

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §106.201, concerning Permanent and Temporary Concrete Batch Plants, §106.202, concerning Temporary Concrete Batch Plants, and §106.203, concerning Specialty Batch Plants.

EXPLANATION OF PROPOSED RULES

In concurrent rulemaking, the commission proposes to create a standard permit for concrete batch plants in 30 TAC Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification. This proposal would consolidate the requirements of §§106.201, 106.202, and 106.203 into the standard permit. This will make the sections redundant and subject to repeal. Any exemption registration for §§106.201, 106.202, and 106.203 filed up to the effective date of this repeal and the concurrent creation of a standard permit for concrete batch plants will be processed as an exemption from permitting. Facilities authorized in this manner must begin construction within 90 days of written site approval by the executive director. This approach is designed to protect against the situation in which an applicant for a registration for an exemption from permitting is involved in a contested case hearing on the registration, and the hearing process could not be completed before the exemption from permitting would be repealed. In such a case, the applicant could not proceed under the standard permit before it is adopted, and also could not, in the absence of such a policy, act upon the repealed standard exemption once a final decision in the contested case hearing is made. By stating its intention to process all exemption registrations for §§106.201, 106.202, and 106.203 filed up to the effective date of the repeal of these sections and concurrent creation of the standard permit as

exemptions from permitting, the commission hopes to clarify its intent with regard to facilities that are not a threat to human health and may be caught in this transitional period.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the repeals are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the repeals.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the repeals are in effect, the anticipated public benefit will be elimination of unnecessary regulations and a simplification of the commission's regulatory structure. Because the requirements of the repealed sections will be combined into a standard permit in Chapter 116, there will be no effect on existing small businesses that do not construct or relocate a concrete batch plant. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

These repeals are part of a rulemaking that will consolidate existing regulations and requirements concerning concrete batch plants into a standard permit. The repeals will therefore have no economic effect. This action will not 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.

TAKINGS IMPACT ANALYSIS

These repeals do not require a dedication of private real property and are not a burden on private property. This rulemaking does not constitute a taking of private real property.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goal 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas. This action is consistent with 31 TAC §501.14(q), which requires the commission to protect air quality in coastal areas. These repeals will not authorize any increase in air emissions.

PUBLIC HEARING

A public hearing on this proposal will be held October 20, 1998, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98005-116-AI. Comments must be received by 5:00 p.m., October 26, 1998. For further information, please contact Kerry Drake, New Source Review Permits Division, (512) 239-1112, Dale Beebe-Farrow, New Source Review Permits Division, (512) 239-1310, or Beecher Cameron, Air Policy and Regulations Division, (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The repeals are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.051. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.051 authorizes the commission to issue a standard permit for numerous similar sources.

The proposed repeals implement Texas Health and Safety Code, §382.057.

SUBCHAPTER H : CONCRETE BATCH PLANTS

§§106.201 - 106.203

§106.201. Permanent and Temporary Concrete Batch Plants (Previously SE 71).

§106.202. Temporary Concrete Batch Plants (Previously SE 93).

§106.203. Specialty Batch Plants (Previously SE 117).

The Texas Natural Resource Conservation Commission (commission) proposes new §116.135, concerning Public Notice Requirements for Concrete Batch Plants, new §116.622, concerning Concrete Batch Plants, and an amendment to §116.614, concerning Standard Permit Fees.

EXPLANATION OF PROPOSED RULES

The commission currently authorizes the majority of concrete batch plants under the conditions of 30 TAC Chapter 106, concerning Exemptions from Permitting. This proposal would combine existing requirements for new or relocated concrete batch plants in §106.201, concerning Permanent and Temporary Concrete Batch Plants, §106.202, concerning Temporary Concrete Batch Plants, and §106.203, concerning Specialty Batch Plants, into a standard permit in §116.622. This consolidation of requirements is consistent with the desire of the commission to simplify its regulatory structure and recognize the potential significance of some sources by developing standard permits, or permits by rule, to replace existing standard exemptions from permitting that provide qualification criteria that are lengthy, complex, widely used, and potentially contentious. In addition to combining the requirements which are currently in the exemptions from permitting, the commission would add requirements to control dust and apply a minimum setback of certain concrete batch plant operations from non-industrial areas to ensure air quality standards for non-industrial receptors and reduce the potential for nuisance. These setbacks for baghouse exhausts and material stockpiles are based on computer dispersion modeling performed to verify the protectiveness of the exemptions from permitting. The modeling results are available from the New Source Review (NSR) Division. While the evaluation

confirmed the protectiveness of the exemptions, it did indicate that the additional setbacks in this proposal were necessary to meet the net-ground level concentration limits in 30 TAC §111.155 in all reasonable worst-case scenarios. Sign posting and alternate language requirements are proposed in order to comply with statutory requirements in Texas Health and Safety Code, §382.056.

