

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts an amendment to §55.152.

The amendment to §55.152 is adopted *with change* to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5339) and, therefore, will be republished.

The amendments to §55.152(a)(2), (3), (6) and (7) will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan.

Background and Summary of the Factual Basis for the Adopted Rule

On February 25, 2016, Texas Aggregates and Concrete Association (TACA) submitted a petition requesting the commission conduct rulemaking to amend public notice rules applicable to initial registration applications for authorization under the Air Quality Standard Permit for Concrete Batch Plants, referred to in this preamble for ease of reference as the CBP standard permit. This permit is distinguishable from the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls, which has different notice and public participation requirements. The petition requested amendments to 30 TAC §39.411(e)(11)(A)(iii) and §39.603(a) and (b) to provide for one 30-day public notice of initial registration applications. On April 6, 2016, the commission considered the petition and directed the executive director to examine the request and initiate rulemaking.

The TACA petition did not address the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls authorized under Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.05198. The public notice requirements for that standard permit are listed within the permit, and registrations for that permit are not subject to the rules in Chapter 39. Therefore, public notice requirements for that permit are not affected by this adopted rulemaking.

The commission is authorized to adopt standard permits under THSC, §382.05195, which prescribes the procedures the commission must follow to adopt a standard permit. The commission implemented THSC, §382.05195 by adopting rules in 30 TAC Chapter 116, Subchapter F. The rules in Chapter 116, Subchapter F provide that when the executive director drafts a new (or proposes amendments to an existing) standard permit, notice of the proposed permit is published in the *Texas Register* and in newspapers. In addition, TCEQ holds a public meeting to provide stakeholders the opportunity for discussion with TCEQ staff and for submittal of comments regarding the proposed permit. The responses to comments and any changes made to the proposed permit in response to the comments are presented to the commission for consideration in an open meeting, commonly referred to as Agenda. Once adopted, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the standard permit. The standard permits are not designed to be amended to include tailored permit conditions applicable to an

individual registration. The CBP standard permit was last amended by the commission effective December 21, 2012.

Each individual CBP Standard Permit registration application is subject to the public participation requirements in Chapters 39 and 55. Since 1985, owners or operators registering for authorization to construct and operate a concrete batch plant (under what is known today as the Air Quality Standard Permit for Concrete Batch Plants) have been subject to specific notice requirements for the proposed plant. These public notice requirements for initial registration applications included the opportunity to request a contested case hearing. In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which made changes to notice requirements for initial registration applications that were administratively complete on or after September 1, 1999. Since the rulemaking to implement HB 801 in 1999, and rule amendments adopted in 2010 have been in effect, the commission has required registrants for the CBP standard permit to publish a Notice of Receipt of Application and Intent to Obtain Permit (NORI) which solicits comments for a 15-day period; contested case hearing and public meeting requests are also solicited. At the same time the NORI is published in a newspaper of general circulation in the municipality or in the nearest municipality in which the plant will be located, the registrant is required to place a copy of the registration application in a public place in the county, and to post signs at the proposed facility location. Alternative language publication and signs may also be required.

After TCEQ staff complete the technical review, registrants were required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments for a 30-day period; hearing requests were also solicited but only if at least one such request was timely made in response to the NORI. At the close of the comment period, the executive director prepares a written response to all timely-filed comments and files the response with the TCEQ's Office of Chief Clerk. If hearing requests were submitted in response to the NORI, hearing requests may be submitted during the 30-day period after the mailing of the executive director's response to comments. Based on comments, registrants may update their registration application representations as to how they will construct and operate under the standard permit; historically, this has been very uncommon. Also, because the permit conditions in the CBP standard permit are established by the commission when the standard permit is adopted, the executive director cannot change any permit conditions for an individual registration in response to comments.

The public has expressed concern that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or contested case hearing, and then to timely submit the information to the TCEQ. This rulemaking requires one 30-day consolidated notice for registrants of the CBP standard permit that will serve as both the NORI and NAPD. To ensure the public has the opportunity to review a complete registration application, the consolidated

notice will be published after the administrative and technical reviews of the registration application are completed. The consolidated notice establishes a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. With one notice instead of two, TCEQ expects there will be more clarity regarding the restrictions on the timeframe to submit hearing requests.

