposed rule, UAPA recommends that UDAQ follow the guidance that has already been set forth by the Environmental Protection Agency (EPA). Where a county or part of a county may indeed be in non-attainment, this proposed rule may be applied. However, areas that have not been designated as such should not be included. We should not overreach into these areas where other counties or parts of a county have not been designated as falling within a non-attainment status. Granted some assumptions may be made, but the rule should apply only for the areas where there is data to apply it. Therefore, UAPA recommends that UDAQ follow the guidance recognized and used by the EPA to declare the other portions or the entirety of the additional counties in question (Weber, Utah, and Tooele) as 'maintenance areas' until such time that the data correctly expands and applies the rule into these geographic areas. UAPA recommends UDAQ only apply this proposed rule to the original areas identified as being in non-attainment in the first draft of the rule and not overreach into areas that have yet to be identified as being in non-attainment.

R307-313-4(3) Blue Smoke & VOC Emissions from Hot Mix Asphalt Plants

The guidance for the exception and use of warm mix asphalt (WMA) requires that the production "consists entirely" of WMA. As an alternate to the proposed language, UAPA recommends the word 'primarily' or the words 'in the normal course of operations' be used to account for the practicalities associated with the regular operations of an asphalt plant. Having worked closely with UDAQ, UAPA is pleased this exception for WMA production has

been included. However, regular operations require a small period of startup each day at regular temperatures before the day's full production at warm mix temperatures. A change to the recommended language will help account for normal practice while affording plants the opportunity to produce most of their production tons at recognized temperatures for WMA, thus reducing VOCs significantly in the normal course of business.

This proposed change would also address considerations when the production of asphalt occurs outside of the widely recognized construction season in Utah (April 15th – October 15th) each year. This flexibility would give UDAQ the necessary tools to enforce the production of WMA at plants during the recognized construction season (the days we are in non-attainment in the summer months) while also allowing for production to happen outside of this window at regular temperatures when projects demand this due to the time of year, lower than recommended ambient temperatures, or scheduling constraints imposed on producers of asphalt from outside third-party agencies or owners to complete their jobs.

R307-313-5(1) VOC Emissions from Storage Tanks

When discussing the systems to be installed on tank storage, the proposed language says, “and control systems such as a condenser and a carbon-filled vessel which shall . . .” UAPA recommends the ‘and’ in this sentence be changed to an ‘or’ as these are two separate systems/methods for capturing the VOCs from tanks and either option will accomplish what UDAQ seeks to achieve. The use of ‘and’ in this sentence could be interpreted to require a redundancy that is both unnecessary and cost-prohibitive to accomplish the same end.

R307-313-7 Compliance Schedule

Due to discrepancies in the analyses regarding the costs associated with such systems, reasonable budgeting and forecasting practices for businesses, the nature and timing of bidding projects for construction, the potential for major disruptions to operations next spring and summer, magnified and lingering supply chain challenges due to COVID-19 and generational inflation, and the limited number of manufacturers for the required blue smoke control systems, UAPA recommends UDAQ and the plants subject to this rule work together in the spirit of reasonableness and gradualism for a phased implementation of the systems.

UAPA appreciates the work UDAQ has done to provide its BACT Analysis. As expected, members of UAPA affected by this proposed rule have spent the last several months conducting their own analyses and there are, at places, significant differences in the numbers and costs between what has been submitted by UDAQ and the work done by these UAPA members. While some of the specific figures may come to light in other submitted public comments, the focus of UAPA is to simply note that there are differences. And while a disagreement on numbers may not ultimately be persuasive, the board should recognize that these systems represent a significant cost to the affected plants and businesses that will make these changes. Given the fact that the best-case scenario for approval of this proposed rule will be in February of 2023, this leaves affected parties roughly two-to-three months before the rule requires full compliance by May 1, 2023. This date, as currently proposed, will be impossible to meet in any reasonable fashion.

Common business practice tells us that budgets for 2023 have already been submitted. Some may have forecasted to account for the potential of these systems, but without the finalization of an approved rule and what it will and will not require is a tough ask for any business or individual. For example, if the Utah Legislature were to impose a rule that all citizens rip out their park strips or be subject to a fine, very few would preemptively rip out the strip before the law was passed or before they knew the final details of what will or will not be required, i.e., do they need to have plants in place thereof, sprinkling systems, etc. Additionally, the law would likely be accompanied by a reasonable timeframe for implementation or a grace period for citizens to plan for, budget, shop, work, or contract labor to work on the change to the park strip. And although this is a rough analogy, the same is true when it comes to ultimately planning for these systems and the associated requirements to follow.