The new §116.622 will create a standard permit that will be applicable to permanent, temporary, and specialty concrete batch plants. Requirements common to all batch plants will include registration with the commission and written approval from the executive director prior to beginning construction. The commission will require public notice as specified in the proposed §116.135 prior to construction, unless the plant is to be a temporary plant located in, or contiguous to, the right-of-way of a public works project as intended by the Texas Legislature in Texas Health and Safety Code, §382.058, as these are the same facilities contemplated by the statute. The commission proposes to amend §116.614 to allow the waiver of fees as specified for a particular standard permit. However, the commission proposes not to waive the fee for this standard permit. Even though the commission does not currently charge a fee for the review of concrete batch plant registrations under exemptions from permitting, the public notification and the resulting comments and hearing requests require a great deal of staff time. This proposal requires public notification which are expected to result in a similar amount of staff time spent reviewing and responding to comments and hearings requests, and the fee is intended to recover staff expenses. Requiring a fee for concrete batch plants affected by this proposal is a departure from

current practice, and the commission is seeking specific comments on this aspect of the proposal, especially the effect on temporary and small facilities.

The new standard permit would require all batch plants to adhere to registration and executive director approval requirements and to control emissions from cement and flyash storage silos and cement and flyash weigh hoppers by means of a fabric filter or a cartridge filter system that is properly maintained. The opacity limitation of exhaust from the filter would be 5.0% as determined by 40 Code of Federal Regulations (CFR) Part 60, Appendix A, Method 9. Conveying systems for cement and flyash would be enclosed with no visible fugitive emissions as measured by 40 CFR 60, Appendix A, Method 22, except during supply truck connect and disconnect. Each bulk storage silo must be equipped with a warning device to alert operators when the silo is full. Dust emissions from road and traffic areas would be minimized by covering the areas, treating them with dust-suppressant chemicals, watering, or paving. Dust from stockpiles would be similarly controlled by watering, dust-suppressant chemicals, or covering. Spills of batching material must be cleaned up or controlled to minimize dust.

Based on mathematical projection of pollutant dispersion, specialty batch plants would be limited to 30 cubic yards per hour maximum production to qualify for this standard permit. The equations supporting these projections are available from the NSR Division. Specialty plants would have the option of controlling dust emissions at the batch mixer by water spray, a pickup device vented to a

fabric filter, enclosing the batch mixer, or conducting the entire mixing operation within an enclosed building. Specialty plants would also have the option of venting weigh hoppers inside the batch mixer.

Temporary batch plants are defined as those that occupy a site for not more than 180 consecutive days or supply concrete for a single public works project or for the same contractor for related project segments. In addition to the general requirements, temporary plants would be required to control emissions at the batch drop point by a suction shroud with a minimum flow rate of 4,000 actual cubic feet per minute of air (acfm) or equivalent system. This shroud shall be vented to a fabric or cartridge filter system. Through calculation, the commission staff has determined that the specified flow rate is adequate to draw emissions from an area affected by a typical concrete batch loading point into the filtering system. As an alternative, temporary wet batch plants may load rotary mix trucks through a water fog ring. All equipment and stockpiles would be set back from any non-industrial receptor by at least 300 feet to allow dispersion of any dust generated by the stockpiles or equipment and reduce the possibility of nuisances. This setback is retained from the exemption from permitting and is based on field experience and observation on the dissipation of dust plumes.

Permanent non-specialty batch plants using this standard permit would be limited to a maximum production rate of 300 cubic yards per hour. This limit is based on a historic review of exemptions and represents what the commission believes to be the upper limit of what a typical plant can process and load onto trucks within an hour. Plants with a production rate higher than 300 cubic yards per hour

would be specialized cases requiring a detailed engineering review for that specific operation. These plants would also require a suction shroud at the batch drop point with a minimum draw of 4,000 acfm of air or equivalent system. In a new requirement designed to ensure air quality standards for non-industrial receptors, facilities producing 250 cubic yards or more of concrete per hour must have baghouse exhausts located at least 200 feet from the nearest non-industrial receptor, e.g., residence, institutional building, or public area. This distance was determined by use of air pollutant dispersion modeling which demonstrated that this separation was necessary to meet particulate concentration standards in §111.155, assuming maximum allowable baghouse exhaust.

