

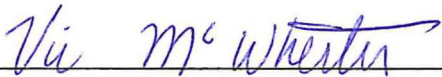
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST

AGENDA REQUESTED: August 24, 2022

DATE OF REQUEST: August 5, 2022

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Vic McWherter (512) 239-0579

CAPTION: Docket No. 2022-0697-MIS. Discussion of the Office of Public Interest Counsel's Annual Report to the Commission made pursuant to Texas Water Code, Section 5.2725, Annual Report; Performance Measures.



Vic McWherter,
Public Interest Counsel

TEXAS COMISSION ON ENVIRONMENTAL QUALITY

Interoffice Memorandum

To: Chairman Jon Niermann
Commissioner Emily Lindley
Commissioner Bobby Janecka

Date: August 5, 2022

From: Vic McWherter 
Public Interest Counsel

Subject: Docket No. 2022-0697-MIS;
The Office of Public Interest Counsel's Annual Report

Texas Water Code Section 5.2725 directs the Office of Public Interest Counsel (OPIC) to provide an annual report to the Commission containing an evaluation of the office's performance in representing the public interest; an assessment of the budget needs of the office, including the need to contract for outside expertise; and any legislative or regulatory changes recommended pursuant to Texas Water Code, Section 5.273. OPIC submits the attached report for fiscal year 2022 in response to this statutory directive. The report's evaluation of OPIC's performance uses the performance measures adopted by the Commission in 2012 and relies on information for fiscal year 2022 that was the most current and available as of August 1, 2022.

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S ANNUAL REPORT TO THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
FOR FISCAL YEAR 2022**

INTRODUCTION

Texas Water Code, Chapter 5, Subchapter G prescribes the role, responsibilities, and duties of the Office of Public Interest Counsel (OPIC or Office) at the Texas Commission on Environmental Quality (Commission or TCEQ). Included among these statutory duties is the requirement under Texas Water Code, Section 5.2725 for OPIC to make an Annual Report to the Commission containing:

1. An evaluation of the Office's performance in representing the public interest;
2. An assessment of the budget needs of the Office, including the need to contract for outside expertise; and
3. Any legislative or regulatory changes recommended pursuant to Texas Water Code, Section 5.273.

In even-numbered years the report must be submitted in time for the Commission to include the reported information in the Commission's reports under Texas Water Code, Section 5.178(a) and (b), and in the Commission's biennial legislative appropriations requests, as appropriate. Accordingly, OPIC respectfully submits this Annual Report to comply with the requirements of Texas Water Code, Section 5.2725.

OPIC was created in 1977 to ensure that the Commission promotes the public's interest. To fulfill the statutory directive of Texas Water Code, Section 5.271, OPIC participates in contested case hearings and other Commission proceedings to help develop a complete record for the Commission to consider in its decision-making process. In these proceedings, OPIC develops positions

and recommendations supported by applicable law and the best available information and evidence. OPIC also advocates for meaningful public participation in the decision-making process of the Commission to the fullest extent authorized by the law. The Office works independently of other TCEQ divisions and parties to present a public interest perspective on matters that come before the Commission. OPIC does this work through activities that include:

- Participating as a party in contested case hearings;
- Preparing briefs for Commission consideration regarding hearing requests, requests for reconsideration, motions to overturn, motions for rehearing, use determination appeals, and various other matters set for briefing by the Office of General Counsel;
- Reviewing and commenting on rulemaking proposals and petitions;
- Reviewing and recommending action on other matters considered by the Commission, including, but not limited to, proposed enforcement orders and proposed orders on district matters;
- Participating in public meetings on permit applications with significant public interest; and
- Responding to inquiries from the public related to agency public participation procedures and other legal questions related to statutes and regulations relevant to the agency.

As a party to Commission proceedings, OPIC is committed to providing independent analysis and recommendations that serve the integrity of the public participation and hearing process. OPIC is committed to ensuring that relevant information and evidence on issues affecting the public interest is developed and considered in Commission decisions. OPIC's intent is to facilitate informed Commission decisions that protect human health, the environment, the public interest, and the interests of affected members of the public to the maximum extent allowed by applicable law.

