State Office of Administrative Hearings

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Chief Administrative Law Judge

July 10, 2026

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RE: SOAH Docket Number 582-26-06288
TCEQ Docket No. 2025-1292-AIR
Application by Verti-Crete Houston, LLC for Issuance of Air Quality Standard Permit for Concrete Batch Plants Registration No. 176289

Dear Parties:

Enclosed are the Proposal for Decision (PFD) and Proposed Order in this case. Within 20 days of the date of issuance of the PFD, any party may file exceptions or briefs. Replies to exceptions, briefs, or proposed findings of fact must be filed within 30 days of the date of issuance of the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies must include a certificate of service and be served on all parties and the Administrative Law Judges. Filings must be submitted electronically to the Chief Clerk of the TCEQ at http://www14.tceq.texas.gov/epic/eFiling/, or by filing an original and seven copies

with the Chief Clerk. Failure to comply with filing requirements may result in the pleadings not being considered.

CC: Service List

SOAH Docket No. 582-26-06288 **Suffix: AIR**
TCEQ Docket No. 2025-1292-AIR

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION BY VERTI-CRETE HOUSTON, LLC FOR CONCRETE BATCH PLANT REGISTRATION NO. 176289

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APPLICATION BY VERTI-CRETE HOUSTON, LLC FOR CONCRETE BATCH PLANT REGISTRATION NO. 176289

PROPOSAL FOR DECISION

Verti-Crete Houston, LLC (Applicant) filed an application (Application) with the Texas Commission on Environmental Quality (Commission or TCEQ) seeking authorization to construct and operate a central mix concrete batch plant under the Commission's Air Quality Standard Permit for Concrete Batch Plants in Fort Bend County, Texas. The Application was opposed by several protestants. The State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs) recommend the Application and the draft permit (Draft Permit) issued by the Commission's Executive Director (ED) be granted without changes.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Jurisdiction was not contested and is addressed in the Proposed Order attached to this Proposal for Decision (PFD). The adequacy of notice was one of the issues referred for a contested case hearing and is addressed in Section III. D below.

TCEQ received the Application on May 8, 2024.[1] The ED reviewed the Application and determined that it met the applicable requirements for the Air Quality Standard Permit for Concrete Batch Plants. The ED subsequently issued the Draft Permit and preliminary decision recommending approval of the Application.[2]

The Commission considered requests for hearing and requests for reconsideration at its October 8, 2025 agenda meeting. The Commission determined that Allison Sullivan, Karen Sullivan, and Michael Sullivan qualified as affected persons and referred the Application to SOAH for a contested case hearing on the following issues:

A) Whether the Draft Permit will be protective of the health and safety of the requesters and their families;

B) Whether the Draft Permit will negatively affect air quality;

C) Whether the Draft Permit will be protective of the environment, including vegetation;

[1] Administrative Record (Admin. Record) Tab C at 13. The Application is at Admin. Record Tab D at 1-79.

[2] Admin. Record Tab C at 13-15, 18-20, 58-80; ED Exhibits (Exs.) 4, 6.

D) Whether the Plant will adversely affect the use and enjoyment of the requesters' property;

E) Whether the Draft Permit will be protective against dust emissions generated from the proposed plant, including nuisance dust emissions; and

F) Whether Applicant substantially complied with applicable notice requirements.[3]

At the SOAH preliminary hearing on January 12, 2026, the Administrative Record was admitted into evidence;[4] and Allison Sullivan, Karen Sullivan, Michael Sullivan, Guangpei Anderson, Tynisha Wright, Xavier Wright, Stephanie Bush, Andre Bush, Janai Buxton, Annette Simmons, Rochelle Emanuel, Ham Garza, and Irene Breeden (collectively, Protestants), Applicant, the ED, the Office of Public Interest Counsel (OPIC) were named as parties to the proceeding.

ALJs Katerina DeAngelo and Monica Garza convened a hybrid hearing on the merits in Austin, Texas on April 14, 2026. Applicant was represented by attorneys Whitney Swift and Kevin Collins. The ED was represented by attorneys Katelyn

[3] Admin. Record Tab A. The parties' briefing and the testimony of certain Protestants' witnesses address matters including TCEQ enforcement practices, local zoning and land-use regulations, traffic and noise impacts, property values, facility siting, wildlife and domestic animals, retention ponds and site-clearing activities, alleged property damage, and Applicant's compliance history. Because these matters are not material to resolution of the referred issues, they are not discussed further in this PFD. Protestants also identify alleged inaccuracies, omissions, and deficiencies in the Application. Because no issue concerning the sufficiency or completeness of the Application was referred for hearing, those allegations are not addressed as independent issues. However, they are considered to the extent Protestants contend the alleged deficiencies demonstrate that the Draft Permit will not be protective of health and safety, air quality, the environment, the use and enjoyment of property, or against dust emissions.

[4] The Admin. Record, consisting of Tabs A-E, was admitted as Applicant's Exhibits 1-4. For ease of reference, all citations to the Admin. Record are made to Admin. Record Tabs A-E.

Ding and Contessa Gay. OPIC was represented by attorney Pranjal Mehta. Protestants Xavier Wright and Allison Sullivan represented Protestants. The record closed on May 14, 2026, following the filing of reply briefs.

II. APPLICABLE LAW

A. BURDEN OF PROOF

Applicant bears the burden of proof by a preponderance of the evidence.[5] Because the Application was referred to SOAH under Texas Water Code section 5.556, Texas Government Code section 2003.047(i-1)–(i-3) applies.[6] Under that statute, the application, draft permit, and supporting administrative record establish a prima facie demonstration that the draft permit complies with applicable legal and technical requirements and, if issued, would protect human health and safety, the environment, and physical property.[7]

A party may rebut that demonstration by presenting evidence that relates to a referred issue and shows that the draft permit violates a specifically applicable requirement.[8] If rebutted, the applicant and ED may present additional supporting evidence.[9] This framework shifts the burden of production but not the ultimate burden of proof. Applicant retains the burden to prove, by a preponderance of the

[5] 30 Tex. Admin. Code § 80.17(a).

[6] Tex. Water Code §§ 5.551(a), .556.

[7] Tex. Gov't Code § 2003.047(i-1).

[8] Tex. Gov't Code § 2003.047(i-2).

[9] Tex. Gov't Code § 2003.047(i-3).

evidence, that the application complies with applicable requirements and that the permit, if issued, would be protective of human health and safety, the environment, and physical property.[10]

In this case, the Application, the Draft Permit, and the other materials listed in Texas Government Code section 2003.047(i-1), which are collectively referred to as the prima facie demonstration, were offered and admitted into the record at the preliminary hearing.[11]

B. TEXAS CLEAN AIR ACT AND TCEQ RULES

The Texas Clean Air Act (Act) grants the Commission authority to review and issue air quality permits.[12] The purpose of the Act is to safeguard the state's air resources by controlling and reducing air pollution in a manner that protects public health, welfare, and property, while preserving the aesthetic enjoyment of clean air and adequate visibility.[13] The Commission is charged with administering the Act, establishing air quality standards for the state, and controlling air quality through practical and economically feasible methods.[14]

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[10] 30 Tex. Admin. Code § 80.17(a), (c); *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

[11] *See generally* Admin. Record.