To reduce the potential for nuisance, the commission added a requirement that all unpaved roads or traffic areas must be located 200 feet from non-industrial receptors. To further reduce the chance for nuisance, the standard permit would require these permanent plants to have paved entry and exit roads, and concrete delivery routes which can be cleaned. While this and other setbacks are not a guarantee against a concrete batch plant ever being a nuisance, these buffer distances are based on observation of dust dissipation. By paving surfaces within 200 feet of non-industrial receptors, batch plant operators will have a cleanable surface, reducing the possibility of large, dense clouds of dust generated by vehicle movement. Permanent non-specialty plants would be restricted to using washed or wetted recycled aggregate to ensure compliance with state particulate matter standards.

The commission currently has three sections in Chapter 106 that apply to concrete batch plants. To qualify for the exemptions, concrete batch plant operators must meet several air pollution control requirements, register their operation with the commission, and receive prior approval from the executive director before construction begins. Additionally, the applicant must publish notice, under Texas Health and Safety Code, §382.058, of its intent to construct and operate this type of facility. Concrete batch plants can be significant sources of particulate air pollution if they are not properly controlled and operated. It is therefore appropriate that newly constructed or relocated concrete batch plants be grouped for authorization under a single standard permit that consolidates the control requirements currently found in Chapter 106. This proposal incorporates these conditions and adds additional setback restrictions to enable the permit to meet particulate concentration standards in §111.155. The additional restrictions, as previously mentioned, include a setback of equipment and stockpiles from non-industrial receptors, a setback of baghouse exhaust from residences, institutional buildings, and public areas, and a requirement that permanent plants pave their entry and exit roads.

Because all conditions of the exemptions from permitting in Chapter 106 that cover concrete batch plants would be included in the standard permit, these exemptions can be repealed. In concurrent rulemaking, the commission proposes the repeal of §106.201, concerning Permanent and Temporary Concrete Batch Plants, §106.202, concerning Temporary Concrete Batch Plants, and §106.203, concerning Specialty Batch Plants. Any exemption registration for §106.201, 106.202, and 106.203 filed up to the date of the standard permit for concrete batch plants and the repeals will be processed as

an exemption from permitting. Facilities authorized in this manner must begin construction within 90 days of written site approval by the executive director. This approach is designed to protect against the situation in which an applicant for a registration for an exemption from permitting is involved in a contested case hearing on the registration, and the hearing process could not be completed before the exemption from permitting would be repealed. In such a case, the applicant could not proceed under the standard permit before it is adopted, and also could not, in the absence of such a policy, act upon the repealed standard exemption once a final decision in the contested case hearing is made. By stating its intention to process all exemption registrations for §§106.201, 106.202, and 106.203 filed up to the effective date of the repeal of these sections and concurrent creation of the standard permit as exemptions from permitting, the commission hopes to clarify its intent with regard to facilities that are not a threat to human health and may be caught in this transitional period.

The commission retains §106.141, concerning Batch Mixers, as an exemption from permitting to authorize small batching mixers with a rated capacity of up to five cubic feet.

Currently, Texas Clean Air Act (TCAA), §382.058, requires public notification and opportunity for hearing on concrete batch plants which are authorized by exemptions from permitting. Since this proposal would repeal all exemptions from permitting specifically concerning concrete batch plants, the commission is applying what it believes to be the intent of the Texas Legislature expressed in §382.058 to concrete batch plants authorized by the proposed standard permit. A new §116.135 is proposed to

consolidate public notice requirements for concrete batch plants into one section that reflects the legislative intent.

The new §116.135 contains specific procedures and information to be included in newspaper announcements of concrete batch plant permit applications. This includes company, name, facility type, location, air contaminants, availability of copies of the application, public comment period, and notification that persons residing within 440 yards (1/4-mile) of the proposed construction site may request a hearing on the proposal. The new section also contains public comment procedures and cross-references to alternate language, and sign posting requirements. The new proposed §116.135 requires compliance with §116.132, concerning Alternate Language Public Notice, which codifies existing practice and statutory requirements. The new proposed §116.135 also requires compliance with §116.133, concerning Sign Posting Requirements, which provides what the commission believes to be the most effective method of notification to the general public and more clearly reflects the requirements of Texas Health and Safety Code, §382.056.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the sections. Strategic Planning and

Appropriations has estimated that as a result of charging a fee for this proposed standard permit, the commission will collect approximately \$180,000 in standard permit fees annually.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be a decrease in fugitive particulate emissions from concrete batch plants and a corresponding decrease in related nuisances to non-industrial receptors. This proposal will primarily affect small businesses.