The Public Interest Counsel is appointed by the Commission. The Counsel supervises the overall operation of OPIC by managing the Office's budget, hiring and supervising staff, ensuring compliance with agency operating procedures, and establishing and ensuring compliance with Office policies and procedures. OPIC has eight full-time equivalent positions: Public Interest Counsel; Senior Attorney; five Assistant Public Interest Counsels; and the Office's Executive Assistant.

OPIC is committed to fulfilling its statutory duty to represent the public interest in Commission proceedings by hiring, developing, and retaining knowledgeable staff who are dedicated to OPIC's mission. To maintain high quality professional representation of the public interest, OPIC ensures that attorneys in the office receive continuing legal education and other relevant training. OPIC further ensures that its staff undertakes all required agency training and is fully apprised of TCEQ's operating policies and procedures.

EVALUATION OF OPIC'S PERFORMANCE

Texas Water Code, Section 5.2725(a)(1) requires OPIC to provide the Commission with an evaluation of OPIC's performance in representing the public interest. In determining the matters in which the Office will participate, OPIC applies the factors stated in 30 Texas Administrative Code (TAC) Section 80.110 (Public Interest Factors) including:

1. The extent to which the action may impact human health;
2. The extent to which the action may impact environmental quality;
3. The extent to which the action may impact the use and enjoyment of property;
4. The extent to which the action may impact the general populace as a whole, rather than impact an individual private interest;

5. The extent and significance of interest expressed in public comment received by the Commission regarding the action;
6. The extent to which the action promotes economic growth and the interests of citizens in the vicinity most likely to be affected by the action;
7. The extent to which the action promotes the conservation or judicious use of the state's natural resources; and
8. The extent to which the action serves Commission policies regarding the need for facilities or services to be authorized by the action.

OPIC's performance measures classify proceedings in four categories: environmental proceedings; district proceedings; rulemaking proceedings; and enforcement proceedings.

For reporting purposes, environmental proceedings include contested case hearing proceedings on permits at the State Office of Administrative Hearings (SOAH) and Commission proceedings related to consideration of hearing requests, requests for reconsideration, motions to overturn, proposals for decision, and other miscellaneous matters heard by the Commission. These proceedings relate to municipal and industrial solid waste and hazardous waste management and disposal activities, underground injection activities, waste disposal wells, water rights authorizations, priority groundwater management area designations, watermaster appointments, industrial wastewater discharge permits, municipal wastewater discharge permits, land application of wastewater permits, land application of septage and sludge, concentrated animal feeding operations, rock and concrete crushers, concrete batch plant standard permit registrations, facilities requiring state and federal air permits, pollution control equipment use determination appeals, and various authorizations subject to the Commission's motion to overturn process. OPIC also includes permit revocation petitions, appeals of decisions on occupational licenses, and emergency orders in numbers reported for this category.

District proceedings include proceedings at SOAH and at the Commission related to the creation and dissolution of districts, and any other matters within the Commission's jurisdiction relating to the oversight of districts.

Rulemaking proceedings include Commission proceedings related to rulemaking actions, state implementation plans, general permits, and rulemaking petitions.

Enforcement proceedings include enforcement contested case hearings active at SOAH and Commission proceedings related to the consideration of proposed orders. For purposes of this report, enforcement proceedings do not include other agreed enforcement orders issued by the Executive Director in matters that were never active cases at SOAH.