Amended §55.152(a)(2) provides for a 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted in response to the consolidated NORI and NAPD. The notice period ends 30 days after the last date of newspaper publication, and the public comment period is automatically extended to the close of any public meeting, as required by §55.152(b). As provided for in §55.201(c), which implements Senate Bill 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted comments.

Concurrently with this adoption, and published in this issue of the *Texas Register*, the commission is adopting amendments to §39.411 and §39.603 in Chapter 39, Public Notice, to provide for a consolidated NORI and NAPD.

The public participation requirements for renewals of registrations under the CBP standard permit are not affected by the adopted amendments in Chapters 39 and 55.

Section Discussion

§55.152, Public Comment Period

Adopted §55.152(a)(2) is created by relocating some of the text of existing subsection (a)(2) to adopted subsection (a)(3). Adopted subsection (a)(2) provides that the close of the public comment period for standard permit registrations for concrete batch plants under the CBP Standard Permit would change from 15 days after the last publication of NORI, or 30 days after NAPD if a second notice is required, to 30 days after the last publication of the consolidated notice concurrently adopted in §39.603. Adopted §55.152(a)(2) does not apply to concrete batch plants temporarily located in or contiguous to the right-of-way of a public works project or to temporary concrete batch plants operating under the standard permit that qualify for relocation.

Subsection (a)(2) was changed from proposal to reflect the actual name of the CBP standard permit, which is "Air Quality Standard Permit for Concrete Batch Plants."

Amended subsection (a)(3) will continue to provide for the comment period applicable to air quality permit renewal applications. Existing paragraphs (3) - (6) in §55.152(a) are re-numbered as paragraphs (4) - (7).

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the

definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to Chapter 55 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, but instead would amend the public comment period for initial standard permit registrations for concrete batch plants under the CBP standard permit, which are procedural in nature.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted amendment to Chapter 55 would amend the public comment period for initial standard permit registration applications for the CBP standard permit for Concrete Batch Plants, which

is procedural in nature. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was developed to meet the requirements for public participation in the TCAA as identified in the Statutory Authority section of this preamble.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted rulemaking to Chapter 55 amends the public comment period for initial standard permit registrations for concrete batch plants under the CBP standard permit, which is procedural in nature. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted amendment is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted rule will not require any changes to outstanding federal operating permits.

Public Comment

The commission held a public hearing on August 10, 2016. The comment period closed on August 22, 2016. The commission received comments from Texas State Representative Alma Allen (Representative Allen), the City of Dallas, the City of Houston, and TACA.

Response to Comments

Changes in the Number of Notices and the Amount of Time to Submit Comments and Requests for a Contested Case Hearing

Comment

Representative Allen commented that while she does not believe that TCEQ's intent in helping the operators reach their goal for one notice is to shorten the time within which the community is able to organize and provide feedback, the shorter time is the most egregious consequence of this proposal.

The City of Houston commented that the current rules grant community members and citizens a valuable window of opportunity to evaluate the potential consequences of the plant proposed in their communities. They are able to obtain, review, and present information about the negative effects concrete batch plants have on communities. Shortening the notice period will burden citizens by limiting their opportunity to participate in important registration and permitting decisions. For those in socioeconomically disadvantaged communities who historically have had less of a voice in public processes and who have fewer resources to deploy to protect themselves, the burden will be particularly onerous.

The City of Dallas commented that the proposed rules place the interests of industry above protection of public health and the environment. There is no benefit to the public by limiting their right to participate in the process of TCEQ review of air permit

applications for concrete batch plants.

Response

This rulemaking was not intended to adversely affect anyone's opportunity or ability to comment on a concrete batch plant registration application, or their ability to ask questions of a registrant who is seeking approval to construct and operate under the CBP standard permit. Although the time to comment and request a contested case hearing has been a 15-day period since 1985 when the opportunity to request a contested case hearing for a concrete batch plant was added to the TCAA, the commission has received comments on previously submitted CBP standard permit registration applications expressing concern that the 15-day period to comment and request a hearing is too short. In response, this rulemaking extends that period to 30 days. In addition, the commission determined that 30 days is reasonable because the permit conditions cannot change in response to comment.