[12] Tex. Health & Safety Code § 382.051(a).

[13] Tex. Health & Safety Code § 382.002(a).

[14] Tex. Health & Safety Code § 382.011(a)-(b).

The Act prohibits the emission of air contaminants without authorization from TCEQ.[15] The Commission may issue an air quality permit only if it determines that: (1) the proposed facility will use at least best available control technology, considering technical practicability and economic reasonableness; and (2) emissions from the facility will not contravene the intent of the Act, including the protection of public health and physical property.[16] If those requirements are not satisfied, the Commission must deny the permit.[17]

Prior to receiving authorization to construct and operate a source of air contaminants, an applicant must demonstrate that the application satisfies all applicable state and federal statutes and regulations.[18] The Commission may issue a standard permit for categories of similar facilities if the Commission determines that: (1) the standard permit is enforceable; (2) compliance with the standard permit can be adequately monitored; and (3) facilities authorized under the standard permit will utilize control technology at least as effective as that required under section 382.0518(b) of the Act.[19] To obtain authorization under a standard permit, an applicant must demonstrate compliance with the applicable requirements and

[15] Tex. Health & Safety Code § 382.0518(a).

[16] Tex. Health & Safety Code § 382.0518(b).

[17] Tex. Health & Safety Code § 382.0518(b), (d).

[18] 30 Tex. Admin. Code § 116.110(a).

[19] Tex. Health & Safety Code § 382.05195(a); 30 Tex. Admin. Code § 116.602(a). Ms. de la Garza testified that a standard permit is a uniform set of permit conditions established by TCEQ for categories of similar facilities, including concrete batch plants, and that facilities qualifying under a standard permit are subject to the same standardized operational and permitting requirements. She testified that the standard permit process is intended to provide a simplified and expedited permitting mechanism as compared to a case-by-case new source review permit. Applicant (Appl.) Exhibit (Ex.) 200 (de la Garza Direct (Dir.)) at 6-7.

conditions of the standard permit.[20] Upon issuance of the authorization, the representations made in the application become binding and enforceable permit conditions.[21]

Texas law also prohibits nuisance emissions. Pursuant to 30 Texas Administrative Code section 101.4, no person may discharge air contaminants "in such concentration and of such duration" that they may adversely affect human health, welfare, vegetation, animal life, or property, or interfere with the normal use and enjoyment of property.

An applicant seeking authorization to construct a permanent concrete batch plant under the Standard Permit must comply with the notice and public hearing requirements established by the Act and the Commission's implementing rules.[22] The applicant must publish notice of the application in accordance with the statutory deadlines and in the manner prescribed by the Commission's rules. The published notice must include the information required by statute, including a description of the proposed plant, contact information for the ED and the applicant, the location where the application may be reviewed, and information regarding the public comment process and public hearing.[23]

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[20] 30 Tex. Admin. Code §§ 116.110(a)(2)(A), .615.

[21] 30 Tex. Admin. Code § 116.615(2).

[22] *See* Tex. Health & Safety Code §§ 382.05199, .0516; 30 Tex. Admin. Code ch. 39.

[23] Tex. Health & Safety Code § 382.05199(b)-(d).

The Commission is responsible for providing mailed notice of the application to the state senator and state representative representing the area where the proposed facility will be located. For applications involving a proposed concrete batch plant, the Commission must also provide notice to the county judge of the county where the facility is proposed to be located and, if applicable, to the presiding officer of the municipality in which the facility will be located.[24]

The Commission's rules further require the applicant to provide the information necessary for the Chief Clerk to issue the required mailed notices, publish newspaper notice, post signs at the proposed site, and make a copy of the application available for public review and copying at a public place in the county where the proposed facility will be located.[25]

III. EVIDENCE AND ANALYSIS

The parties presented expert testimony and documentary evidence. Protestants had 150 exhibits admitted, including testimony from Xavier Wright, Karen Sullivan, Michael Sullivan, Guangpei Anderson, Andre Bush, Stephanie Bush, Tynisha Wright, Janai Buxton, Ham Garza, Rochelle Emanuel, Irene Breeden, Annette Simmons, Allison Sullivan, Robin Elackatt,

[24] Tex. Health & Safety Code § 382.0516.

[25] 30 Tex. Admin. Code §§ 39.405(g), .413, .602, .603, .604, .605. The parties' testimony and briefing addressed compliance with the newspaper publication and sign posting requirements. Because those aspects of the public notice process were not materially disputed, they are not discussed further in this PFD.

Jennifer Thomas Gomez, Reginald Pearson, Dr. Inyang Uwak, and Tim Doty.[26] Applicant had 19 exhibits admitted, including testimony from Kyle Hohnbaum, Anna de la Garza, and Jonathan Urban.[27] The ED had six exhibits admitted, including testimony from Alexander Hilla.[28] OPIC did not present evidence.

A. BACKGROUND

1. Standard Permit

The Commission adopted the Air Quality Standard Permit for Concrete Batch Plants (Standard Permit) to authorize qualifying concrete batch plants that satisfy specified operational limitations, emissions controls, setback distances, and recordkeeping requirements. According to the Standard Permit, specialty concrete batch plants are limited to a maximum production rate of 60 cubic yards per hour (yd^3/hr) and 262,800 cubic yards per year (yd^3/yr).[29]

The Standard Permit establishes operational and emissions-control requirements intended to minimize particulate emissions and nuisance conditions. For specialty concrete batch plants, regulated emission sources include stockpiles, material handling operations, the batch mixer feed exhaust, and fabric or cartridge

[26] Protestant (Prot.) Exs. JTD, IU, RP, JTG, JTG1-JTG3, RJE, ATS, ATS1, ATS3, ATS6, ATS8-ATS13, ATS15, ATS17, ATS18, ATS20–ATS30, ATS33– ATS69, OG1-OG2, ANS, ANS1-ANS2, IB, RE, RE1, HG, HG1-HG20, JB, TW, SB, SB1–SB14, AB, GA, GA1–GA3, GA6–GA7, MAS, MAS1–MAS20, KS, KS4–KS8, and XW.

[27] Applicant (Appl.) Exs. 100, 101-102, 200, 201-210, 300-302, 400-402.

[28] ED Exs. 1-6.

[29] Admin. Record Tab C at 1-12; ED Ex. 1 (Hilla Dir.) at 5, 10.

filter systems.[30] The Standard Permit also establishes minimum setback distances and limits the location of stationary equipment, stockpiles, and vehicles used in plant operations. For a specialty plant producing up to 30 yd^3/hr, the batch mixer feed exhaust must be located at least 100 feet from any property line, and stationary equipment, stockpiles, and plant vehicles generally may not be located within 50 feet of a property line, except for incidental traffic and site entrances and exits.[31]

Before adopting the 2024 amendments to the Standard Permit, TCEQ conducted an updated protectiveness review and Air Quality Analysis to evaluate whether facilities operating in compliance with the Standard Permit would be protective of human health and the environment. TCEQ performed emissions calculations and air dispersion modeling using conservative assumptions regarding emissions, production rates, operating scenarios, meteorological conditions, and facility configurations. The review evaluated emissions from material handling operations, truck loading, stockpiles, cement silos, and internal combustion engines and assessed carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter (PM), PM with diameters of ten micrometers or less (PM_{10}), PM with diameters of 2.5 micrometers or less ($PM_{2.5}$), nickel particulate, formaldehyde, and crystalline silica. TCEQ compared modeled concentrations with applicable National Ambient Air Quality Standards (NAAQS), Effects Screening Levels, and other applicable standards and concluded that facilities operating in compliance with the Standard Permit would be protective of human health, including sensitive subgroups such as

[30] ED Ex. 1 (Hilla Dir.) at 6.