OPIC's Performance Measures

As required by Texas Water Code, Section 5.2725(b), the Commission developed the following OPIC performance measures which were implemented on September 1, 2012:

Goal 1: **To provide effective representation of the public interest as a party in all environmental and district proceedings before the Texas Commission on Environmental Quality**

Objective: To provide effective representation of the public interest as a party in 75 percent of environmental proceedings and 75 percent of district proceedings heard by the TCEQ

Outcome Measure:

- Percentage of environmental proceedings in which OPIC participated
- Percentage of district proceedings in which OPIC participated

Goal 2: To provide effective representation of the public interest as a party in all rulemaking proceedings before the Texas Commission on Environmental Quality

Objective: To participate in 75 percent of rulemaking proceedings considered by the TCEQ

Outcome Measure:

- Percentage of rulemaking proceedings in which OPIC participated

Goal 3: To provide effective representation of the public interest as a party in all enforcement proceedings before the Texas Commission on Environmental Quality

Objective: To provide effective representation of the public interest as a party in 75 percent of enforcement proceedings heard by the TCEQ

Outcome Measure:

- Percentage of enforcement proceedings in which OPIC participated

FY 2022 Performance

OPIC's performance measures for environmental, district, rulemaking and enforcement proceedings are expressed as percentages of the proceedings in which OPIC could have participated. OPIC uses a reporting process within the TCEQ Commissioners' Integrated Database that allows OPIC to track its work on assigned permitting and licensing matters active at any point within a fiscal year. Other tools used by OPIC include spreadsheets that track fiscal year agenda item totals by performance measure category and track enforcement matters active at SOAH at any point during the fiscal year.

Performance measure percentages were derived by using information available for FY 2022 as of August 1, 2022. In fiscal year 2022, OPIC participated in a total of 640 proceedings consisting of: 96 environmental proceedings; 13 district proceedings; 38 rulemaking proceedings; and 493 enforcement

proceedings.

OPIC's participation in 96 of 96 total environmental proceedings resulted in a participation percentage of 100%.

OPIC's participation in 13 of 13 district proceedings resulted in a participation percentage of 100%.

OPIC's participation in 38 of 38 rulemaking proceedings, including the review of all petitions, proposals, and adoptions considered by the Commission during fiscal year 2022, resulted in a participation percentage of 100%.

OPIC's participation in 493 of 493 enforcement proceedings, including the review of orders considered at Commission agendas and the participation in additional cases that were active at SOAH during fiscal year 2022, resulted in a participation percentage of 100%.

ASSESSMENT OF BUDGET NEEDS

Texas Water Code, Section 5.2725(a)(2) directs OPIC to provide the Commission with an assessment of its budget needs, including the need to contract for outside technical expertise. The operating budget for OPIC in fiscal year 2022 was \$ 653,677 as shown in Figure 1 below.

Figure 1
OPIC Budget, FY 2022

Budget Category		FY 2022 Budget
31	Salaries	\$ 636,677
37	Travel	\$ 7,100
39	Training	\$ 5,500
43	Consumables	\$ 500
46	Other Operating Expenses	\$ 1,600
54	Facilities, Furniture & Equipment	\$ 2,300
TOTAL		\$ 653,677

Texas Water Code, Section 5.274(b) provides that OPIC may obtain and use outside technical support to carry out its functions. Texas Water Code, Section 5.2725(a)(2) requires this report to include information about OPIC's budget needs to contract for outside technical expertise. OPIC's initial budgets typically do not include funds for temporary and professional services; however, when such needs have been identified, funds are made available through additional funding requests.

The need to retain technical consulting services in contested case hearings rarely becomes apparent in time for OPIC to identify, obtain, and use technical expertise by way of individually negotiated contracts. Also, the complex permit applications OPIC tracks during the comment period often settle prior to hearing. OPIC has been reluctant to commit state resources for work on such matters until SOAH proceedings are imminent.

OPIC has remained open to possibilities for retaining outside technical expertise in novel and complex cases when the timing and circumstances allow. During the agency's sunset review this past year, sunset advisory committee staff and TCEQ General Law Division attorneys brought to OPIC's attention that efficiencies could be realized by retaining technical expertise through umbrella contracts. The initial process of establishing an umbrella contract may require extensive time and effort from multiple agency staff members; however, the assumption is that once such a contract is in place, individual work orders for technical expertise could be processed relatively quickly.