The commission disagrees that the rule amendments place the interests of industry above protection of public health and the environment. The CBP standard permit, last amended in 2012, is protective of human health and the environment, as discussed elsewhere in this Response to Comments. The commission has made no changes to the rules in response to these comments.

Comment

Representative Allen commented that the current 15-day NORI period is often not enough time to allow citizens to search the newspapers, review the permit and understand its implications, decide to request a public meeting or a contested case hearing, and then to submit the information to TCEQ in a timely fashion. However, the proposed single 30-day period for the permit is also inadequate. Although the proposed rule allows additional time to request a contested case hearing, it shortens the time with which the public is able to organize and provide public comment.

The City of Dallas commented that it is very concerned that the proposed rules will substantially and unjustifiably limit the public's right to receive notices, submit comments, request public meetings, and request public hearings during the permit application process for the CBP standard permit. The proposed consolidation of the NORI and NAPD into one notice is a significant decrease in time and would diminish public opportunity for input to the agency. This would substantially limit the public's existing right to engage in the permitting process.

TACA supports the executive director's proposed rulemaking, including the specific amendments to §39.411 and §39.603. This rulemaking will allow the public more time to review the registration application. Because the initial comment period will increase from a 15-day period to a 30-day period, this rulemaking will also ensure an additional 15 days to request a contested case hearing. TACA encourages the TCEQ to adopt the

rules as proposed.

Response

The purpose of this rulemaking is to establish a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. In response to previously submitted CBP standard permit registration applications, the public has expressed concerns that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or a contested case hearing, and then to timely submit the information to the TCEQ.

The consolidated NORI and NAPD will not be prepared or mailed to the registrant for publication until the registration application is both administratively and technically complete. To ensure that it is clear that the public has the opportunity to review the complete registration application with the established CBP standard permit within the 30-day comment period, §39.603(c) was changed from proposal in response to these comments to delete the reference to the executive director declaring the registration application administratively complete. In addition, §55.152(a)(2) is adopted to provide for a 30-day notice period.

Companies submitting registration applications to construct under the CBP standard permit are required to publish notice in a newspaper, and, in some cases,

in alternate language publications. In addition, they are also required to post signs at the proposed site of the concrete batch plant. Both the signs, which are often the most effective for notifying nearby residents, and the newspaper notices provide instructions on how to obtain additional information about the registration application. A copy of the registration application is also available in a local public place. The TCEQ or the registrant may be contacted for more information about the registration application or CBP standard permit conditions.

The commission understands that citizens who live or work near a proposed location of a concrete batch plant may have never before received notice of a proposed concrete batch plant, or may be unaware of the commission's CBP standard permit, the process for submitting comments, or the opportunity to request a public meeting, or, for certain persons, the opportunity to request a contested case hearing. People can stay informed of any notices in their area by signing up for a mailing list, or going online to <http://www14.tceq.texas.gov/epic/eNotice/> and pull up notices by ZIP Code, County, etc.

To develop their comments and questions, citizens can review both the registration application and the commission's CBP standard permit. Unlike case-by-case applications which are often hundreds of pages in length and may contain air dispersion modeling, registration applications for a CBP standard permit are, by

their nature, less extensive (on average they contain approximately 40 pages) and air dispersion modeling is not required. As discussed earlier, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the CBP standard permit. Standard permits are not designed to be amended to include tailored permit conditions applicable to an individual registration. As such, the permit conditions cannot change in response to comments. The CBP standard permit was last amended by the commission effective December 21, 2012. In the actual permit document, currently located at <https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/Mechanical/cbpsp-finalpreamble.pdf>, the commission explains its basis for finding that the permit is protective of human health and the environment, and its basis for the specific permit conditions.