[31] ED Ex. 1 (Hilla Dir.) at 11.

children, elderly persons, and individuals with preexisting health conditions, public welfare, and the environment.[32]

The protectiveness review also considered cumulative impacts from nearby facilities. As a result, the Standard Permit includes site-wide production limits and setback requirements applicable to nearby rock crushers, concrete crushers, and hot-mix asphalt plants. TCEQ concluded that compliance with those limitations adequately addresses potential cumulative impacts and that additional review of off-site sources is not required when evaluating an individual application under the Standard Permit.[33]

The Standard Permit further requires measures to minimize fugitive dust and nuisance emissions, including washed sand and aggregate, enclosed operations, fabric or cartridge filter systems, water or chemical dust suppression, setback requirements, and best management practices for roads, stockpiles, and dust-control equipment. Operators are also required to comply with 30 Texas Administrative Code section 101.4. TCEQ concluded that facilities operating in compliance with the Standard Permit are not expected to create nuisance conditions or significant fugitive dust emissions beyond the property line.[34]

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[32] ED Ex. 1 (Hilla Dir.) at 7-8, 14-15; Appl. Ex. 300 (Urban Dir.) at 5-7; Appl. Ex. 202.

[33] ED Ex. 1 (Hilla Dir.) at 7, 15; Appl. Ex. 300 (Urban Dir.) at 5.

[34] ED Ex. 1 (Hilla Dir.) at 8-9; Appl. Ex. 202.

2. TCEQ Permit Application Review Process

The ED's review of a Standard Permit application consists of both an administrative review and a technical review. The administrative review evaluates the completeness of the application, including verification of application materials, company information, mailing addresses, fees, and compliance status. The technical review evaluates whether the application demonstrates compliance with the Standard Permit requirements, including review of required forms, checklists, process descriptions, maps, plot plans, compliance history, and public notice compliance.[35]

3. Application and Draft Permit

Applicant seeks authorization to construct and operate a permanent specialty concrete batch plant (Plant) in Missouri City (City), Fort Bend County, Texas.[36] The Plant will use a central mixer to manufacture precast concrete products, including concrete panels, walls, and columns, rather than producing ready-mix concrete for delivery by mixer trucks.[37] According to Applicant's witnesses, the Plant will operate at a substantially smaller production rate than a traditional concrete batch plant and will generate significantly less truck traffic.[38] The Plant is authorized for a maximum

[35] ED Ex. 1 (Hilla Dir.) at 2, 4-5.

[36] Admin. Record Tab D at 6; Appl. Ex. 100 (Hohnbaum Dir.) at 2; Appl. Ex. 200 (de la Garza Dir.) at 4, 6.

[37] Appl. Ex. 100 (Hohnbaum Dir.) at 3; Appl. Ex. 200 (de la Garza Dir.) at 4.

[38] Appl. Ex. 100 (Hohnbaum Dir.) at 3; Appl. Ex. 200 (de la Garza Dir.) at 4.

production rate of 20 yd^3/hr and 40,000 yd^3/yr and will operate no more than eight hours per day, five days per week, and 2,000 hours annually.[39]

Washed sand and gravel (aggregate) will be delivered by truck and stockpiled on-site. The stockpiles will be watered as needed to control dust emissions. During production, a front-end loader will transfer aggregate to the hopper, from which it will be conveyed to the elevated aggregate bin and then into the weigh batcher before entering the central mixer. Cement and fly ash will be pneumatically conveyed from delivery tankers into three silos and then transferred, through enclosed equipment, to the cement weigh batcher before being introduced into the central mixer.[40]

Emission sources associated with the Plant include fugitive dust emissions from stockpiles and material handling operations, as well as PM emissions from the cement silos, weigh batcher/hopper, and central mixer. Dust emissions from the stockpiles will be controlled through water application as needed, while emissions from the silos, weigh batcher, and mixer will be controlled through cartridge filter systems. The Plant will also utilize three-sided stockpile enclosures, an eight-foot perimeter wall, and fabric filters with a manufacturer's guaranteed control efficiency of 99.99 percent.[41] The Plant will not rely on diesel-powered engines to power its operations, and its principal emission sources will be located approximately 137 feet from the nearest property line.[42]

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[39] Admin. Record Tab C at 13; ED Ex. 1 (Hilla Dir.) at 10; Appl. Ex. 200 (de la Garza Dir.) at 5.

[40] Admin. Record Tab C at 13.

[41] Admin. Record Tab D at 33; Appl. Ex. 200 (de la Garza Dir.) at 5-6; Hearing Transcript (Tr.) at 168, 174, 177-78.

[42] Appl. Ex. 300 (Urban Dir.) at 10.

The Draft Permit authorizes emissions of PM, including PM_{10}, $PM_{2.5}$, aggregate dust, cement dust, and road dust.[43] Although applicants seeking authorization under the Standard Permit are not required to submit air-dispersion modeling or emissions calculations, Applicant voluntarily prepared emissions calculations using TCEQ's Concrete Batch Plant Emission Rate Calculation Workbook (Emission Workbook) to estimate emissions from the proposed Plant. The emissions calculations estimate that loading fugitives are the largest source of particulate emissions, at 0.087 tons per year of PM and 0.024 tons per year of PM_{10}, followed by stockpiles, at 0.036 tons per year of PM, 0.018 tons per year of PM_{10}, and 0.003 tons per year of $PM_{2.5}$. All remaining emission points are estimated to emit less than 0.001 ton per year of PM.[44]

B. Referred Issues A-D: Protectiveness of the Draft Permit

1. Protestants' Position and Evidence

a) Witnesses' Testimony

Health and Safety of the Requesters and Their Families. Numerous protestants testified regarding existing medical conditions within their households and expressed concern that emissions associated with Plant operations could adversely affect their health and the health of their families. They testified regarding respiratory ailments, asthma, allergies, sinus conditions, migraines, reactive airway

[43] Admin. Record Tab C at 13; ED Ex. 1 (Hilla Dir.) at 10.

