

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes a new §80.128, Specific Admissibility of Evidence for Concrete Batch Plants.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES
Senate Bill (SB) 1298, 76th Legislature, 1999, amended the Texas Health and Safety Code (THSC), §382.058, Limitation on Commission Exemption for Construction of Certain Concrete Plants, by adding subsection (d), to prohibit evidence regarding air dispersion modeling to be submitted at a hearing under THSC, §382.056, Notice of Intent to Obtain Permit or Permit Review; Hearing, for concrete batch plants which register under THSC, §382.057, Exemptions.

SB 766, which also passed during the 76th Legislature, 1999, amended THSC, §382.058 to reference permits by rule and standards permits instead of exemptions for concrete batch plants. In order to give effect to both SB 1298 and SB 766, the commission will implement the intent of the language from "adoption of exemption under §382.057" to "issuance of standard permit under §382.05195" and the procedures which are codified under 30 TAC 116, Subchapter F.

It is anticipated that concrete batch plants will be eligible for a standard permit from the commission instead of an exemption. The commission is currently concluding extensive research to ensure that the standard permit for concrete batch plants will be protective. Prior to the granting of the standard permit, certain concrete batch plants will be required to provide public notice and may be subject to a contested case hearing. Under these circumstances, when air dispersion modeling is introduced at a public hearing for a concrete batch plant registering under an exemption, it greatly increases the cost

without commensurate improvement in air quality. SB 1298 creates a prohibition on submittal of evidence regarding air dispersion modeling during a public hearing when a standard permit considering modeling and impacts review for these facilities has been issued by the commission. This prohibition will begin to apply upon the issuance of a standard permit for concrete batch plants by the commission, which is anticipated in the Summer of 2000.

SECTION BY SECTION DISCUSSION

The new proposed §80.128 prohibits evidence regarding air dispersion modeling to be submitted at a hearing under THSC, §382.056, if the commission considers air dispersion modeling information in the course of adopting the standard permit under TCAA, §382.05195 for a concrete plant.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations Division, has determined for the first five-year period the proposed rule is in effect, there will be a some decrease in fiscal implications for state or local governments as a result of administration or enforcement of the proposed rule.

Enforcement of the rule will result in an decrease in workload for commission staff.

PUBLIC BENEFIT

Mr. Grymkoski has also determined for each year of the first five years the proposed rule is in effect, the public benefit anticipated from enforcement of and compliance with the rule will be no duplicative effort by companies and protestants in providing dispersion modeling in contested case hearings. It should also provide for expedited hearings.

SMALL AND MICRO-BUSINESS IMPACT ANALYSES

The rule is not anticipated to impose costs on persons, small businesses, or micro-businesses. The rule could save small businesses up to \$10,000 in dispersion modeling in an contested case hearing. In those instances that the agency provided modeling for small businesses, it would decrease the commission's expenditure of resources.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Section 80.128 contains a change in the procedural rules which prohibits the introduction of modeling in a contested case hearing. Since extensive modeling was performed by the commission regarding concrete batch plants and the emissions from these plants has been shown to be insignificant, this prohibition will not affect the protection of the environment.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. It is anticipated certain concrete batch plants will be eligible for a standard permit from the commission. The commission is currently concluding extensive research to ensure that the standard permit for concrete batch plants will be protective. Prior to the granting of the standard permit, certain concrete batch plants will be required to provide public notice and may be subject to a contested case hearing. When air dispersion modeling is

introduced at a public hearing, it greatly increases the cost to the applicant and commission. Section 80.128 creates a prohibition on submittal of evidence regarding air dispersion modeling during a public hearing involving a concrete batch plant standard permit. Therefore, this revision will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed section is not subject to the Texas Coastal Management Program (CMP). The proposed action concerns only the procedural rules of the commission and general agency operations, is not substantive in nature, does not govern or authorize any actions subject to the CMP, and is not itself capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et. seq.).

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on May 16, 2000 at 10:00 a.m. in Building F, Room 3202A at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-060-116-AI. Comments must be received by 5:00 p.m., May 22, 2000. For further information, please contact Phil Harwell, Policy and Regulations Division, (512) 239-1517.

STATUTORY AUTHORITY

The new section is proposed under THSC, §382.058(d), to prohibit evidence regarding air dispersion modeling submitted at a hearing under THSC, §382.056 for concrete batch plants which register under TCAA, §382.05195; THSC, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.051, which authorizes the commission to issue a permit for numerous similar sources; THSC, §382.0513, which authorizes the commission to establish and enforce permit conditions consistent with the TCAA; and THSC, §382.05195, which authorizes the commission to issue a standard permit.

The proposed new section implements THSC, §382.011, General Powers and Duties; THSC, §382.012, State Air Control Plan; THSC, §382.017, Rules; THSC, §382.051, Permitting Authority of Commission; Rules; THSC, §382.0513, Permit Conditions; THSC, §382.0515, Application for Permit; and THSC, §382.058, Limitation on Commission Exemption for Construction of Certain Concrete Plants.

CHAPTER 80 : CONTESTED CASE HEARINGS

SUBCHAPTER C : HEARING PROCEDURES

§80.128

§80.128. Specific Admissibility of Evidence for Concrete Batch Plants.

If the commission considers air dispersion modeling information in the course of issuing a standard permit under Chapter 116, Subchapter F of this title (relating to Standard Permits) for a concrete plant that performs wet batch, dry batching, or central mixing, evidence regarding air dispersion modeling may not be submitted at a hearing under Texas Health and Safety Code, §382.056.