The deadline for submitting comments is extended to the end of any public meeting held regarding the registration application, if the meeting is held more than 30 days after the date of the last newspaper publication. Public meetings provide an opportunity for the public to submit comments regarding the registration applications. For CBP standard permit registration applications, the TCEQ will hold a public meeting if there is significant public interest in a registration application or if requested by a legislator from the area of the proposed project. A request for a public meeting must be submitted to the chief clerk during the 30-day public comment period. Comments, public meeting requests, and requests for contested

case hearings may be submitted in writing to the commission via regular mail, fax, hand delivery, or electronic submittal. Oral comments are accepted at public meetings. All timely comments are responded to in writing by the executive director at or prior to the issuance of the CBP standard permit registration. Requests for contested case hearing must be received within 30 days of the publication of the consolidated notice. All timely hearing requests are considered by the commissioners in their open meeting.

Within the 30-day period, citizens should have adequate time to become aware of the notice, review the registration application and CBP standard permit, prepare and submit comments, and request a public meeting or a contested case hearing. For these reasons, and because the permit conditions cannot change in response to comment, the commission has determined that a 30-day comment period is reasonable.

Comment

Representative Allen commented that she and her constituents in House District 131 feel that rather than shortening the length of time the public is able to weigh in, they should be given, at minimum, the same amount of time they have presently, which is 45 days. Although they appreciate the extension of the contested case hearing deadline, and understand the need for consolidation and greater efficiency in the process, they do not see the need for the public to give up precious time in the process

for providing feedback, when they have so little say to begin with. The residents are almost always on the losing side of these permits, having to put up with increased traffic, deteriorating roads, and dust particles. Having the time to weigh in on the application gives residents the ability to form a dialogue with the applicant, wherein they are able to discuss things like alternative routes, locations, and dust mitigation techniques. They support a 45-day notice that combines the entire application and review process, which would better serve the interests of both the communities and the owners or operators.

Response

As discussed earlier, because the registration application information is not voluminous, the commission has determined that 30 days is appropriate. The commission understands that citizens may want to meet with representatives of the applicant to discuss local concerns, including topics for which the TCEQ does not have jurisdiction, such as alternative routes for trucks and the specific location of the concrete batch plants. This can be accomplished by meetings between citizens and the applicant, or at a public meeting conducted by TCEQ. The commission has made no changes to the rules in response to this comment.

Comment

TACA commented that the proposed rule changes will expedite the permitting process, and encourages the TCEQ to adopt the rules as proposed.

Response

The purpose of this rulemaking is to establish a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. In response to previously submitted CBP standard permit registration applications, the public has expressed concerns that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or a contested case hearing, and then to timely submit the information to the TCEQ. Specifically, with one notice instead of two, TCEQ anticipates that there will be more clarity regarding the timeframe to submit hearing requests.

Under the amended rules, the administrative and technical reviews will occur prior to issuance of the consolidated NORI and NAPD for publication by the registrant. The TCEQ will consider the comments submitted and prepare a response to comments, which is also included as part of the processing time. If hearing requests are received, additional time is required for the commission to consider those requests at an open meeting. If a contested case hearing is held, the final decision on the registration application may be one year or longer after it is received.

The change to a consolidated notice may result in a reduction in the application processing time due to the notice consolidation. However, that reduction cannot be

estimated at this time. Between September 1, 2015, and September 1, 2016, the average time to process CBP standard permit registration applications with both NORI and NAPD was 129 days. This includes registration applications with comments, public meetings and, where applicable, contested case hearing requests considered by the commission, including those for which a hearing request was granted and a contested case hearing was held.

Although there will be no separate NAPD publication under the adopted rules, the factor that primarily determines the length of time for a permit to be issued is the quality of the registration application. The permitting process is shortest when registrants provide a complete application at submittal, and newspaper publication occurs within a day or a few days after the notice is provided to the registrant by TCEQ. To expedite the review process, applicants can elect to submit their registration applications under the commission's expedited permitting program.

Comment

TACA commented that the change in public notice requirements would provide a cost savings to operators of concrete batch plants.

Response

As discussed in the Public Benefits and Costs portion of the proposed rule preamble, registrants for the CBP standard permit will save approximately 50% on

publication costs by having one publication instead of two for English language publication and also for any required alternate language publication. One round of English language publication costs are estimated between \$674 and \$9,759, depending on which newspaper is used for publication, the day of the week, and how many words are in the notice. The cost of publishing in newspapers in larger cities is greater than newspaper publication costs in smaller cities.