[44] ED Ex. 1 (Hilla Dir.) at 6; Appl. Ex. 200 (de la Garza Dir.) at 12; Appl. Ex. 203; Admin. Record Tab D at 43.

disease, and other respiratory sensitivities. Several protestants further testified regarding family histories of heart disease, stroke, and cancer and expressed concern that exposure to PM, crystalline silica, diesel exhaust, and other airborne pollutants associated with Plant operations could aggravate existing medical conditions or increase health risks. Protestants also expressed concern regarding potential impacts on children living near the Plant, including children with asthma, respiratory conditions, and other health vulnerabilities, as well as infants and other sensitive populations residing in the surrounding neighborhood.[45]

Dr. Uwak testified that scientific literature associates exposure to $PM_{2.5}$ with adverse respiratory, cardiovascular, neurological, and other health effects and opined that individuals with preexisting respiratory or cardiovascular conditions are particularly vulnerable to such exposure. He further testified that $PM_{2.5}$emissions from the Plant could pose a health risk to nearby residents, particularly those households identified in the record as having members with existing respiratory or cardiovascular illnesses.[46]

Air Quality. Many Protestants expressed concern that emissions from the Plant would adversely affect local air quality. They expressed concern regarding emissions of PM, crystalline silica, diesel exhaust, and other airborne pollutants associated with Plant operations and testified that such emissions could affect nearby

[45] Prot. Ex. ATS (Allison Sullivan Dir.) at 3; Prot. Ex. AB (Andre Bush Dir.) at 121; Prot. Ex. ANS (Simmons Dir.) at 122; Prot. Ex. GA (Anderson Dir.) at 124; Prot. Ex. HG (Garza Dir.) at 129; Prot. Ex. IB (Breeden Dir.) at 151–52; Prot. Ex. JB (Buxton Dir.) at 153–55; Prot. Ex. KS (Karen Sullivan Dir.) at 156; Prot. Ex. MAS (Michael Sullivan Dir.) at 163–64; Prot. Ex. RE (Emanuel Dir.) at 186; Prot. Ex. SB (Stephanie Bush Dir.) at 188; Prot. Ex. TW (Tynisha Wright Dir.) at 189; Prot. Ex. XW (Xavier Wright Dir.) at 190.

[46] Prot. Ex. IU (Uwak Dir.) at 211–13.

residences because of the Plant's close proximity to surrounding homes. Several protestants further testified that the neighborhood is already affected by emissions associated with existing industrial facilities, major roadways, truck traffic, rail operations, and another concrete batch plant and expressed concern that emissions from the Plant would contribute to existing air-quality burdens in the area.[47]

Environment, Including Vegetation. Several protestants testified that emissions from the Plant could adversely affect vegetation and outdoor growing areas located on nearby residential properties. They expressed concern that PM and other emissions associated with Plant operations could settle on gardens, fruit trees, landscaping, and other vegetation maintained by residents. Protestants further testified that the surrounding neighborhood contains numerous residential properties where gardening and cultivation of plants form part of residents' regular use of their properties and expressed concern that Plant emissions could adversely affect those activities and the surrounding environment.[48]

Use and Enjoyment of Property. Protestants testified that they selected their homes because of the residential character of the neighborhood and regularly use their properties for gardening, outdoor recreation, exercise, sports, family gatherings, and other outdoor activities. They testified that they regularly use yards,

[47] Prot. Ex. ATS (Allison Sullivan Dir.) at 3–4; Prot. Ex. ANS (Simmons Dir.) at 122; Prot. Ex. HG (Garza Dir.) at 129; Prot. Ex. IB (Breeden Dir.) at 151–52; Prot. Ex. JB (Buxton Dir.) at 153–54; Prot. Ex. MAS (Michael Sullivan Dir.) at 163; Prot. Ex. RE (Emanuel Dir.) at 186; Prot. Ex. TW (Tynisha Wright Dir.) at 189; Prot. Ex. XW (Xavier Wright Dir.) at 190.

[48] Prot. Ex. AB (Andre Bush Dir.) at 120; Prot. Ex. GA (Anderson Dir.) at 124; Prot. Ex. HG (Garza Dir.) at 129; Prot. Ex. IB (Breeden Dir.) at 151; Prot. Ex. KS (Karen Sullivan Dir.) at 156–57; Prot. Ex. MAS (Michael Sullivan Dir.) at 164; Prot. Ex. RE (Emanuel Dir.) at 186; Prot. Ex. SB (Stephanie Bush Dir.) at 187; Prot. Ex. TW (Tynisha Wright Dir.) at 189.

gardens, patios, and other outdoor living areas and expressed concern that emissions associated with Plant operations would interfere with those activities and diminish their ability to enjoy their properties. Several protestants further testified that outdoor space, neighborhood livability, and the residential nature of the area were important considerations in choosing their homes and expressed concern that operation of the Plant would adversely affect their use and enjoyment of their properties and surrounding neighborhood.[49]

Deficiencies in the Application. Several protestants testified that the Application contains inaccuracies, omissions, and insufficient detail regarding the Plant. Allison Sullivan and Michael Sullivan questioned the accuracy of maps, location information, and distance measurements contained in the Application and expressed concern regarding the adequacy of information describing the Plant's operations, emissions controls, monitoring systems, and nearby receptors. They further testified that certain sensitive receptors, including Marshall High School, were not accurately reflected in the Application materials.[50]

Mr. Doty, an environmental consultant, similarly testified that the Application lacks sufficient technical detail to allow a reliable evaluation of the Plant's emissions, air-quality impacts, nuisance impacts, and the effectiveness of proposed control measures. He testified that important information regarding Plant

[49] Prot. Ex. AB (Andre Bush Dir.) at 120; Prot. Ex. ANS (Simmons Dir.) at 122; Prot. Ex. GA (Anderson Dir.) at 124; Prot. Ex. HG (Garza Dir.) at 129–30; Prot. Ex. IB (Breeden Dir.) at 151; Prot. Ex. JB (Buxton Dir.) at 153; Prot. Ex. KS (Karen Sullivan Dir.) at 156–57; Prot. Ex. MAS (Michael Sullivan Dir.) at 163–64; Prot. Ex. RE (Emanuel Dir.) at 186; Prot. Ex. SB (Stephanie Bush Dir.) at 187; Prot. Ex. TW (Tynisha Wright Dir.) at 189; Prot. Ex. XW (Xavier Wright Dir.) at 190–91.

[50] Prot. Ex. ATS (Allison Sullivan Dir.) at 2–3; Prot. Ex. MAS (Michael Sullivan Dir.) at 164–65.

layout, aggregate stockpiles, perimeter walls, traffic patterns, dust-control systems, filtration equipment, monitoring procedures, and operational practices was either absent or inadequately described. According to Mr. Doty, multiple versions of the site maps contained inconsistencies and did not adequately depict structures, infrastructure dimensions, vehicular pathways, and other features necessary to evaluate Plant layout and setback distances. Mr. Doty opined that these deficiencies created uncertainty regarding the accuracy of the site plan and the information necessary to evaluate potential impacts from Plant operations. Mr. Doty acknowledged that his primary concern was the level of detail provided in the Application and that he was not offering the opinion that the Application affirmatively demonstrated a violation of any specific emission limitation.[51]

b) Protestants' Argument

Deficiencies in the Application. Protestants argue that the Application contains numerous deficiencies that render the Draft Permit conditions insufficiently specific and enforceable. According to Protestants, the Application incorrectly stated that no school is located within 3,000 feet of the Plant, failed to clearly identify the location of equipment and stockpiles on the site, failed to provide sufficient information regarding setback distances, and included an incorrect identification of the proposed baghouse filter model. Protestants maintain that, because of these deficiencies, the Commission cannot adequately determine