The commission believes that the most significant costs associated with this proposal will result from charging of standard permit registration fees and the paving requirements. A standard permit registration fee is \$450, and this proposal would result in approximately \$180,000 additional annual costs to the industry. As proposed, this fee would apply to each registration of a facility, including relocation of temporary facilities. Some facilities may relocate as often as 26 times per year, resulting in a potential individual annual business cost of \$11,700.

New or relocated plants that are sited such that their in-plant roads and traffic areas are at the minimum setback from non-industrial receptors would be required to pave these areas within a distance of 200 feet of the affected receptor. Based on a paving cost of \$27 per square yard, the commission estimates that the total cost of paving would be in the range of \$5,000 to \$10,000, depending on the proximity of

the receptor. Operators of plants could avoid these costs by locating the plant with sufficient setback from non-industrial areas. The commission does not believe that it is an economic necessity to locate a plant in such close proximity to non-industrial areas so that the maximum paving requirements are triggered. Similarly, the commission does not believe that it will impose a burden on operators of new plants to locate their operation with setback distances from non-industrial areas that are well above the minimum. The paving requirement should have the secondary effect of providing incentive for operators to locate new plants such that their chance for causing nuisances are reduced. The commission is basing this analysis on operational experience with these plants and discussions with operators and a trade association.

DRAFT REGULATORY IMPACT ANALYSIS

The staff anticipates that the new §116.622 will eventually apply to a significant number of facilities statewide. However, the technical requirements of this standard permit are essentially identical to those that operators of batch plants would have to meet for authorization under an exemption from permitting. The requirements of the exemptions are being transferred to the standard permit along with new setback, fee, and paving requirements. A standard permit registration fee is \$450, and this proposal would result in approximately \$180,000 additional annual costs to the industry. As proposed, this fee would apply to each registration of a facility, including relocation of temporary facilities. Some facilities may relocate as often as 26 times per year, resulting in a potential individual annual business cost of \$11,700.

The staff estimated the cost of paving at \$27 per square yard. The most extensive paving would be required of facilities located at the minimum setback distances from non-industrial areas. The staff estimated this cost at \$5,000 to \$10,000 per facility. However, these costs could be drastically reduced or eliminated by increasing the setback of the facility from non-industrial areas. This action should not 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.

There is no federal law that applies to this proposal and, while not specifically required by state law the proposal is intended to simplify and consolidate existing regulations. TCAA, §382.051 authorizes the commission to create a standard permit for similar sources, and these amendments are proposed under that specific authority.

This proposal does not exceed a requirement of state law and is proposed under the TCAA, §382.051. The proposal is not specifically required by federal law.

There is no requirement of delegation between the state and federal government applicable to the subject of this proposal.

TAKINGS IMPACT ANALYSIS

This proposal requires that material stockpiles, unpaved in-plant roads, and baghouse exhausts of concrete batch plants be set back 300 or 200 feet from non-industrial receptors, depending on production rate, abatement system alternatives, and whether the plant is permanent or temporary. These setbacks could conceivably burden private real property by requiring potential operators of batch plants to dedicate a portion of land currently owned or purchase additional land to meet the setback. The proposed setbacks are relatively small, and operators of batch plants have flexibility in arranging their physical plants to achieve setbacks. Consequently, the commission believes that cases of property dedication or the purchase of additional property will be infrequent. This action is taken to prevent public and private nuisances and therefore under Texas Government Code, §2007.002(b)(6), does not require a full takings analysis.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and

has determined that this rulemaking action is consistent with the applicable CMP goal 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas. This action is consistent with 31 TAC §501.14(q), which requires the commission to protect air quality in coastal areas. These amendments will not authorize any increase in air emissions.

PUBLIC HEARING

A public hearing on this proposal will be held October 20, 1998, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98005-116-AI. Comments must be received by 5:00 p.m.,

October 26, 1998. For further information, please contact Kerry Drake, New Source Review Permits Division, (512) 239-1112, Dale Beebe-Farrow, New Source Review Permits Division, (512) 239-1310, or Beecher Cameron, Air Policy and Regulations Division, (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The new section is proposed under the Texas Health and Safety Code, TCAA, §§382.012, 382.017, and 382.051. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.051 authorizes the commission to issue a standard permit for numerous similar sources.

