

**TCEQ AIR QUALITY STANDARD PERMIT FOR CONCRETE BATCH PLANT  
REGISTRATION 119443L001**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>SOUTHERN CRUSHED</b>	<b>§</b>	
<b>CONCRETE, LLC</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>CONCRETE BATCH PLANT</b>	<b>§</b>	
<b>HOUSTON, HARRIS COUNTY</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**EXECUTIVE DIRECTOR’S RESPONSE TO PUBLIC COMMENT**

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Standard Permit application and Executive Director’s preliminary decision for a concrete batch plant submitted by Southern Crushed Concrete, L.L.C (SCC or Applicant). As required by Title 30 Texas Administrative Code (TAC) § 55.156, before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments.

The Office of the Chief Clerk timely received comment letters from the following elected officials and entities: Representative Borris L. Miles (Texas House of Representatives, District 146), Larry V. Green (Houston City Council, District K), Bob Allen (Harris County Pollution Control Services Department), M. Annette Cluff (The Varnett Public School), Maria Theresa Nguyen and Maria Goretti Vu OP (on behalf of the Dominican Sisters of Mary Immaculate Province).

The Office of the Chief Clerk timely received comment letters from the following persons: Wanda Adams, George A. Bathey, Travis J. Beck, Mary Beckner, Gary Behelfer, Buddy Bell, Mike Bercu, Joan Bitar, Karl Blomquist, Linda Bolet, Jay Broadfoot, Kate Brusegaard, Ngoc Bui, Carolyn Campbell, Dan Carpenter, Robert E. Carpenter, Susan N. Cedars, Cindy Peden Chapman, Huong Ngoc Chau, Austin H. Chen, Sahel Chen, Julia Chew, Henry Chiu, Peter Chu, Daniel J. Cohen, Dao Van Cong, Martha Crockett, Eric L. Crowder, Dao Thi Cuc, Melanie Dando, An Dang (two separate commenters), Binh Dang, Hien V. Dang, Jennifer Davis, Vicki Davison, Anne Debuyserie, Barbara Dell, Kara DeRocha, Mary Dickerson, Dung Do, Khar Do, Lien Do, Phuong Do, Cao Doan, Tan Durh, Rebecca (Becky) Edmondson, Jennifer Edmondson, AnnaMarie Edstrom, Jane Falk, Laura Falk, Jeff Faulkinbury, Yvonne Fedee, Doreen R. Fillion, Sandra Flechsig, Douglas C. Frank, Holly Frantz, Leticia Garcia, Elaine Gaskamp, Pat Margaret Gayle, Otilia Gonzales, Stacey Gorniak, Lisa B. Gossett, Steve T. Greene, Praveen Gunaseelan, William Hammons, Beverly J. Hanson, John W. Hanson, Ken Harhai, Melanie W. Harrell, Elizabeth Young Harrison, Jeremy Hart, Kim Hart, Marcia Hartman, David Hawes, Jodie R. Hebert, Andras Heczey, Cecilia Hernandez, Raymond Hickey, Sang Hoakg, Noreen Hoard, Elizabeth Holderfield, Steve Honore, Will Howard, Martha Huebel, Kristen Hueske, Nancy Hunter, Diem Trang Huynh, Khoa Huynh, Ngoe Huynh, Tri Huynh, Linda H. Jones, Av Justice, Charles Kasdorf III, Carol Kehlenbrink, Pam Kehoe, William Kessler, Robert G. Kieke, Bill King, Theresa Kirschke, Boris Kurinets, Julie Kuruvilla, Viet Lam, Rosamund Landry, Victoria Langlais, Cuc Le, Phuong-Loan Thi Le, Thuy Le, Truc Le, Van Le, Stephanie Lester, Garnett W. Lewis, Howard H. Lindsay, Claudette Lloyd, Elizabeth Lloyd, Kathy Long, John Lumsden III, Gabriella Lupski, Thu Mai, Shari Mauthner, Henry L. Mayfield Jr., Charlotte McClain, Lucy McLaughlin, Meredith McNulty, Michael Menendez, Regina Midkiff, Le Quang Mink, Margaret Ann Minogue-Heyl, Lauren Mitchell, Robert Scott Montgomery, E. Claire Moore, Pamela Morris, Monica H. Morrison, Lach Mullen, Thuy Ng, Duyen Bich Nguyen, Anh Nguyen, Anna