[51] Prot. Ex. JTD (Doty Dir.) at 224-37; Tr. at 125-30.

compliance with the applicable standard permit requirements or establish enforceable permit conditions.[52]

Health and Safety of the Requesters and Their Families and Air Quality. Protestants argue that the Draft Permit will not be protective of the health and safety of nearby residents and their families and air quality because the TCEQ protectiveness review relies on incomplete and non-site-specific information.[53] They contend that the nearest TCEQ monitoring station used in the protectiveness review is located more than five miles from the Plant and in a different county and, therefore, does not accurately represent air-quality conditions experienced by residents immediately adjacent to the Plant. Protestants further argue that the protectiveness review failed to consider cumulative impacts from nearby emission sources, including an existing concrete batch plant, major roadways, and a railroad corridor located within approximately one mile of the Plant.[54]

According to Protestants, their own air-monitoring data collected near the Plant reflects "significantly high $PM_{2.5}$ and other particulate emissions" greater than those assumed in the protectiveness review and provides a more representative assessment of local conditions. They maintain that cumulative impacts from surrounding sources were not adequately evaluated by Applicant or TCEQ. According to Protestants, even under the assumptions used in Applicant's modeling,

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[52] Prot. Closing Brief (Br.) at 9-15, 18-20; Prot. Reply Br. at 5-6. Mr. Hilla testified that he could not identify where the stockpiles would be but stated that the plot plans indicate that they would be roughly northwest of the emission points. Tr. at 235.

[53] *See* Prot. Closing Br. at 15-17, 20-21.

[54] Prot. Closing Br. at 15-17; Prot. Reply Br. at 7.

the Plant will generate particulate emissions, and those emissions will be introduced into an already impacted residential area. Protestants, therefore, contend that the Plant will worsen existing air quality conditions and adversely affect nearby residents.[55]

Environment and Use and Enjoyment of Property. Protestants argue that the Draft Permit will not be protective of the environment. They contend that the Application lacks sufficient information regarding the proposed control technologies and emissions-control measures to demonstrate that operation of the Plant will adequately protect the environment.[56] According to Protestants, operation of the Plant will adversely affect the use and enjoyment of nearby residential properties.[57]

2. Applicant's Position

a) Ms. de la Garza's Testimony

Ms. de la Garza prepared the Application, which she testified contains all information required for authorization under the Standard Permit and demonstrates compliance with applicable Standard Permit requirements and TCEQ air permitting rules.[58]

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[55] Prot. Closing Br. at 17-18; Prot. Reply Br. at 7; Prot. Exs. OG1-OG2.

[56] Prot. Closing Br. at 20; Prot. Reply Br. at 7.

[57] Prot. Closing Br. at 21; Prot. Reply Br. at 8.

[58] Appl. Ex. 200 (de la Garza Dir.) at 4.

Ms. de la Garza testified that the Plant would combine aggregate, sand, cement, fly ash, and water to manufacture precast concrete products on-site rather than produce ready-mix concrete for off-site delivery. According to Ms. de la Garza, the Plant will operate at a maximum production rate of 20 yd^3/hr and 40,000 yd^3/yr, substantially below the maximum production rates authorized under the Standard Permit. She testified that the lower production rate will result in lower material usage, smaller stockpiles, less truck traffic, and lower emissions than larger concrete batch plants.[59]

Ms. de la Garza prepared the Emission Workbook using the TCEQ Concrete Batch Plant Emission Rate Calculation Workbook, which incorporates methodologies and emission factors derived from U.S. Environmental Protection Agency (EPA) AP-42 guidance. She explained that the calculations were based on the Plant's design, production rates, operating schedule, throughput, and emissions-control equipment and estimated emissions of PM, PM_{10}, and $PM_{2.5}$ from all Plant sources.[60] The estimated site-wide emissions of $PM_{2.5}$ from the Plant are 0.003 pound per hour and 0.006 tons per year, or about 12 pounds per year.[61] Ms. de la Garza testified that $PM_{2.5}$ constitutes only a small portion of total particulate emissions because most materials processed at the Plant are washed sand and aggregate rather than fine particulate materials. She characterized the projected emissions as very low and compared them to emissions from common sources such as diesel generators and gasoline-powered lawn equipment. In her opinion, the

[59] Appl. Ex. 200 (de la Garza Dir.) at 4-5.

[60] Appl. Ex. 200 (de la Garza Dir.) at 11-12, 15-17.

[61] Appl. Ex. 200 (de la Garza Dir.) at 14.

emissions calculations accurately reflect the proposed operation and were prepared using reliable and accepted methodologies.[62]

Ms. de la Garza also responded to criticisms that the Application lacked sufficient detail regarding the Plant layout, stockpiles, emissions controls, roads, sprinkler systems, monitoring procedures, and other design features. She testified that the Application contains all information required for a Standard Permit registration and that many of the items identified by Mr. Doty are not required elements of the permitting process. She explained that the Application was required to identify emission points and stockpile areas but not provide detailed dimensions for all equipment. She further testified that the cartridge filter system identified in the Application belongs to the same product series described in the manufacturer's documentation and that the relevant permitting consideration is the control efficiency associated with that series, which is guaranteed by the manufacturer.[63]

Moreover, Ms. de la Garza explained that, during technical review, TCEQ requested clarification regarding certain maps and diagrams because portions of the original submission did not print correctly. She provided revised maps, updated plot plans showing distances from emission sources to property lines, and a clearer process-flow diagram. She testified that TCEQ requested no additional information after those revisions.[64] Ms. de la Garza acknowledged that the original Application incorrectly stated that no school was located within 3,000 feet of the Plant but

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[62] Appl. Ex. 200 (de la Garza Dir.) at 13-16.

[63] Appl. Ex. 200 (de la Garza Dir.) at 16-20; Tr. at 167-69.

[64] Appl. Ex. 200 (de la Garza Dir.) at 4, 10-11; Tr. at 165-66, 195.

characterized the error as an administrative oversight that did not affect compliance with any Standard Permit requirement because the information was not a permitting criterion.[65]

Ms. de la Garza also testified that the Plant, as a specialty concrete batch plant, is subject to the setback requirements applicable to specialty plants. Using Geographic Information System measurements reflected on the updated plot plan, she determined that all Plant sources satisfy the applicable setback requirements. She also noted that TCEQ concluded the Application contained sufficient information regarding the Plant design and emissions-control measures to demonstrate compliance with the Standard Permit.[66]

b) Dr. Urban's Testimony

Dr. Urban evaluated the potential human-health implications of air emissions from the Plant, particularly $PM_{2.5}$ emissions.[67] He explained that TCEQ evaluated the health impacts of concrete batch plants when it developed and revised the Standard Permit. According to Dr. Urban, TCEQ used emissions estimates, air-dispersion modeling, background air-quality data, and health-based standards to evaluate whether facilities operating within the Standard Permit's limits would be protective of public health. He testified that the analysis considered both facility emissions and existing background pollutant concentrations and that the

[65] Tr. at 169-70.