A two-to-three-month window from February to May for full implementation is impossible to appropriately plan and budget for, let alone order, receive, and install these systems. This is only accentuated by the fact that many of the jobs and projects that will happen next year have already gone out to bid and have been awarded without accounting for the additional costs of these systems that, unfortunately, must be passed on to public agencies and private owners of projects in the future. Coupled with the potential for major disruptions, if not full closure of plants to install the systems,

the proposed rule and its timing has the potential to delay construction schedules and timeframes that producers of asphalt mix may have already committed to in their winning bids and contracts for next spring and summer.

In the spirit of reasonableness, gradualism, and cooperation, UAPA would propose the following schedule be put in place for implementation of the systems. This schedule will allow for the modifications to take place during the construction offseason in Utah and allow for the proper time to budget for such large capital expenditures as well as plan for the manufacture, delivery, and retrofit of existing plants under the unique and challenging circumstances outlined above without sacrificing the long-term goals UDAQ is ultimately after for the plants located in the identified areas of non-attainment:

- For all new plants that may be in the non-attainment area, UAPA proposes that they should come built with the required systems as outlined in the rule.
- For existing plants, UAPA proposes the following schedule, concentrating on the areas of highest impact to VOC capture first and then working for complete system buildouts from there:
 - Year One – Ready for Spring 2025 – Drag slat (tail pulley to head pulley) full controls in place. This is where the mix is hottest at its first transfer point and where producers believe up to 70% of VOCs may be captured or reduced.
 - Year Two – Ready for Spring 2026 – Top of silo. This is the next areas of impact where producers believe up to 20% - 25% of VOCs may be captured or reduced.
 - Year Three – Ready for Spring 2027 – Tank controls. Control of VOCs at the tanks is less critical as most systems are already self-contained, but industry does believe up to 5% - 10% of the VOCs may be captured here.
 - Each plant in the non-attainment areas would be required to submit a good-faith plan and documentation of scheduling the retrofits to officials at UDAQ. By addressing the most impactful areas first, UAPA believes there is potential for significant reduction of VOCs within the first year of the plan while allowing for time and appropriate planning to address the additional areas the rule seeks to address. This plan would also not preclude any one plant from implementing controls in advance of reasonable and expected deadlines from UDAQ.
- Additionally, UDAQ should consider eliminating loadout controls entirely from the proposed rule. Loadout controls create major safety concerns as such controls create a confined space, blind spots in loadout, and potentially hazardous conditions for drivers while they are enclosed at the bottom of the silo during the loadout process. The risks associated with these controls do not outweigh the benefit of any potential VOC capture.

UAPA believes a phased approach best addresses the scheduling concerns, cost concerns, and operational concerns of its affected members. By using the natural offseason in this manner, appropriate planning and budgeting can take place while also achieving the goals of UDAQ. This approach will also account for timely capital expenditure requests, preexisting contracted work, current bids, and jobs set to take place next year and beyond to happen without major disruptions or other challenges that may arise under these commitments. With the potential passage of the rule in February 2023, producers of mix in the non-attainment areas will then reasonably know what to expect and when to expect it versus a deadline in May of 2023, that will be, without any hyperbole, impossible to meet given current constraints.

Conclusion

UAPA appreciates the efforts and openness of UDAQ over the past several months as this proposed rule has come forward. Working on these matters together has proven fruitful for both parties. The association believes these last few recommended changes will continue that trend. And although we want to be good partners in any potential change by laying out solutions to this proposed rule, the hardest part of the proposed rule is the real dearth of any third-party data as to show how effective any of these systems really are in practice. No one argues that UAPA members would like to do their part, but it is hard to even define what their part in this is when there is no independent data to show what is reduced or captured by these systems outside of numbers produced by the manufacturer of the equipment themselves. Rulemaking based on those kind of self-interested assumptions presents incredible risks on the part of those it is applied to – what happens when each of these affected plants goes out and installs these systems at the cost of millions of dollars only to find out that once data is actually gathered these systems are not as effective as hoped for or that we find

we are still in non-attainment due to numerous factors outside of this rule (i.e., increased population, more cars on the road, etc.)? We are hopeful UDAQ will understand these concerns as UAPA members potentially prepare to make significant investments at their facilities. It would be beneficial to work with UDAQ to better understand what success is/means when it comes to this rule. It would be unfortunate to for producers of mix to make these significant investments only to have to turn around and make additional costly investments down the road in a few years to accomplish what UDAQ is originally hoping to achieve with this rule based off a small sampling of data supplied by the makers of the equipment to be installed with little to no independent verification of said data. This alone, is very concerning to UAPA members and should merit additional discussion and refinement of the end goals from all involved.

UAPA looks forward to your consideration of these recommendations and stands ready to answer any additional inquiries at your convenience.

Best regards,

W. Reed Ryan
Executive Director
The Utah Asphalt Pavement Association