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Nguyet Nguyen, Bam Nguyen, Charlie Nguyen, Cindy Nguyen, Duyen Nguyen, Han Nguyen, Hanh Nguyen, Joseph Hong Nguyen, Khanh Nguyen, Khoa Nguyen, Khuyen Nguyen, Nai Nguyen, Ngoc Hoa Nguyen, Ngoz-Van Nguyen, Robert Nguyen, Thi Nguyen, Thuan Nguyen, Thuy Nguyen, Tinh Nguyen, Trinn Nguyen, Tu Nguyen, Tuan Van Nguyen, Xuan Nguyen, Than Nhung, Monica Ann Nichols, John Nienhuser, Joe Niles, Thuy No, Jo Noguee, William Nolte, Luanne Novak, Edward Thomas O'Rourke, Jr., Daniel Oko, Sherri Oliver, Naomi S. Ostfeld, Kathleen Ownby, Mary Oxford, Matthew Patterson, Allyn S. Pearlman, Carole G. Pentony, Giang Pham, Lan Pham, Nam Pham, Theresa Hang Pham, Huong Phan, Mai Phan, Nam Phan, Phuong Phan, Xuan Phan, Steven Polnaszek, Hazel Potvin, Clara M. Pruitt, Mary Putney, Hugh J. Rafferty, Cathryn Ramirez, Edith Gail Reaben, Dory and Harold Ridings, Ralph Rieger, Lucille Rivera, Tom Roberts, Sylvia M. Rosales, Donna S. Roy, Ray W. Runge, Paul Clinton Rusk II, Howard Sacks, Vincent L. Sanders, Kathi Sandler, Leslie Santamaria, Aisha Richelle Savoy, Yevonne Sullivan Sawyers, Russell Schexnayder, Elyssa Schnurr, Carol Schumacher, Robert J. Schwartz, Nagaraja Shamsundar, Jack T. Shanks, S. Shapley, Laura L. Sharp, Richard C. Sharp, Adrian Shelley III, Susan E. Shotland, Eugene Leon Sirls, Cynthia Snider, Joanie South-Shelley, Angie Spears, Frank George Staats, Donna Strom, Jean Suchecki, Shannon K. Sweeney, Bessie Swindle, Gregory Switzer, Alexandra Taylor, P.J. Taylor, Timothy Than, Le Thanh, Sandra Guerra Thompson, Phylis R. Tomlinson, Boo Tran, Chii Tran, Henry Tran, Loc Tran, Paul Tran, Thach Tran, Thanh Tran (two separate commenters), Van Tran, Starla Turnbo, Mary and R. Chan Tysor, Alvin Ubiera, Guadalupe Valderaz, Sheryl Vandeven, Hiep Thi Vo, Binh Vu, Rose Walker, Adam J. Weiss, Norma Welscher, Gene R. Wild, Lisa A. Wild, Jody R. Wilding, Marcy Williams, Tran Y., Christopher Zider, F.J. Zider, Paul R. Zider, and Y.S.A.

This Response addresses all timely public comments received, whether or not withdrawn. If you need more information about this permit application or the permitting process please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

## **BACKGROUND**

### Description of Facility

SCC has applied to the TCEQ for a Standard Permit under Texas Clean Air Act (TCAA), § 382.05195. This permit would authorize the Applicant to construct and operate a temporary concrete batch plant. The facility is located at 5001 Gasmer Drive, Houston, Harris County. The contaminants authorized under this permit include dust, aggregate, cement, and particulate matter (PM), including PM with aerodynamic diameters of 10 microns or less (PM<sub>10</sub>) and 2.5 microns or less (PM<sub>2.5</sub>).

### Procedural Background

Before work begins on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain an authorization from the commission. This permit application is for issuance of Registration 119443L001. The permit application was received on April 24, 2014 and declared administratively complete on May 1, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English on May 29,

2014 in the *Houston Chronicle* and in Spanish on May 30, 2014 in *El Observador*. The Notice of Application and Preliminary Decision for an Air Quality Permit was published in English on July 24, 2014 in the *Houston Chronicle* and in Spanish on July 25, 2014 in *El Observador*. A public meeting was held on July 29, 2014, in Houston. The notice of the public meeting was mailed to all commenters on July 15, 2014. The public comment period ended on August 25, 2014.

## **COMMENTS AND RESPONSES**

### **COMMENT 1: Air Quality/Health Effects (Humans/Animals/Plants)**

Commenters expressed concern regarding the amount and type of emissions (particularly concrete dust and PM) that would be generated from operations at the proposed plant and the effect that these emissions may have on air quality. Commenters asked about health effects on children and individuals with preexisting respiratory and cardiovascular conditions. In addition, commenters asked about health effects on domestic animals, wildlife, particularly bird life at the Willow Waterhole Conservation Reserve (Willow Waterhole), aquatic life, and plants. A commenter stated that SCC should provide modeling data to determine the off-site impacts of PM emissions.

Commenters stated that the proposed plant would be located within 440 yards of their homes and Willow Waterhole, and that the southeastern prevailing winds will carry dust into the neighborhood and into the Willow Waterhole. A commenter stated that if the proposed plant suffers a power outage to the control systems, it will "burp" a cloud of dust. Another commenter stated that on several occasions, heavy trucks driving over the loose dirt caused heavy clouds of dust to be blown across the path in the park adjacent to the proposed plant. The commenter stated that it was not just loose soil because it contained concrete dust.

Commenters asked about the potential for the proposed plant to create nuisance dust conditions for nearby residents, the park, schools, and businesses. The commenters cited the provisions of 30 TAC § 101.4, which states, "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or to interfere with the normal use and enjoyment of animal life, vegetation, or property." A commenter stated his understanding that citizens can document nuisance conditions as observed and submit the documentation to the TCEQ.

A commenter observed that Harris County is very near nonattainment for PM<sub>2.5</sub>. Another commenter stated that dust levels on top of the summer ozone levels in Houston will be an issue. A commenter stated that according to the United States Environmental Protection Agency (EPA), Texas has the worst emission rating in the entire country.

The Westbury Super Neighborhood approved a resolution (submitted by Cindy Chapman, President of the Westbury Area Improvement Corp. and Becky Edmondson, President of the Westbury Civic Club) stating that the proposed plant operation will have a significant negative impact on the health, safety, and well-being of residents, students, and the general public in the Westbury area.

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**RESPONSE 1:** The stated purpose of the TCAA is to “safeguard the state’s air resources from pollution by controlling or abating air pollution and emissions of air contaminants.” TCAA § 382.002(a). In accordance with this purpose, prior to the Air Quality Standard Permit for Concrete Batch Plants (Standard Permit) being approved in 2000 and amended in 2003 and 2012, the TCEQ conducted an extensive protectiveness review to determine the technical requirements, which included property line distance requirements, compliance with the National Ambient Air Quality Standards (NAAQS) for PM, and maximum production rates at which a plant’s operation will not be detrimental to human health and welfare or the environment.