Nevertheless, a primary concern would remain as to whether the 180-day schedule for SB 709 permitting cases allows sufficient time following placement of a work order for a contractor to: (1) locate an appropriate expert; (2) ensure the expert has no conflicts of interest because of work for other clients; (3) ensure the expert's existing workload and schedule allow them to work for OPIC within the window of time required; (4) and ensure that high quality deliverables such as technical reports can be available in time to be useful for the hearing. This timing problem is compounded by the fact that SOAH reserves one-third of SB 709's maximum 180-day period from the preliminary hearing through the issuance of the proposal for decision (PFD) to prepare a PFD. Because SOAH reserves 60 days *after* conclusion of the evidentiary hearing and submittal of all written briefs related to closing arguments, the duration of time from preliminary hearing through evidentiary hearing is less than than 120 days. OPIC will continue to engage with agency staff to explore these concerns and determine how umbrella contracts and work orders may allow OPIC to avail itself of technical expertise more efficiently.

LEGISLATIVE & REGULATORY CHANGE RECOMMENDATIONS

Texas Water Code, Section 5.273(b) authorizes OPIC to recommend needed

legislative and regulatory changes. Texas Water Code, Section 5.2725(a)(3) provides that any such recommendations are to be included in OPIC's Annual Report. For purposes of this report, OPIC's only recommendations are for legislative changes relating to concrete batch plant standard permits and authorizations to use these permits.

Legislative Change Recommendations

Proposed Changes to Texas Health and Safety Code Sections 382.058, 382.05195, and 382.05198 regarding Concrete Batch Plant Standard Permits

First, OPIC proposes changes to Texas Health and Safety Code (THSC), Section 382.058(c), addressing who can be found to have standing as an “affected person” with respect to concrete operations authorized by the standard permit issued under THSC Section 382.05195. As currently written, only those persons residing in a permanent residence within the specified distance of the “proposed plant” may request a hearing as a person who may be affected. OPIC asserts that limiting affected person status by reference to a “permanent residence” is overly restrictive and does not account for schools or places of worship requesting a hearing. Allowing schools and places of worship to request a hearing is consistent with other related provisions of the Texas Clean Air Act; these institutions are protected by the buffer zone requirements of the standard permit for concrete batch plants with enhanced controls and the standard permit for concrete crushers.¹ OPIC's proposal would include schools and places of worship, as well as residents of single or multifamily housing units, in the universe of requestors who may be considered affected persons.

Second, OPIC proposes that the distance limitation for determining affected person status be increased from 440 to 880 yards. The buffer zone for

¹ Texas Health and Safety Code, Sections 382.05198(19) and 382.065.

the standard permit with enhanced controls would also increase to 880 yards. OPIC notes that changing the distance requirements in Sections 382.058(c) and 382.0198(19) to 880 yards was previously proposed by Senator Donna Campbell in SB 208 filed during the 86th Texas Legislative Session.

Regardless of any air dispersion modeling the agency has relied upon to conclude individuals should expect no ill effects from a plant 440 yards from them, the public is not reassured that such a short distance is unquestionably protective under all circumstances. Concrete batch plant authorizations tend to be among the most contentiously protested permitting matters under TCEQ's jurisdiction. People in neighborhoods further than 440 yards from facilities are frequently outraged to learn that they are not considered eligible to be affected persons in hearings held on these applications.

The public's dissatisfaction with the 440-yard distance limitation is based on experience. Particularly in environmental justice communities where these plants are concentrated, nearby neighbors regularly report health concerns and nuisance dust conditions. In written comments dated June 29, 2021, Harris County informed TCEQ that the county had documented 144 violations during 122 concrete batch plant investigations conducted between February 2020 and June 2021.² It appears in many cases that a 440-yard buffer zone is simply insufficient to prevent nuisance conditions.