If adopted, this proposal would implement §382.051 by creating a standard permit which consolidates existing regulations for concrete batch plants.

The proposed new section implements Texas Health and Safety Code, §382.051.

SUBCHAPTER B : NEW SOURCE REVIEW PERMITS

DIVISION 3 : PUBLIC NOTIFICATION AND COMMENT PROCEDURES

§116.135

§116.135. Public Notice Requirements for Concrete Batch Plants.

Facilities constructed under this chapter which consist of permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, or specialty batch, concrete, mortar, grout mixing, or pre-cast concrete products, shall conduct public notice of the proposed construction unless exempted from public notice requirements by §116.622(2) of this title (relating to Concrete Batch Plants). In all cases, public notice shall include the information specified in paragraph (1)(A) and (B) of this section.

(1) Public notification procedures.

(A) At the applicant's expense, notice of intent to construct shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice shall contain the following information:

_____ (i) application number;

_____ (ii) company name;

_____ (iii) type of facility;

_____ (iv) description of the location of facility or proposed location of the
facility;

_____ (v) contaminants to be emitted;

_____ (vi) location and availability of copies of the completed application;

_____ (vii) public comment period;

_____ (viii) procedure for submission of public comments concerning the
proposed construction;

(ix) notification that a person residing within 440 yards (1/4-mile) of the proposed plant is an affected person who is entitled to request a hearing in accordance with commission rules; and

(x) name, address, and phone number of the regional commission office to be contacted for further information.

(B) Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issues of the newspaper and shall contain the information specified in subparagraph (A)(i)-(iv) of this paragraph and note that additional information is contained in the notice published under subparagraph (A) of this paragraph in the public notice section of the same issue.

(C) Alternate language public notice and sign posting must be conducted as specified in §116.132(c) and (d), and §116.133 of this title (relating to Public Notice Format; and Sign Posting Requirements), with documentation provided to the commission's Office of Air Quality.

(D) The public notice requirements of this section may be used to meet the requirements that coincide with Chapter 321, Subchapter J of this title (relating to Discharges to

Surface Waters from Ready-mixed Concrete Plants and/or Concrete Products Plants or Associated Facilities), provided that the additional requirements of that subchapter are met.

(2) Hearing request and public comment procedures.

(A) Only those persons actually residing in a permanent residence within 440 yards (1/4-mile) of the proposed plant may submit requests for public hearings under TCAA, §382.056, on the executive director's preliminary decision to issue or not to issue the standard permit.

(B) Any interested person may submit written comments to the executive director concerning the pending permit.

(C) Comments and hearing requests must be received in writing within 15 days of the last publication date of the notices specified in paragraph (1)(A) and (B) of this section. All written comments and hearing requests shall be processed and considered in accordance with Chapter 55 of this title (relating to Request for Contested Case Hearings; Public Comment), except that for purposes of this section, only persons actually residing in a permanent residence within 440 yards (1/4-mile) of the proposed plant may request a hearing as a person who may be affected.

SUBCHAPTER F : STANDARD PERMITS

§116.614, §116.622

STATUTORY AUTHORITY

The amendment and new section are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.051. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.051 authorizes the commission to issue a standard permit for numerous similar sources.

The proposed amendment and new section implement Texas Health and Safety Code, §382.051.

§116.614. Standard Permit Fees.

Any person who claims a standard permit shall remit, at the time of registration, a flat fee of \$450 for each standard permit claimed, except as specified for a particular standard permit. All standard permit fees will be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and delivered with the permit registration to the TNRCC, P.O. Box 13088, MC 214, Austin, Texas 78711-3088. No fees will be refunded.

§116.622. Concrete Batch Plants.

This standard permit authorizes concrete batch facilities that meet the following conditions.

(1) Administrative requirements.

(A) The facility shall be registered in accordance with §116.611 of this title (relating to Registration Requirements), including a current Table 20.

(B) No owner or operator of a concrete batch plant shall begin construction and/or operation without obtaining written approval from the executive director. The time period in §116.611(b) of this title does not apply to facilities required to conduct public notice in paragraph (2) of this section.