The EPA has established the NAAQS for PM, which are set to protect sensitive members of the population such as children, the elderly, and individuals with existing respiratory conditions. The NAAQS, as defined in the federal regulations (40 Code of Federal Regulations (CFR) § 50.2), include both primary and secondary standards. The primary standards are those which the Administrator of the EPA determines are necessary, with an adequate margin of safety, to protect the public health, including sensitive members of the population such as children, the elderly, and individuals with existing lung or cardiovascular conditions. Secondary NAAQS are those which the Administrator determines are necessary to protect the public welfare and the environment, including animals, crops, vegetation, and buildings, from any known or anticipated adverse effects associated with the presence of an air contaminant in the ambient air. The standards are set for criteria pollutants such as respirable PM, which includes PM<sub>10</sub> and PM<sub>2.5</sub>. Harris County is in attainment for the NAAQS for PM. The Standard Permit is designed to be in compliance with the EPA standards.

The primary contaminants that have the potential to be emitted from the proposed facility are dust particles due to vehicle traffic and material handling (specifically aggregate and cement), which have particle sizes less than or equal to PM<sub>10</sub> and PM<sub>2.5</sub>. All of the potential dust concentrations have been evaluated using reasonable worst case operating parameters and compared to the federal criteria mentioned above. The Standard Permit requires substantial dust control processes to minimize dust issues. When a company operates in compliance with the proposed permit, there should be neither deterioration of air quality nor the generation of dust such that it impacts visibility.

As the commenters noted, applicants must comply with 30 TAC § 101.4, which prohibits nuisance conditions. As long as the facility is operated in compliance with the terms of the permit, nuisance conditions are not expected. The TCEQ cannot deny authorization of a facility if a permit application demonstrates that all applicable statutes, rules, and regulations will be met.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with the terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at 713-767-3500 or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. If the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

As one commenter mentioned, citizen-collected evidence may be used in such an action. See 30 TAC § 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. Under the citizen-collected evidence program, individuals are providing information on possible violations of environmental law and the information can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, "Do You Want to Make an Environmental Complaint? Do You Have Information or Evidence?" This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028 and may be downloaded from the agency website at [www.tceq.texas.gov](http://www.tceq.texas.gov) (under Publications, search for Publication Number 278).

Violations are usually addressed through a notice of violation letter that allows the operator a specified period of time within which to correct the problem. The violation is considered resolved upon timely corrective action. A formal enforcement referral will be made if the cited problem is not timely corrected, if the violation is repeated, or if a violation is causing substantial impact to the environment or neighbors. In most cases, formal enforcement results in an agreed enforcement order including penalties and technical requirements for corrective action. Penalties are based upon the severity and duration of the violation(s). Violations are maintained on file and are included in the calculation of a facility's and a person's compliance history. Compliance history ratings are considered during permit application reviews, as outlined in Response 5.

**COMMENT 2: Cumulative Effects of Nearby Facilities**

A commenter stated that there are 296 air permits already issued in the area of the proposed plant, 13 of which are concrete batch plants. Commenters also stated that within two miles of the proposed SCC plant, there are seven facilities with air permits, three of which are concrete companies. A commenter noted that SCC has another concrete plant just down the street. Commenters stated that there are already too many concrete plants in this part of town, and that the cumulative effect of all of these facilities will negatively affect the health of residents in this area.

**RESPONSE 2:** As discussed in Response 1, the technical requirements contained in the Standard Permit are designed to ensure that facilities operating under a Standard Permit, 30 TAC § 116.611, achieve the emission standards determined to be protective of human health and the environment. During the protectiveness review, the TCEQ reviewed the potential for emissions of PM from concrete batching facilities and determined that facilities operating under the Standard Permit will meet the NAAQS for PM<sub>10</sub> and PM<sub>2.5</sub>. The NAAQS for PM<sub>10</sub> are 150 and 35 micrograms per cubic meter (µg/m<sup>3</sup>) for a 24-hour period and 50 and 15 µg/m<sup>3</sup> annually.<sup>1</sup> The NAAQS for PM<sub>2.5</sub> has a 24-hour standard of 35 µg/m<sup>3</sup> and an annual standard of 12 µg/m<sup>3</sup>.

Harris County is in nonattainment for the NAAQS standard for ozone. Nonattainment means the levels of ozone in Harris County are contributing to the exceedance of the ozone NAAQS. The precursors to ozone development are nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs). The proposed concrete batch plant should not contribute to the deterioration of the

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<sup>1</sup>The annual standard has been revoked by EPA but still included here because it was effective at the time the TCEQ developed the standard permit.

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Harris County ozone nonattainment area because the plant will not be using a diesel engine or generator to power the facility; therefore, it will not emit NO<sub>x</sub> or VOCs. As stated previously, the only contaminant the Applicant would be authorized to emit is PM. Harris County is in attainment with the PM NAAQS. Therefore, if the plant is operated in accordance with the proposed permit, there should be no adverse impact to air quality as a result of cumulative operations.

In regards to concrete batch plants and other facilities with air permits located in the area, the TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider facility location or zoning when determining whether to approve or deny a permit application. The Air Quality Standard Permit for Concrete Batch Plants requires all facilities be placed a minimum distance of 100 feet from the applicant's property line. This distance requirement is designed to protect the occupants of a residence, school, or place of worship beyond the property line. Additionally, as mentioned in Response 1, 30 TAC § 101.4 prohibits a person from creating or maintaining a condition of nuisance that interferes with a landowner's use and enjoyment of property.

**COMMENT 3: Alleviation of Dust Impacts**

A commenter stated that the TCEQ should require the Applicant to do the following:

- pave all in-plant roadways with a cohesive hard surface that is maintained intact and cleaned;
- install 12-foot high dust-suppressing fencing along all traffic routes and work areas;
- place three-walled bunkers around all stockpiles that are at least two feet above the top of the stockpile; and
- install wash and rumble strips to minimize airborne PM from concrete tracked onto the public roadway.

Another commenter suggested that the Applicant plant a line of shrubbery next to the proposed plant's fence and use other measures to mitigate the dust problem. A commenter asked what types of wind barriers will be used to control dust emissions from the proposed plant.