Examples may be helpful to envision 440 yards. Many par-4 golf course holes are 440 yards or longer. At the Tournament Players Club (TPC) Four Seasons Las Colinas (Four Seasons Resort Dallas), hole 3 is 528 yards. At the

² TCEQ Non-Rule Project No. 2021-016-OTHR-NR; Harris County's Comments and Request for Extension of Time regarding Proposed Amendment to Texas Commission on Environmental Quality Air Quality Standard Permit for Concrete Batch Plants submitted on June 29, 2021.

TCEQ's Park 35 offices in Austin, Building F is over 440 yards away from two other buildings within the TCEQ office complex, Building A and Building B.

OPIC presents this hypothetical scenario for illustration purposes:

- (1) a proposed concrete plant with a baghouse located at the site of Building A;
- (2) a family's property within the boundaries of Park 35 Circle and I-35; and
- (3) the family's residence located at Building F.

The plant (at Building A) would be over 440 yards from the family residence (at Building F), and the baghouse (at Building A) would be more than 100 feet from the property line (Park 35 Circle). Such a plant could be authorized with no opportunity for the family to have a contested case hearing under current law. Also under current law, stockpiles of dust-causing raw materials of unrestricted size could be located within 50 feet of the family's property line (Park 35 Circle).

Third, in addition to increasing the distance limitation from 440 to 880 yards, OPIC also recommends that the starting point for the operative measurement in Texas Health and Safety Code, Section 382.058(c) and 382.0198(19) be taken from the property line. The existing statutory language is problematic in measuring the specified distance from the "proposed plant." The term "proposed plant" in Section 382.058(c) has been interpreted to refer to "a stationary point of origin of air contaminants proposed in the application."³ However, as discussed below, emissions points plotted in concrete batch plant registration applications are neither definite nor immovable.

³ See, e.g., Proposal for Decision on the Application by East Texas Precast Co., Ltd. for Registration and Approval to Use the Air Quality Standard Permit for Concrete Batch Plants at page 8; Registration No. 86593; SOAH Docket No. 582-10-2070; TCEQ Docket No. 2009-1691-AIR.

The standard permit issued under Section 382.05195 allows operators to (1) place a suction shroud baghouse exhaust anywhere on the applicant's property if it is not within 100 feet of the property line, and (2) place stationary equipment and stockpiles anywhere on the applicant's property, so long as they are not within 50 feet of the property line. Notably, after a standard permit is issued, TCEQ rules allow the operator to relocate proposed emission points anywhere on the property, without the opportunity for a contested case hearing, so long as the changes do not "affect that person's right to claim a standard permit." 30 Texas Administrative Code, Section 116.615(2). Therefore, under the current rules, an applicant could avoid a contested case hearing by filing an application that plots emission points at areas of the plant site more than 440 yards away from potentially affected persons, obtaining a registration, then moving emission points closer to the requestor's residence, anywhere just outside the minimum 100-foot and 50-foot buffers designated in the standard permit. To address the concerns discussed above, OPIC recommends that the designated distance requirement be measured from an unchangeable point — the property line of the site where the concrete batch plant would be located.

Fourth, OPIC proposes changes to THSC Section 382.058(d) to allow parties to present air dispersion modeling evidence during a contested case hearing. The applicant could continue relying on prior modeling that TCEQ used in issuing the standard permit. It makes sense that applicants are not required to submit additional modeling to have their application declared technically complete or to meet their prima facie burden to present evidence at hearing.

However, affected persons have not had the opportunity to challenge the permit's protectiveness in the context of their unique location and circumstances. Environmental justice communities that are home to numerous concrete plants question whether the standard permit adequately accounts for

the impact of cumulative effects from multiple nearby plants. Though there may be variables other than production throughput that could affect modeling results for a specific concrete batch plant site, the assumptions underlying the TCEQ's modeling cannot be challenged under existing law. Because protesting parties cannot submit modeling to challenge the assumption that anticipated impacts on their interests are minimal, some conclude that a hearing is futile and question why the right to hearing even exists with respect to these registrations. If there continues to be a statutorily authorized opportunity for a contested case hearing on these registrations, this opportunity should allow for meaningful public participation.