[66] Appl. Ex. 200 (de la Garza Dir.) at 17, 20; Tr. at 178-79.

[67] Appl. Ex. 300 (Urban Dir.) at 3-5.

Standard Permit was adopted only after TCEQ determined that facilities complying with its throughput limits, emissions controls, and setback requirements would not cause unacceptable health impacts. Dr. Urban opined that it is scientifically appropriate for TCEQ to rely on that protectiveness review when evaluating individual registrations because the review was conducted using conservative assumptions intended to represent the upper range of potential impacts authorized by the Standard Permit.[68]

Dr. Urban testified that the Application estimates total $PM_{2.5}$ emissions from the Plant at approximately 0.006 tons per year, or about 12 pounds annually, which he characterized as less than one ounce per day of operation. He explained that these emissions represent the combined total from all Plant sources, including stockpiles, material handling operations, storage bins, silos, the weigh hopper, baghouse controls, and mixer-loading activities.[69]

Dr. Urban compared the Plant to the hypothetical specialty concrete batch plants evaluated by TCEQ during its protectiveness review. He testified that the facilities evaluated by TCEQ operated at higher production rates, produced substantially more concrete annually, operated more hours and days per year, included fuel-powered equipment, and were evaluated using shorter setback distances than those proposed for the Plant. According to Dr. Urban, the Plant is limited to 20 yd^3/hr and 40,000 yd^3/yr, compared to the 30 yd^3/hr and

[68] Appl. Ex. 300 (Urban Dir.) at 6-8; Tr. at 204-07.

[69] Appl. Ex. 300 (Urban Dir.) at 9; Tr. at 222.

131,000 yd^3/yr considered in TCEQ's review. He testified that, because the Plant will operate at lower production levels, for fewer hours, without fuel-powered equipment, and with greater setback distances than those evaluated in TCEQ's protectiveness review, it falls within the assumptions underlying that review.[70]

Dr. Urban testified that TCEQ's protectiveness review accounts for cumulative pollutant concentrations by combining modeled emissions from the proposed source with background air-quality data. He explained that TCEQ relies on monitoring data from locations expected to experience elevated pollutant concentrations and population exposure and that the Harris County monitor used in the analysis was expected to reflect higher pollutant concentrations than would be expected at the Plant location, making the analysis conservative. He further testified that pollutant concentrations generally decrease with distance from the source and that TCEQ's evaluation is based on concentrations at the property boundary. According to Dr. Urban, if concentrations at the property boundary comply with applicable health-based standards, concentrations farther from the source would be expected to be lower. Dr. Urban acknowledged, however, that he did not specifically evaluate emissions from a nearby existing concrete batch plant and was not aware of that facility when he conducted his review.[71]

According to Dr. Urban, the protectiveness review considers long-term and lifetime exposure scenarios and relies on health-based standards that incorporate

[70] Appl. Ex. 300 (Urban Dir.) at 9-10; Tr. at 222, 230.

[71] Tr. at 204-09, 211-13, 215-20.

safety factors intended to protect sensitive populations, including children, elderly individuals, and persons with preexisting health conditions. He stated that, assuming the Plant operates as represented in the Application and complies with the Standard Permit requirements, the Plant would fall well within the assumptions used in TCEQ's protectiveness review and would not adversely affect persons located at or beyond the property boundary.[72]

Based on his review of the Application, the emissions calculations, and TCEQ's protectiveness review, Dr. Urban concluded that the Plant is smaller, operates less frequently, emits less PM, and maintains greater setbacks than the facilities evaluated by TCEQ. He, therefore, opined that $PM_{2.5}$ emissions from the Plant are not expected to present a significant health risk to nearby residents, including Protestants and their families. He disagreed with Dr. Uwak's opinion that emissions from the Plant would create a significant health risk and stated that his conclusions were based on the Plant's projected emissions and compliance with the operational limits, emissions controls, and setback requirements established by the Standard Permit.[73]

c) Applicant's Argument

Applicant argues that the Application includes all the information necessary to confirm that the Plant will comply with the requirements of the Standard Permit. No witness identified an aspect of the Plant, as represented in the Application, that

[72] Tr. at 204, 220-21, 225-28.

[73] Appl. Ex. 300 (Urban Dir.) at 11-12.

fails to satisfy a substantive requirement of the Standard Permit, and Protestants offered no meaningful evidence sufficient to overcome the presumption that compliance with the Standard Permit's requirements is protective.[74]

Applicant further asserts that TCEQ's protectiveness review for the Standard Permit evaluated the relevant pollutants for a proposed concrete batch plant, employed conservative air dispersion modeling assumptions, and conservatively evaluated a range of batch plant configurations and production rates. According to Applicant, the ED reasonably relied on the protectiveness review in concluding that the Plant would be protective. Applicant contends that reliance on the protectiveness review is particularly appropriate for the issues A-D referred by the Commission because the Plant will be smaller, better-controlled, lacking certain emissions sources, and located farther from the property line than the exemplar plant TCEQ evaluated to identify the characteristics of a protective concrete batch plant.[75]

Applicant also argues that TCEQ's use of background monitoring data from Harris County is not a "gap" in the analysis. To the contrary, Applicant contends this approach is more conservative, and thus more protective, because the Harris County data accounts for cumulative emissions impacts from other sources that are expected to exceed the actual background concentrations in the immediate vicinity of the Plant.[76] Applicant challenges Protestants' arguments on protectiveness and background monitoring data as relying on evidence outside the

[74] Appl. Closing Br. at 15–16, 22–23; Appl. Reply Br. at 4.

[75] Appl. Closing Br. at 24; Appl. Reply Br. at 9–10.

[76] Appl. Reply Br. at 11–12.

record. Applicant notes that Protestants' references to "significantly high $PM_{2.5}$ and other particulate emissions" rely on Exhibits OG 001 and OG 002, which are copies of website links containing no emissions data themselves. Applicant further notes that no expert witness qualified to evaluate the $PM_{2.5}$ data in those exhibits, or to compare it to TCEQ's protectiveness review, testified in this proceeding, and argues that Protestants' arguments on this point should accordingly be given no weight.[77]

Finally, Applicant reiterates that the record demonstrates the Application satisfies all requirements of the Standard Permit, and that the Plant, operated in accordance with the Application's representations and in compliance with the Standard Permit, will be protective of human health, the use and enjoyment of property, and the environment.[78]

3. ED's Position

a) Mr. Hilla's Testimony

Mr. Hilla, a Permit Reviewer in the Mechanical/Coatings Section of TCEQ's Air Permits Division, performed the technical review of the Application.[79] He testified that the Application satisfied the requirements of the Standard Permit.[80]

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[77] Appl. Reply Br. at 12.

[78] Appl. Reply Br. at 14.

[79] ED Ex. 1 (Hilla Dir.) at 2, 4, 16.

[80] ED Ex. 1 (Hilla Dir.) at 16.