A commenter noted that he had seen SCC personnel spray water at the location of the proposed plant to alleviate visible dust emissions, but this was not done consistently. Another commenter asked for TCEQ contact information in the event that citizens see dust emissions at the proposed plant. The commenter asked what information needs to be provided and what actions the TCEQ takes once the information is received.

**RESPONSE 3:** The TCEQ appreciates the comments regarding alleviation of dust impacts at the proposed plant.

Subsection (5)(E) of the Standard Permit requires that owners/operators control emissions from in-plant roads and traffic areas at all times and provides four options by which the emissions can be controlled. The options available for temporary concrete batch plants under the Standard Permit include:

- (i) watering them; or

- (ii) treating them with dust-suppressant chemicals as described in the application of aqueous detergents, surfactants, and other cleaning solutions on the TCEQ's *de minimis* list (see 30 TAC § 116.119); or
- (iii) covering them with a material such as (but not limited to), roofing shingles or tire chips and used in combination with (i) or (ii) above; or
- (iv) paving them with a cohesive hard surface that is maintained intact and cleaned.

In lieu of meeting the buffer distance requirement for roads and stockpiles in subsection (8)(D) of the Standard Permit, subsection (8)(E) requires that the owner/operator install 12-foot high dust-suppressing fencing and contain stockpiles within a three-walled bunker. By meeting all of the above requirements of the Standard Permit for in-plant roads and traffic areas, the Applicant is not required to provide further dust control measures for public roadways, such as the suggested wash and rumble strips.

In addition to complying with the federal and state standards mentioned above and as noted by commenters, applicants must comply with 30 TAC § 101.4, which prohibits nuisance conditions. As long as the Applicant's facility is operated in compliance with the terms of the Standard Permit, nuisance conditions are not expected.

**COMMENT 4: Standard Permit Opacity Requirements/Monitoring**

A commenter asked for clarification regarding visible emission requirements in subsection (5)(H) of the Standard Permit. The commenter asked who is responsible for quarterly monitoring of dust emissions and what training is required of the person performing the monitoring. A commenter urged the TCEQ to establish constant monitoring of the proposed plant to ensure that no negative impacts to nearby residents occur.

**RESPONSE 4:** As required by subsection (5)(H), the Applicant is responsible for performing and recording observations for visible fugitive emissions quarterly. These observations must be accomplished in accordance with EPA's Test Method (TM) 22. TM 22 determines the amount of time that visible emissions occur during the observation period (*i.e.*, the accumulated emission time). This method does not require that the opacity of emissions be determined. Since this procedure requires only the determination of whether visible emissions occur and does not require the determination of opacity levels, observer certification according to the procedures of Test Method 9, an opacity check, is not required. However, it is necessary that the observer has knowledge of the general procedures for determining the presence of visible emissions. At a minimum, the observer must be trained and knowledgeable regarding the effects of background contrast, ambient lighting, and observer position relative to lighting, wind, and the presence of uncombined water (condensing water vapor) on the visibility of emissions. This training is to be obtained from written materials found in References 1 and 2 or from the lecture portion of the Method 9 certification course.

The TCEQ has not required continuous air monitoring for minor source air permits unless conditions are exacerbated by such things as significant documented and justified complaints, unsatisfactory performance, or enforcement actions. There are no site-specific monitors contemplated for the proposed plant. However, mobile monitoring can be implemented by the TCEQ Houston Regional Office if conditions warrant. As described in detail in the previous

responses, if the Applicant operates in accordance with the terms of the Standard Permit, adverse impacts to the public health or welfare are not expected.

**COMMENT 5: Compliance History**

Commenters stated that SCC has an especially poor record of complying with environmental regulations and that this record does not inspire confidence. A commenter stated that reportedly, for years SCC has operated a concrete crushing operation at this site without a permit. Another commenter stated that if the air modeling done for this standard permit registration used the assumption that SCC would operate within the limits of the permit, it will be inaccurate because SCC has a history of ignoring production limits.

A commenter stated that a copy of the investigations/citations for SCC was 45 pages and is the longest the commenter had ever seen. Commenters noted that the list included the following violations:

- failing to obtain authorization to move the crusher between locations;
- failing to maintain recordkeeping of the pollution abatement system for two years;
- exceeding allowable limits for the daily production rate; and
- exceeding the number of hours of operation allowed per week for a crushed concrete facility.

**RESPONSE 5:** During the technical review of the Standard Permit application, a compliance history review of the company and the site was conducted based on the criteria in 30 TAC Chapter 60. These rules may be found at the following website: [www.tceq.texas.gov/rules/index.html](http://www.tceq.texas.gov/rules/index.html). The compliance history for the company and site was reviewed for the five-year period prior to the date the permit application was received by the ED. The compliance history includes multimedia (air, water, and waste) compliance-related components about the site under review and is not limited to air-related issues. These components include: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emission events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance.

Compliance history ratings are classified as following:

- High: rating below 0.10, complies with environmental regulations extremely well;
- Satisfactory: rating 0.10 – 55.00, generally complies with environmental regulations;
- Unsatisfactory: rating greater than 55.00, fails to comply with a significant portion of the relevant environmental regulations;
- Unclassified: inadequate or no compliance information; or
- Not applicable: the customer and site were created after the annual compliance history audit.

Because this would be a new concrete batch plant, the site does not have a rating and has a classification of “Not Applicable.” The company rating and classification, which is the



multimedia average of the ratings for all sites the company owns, is rated as "Satisfactory" with a rating of 6.44. This rating takes into account all sites owned and operated by the company and reflects all violations that may have occurred at the separate facility locations in the five-year period prior to the date the application was received.