Fifth, OPIC proposes changes to ensure that concrete plant standard permits remain protective in the years following initial issuance. Proposed THSC Section 382.058 (e)-(g) would require a review of concrete batch plant standard permits every ten years. Updated modeling would be required during these reviews to ensure the most advanced and current models have been used. The provisions of proposed Section 382.058 (e)-(h) would help ensure that all particulate matter emissions are considered, and any standard permit renewed contains enforceable provisions that are consistent with the assumptions and inputs used in the underlying modeling.

Finally, the proposal includes changes to THSC Section 382.05198 to address certain requirements of the current Concrete Batch Plant Standard Permit with Enhanced Controls that arguably are *less* stringent than the standard permit's provisions. The proposed changed provisions would address these differences concerning requirements relating to daily production limits, warning devices and automatic shut offs, visible emissions testing, and emissions controls for auxiliary storage tanks. Also, OPIC proposes eliminating the current subsection (b) exceptions to 100-foot buffer zone requirements for certain

emission sources to ensure truly “enhanced” protectiveness of operations under this authorization.

For the foregoing reasons, OPIC proposes statutory changes to Texas Health and Safety Code Chapter 382 as follows:

Sec. 382.058. CONCRETE PLANTS AUTHORIZED UNDER PERMIT BY RULE, STANDARD PERMIT, OR EXEMPTION.

(a) A person may not begin construction on any concrete plant that performs wet batching, dry batching, or central mixing under a standard permit under Section 382.05195 or a permit by rule adopted by the commission under Section 382.05196 unless the person has complied with the notice and opportunity for hearing provisions under Section 382.056.

(b) This section does not apply to a concrete plant located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

(c) For purposes of Section 382.056(n) and Texas Water Code Section 5.556, the only hearing requestors who may be affected persons entitled to a contested case hearing are:

(1) persons residing in a single or multifamily permanent residence within 880 yards of the property line of the site where the concrete plant is proposed to be located; and

(2) schools or places of worship within 880 yards of the property line of the site where the concrete plant is proposed to be located.

(d) If the commission considers air dispersion modeling information in the course of adopting an exemption under Section 382.057 for a concrete plant that performs wet batching, dry batching, or central mixing, the commission may not require that a person who qualifies for the exemption conduct air dispersion modeling before beginning construction of a concrete plant. Notwithstanding the foregoing, air dispersion modeling may be introduced into the evidentiary record at the State Office of Administrative Hearings by any party admitted to a

contested case hearing under Sections 382.056 and 382.058.

(e) For any standard permit issued under Section 382.05195 or Section 382.05198 for a concrete plant that performs wet batching, dry batching, or central mixing, the commission shall review the standard permit not later than the tenth anniversary of the date on which the standard permit takes effect and every ten years after that date. The adoption of an amendment does not affect the dates on which the standard permit must be reviewed, except that the effective date of an amendment is considered to be the effective date of the standard permit or exemption if the agency formally conducts a review in accordance with this section as part of the process of adopting the amendment.

(f) The commission shall renew, renew with amendments, or revoke a standard permit as the result of reviewing the standard permit under this section.

(g) The procedures of Section 382.05195 relating to the original adoption of a standard permit apply to the review of a standard permit under this section, and to the resulting renewal, or renewal with amendments of the standard permit.

(h) The commission's review of a standard permit under this Section must include an assessment of updated air dispersion modeling using the AERMOD model or a subsequently developed model deemed more accurate and accepted by the United States Environmental Protection Agency. The review must also include an evaluation of health effects of speciated particulate matter emissions including crystalline silica, fly ash, and Portland cement. The review must provide a reasoned justification for all assumptions and inputs used in the air dispersion modeling and health effects review regarding background concentrations of air pollutants, emissions from roads, emissions from concrete manufacturing operations, emissions from material loading and handling operations, and emissions from material storage operations, including:

(1) the size of material stockpiles and their location relative to the concrete plant site's property line;

(2) the number and location of material loading and transfer drop points;

(3) the composition of raw materials stockpiled or otherwise stored at the concrete plant site, including aggregates, sand, cement, and fly ash; and

(4) the control technologies used to limit emissions from baghouses, silos, weigh hoppers, material transfer drop points, stockpiles, and roads.