Mr. Hilla explained that the Standard Permit incorporates all applicable federal and state regulatory requirements. He testified that the Standard Permit was developed to ensure compliance with applicable state and federal air-quality standards, including the NAAQS, which are established to protect public health, including sensitive populations. He identified sensitive populations as including children, the elderly, and individuals with preexisting health conditions, such as asthma. Mr. Hilla further testified that he would not expect pollutant concentrations that remain below the applicable NAAQS to cause adverse health effects, including for members of those sensitive populations.[81]

b) ED's Argument

The ED argues that the Application satisfies all applicable requirements of the Standard Permit and that issuance of the registration is, therefore, appropriate. According to the ED, TCEQ staff reviewed the Application and determined that it is technically complete and complies with all applicable state and federal regulatory requirements. The ED asserts that operation of the Plant in accordance with the Standard Permit conditions will be protective of human health, air quality, property, and the environment.[82]

[81] ED Ex. 1 (Hilla Dir.) at 7-9.

[82] ED Closing Br. at 4-9.

4. OPIC's Position

OPIC argues that the Applicant satisfied its burden of proof and that the preponderance of the evidence supports issuance of the Draft Permit under the Standard Permit.[83]

With respect to health and safety, OPIC argues that the Standard Permit was developed following an extensive protectiveness review designed to ensure protection of human health and the environment. In OPIC's view, the record demonstrates that the Plant complies with the requirements of the Standard Permit and, therefore, will be protective of the health and safety of nearby residents, including sensitive populations.[84] OPIC further maintains that emissions from the Plant will comply with applicable air-quality standards and will not negatively affect air quality. According to OPIC, the Draft Permit includes multiple emission-control measures and operational requirements designed to prevent and control PM and dust emissions.[85]

Regarding environmental impacts, OPIC argues that compliance with applicable air-quality standards demonstrates that the Plant will be protective of the environment, including vegetation. According to OPIC, operation of the Plant in

[83] OPIC Closing Br. at 7.

[84] OPIC Closing Br. at 7-8.

[85] OPIC Closing Br. at 8-9.

accordance with the Standard Permit will not adversely affect environmental resources or vegetation.[86]

OPIC acknowledges Protestants' concerns regarding the use and enjoyment of their property. Nevertheless, OPIC maintains that the record does not show that the Plant would create or maintain a nuisance condition that interferes with neighboring landowners' use and enjoyment of their property.[87]

5. ALJs' Analysis

The Application, Draft Permit, and Administrative Record establish a prima facie demonstration under Texas Government Code section 2003.047(i-1) that the Draft Permit complies with applicable legal and technical requirements and, if issued, will protect human health and safety, the environment, and physical property. Protestants had the burden under section 2003.047(i-2) of presenting evidence that the Draft Permit violates a specifically applicable requirement. They did not rebut the prima facie demonstration as to Issues A through D.

Protestants' testimony regarding personal medical histories, air-quality concerns, and the residential character of the neighborhood does not identify a specifically applicable Standard Permit requirement the Draft Permit fails to meet, and it does not establish that the Plant, operated as proposed, would exceed any

[86] OPIC Closing Br. at 9.

[87] OPIC Closing Br. at 11.

applicable health- or welfare-based standard. Without that link, the testimony cannot defeat the prima facie showing, however genuine the concerns it reflects.

Protestants' arguments regarding deficiencies in the Application are similarly unpersuasive. TCEQ staff addressed the issues Protestants raise during technical review and concluded that the Application was sufficient, and no witness opined that any deficiency amounted to a violation of a specific emission limitation. Wanting more detail is not the same as identifying noncompliance.

Protestants also argue that TCEQ's protectiveness review relied on background monitoring data unrepresentative of conditions near the Plant, and that it failed to account for the Plant's impact alongside a nearby existing concrete batch plant. TCEQ's protectiveness review for the Standard Permit was never meant to evaluate facilities in isolation; instead, it built cumulative impacts into the rule itself. The site-wide production limits and setback requirements for nearby rock crushers, concrete crushers, and hot-mix asphalt plants exist because TCEQ already accounted for cumulative impact at the rulemaking stage and concluded that compliance with those limits addresses impact without requiring source-by-source modeling at registration. The ALJs are not in a position to rewrite the Standard Permit, and any disagreement with the rulemaking would be for a different forum.

The record also supports the protectiveness determination independent of the rulemaking record. The Plant's authorized characteristics fall within the conservative assumptions TCEQ used to evaluate the Standard Permit, and the

ED's own technical review reached the same conclusion through a separate, independent process. These two sources of evidence reinforce one another and reduce the significance of relying on either alone.

The ALJs recognize that Dr. Urban did not know about the nearby existing concrete batch plant and did not evaluate it. That is a real gap. It limits what weight his testimony can carry on a facility-specific cumulative-impacts theory, and the ALJs do not rely on it for that purpose. It does not, however, undercut the narrower point his testimony does support: that the Plant's own characteristics fall well within what TCEQ already modeled. Protestants identified the nearby plant but offered no emissions data, modeling, or expert testimony showing what combined impact, if any, would result. Exhibits OG-001 and OG-002 are website links with no emissions data, and no qualified witness testified about them.

Taken as a whole, the record shows the Plant will operate within the Standard Permit's production limits, setbacks, and emissions controls, and that in several respects—production rate, hours, equipment, and setback distance—it will operate more conservatively than what TCEQ already determined to be protective. The ALJs do not doubt that Protestants' concerns about their health, their air quality, their property, and their families are genuine. Weighing those concerns against the statutory framework and the record in this case, the ALJs conclude that Applicant proved by a preponderance of the evidence that the Draft Permit will be protective of the health and safety of the requesters and their families (Issue A), will not negatively affect air quality (Issue B), will be protective of the environment, including vegetation (Issue C), and will not adversely affect the use and enjoyment

of the requesters' property (Issue D).[88] Applicant, therefore, met its burden of proof on Referred Issues A through D.

C. REFERRED ISSUE E: PROTECTIVENESS AGAINST DUST EMISSIONS

1. Protestants' Position and Evidence

a) Witnesses' Testimony

Numerous Protestants testified that dust originating from Applicant's existing operations already affects their properties and interferes with their use of outdoor areas. They described observing visible airborne dust traveling from Applicant's property during windy conditions and testified that dust accumulates on patios, outdoor furniture, windows, vehicles, laundry, gardens, fruit trees, landscaping, and other outdoor surfaces. Several Protestants testified that they regularly clean dust from outdoor living areas before using them and expressed concern that operation of the Plant would increase nuisance dust impacts in the surrounding neighborhood.[89]

[88] The ALJs also recognize that Protestants' concerns regarding the use and enjoyment of their properties substantially overlap with their allegations regarding nuisance dust. Because dust emissions are the subject of a separately referred issue, the ALJs address those allegations in the analysis of Issue E.

[89] Prot. Ex. GA (Anderson Dir.) at 123; Prot. Ex. HG (Garza Dir.) at 129; Prot. Ex. IB (Breeden Dir.) at 151; Prot. Ex. KS (Karen Sullivan Dir.) at 156; Prot. Ex. MAS (Michael Sullivan Dir.) at 163; Prot. Ex. XW (Xavier Wright Dir.) at 190. Protestants' Exhibits ATS 022-024, 026-027 show dust impacts to neighboring properties from Applicant's lot, including visible airborne dust during wind gusts and water spray breaching the fence line.