**COMMENT 6: Site Review**

Commenters stated that the TCEQ's site review document is inaccurate because it states that the surrounding land use is industrial and commercial. Commenters stated that while this may have been true 20 years ago, that is not the case today. Commenters stated that the area now includes a Catholic convent, an apartment complex, homes, schools, and a park (Willow Waterhole). In addition, a commenter stated that the site review incorrectly indicated a low nuisance potential in the area surrounding the proposed plant site. Another commenter stated that the site review acknowledges that a school is located less than 3,000 feet from the proposed plant.

**RESPONSE 6:** Observations made by the TCEQ investigator identified the immediate area around the proposed site as industrial/commercial. There are no restrictions in the Standard Permit for a concrete batch plant that limit the construction and operation of a facility near a school. However, TCAA § 382.052 requires the TCEQ to consider possible adverse short-term or long-term side effects of air contaminants or nuisance odors on individuals attending elementary, junior high, or senior high schools located within 3,000 feet of a proposed facility. As stated in previous responses, in developing the Standard Permit, a protectiveness review was conducted for all contaminants emitted and the maximum concentration of those contaminants was determined. As a result of this protectiveness evaluation, the Standard Permit requires all facilities to be placed a minimum distance of 100 feet from the applicant's property line. This distance requirement is designed to protect occupants of a residence, school, or place of worship beyond the property line.

For this specific application, the Applicant's proposed plant location will be over 700 feet from the Southern Crushed north property line, which is the closest property line to the Varnett School. Therefore, the plant will be approximately 2,800 feet from the Varnett School.

**COMMENT 7: Applicant's Standard Permit Registration**

Commenters asked whether the concrete plant will operate at the same time as the crushed concrete plant. A commenter asked for clarification regarding the Applicant's "temporary" designation for the plant, and when work would be complete. A commenter stated that the hours of operation and actual production rates are not clearly restricted. A commenter noted that SCC has stated that the plant will only run four hours a day and four trucks a day; the commenter asked how the TCEQ will ensure that only this operation will occur.

A commenter stated that the information submitted with the permit application is minimal, and potential parties cannot evaluate whether to request a hearing or to specify their issues of concern. Commenters asked about the plot plan, a detailed description of the equipment, and pollution abatement equipment and practices. A commenter asked whether distance limitations of the Standard Permit have been met by the Applicant. A commenter asked whether the comment period can be extended because citizens have not had an opportunity to view the plot

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plan. The commenter further asked whether the permit registration can be nullified because all of the required information was not included.

Commenters stated that the Applicant misrepresented in the Standard Permit registration application that the plant would be located in an industrial area and that the TCEQ can reject the registration based on the false information supplied.

**RESPONSE 7:** The ED reviews the application to determine whether the facility will meet all applicable distance and buffer requirements of the Standard Permit. The Standard Permit allows a concrete batch plant and concrete crusher to operate on the same site as long as the minimum setback distances are met. In this case, the two facilities must be a minimum of 550 feet apart or not operate at the same time. Currently, there are no other operations on site.

The Applicant identified this facility will be considered temporary, which limits the time the facility may be on site to no more than 180 days or completion of the single project. The Applicant represented the facility would be on site for 180 days.

The Standard Permit provides for 24-hour operation and does not require an applicant to provide specific operating hours. The Applicant represented operation up to 12 hours per day and six days per week during this project.

The TCEQ permit reviewer conducted a thorough review of this Standard Permit registration application to ensure that it meets the requirements of all applicable state and federal standards. The Applicant submitted a plot plan with the original registration that identified the location of the concrete batch plant and associated equipment. As required by 30 TAC § 39.405(g), the Applicant verified that all required documents, including the plot plan, were available for public viewing at the Houston Public Library beginning on May 29, 2014.

Additionally, due to the concerns expressed by the commenters, the Houston Regional Office conducted a site review on June 13, 2014, and confirmed that the conditions of the Standard Permit were satisfied as represented. As previously mentioned, the TCEQ investigator measured the distance between the proposed plant and the nearest school (Varnett School). This distance was approximately 2,800 feet. The investigator also indicated there should be low nuisance and odor potential due to the proposed location. The Applicant also provided a more detailed plot plan to better represent the equipment location and distance measurements at the site and verified that this updated plot plan was available for public viewing at the Houston Public Library beginning on July 30, 2014.

The comment period was extended to the end of the public meeting that was conducted in Houston on August 25, 2014.

As previously mentioned, the TCEQ does not have jurisdiction to consider facility location choices made by an applicant when determining whether to approve or deny a permit application, unless state law imposes specific distance limitations that are enforceable by the TCEQ.

**COMMENT 8: TCEQ's Development of the Standard Permit**

Commenters asked about the atmospheric modeling data that was used to establish the requirements of the Standard Permit and when it was last updated. Commenters questioned whether data from five years ago is still accurate, and they questioned the protectiveness of the Standard Permit. A commenter requested that a current wind study be undertaken by the TCEQ.

**RESPONSE 8:** The modeling platform ISCST<sub>3</sub> (Version 02035) was used to perform the Air Quality Analysis (AQA) in support of the concrete batch plant standard permit protectiveness review in September 2012. The AQA included air dispersion modeling of a model concrete batch plant at two maximum hourly production levels, 30 cubic yards per hour and 300 cubic yards per hour. The AQA considered a daily production limit not to exceed 6,000 cubic yards per day. The emission generating facilities or activities included in the AQA are material handling operations, truck loading, stockpiles, cement silos, and an internal combustion engine to generate power for equipment at the site. The analysis represented the operating schedule of facilities or activities at the site as 24 hours per day. The air contaminants evaluated were carbon monoxide (CO), nitrogen oxides (NO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), nickel (Ni) particulate, and formaldehyde (CHOH).