Sec. 382.05195. STANDARD PERMIT.

(a) The commission may issue a standard permit for new or existing similar facilities if the commission finds that:

(1) the standard permit is enforceable;

(2) the commission can adequately monitor compliance with the terms of the standard permit; and

(3) for permit applications for facilities subject to Sections 382.0518(a)-(d) filed before September 1, 2001, the facilities will use control technology at least as effective as that described in Section 382.0518(b). For permit applications filed after August 31, 2001, all facilities permitted under this section will use control technology at least as effective as that described in Section 382.0518.

(b) The commission shall publish notice of a proposed standard permit in the Texas Register and in one or more statewide or regional newspapers designated by the commission by rule that will, in the commission's judgment, provide reasonable notice throughout the state. If the standard permit will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require additional notice to be given. The notice must include an invitation for written comments by the public to the commission regarding the proposed standard permit and must be published not later than the 30th day before the date the commission issues the standard permit.

(c) The commission shall hold a public meeting to provide an additional

opportunity for public comment. The commission shall give notice of a public meeting under this subsection as part of the notice described in Subsection (b) not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission shall issue a written response to the comments at the same time the commission issues or denies the permit. The response must be made available to the public, and the commission shall mail the response to each person who made a comment.

(e) The commission by rule shall establish procedures for the amendment of a standard permit and for an application for, the issuance of, the renewal of, and the revocation of an authorization to use a standard permit.

(f) A facility authorized to emit air contaminants under a standard permit shall comply with an amendment to the standard permit beginning on the date the facility's authorization to use the standard permit is renewed or the date the commission otherwise provides. Before the date the facility is required to comply with the amendment, the standard permit, as it read before the amendment, applies to the facility.

(g) The adoption or amendment of a standard permit or the issuance, renewal, or revocation of an authorization to use a standard permit is not subject to Chapter 2001, Government Code, except as required under Section 382.058.

(h) The commission may adopt rules as necessary to implement and administer this section.

(i) The commission may delegate to the executive director the authority to issue, amend, renew, or revoke an authorization to use a standard permit.

(j) If a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(1) the date new construction, expansion, or modification of a facility begins; or

(2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.

(k) An application for ~~the issuance of~~ authorization to use a standard permit under this section for a concrete plant that performs wet batching, dry batching, or central mixing, including a permanent, temporary, or specialty concrete batch plant, as defined by the commission, must include a plot plan that clearly shows:

(1) a distance scale;

(2) a north arrow;

(3) all property lines, emission points, buildings, tanks, and process vessels and other process equipment in the area in which the facility will be located;

(4) at least two benchmark locations in the area in which the facility will be located; and

(5) if the permit requires a distance, setback, or buffer from other property or structures as a condition of the permit, whether the required distance or setback will be met.

(l) Any renewed or amended standard permit for a concrete plant issued following a standard permit review under Section 382.058 (e)-(h) shall include enforceable provisions that are consistent with the assumptions made and input variables used in the air dispersion modeling required by Section 382.058(e)-(h). These provisions may include, without limitation, restrictions on the number, size, and location of material storage stockpiles, restrictions on the number and location of material loading and transfer drop points, and the use of specified control technologies for all emission sources at the concrete plant site.

Sec. 382.05198. STANDARD PERMIT FOR CERTAIN CONCRETE PLANTS.