(C) Any registration for an exemption from permitting filed under §§106.201, 106.202, or 106.203 of this title (relating to Permanent and Temporary Concrete Batch Plants (Previously SE 71); Temporary Concrete Batch Plants (Previously SE 93); and Specialty Batch Plants (Previously SE 117)) prior to the effective date of this section will be processed as an exemption from

permitting. Any facility authorized by exemption from permitting under this subparagraph shall begin construction within 90 days of receiving written site approval from the executive director.

(2) Unless the facility is to be a temporary concrete plant, as defined in paragraph (5) of this section, which is located in, or contiguous to, the right-of-way of a public works project, public notice must be conducted as specified in §116.135 of this title (relating to Public Notice Requirements for Concrete Batch Plants).

(3) General requirements.

(A) All cement/flyash storage silos and weigh hoppers shall be equipped with a fabric or cartridge filter or vented to a fabric or cartridge filter system. Any fabric or cartridge filter, any fabric or cartridge filter system, and any suction shroud shall be maintained and operated properly with no tears or leaks. Emissions from these devices shall not exceed 5.0% opacity, as measured by EPA Method 9, or equivalent.

(B) Conveying systems for the transfer of cement/flyash to and from the storage silos shall be totally enclosed and operated properly with no visible fugitive emissions, except during cement/flyash tanker connect and disconnect, as measured by EPA Method 22, or equivalent.

(C) Dust emissions from all roads and traffic areas must be minimized at all times by one of the following methods:

(i) covered with a material such as, but not limited to, roofing shingles or tire chips;

(ii) treated with dust-suppressant chemicals;

(iii) watered; or

(iv) paved with a cohesive hard surface that is maintained intact and cleaned.

(D) All stockpiles shall be sprinkled with water, dust-suppressant chemicals, or covered, as necessary, to minimize dust emissions.

(E) Spillage of materials used in the batch shall be immediately cleaned up and contained or dampened so that dust emissions are minimized.

(F) A warning device shall be installed on each bulk storage silo to alert operators when the silo is full.

(4) Additional requirements for specialty batch concrete, mortar, grout mixing, or pre-cast concrete products plants.

(A) Site capacity shall not exceed 30 cubic yards per hour.

(B) As an optional alternative to the requirement in paragraph (3)(A) of this section, the cement/flyash weigh hopper may be vented inside the batch mixer.

(C) Dust emissions at the batch mixer feed shall be controlled by one of the following:

(i) a spray device which eliminates visible emissions;

(ii) a pickup device delivering air to a fabric or cartridge filter;

(iii) an enclosed batch mixer feed such that no visible emissions occur;

or

(iv) conducting the entire mixing operation inside the enclosed process building such that no visible emissions from the building occur during mixing activities.

(5) Additional requirements for temporary concrete plants. For the purposes of this section, a temporary concrete plant is one that occupies a designated site for not more than 180 consecutive days or supplies concrete for a single public works project or for the same contractor for related project segments, but not other unrelated projects.

(A) A suction shroud or other pickup device shall be installed at the batch drop point (drum feed for central mix plants) and vented to a fabric or cartridge filter system with a minimum of 4,000 actual cubic feet per minute of air. As an optional alternative to a suction shroud or other pickup device, loading of rotary mix trucks at a wet batch plant shall be through a discharge spout equipped with a water fog ring having low-velocity fog nozzles spaced to create a continuous fog curtain that minimizes dust emissions.

(B) All stationary equipment and stockpiles shall be located at least 300 feet from any non-industrial receptor. This distance limitation does not apply to structures within the boundaries of the project for which the facility is to pour concrete when the facility is located on or contiguous to the project.

(6) Additional requirements for concrete plants other than specialty or temporary concrete plants.

(A) A suction shroud or other pickup device shall be installed at the batch drop point (drum feed for central mix plants) and vented to a fabric or cartridge filter system with a minimum of 4,000 actual cubic feet per minute of air.

(B) At facilities producing 250 cubic yards of concrete per hour or more, baghouse exhausts must be located at least 200 feet from any non-industrial receptor.

(C) All unpaved roads or traffic areas must be located at least 200 feet from any non-industrial receptor.

(D) All on-site entry and exit roads and concrete delivery routes shall be paved with a cohesive hard surface that can be maintained intact and cleaned.

(E) Production at the site shall not exceed 300 cubic yards per hour of concrete.

(F) Only washed or wetted recycled aggregate may be used.

(G) Records shall be maintained on-site for the most recent 24 months to verify compliance with the production limits of this paragraph.