The predicted concentrations for all contaminants evaluated are below all relevant NAAQS or effects screening levels (ESLs) at all distances. The TCEQ used surface meteorological data from Austin and upper-air data from Victoria for the years 1983, 1984, 1986, 1987, and 1988. Since this analysis is primarily short-term concentrations, this five-year data set would include worst-case, short term meteorological conditions that would occur anywhere in the state and is considered valid.

The TCEQ does not perform wind studies.

**COMMENT 9: TCEQ's Permit Review Process/Mission**

A commenter stated that just because a permit is "grandfathered" doesn't make it right. Another commenter stated, "It's really amazing to me that the TCEQ can just approve a permit if somebody can fill out an application correctly." A commenter stated, "I have no faith in the TCEQ to make sure that the 180 days of concrete making at Southern Crushed Concrete will be trouble-free, without any negative health or environmental consequences for the students, the residents, the wildlife, or the water."

Commenters stated that according to the TCEQ's website, the agency's mission is to provide clean air, water, and the safe management of waste, as well as "protection of public health, general welfare, and physical property including esthetic enjoyment of air resources by the public and the maintenance of adequate visibility." A commenter expressed her concern that TCEQ staff at the public meeting could not answer basic questions concerning water and that she thought this was offensive. A commenter stated that it is the TCEQ's responsibility to assist both applicants in obtaining authorizations and the public in living a better quality of life. Another commenter noted that the TCEQ's review of a permit application is narrow in scope, and does not include such variables as welfare and economic development of an area.

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A commenter stated her understanding that an applicant meeting Standard Permit requirements will typically be granted that authorization; however, this commenter urged TCEQ staff to conduct a more thorough and independent review in this specific situation. In addition, this commenter stated that in some past situations, the TCEQ Commissioners have taken into account the "general duty" provisions of the TCAA (i.e., TCAA § 382.002, Policy and Purpose).

**RESPONSE 9:** The Standard Permit registration was issued in 2000 and amended in 2003 and again in 2012. It is not a grandfathered permit authorization. As mentioned in previous responses, the TCEQ permit reviewer conducted a thorough review of this application for a Standard Permit registration to ensure that it meets the requirements of all applicable state and federal standards, policy and procedures, and the agency's mission to protect the state's human and natural resources consistent with sustainable economic development. Additionally, the TCEQ considers all timely comments received on applications.

While the TCEQ is responsible for the environmental protection of all media (including water), the TCAA specifically addresses air-related issues. This permit, if issued, will regulate the control and abatement of air emissions only. The scope of this air quality permit application review does not include water assessment or consideration of issues involving water quality or quantity. Depending on the nature of the facility's operations, the Applicant may be required to apply for separate permits that regulate water quality. The issuance of an air quality authorization does not negate the need for other permits, such as storm water, prior to start of construction or operation, and it does not authorize the contamination of other media. Accordingly, this Standard Permit registration review did not include a specific water or waste control assessment.

**COMMENT 10: Newspaper Notice/Comment Period**

Commenters asked whether the Applicant should have provided notice of the Standard Permit registration by newspaper publication and sign-posting, in Vietnamese. Additionally, a commenter asked whether the Applicant should have provided notice in Mandarin.

Commenters are concerned about the welfare of nearby Vietnamese inhabitants. A commenter stated that they have a limited ability to understand English, and therefore, they have a limited ability to understand concerns and issues affecting their welfare in regard to the proposed plant.

A commenter requested that the time period for submitting public comments and hearing requests on the proposed permit be extended at least an additional 15 days (as is required for most TCEQ permit actions) and ideally an additional 30 days or more.

**RESPONSE 10:** The TCEQ's requirements for alternative language publication are located in 30 TAC § 39.405(h). The Commission requires that notice be published in an alternative language if the elementary or middle school located nearest to the facility or proposed facility is required to provide a bilingual education program as defined by the Texas Education Code, Chapter 29, Subchapter B and 19 TAC § 89.1205(a). Under the provisions of 19 TAC § 89.1205(e), when elementary or middle schools offer English as a second language, the applicant is not required to publish an alternative language public notice.

The TCEQ's newspaper notice requirements are located in 30 TAC § 39.603. The Commission requires applicants to publish notice in a publication of general circulation in the municipality or county in which the facility is located or proposed to be located in the alternative language or languages in which the bilingual education program is or would have been taught. To demonstrate compliance with these provisions, applicants are required to provide the Office of the Chief Clerk with copies of the published notice and a publisher's affidavit verifying facts related to the publication. SCC verified that the school district is not required to provide bilingual education programs in Vietnamese or Mandarin; therefore, bilingual notices in Vietnamese and Mandarin were not published, and signs were not posted in these alternative languages.

The TCEQ received timely hearing requests during the first public notice comment period. The receipt of timely hearing requests extended the period for the submission of additional hearing requests to August 25, 2014.

**COMMENT 11: Willow Waterhole Conservation Reserve**

Commenters stated that SCC should place the proposed plant in a less populated area, away from neighborhoods, an existing park and future outdoor theater, and several entities, including schools, a church convent, and a nursing home. These commenters stated that this site is not an industrial area, it is a residential area. Commenters stated that a company of this kind is an eyesore and incompatible with current surroundings. Commenters expressed concern regarding the negative impacts of the proposed plant on the neighboring Post Oak Manor, Westbury, and Vietnamese communities.

Many commenters expressed specific concern regarding how operations and emissions from the proposed plant will affect those in the community using Willow Waterhole, as well as the park environment. Commenters explained that Willow Waterhole includes a series of wet-bottom detention ponds for flood control and a greenspace in a 291-acre park in southwest Houston. The expanses around the ponds are designed for wildlife conservation and passive recreation and include walking trails, gazebos, and native plants. Commenters stated that one organization conducts a monthly bird count and counts as many as 45 different species on a given day. A commenter also stated that annually, since 2004, free music and film have been supplied in the park and that these events draw up to 1,500 people per event.