Comment

TACA commented that the proposed rule changes will eliminate duplicative public notice requirements. TACA encourages the TCEQ to adopt the rules as proposed.

Response

Prior to these rule amendments, a registrant was required to publish two separate public notices, NORI and NAPD. Because the registration application is for a CBP standard permit, the only new information for the public to review during the NAPD period were updates to the application that may have been requested as part of the technical review. As discussed previously in this preamble, the permit conditions are established when the standard permit is issued by the commission under THSC, §382.05195 and 30 TAC Chapter 116, Subchapter F and cannot be changed or tailored for a specific facility. Under the adopted rules, the technical review will be complete prior to issuance of the consolidated notice.

These permits are distinguishable from applications for individual case-by-case permit applications. For those applications, the NORI does not include a draft permit for public review and comment. Only the NAPD for individual case-by-case permit applications provides a draft permit with conditions tailored to the specific type of facilities and emissions to be authorized that is subject to public review and comment. Those comments may result in changes to the draft permit.

These two separate procedures have resulted in some frustration that comments submitted in response to the NAPD for a CBP standard permit cannot result in changes to the permit.

Because the CBP standard permit process differs from the individual case-by-case permit application process, providing a separate NAPD for a CBP standard permit registration does not provide the public new information to form the basis for submitting comments that may affect the outcome of the TCEQ review. Because the CBP standard permit registration applications are less complex than many other applications, having the technical review completed and the standard permit available for review during one 30-day comment period is expected to result in comments that are more specifically focused on the particular registration application.

Concerns Regarding Protection of Public Health

Comment

The City of Houston commented that there is no doubt that concrete batch facility operations emit particulate air pollution. Particulate air pollution is known to be correlated with high-risk asthma attacks and cardiac arrest. There are currently 18 concrete batch facilities in a four-mile radius within the socio-economically disadvantaged Houston Super Neighborhoods of Central/Southeast, South Acres/Crestmont Park, and Minnetex. These Houston neighborhoods also experience particulate air pollution from other sources, including 13 metal recycling facilities. In summary, there are numerous facilities in socioeconomic or disadvantaged neighborhoods in Houston, which experience a higher rate of air pollution and health effects higher than the remainder of the city. Unsurprisingly, each of these particular Houston neighborhoods is within a "high risk of asthma attack and cardiac arrest" area according to the American Journal of Preventative Medicine and Public Health. See Loren H. Raun, *Geospatial Analysis for Targeting Out-of-Hospital Cardiac Arrest Intervention*, American Journal of Preventive Medicine, August 2013, at 137-42; Loren H. Raun, *Factors Affecting Ambulance Utilization for Asthma Attack Treatment: Understanding Where to Target Interventions*, Public Health, March 2015. Health officials are concerned that, in the aggregate, the density of air pollution sources, such as concrete batch plants, may result in cumulative concentration levels that pose an unacceptable health risk to neighborhoods like these.

The rules should not be changed to make it harder for communities and citizens to

protect themselves by participating in regulatory proceedings, and therefore the City of Houston opposes the proposed rules.

The City of Dallas commented that the proposed rules do not further the TCEQ's stated mission of protecting the state's public health and natural resources consistent with sustainable economic development.

Response

The TCEQ previously conducted a comprehensive protectiveness review during the development of the CBP standard permit to ensure that the requirements of the permit would protect human health and the environment. This review took into consideration many variables and assumed conditions that maximize emissions impacts to develop an air dispersion modeling approach that was conservative and applicable to any location in the state.

The primary contaminants evaluated during the protectiveness review as potential emissions from concrete batch plants included particulate matter (PM) (aerodynamic diameter of equal to or less than 10 and 2.5 micrometers (PM₁₀ and PM_{2.5})), carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), nickel particulate, and formaldehyde. When the conditions of this CBP standard permit are met, including annual, daily, and hourly production limits, concentrations of these pollutants would be below their respective health protective values, including the

National Ambient Air Quality Standards (NAAQS) or TCEQ Effects Screening Levels (ESLs).