(a) The commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and that meets the following requirements:

- (1) production records must be maintained on site while the plant is in operation until the second anniversary of the end of the period to which they relate;
- (2) each cement or fly ash storage silo, weigh hopper, and auxiliary storage tank must be equipped with a fabric or cartridge filter or vented to a fabric or cartridge filter system;
- (3) each fabric or cartridge filter, fabric or cartridge filter system, and suction shroud must be maintained and operated properly with no tears or leaks;
- (4) excluding the suction shroud filter system, each filter system must be designed to meet a standard of at least 0.01 outlet grain loading as measured in grains per dry standard cubic foot;
- (5) each filter system and each mixer loading and batch truck loading emissions control device must meet a performance standard of no visible emissions exceeding 30 seconds in a six-minute period as determined using United States Environmental Protection Agency Test Method 22 ~~as that method existed on September 1, 2003~~;
- (6) if a cement or fly ash silo is filled during non-daylight hours, the silo filter system exhaust must be sufficiently illuminated to enable a determination of compliance with the performance standard described by Subdivision (5);

- (7) the conveying system for the transfer of cement or fly ash to and from each storage silo must be totally enclosed, operate properly, and be maintained without any tears or leaks;
- (8) except during cement or fly ash tanker connection or disconnection, each conveying system for the transfer of cement or fly ash must meet the performance standard described by Subdivision (5);
- (9) An automatic shut off must be installed, or a warning device must be installed on each bulk storage silo to alert the operator in sufficient time for the operator to stop loading operations before the silo is filled to a level that may adversely affect the pollution abatement equipment, and any visible warning devices must be kept free of particulate build-up at all times;
- (10) if filling a silo results in failure of the pollution abatement system or failure to meet the performance standard described by Subdivision (5), the failure must be documented and reported to the commission;
- (11) each road, parking lot, or other area at the plant site that is used by vehicles must be paved with a cohesive hard surface that is properly maintained, cleaned, and watered so as to minimize dust emissions;
- (12) each stockpile must be sprinkled with water or dust-suppressant chemicals or covered so as to minimize dust emissions;
- (13) material used in the batch that is spilled must be immediately cleaned up and contained or dampened so as to minimize dust emissions;
- (14) production of concrete at the plant must not exceed 300 cubic yards per hour and 6,000 cubic yards per day;

(15) a suction shroud or other pickup device must be installed at the batch drop point or, in the case of a central mix plant, at the drum feed and vented to a fabric or cartridge filter system with a minimum capacity of 5,000 cubic feet per minute of air;

(16) the bag filter and capture system must be properly designed to accommodate the increased flow from the suction shroud and achieve a control efficiency of at least 99.5 percent;

(17) the suction shroud baghouse exhaust must be located more than 100 feet from any property line;

(18) stationary equipment, stockpiles, and vehicles used at the plant, except for incidental traffic and vehicles as they enter and exit the site, must be located or operated more than 100 feet from any property line; and

(19) if the plant is located in an area that is not subject to municipal zoning requirements, the central baghouse must be located:

(i) at least 880 yards from the property line, or

(ii) at least 880 yards from any building used as a single or multifamily residence, school, or place of worship at the time the application to use the permit is filed with the commission, and

(iii) the authorization to use the permit prohibits the relocation of emission sources to any locations that differ from those shown on the plot plan required under subsection (b), unless a new application to use the permit is approved that satisfies all requirements of this section. if the plant is located in an area that is not subject to municipal zoning regulation.

~~(b) Notwithstanding Subsection (a)(18), the commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and does not meet the requirements of that subdivision if the plant meets the other requirements of Subsection (a) and:~~

~~(1) each road, parking lot, and other traffic area located within the distance of a property line provided by Subsection (a)(18) is bordered by dust-suppressing fencing or another barrier at least 12 feet high; and~~

~~(2) each stockpile located within the applicable distance of a property line is contained within a three-walled bunker that extends at least two feet above the top of the stockpile.~~

~~(b) An application for the issuance of authorization to use a standard permit under this section must include a plot plan that meets the requirements of Section 382.05195(k).~~

CONCLUSION

OPIC appreciates this opportunity to review its work and recommits to its statutory directive to protect the public interest.