Commenters stated that Willow Waterhole is an asset to the community and over time will be a beautiful greenspace in a sprawling urban area. A commenter stated that the industrial "no man's land" that grew along the railroad tracks has suddenly become a 300-acre greenspace and is slated to be one of Houston's eight signature parks.

A commenter urged those who are responsible for overseeing the permit to visit and take a walk to Willow Waterhole and see how the request from SCC goes against the original planning of the park's long-term goals. Another commenter asked the TCEQ to consider rejecting the proposed plant's permit since it would be located close to a park that is held near and dear to families in the surrounding communities. A commenter stated that the area is family-oriented and should be able to choose to support family-oriented businesses.

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Commenters stated that the proposed plant is permitted to run for six days a week, 12 hours a day, so it will be difficult for park users to escape the resulting dust and noise. A commenter stated that this greenspace was intended to serve as an outdoor classroom for the adjacent high school and that dust-producing operations will make it virtually impossible for teachers to take students into the greenspace. As a result, the school district will lose a valuable resource. Commenters further stated that allowing the permit would almost completely negate preservation of this natural greenspace, regardless of what the company's "models" show for air quality.

**RESPONSE 11:** The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. The TCEQ does not have jurisdiction to consider facility location choices made by an applicant when determining whether to approve or deny a permit application, unless state law imposes specific distance limitations that are enforceable by the TCEQ. Zoning and land use are beyond the authority of the TCEQ for consideration when reviewing air quality Standard Permit applications and such issues should be directed to local officials. As previously mentioned, the Standard Permit requires a 100 foot setback for all facilities authorized by the Standard Permit from the nearest property line. It also requires a 50 foot setback distance for stationary equipment, stockpiles, and in-plant roads except for entrance and exit roads. If the distance cannot be met, the applicant must construct dust suppressing fencing or other barriers as a border around roads, other traffic areas, and work areas. These borders must be a height of at least 12 feet. Stockpiles must also be contained within a three walled bunker that extends at least two feet above the top of the stockpile.

**COMMENT 12: Negative Economic Impact/Enjoyment of Property/Property Values**

Commenters expressed concern that operations and emissions from the proposed plant will have a negative economic impact on the area by affecting nearby properties and recreational areas. A commenter stated that it does not make sense to have an industrial plant in the center of the park; the land use is of a higher value in a different capacity.

Commenters stated that the amount of dust this type of business creates will decrease property values and cause the city's tax revenues to drop. Commenters stated that permitting the proposed plant negatively affects the adjacent Levitt Pavilion amphitheater project and planned 90A rail line, which would hinder the city's ability to market itself as an attractive place to live and work. A commenter stated that many industries (such as the proposed plant) that have a great impact upon citizens' welfare escape the cost of repairing the damage that they create.

**RESPONSE 12:** The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider facility location, building design, zoning, or potential effects on property values when determining whether to approve or deny a permit application. However, as stated previously, 30 TAC § 101.4 prohibits a person from creating or maintaining a condition of nuisance that interferes with a landowner's use and enjoyment of his property.

**COMMENT 13: Environmental Equity**

A commenter stated that over 40 percent of the people who live in this census track live below the poverty line; therefore, they don't have the same access that other people do to quality

healthcare. The commenter stated that it is wrong to take an already disadvantaged area and make it even more disadvantaged by ruining the air quality. Another commenter asked how many of these types of plants are placed in impoverished neighborhoods versus middle-class neighborhoods versus wealthy neighborhoods, stating that this should be a consideration in approval of future similar plant locations. A commenter stated that she is speaking on behalf of economically disadvantaged students and their parents regarding the negative effects of the proposed plant's emissions.

**RESPONSE 13:** Air permits evaluated by the agency are reviewed without reference to the socioeconomic or racial status of the surrounding community. Although there are no TCEQ rules addressing environmental equity issues such as the location of permitted facilities in areas with minority and low-income populations, disparate exposures of pollutants to minority and low-income populations, or the disparate economic, environmental, and health effect on minority and low-income populations, the TCEQ has made a strong policy commitment to address environmental equity. The Office of the Chief Clerk works to help citizens and neighborhood groups participate in the regulatory process; to ensure that agency programs that may affect human health or the environment operate without discrimination; and to make sure that citizens' concerns are considered thoroughly and are handled in a way that is fair to all. You may contact the Office of the Chief Clerk at 512-239-3300 for further information.

As previously mentioned in Response 1 the protectiveness reviews performed during the development of the Standard Permit in 2000 and 2012 demonstrated the Standard Permit will meet both the primary and secondary NAAQS. If the facility is operated in accordance with the Standard Permit we do not expect any adverse health effects.

**COMMENT 14: Water Quality**

Commenters expressed concern regarding the effect of the plant's operations on nearby ground and surface water. Specifically, they were concerned about runoff resulting from the proposed plant's operations that would flow to the park. Commenters stated that the runoff would be highly alkaline, which would negatively affect the water quality in Willow Waterhole basins and would impact wetland plants, fish, mussels, and more than 150 species of migrating birds. A commenter stated that concrete batch plants use materials that could increase the turbidity of water in the basins at the park.

Commenters asked whether the proposed plant is compliant with Storm Water Pollution Prevention Plan (SWPPP) requirements, whether SWPPP plans and details were submitted and accepted for the proposed plant, and whether there will be an opportunity for comment and a hearing regarding the SWPPP.

**RESPONSE 14:** While the TCEQ is responsible for the environmental protection of all media (including water), the law governing air permits deals specifically with air-related issues. The scope of this air quality permit application review does not include water assessment or consideration of issues involving water quality or quantity. Depending on the nature of the facility's operations, an applicant may be required to apply for separate permits that regulate water quality. The issuance of an air quality authorization does not negate the need for other permits, such as storm water, and it does not authorize the contamination of other media.