The NAAQS values for CO, NO₂, SO₂, and PM are derived to protect human health with an adequate margin of safety to include sensitive populations such as children, the elderly, and individuals that suffer from respiratory diseases such as asthma and chronic obstructive pulmonary disease (COPD). Similar criteria are used to derive the ESLs. Thus, if short-term and long-term emissions do not exceed these values, the operation of facilities with these types of emissions would not pose a threat to human health or welfare. This particular area of Houston has been in compliance with the NAAQS for all of the aforementioned air contaminants and will be required to continue to meet the NAAQS in the future even if those standards change.

The concern regarding the 18 concrete batch plants is addressed in two ways: via the conservatism used to derive the health protective NAAQS and ESLs, which take into consideration cumulative and aggregate exposures; and by the thorough review of air dispersion modeling representations of these types of facilities that are conducted during the development of the CBP standard permit. Modeling data indicate that maximum concentrations of pollutant emissions would typically occur a relatively short distance from the emissions source. Therefore, review of other off-site sources is not necessary when determining approval of registration

applications for this particular standard permit. Concrete batch plants located greater than 550 feet from sources with similar emissions are predicted to not exceed the health protective NAAQS or ESLs, even when operating simultaneously. The CBP standard permit requires the owner or operator to locate the concrete batch plant at least 550 feet from any crushing plant or hot mix asphalt plant. If these distance conditions in the standard permit are not met, then sources with similar emissions such as rock crushers, hot mix asphalt plants, or other concrete batch plants cannot operate at the same time.

As discussed earlier, there are layers of conservatism incorporated into the CBP standard permit. This includes the modeling assumptions used to establish the operational limitations, which include fabric or cartridge filter systems to control PM; distance restrictions regarding the location of the concrete batch plant relative to any crushing plant, hot mix asphalt plant, or other concrete batch plant; distance restrictions regarding the location of the suction shroud baghouse exhaust, stationary equipment, stockpiles, or vehicles used for the operation of the concrete batch plant; and material throughput by limiting the site production to, for example, no more than 300 cubic yards in any one hour and no more than 6,000 cubic yards per day. In addition, the NAAQS and ESLs are not only health-protective, but include a margin of safety to accommodate sensitive populations, aggregate exposures, and cumulative exposures. Thus, when the conditions of the CBP standard permit are met, plants operating under these permits are not expected to adversely affect

human health, welfare, or the environment.

The comment also refers to areas of Houston where the neighborhoods coexisting with concrete batch plants and metal recycling facilities are characterized as "high risk of asthma and cardiac arrest," according to a scientific study published by Raun and colleagues. TCEQ staff reviewed this publication and has concerns with the interpretation and utilization of data therein. Primary concerns are that the study of correlation between emergency medical service (EMS) calls and criteria pollutants (CO, NO₂, SO₂, and PM_{2.5}) were in fact inconsistent, indicating a weakness in these associations and suggesting that the pollutants did not cause the EMS calls. The study authors also utilized a highly conservative linear model to estimate risks. Available data suggest that this type of model would overestimate risk for many criteria pollutants and would be inappropriate to use based on the fact that many, if not all, criteria pollutants demonstrate a threshold, meaning that there is a concentration below which harmful effects are not observed. Due to lack of proper controls, inconsistency in the body of available scientific evidence in the study, and acknowledgement of the limitations of their model, the results of these studies may be considered of interest, but not reliably predictive of health effects, particularly at lower, ambient pollutant levels.

Therefore, TCEQ's extensive evaluation clearly indicates that concrete batch plants operating in this area of Houston do not pose a threat to human health or welfare

due to the parameters and limitations applied to the CBP standard permit. This conclusion is supported by the TCEQ's monitoring data in the area that demonstrate compliance with the PM NAAQS, which accommodate both aggregate and cumulative exposure. The commission has made no changes to the rules in response to these comments.

SUBCHAPTER E: PUBLIC COMMENT AND PUBLIC MEETINGS

§55.152

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; TWC, §5.115, Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the

state's air; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission; and THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, which prescribes authorization requirements for certain concrete batch plants. In addition, the amendment is also adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.056 and §382.058.

§55.152. Public Comment Period.

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title (relating to Newspaper Notice) for a registration for a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project;

(3) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(4) 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(5) 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(6) the time specified in commission rules for other specific types of applications; or

(7) as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended to the close of any public meeting.