This permit does not authorize the discharge of pollution into a body of water. As stated in previous responses, individuals are encouraged to report environmental concerns, including water quality issues, or suspected noncompliance with the terms of any permit or other environmental regulation by contacting the TCEQ Houston Regional Office at 713-767-3500 or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it will be subject to enforcement action.

**COMMENT 15: Threatened/Endangered Species**

Commenters stated that the dust and runoff from the proposed plant may affect the endangered Texas Prairie Dawn Flower, which grows at the Willow Waterhole. In addition, a commenter stated that Bald Eagles, Peregrine Falcons, and Sprague's Pipits have been seen at the park. A commenter stated that a very rare grass also exists in the area.

**RESPONSE 15:** Compliance with rules and regulations regarding endangered species is handled at the state level by the Texas Parks and Wildlife Department and at the federal level by the United States Fish and Wildlife Service. It is incumbent upon an applicant to request and acquire any additional authorizations that may be required under state or federal law. However, if operated in accordance with the requirements of the permit, adverse impacts from the proposed plant are not expected. Additionally, the Applicant must comply with 30 TAC § 101.4, which prohibits the discharge of contaminants which may be injurious to, or adversely affect, wildlife.

**COMMENT 16: Truck/Traffic Hazard/Roads/Noise**

Commenters expressed concern regarding airborne dust generated by the proposed plant's trucks and damage to nearby roads and additional traffic and safety issues. A commenter suggested that there should be more cautionary signs placed in the area to remind truck drivers of the speed limit and to alert them of the presence of pedestrians. Another commenter stated that debris attached to the tires of trucks may track onto the streets, which would cause potential storm water quality issues. A commenter stated that the Applicant should provide further emissions calculations related to vehicular traffic.

Other commenters stated that noise created by the operations at the proposed plant will affect the nearby neighborhood and park. A commenter stated, "Concrete batch plants are flat out noisy! Noise pollution from trucks and front end loader engines, hydraulic pumps, etc. Those noises will disturb the wildlife that is monitored on a monthly basis by the Houston Audubon as well as park goers."

**RESPONSE 16:** The TCEQ's jurisdiction is established by the Legislature and is limited to the issues set forth in statute. Accordingly, the TCEQ does not have jurisdiction to consider traffic, road safety, road repair costs, or noise when determining whether to approve or deny a permit application. Trucks are considered mobile sources, which are not regulated by the TCAA. Moreover, the TCEQ is prohibited from regulating roads per TCAA § 382.003(6), which excludes roads from the definition of "facility."

However, should additional traffic result in air emissions, nuisance-related regulatory provisions may be applied. Although the TCEQ is prohibited from regulating trucks, TCEQ rules



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prohibit anyone from causing a traffic hazard. Specifically, 30 TAC § 101.5 states, "No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use."

Jurisdiction over traffic on public roads, including any load-bearing restrictions and public safety including access, speed limits, and public roadway issues, are typically the responsibility of local, county, or other state agencies, such as the Texas Department of Transportation (TxDot) and the Texas Department of Public Safety (DPS). An air quality permit does not authorize a violation of any road safety or load-bearing restrictions. Concerns regarding roads should be addressed to appropriate state or local officials.

The TCEQ similarly does not have jurisdiction to consider noise from a facility when determining whether to approve or deny a permit application. As such, the TCEQ does not have authority under the TCAA to require or enforce any noise abatement measures. Noise ordinances are normally enacted by cities or counties and enforced by local law enforcement authorities. Commenters should contact their local authorities with questions or complaints about noise.

**COMMENT 17: Questions/Comments Directed to Applicant**

The following questions/comments were directed to the Applicant:

- Do you plan on creating any noise barriers so that plant operations will not be heard at the nearby park? How many decibels is this operation?
- When we had environmental concerns at the Waste Management operation, they worked with us and even reconfigured their footprint; Waukesha Pearce participated in our Super Neighborhood meetings; both Shell and Waste Management are partners in the Willow Waterhole Greenspace Conservancy. Sadly, SCC has not to my knowledge ever been engaged with our neighborhood
- What is the purpose of the batch plant? What project(s) will it get used for, and where? Will this plant remove, leave in place, or add to the large pile of gravel that is already on the site?
- Was a site analysis done to show the adjacency to the Willow Waterhole on two sides? Where will the main entrance to the facility be? Will new curb cuts be necessary or provided? If so, where? Will city of Houston landscape setbacks and buffering requirements be followed on site? Has a survey been done on the site to indicate setbacks, buffers, and easements in force on the site? Has this been submitted and approved by the Houston Permitting Office?
- Has the Applicant submitted and received approval by all necessary authorities in Harris County and the state of Texas?
- What will the hours of operation be for the proposed plant? Will the proposed plant comply with city of Houston noise requirements?
- What site mitigation measures will be taken when the concrete crushing plant is no longer in operation?
- The Fish and Wildlife Service requested that you contact them regarding the potential impact of your plant on the Texas Prairie Dawn Flower, which is present at the Willow Waterhole.

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- Why is the equipment removed at the end of 180 days, but not the foundations?
- It does not make economic sense for SCC in this particular area; SCC could probably make a lot of money by selling the property to a developer and bring some quality commercial development to our neighborhood.
- There are a lot of people who are invested in this community and they're willing to work and oppose this particular proposal down to the nitty-gritty.
- It's time for SCC to move.
- How large is a concrete truck? How much concrete will you move in a day? How many concrete yards will you be delivering during your temporary operation?
- Your business negatively impacts our residents, our space, and our livelihood.

**RESPONSE 17:** These specific questions were addressed to the Applicant and are included for completeness, but not addressed by the Executive Director.

**CHANGES MADE IN RESPONSE TO COMMENT**

No changes have been made to the Executive Director's preliminary determination that the application meets the requirements for permit issuance.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE  
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