Ms. Gomez, the Director of Planning and Development Services for the City, expressed concerns regarding nuisance dust associated with concrete batch plant operations. She testified that, although the Standard Permit contains numerous operational and control requirements intended to minimize such impact, those controls may not eliminate off-site impacts under all operating conditions, including wind events, equipment malfunctions, or maintenance failures. She further testified that the Standard Permit's visible-emissions monitoring and corrective-action requirements reflect the possibility that emissions excursions may occur and expressed concern regarding the proximity of the Plant to nearby residences and schools.[90]

Mr. Doty testified that the Application lacks sufficient technical detail to reliably evaluate the potential for nuisance emissions and real-world impacts to surrounding residents. According to Mr. Doty, without additional information regarding those features, it is difficult to evaluate the effectiveness of the proposed emissions controls, the likelihood of off-site dust impacts, or the potential for nuisance conditions affecting nearby residents and properties.[91]

b) Protestants' Argument

Protestants argue that the Draft Permit will not be protective against dust emissions generated by the Plant, including nuisance dust emissions. They contend

[90] Prot. Ex. JTG (Gomez Dir.) at 194-95.

[91] Prot. Ex. JTD (Doty Dir.) at 233-36. As mentioned above, Mr. Doty acknowledged that his primary concern was the level of detail provided in the Application and that he was not offering the opinion that the Application affirmatively demonstrated a violation of any specific emission limitation. Tr. at 125.

that the close proximity of the Plant to nearby residences, combined with existing dust conditions in the area, creates a substantial risk that dust generated by Plant operations will migrate off-site and affect neighboring properties. Protestants rely on testimony regarding existing dust conditions, photographs and videos depicting visible dust and related conditions near Applicant's property, and criticisms of the information contained in the Application. According to Protestants, the record does not demonstrate that the proposed control measures will adequately prevent nuisance dust emissions under real-world operating conditions.[92]

2. Applicant's Position and Evidence

a) Mr. Hohnbaum's Testimony

Mr. Hohnbaum, a Senior Project Manager for Millis Development & Construction, testified regarding the Plant and its planned operations. He stated that equipment, structures, and materials currently located at Applicant's property are associated with existing site activities separate from the Plant and were not included in the Application. He noted that Applicant also constructed an eight-foot concrete wall around the perimeter of the property, which was not a Standard Permit requirement.[93]

[92] Prot. Closing Br. at 21; Prot. Reply Br. at 8.

[93] Appl. Ex. 100 (Hohnbaum Dir.) at 3-4.

b) Ms. de la Garza's Testimony

Ms. de la Garza testified that dust is one of the principal emissions associated with a concrete batch plant. She explained that cement and fly ash at the Plant will be stored in fully enclosed silos and pneumatically conveyed through enclosed equipment to the weigh batcher before entering the central mixer. Dust generated during these operations will be controlled through cartridge-filter systems located at the weigh batcher/hopper and central mixer.[94]

Ms. de la Garza testified that the Application contains the filter information required by TCEQ, including manufacturer specifications for the proposed dust-collection system. She explained that the emission control efficiencies used in the Emissions Workbook were based on information provided by the manufacturer of the specific cartridge filters proposed for the Plant. She further testified that, based on her experience, the represented control efficiencies are consistent with efficiencies commonly associated with that type of filter and that the manufacturer guarantees approximately 99.99 percent control efficiency when the equipment is properly operated and maintained.[95]

Regarding fugitive dust from aggregate stockpiles, Ms. de la Garza testified that Applicant proposes to control emissions through watering as needed. She explained that the Standard Permit allows applicants to control stockpile emissions by watering, covering, or enclosing the stockpiles, and Applicant elected watering as

[94] Appl. Ex. 200 (de la Garza Dir.) at 5-6; Tr. 171-75.

[95] Appl. Ex. 200 (de la Garza Dir.) at 10, 15, 19; Admin. Record Tab D at VCH14, VCH46-51; Tr. at 177-78.

its method of compliance. According to Ms. de la Garza, neither the Standard Permit nor the associated application forms require an applicant to provide engineering specifications or a physical description of the watering system. Rather, the application requires only that the applicant identify the dust-control method that will be used. Although she understood that Applicant intended to use an irrigation system with pop-up sprinkler heads to maintain moisture in the stockpiles, she testified that details such as the number and location of sprinklers, the strength of the water streams, or whether the system would operate continuously or intermittently are not required as part of the Standard Permit application. She further explained that watering would occur as needed to minimize emissions, with the timing and frequency determined by the plant operator based on site conditions.[96]

c) Applicant's Argument

Applicant argues that the Plant will not create a nuisance, interfere with the use and enjoyment of neighboring property, or generate nuisance dust because it will operate in compliance with the Standard Permit. According to Applicant, TCEQ's protectiveness review used conservative air dispersion modeling to demonstrate compliance with both the primary NAAQS, which protect public health, and the secondary NAAQS, which protect public welfare, including the use and enjoyment of property. Applicant contends that it is reasonable to conclude that a facility complying with the Standard Permit will not adversely affect neighboring properties.[97]

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[96] Appl. Ex. 200 (de la Garza Dir.) at 19; Tr. 175-77.

[97] Appl. Closing Br. at 24-25.

Applicant further argues that the Standard Permit contains numerous conditions designed to prevent nuisance dust. Those conditions require the permit holder to use methods such as watering to control nuisance dust from in-plant roads, traffic areas, and material stockpiles; limit deliveries to pre-washed sand and aggregate; comply with particulate matter emissions-control requirements for silos, weigh hoppers, and conveyors; maintain the required property-line setbacks for potential PM emission sources; ensure that visible emissions do not leave the property; and conduct periodic visible-emissions observations with immediate corrective action taken to eliminate excessive visible emissions.[98]

According to the Applicant, the Plant will comply with all Standard Permit requirements and, in several respects, will exceed the minimum requirements by operating at lower production rates, lower annual throughput, fewer operating hours, greater property-line setbacks, and without diesel-powered engines used in plant operations. The Applicant also points to the eight-foot perimeter wall constructed around the site as an additional measure intended to reduce off-site dust. Based on these factors, the Applicant argues that the Plant will not interfere with the use and enjoyment of neighboring property and will be protective against nuisance dust emissions.[99]

[98] Appl. Closing Br. at 25.

[99] Appl. Closing Br. at 26-27.

3. ED's Position and Evidence

a) Mr. Hilla's Testimony

Mr. Hilla testified that the Standard Permit provides that visible emissions leaving the property may not exceed 30 seconds in any six-minute period. He further stated that, if the Plant is operated in accordance with the Standard Permit, he would not expect it to cause a nuisance or expect nuisance dust to leave the plant property.[100]

Mr. Hilla testified that fugitive emissions from a concrete batch plant are gaseous or particulate contaminants that enter the atmosphere without passing through a stack, chimney, vent, or similar opening. For this type of facility, he identified the fugitive sources as material transfer points and stockpiles. He stated that the Standard Permit contains controls addressing fugitive emissions.[101]

For a specialty concrete batch plant, Mr. Hilla testified that the Standard Permit requires the applicant to use at least one control method for the batch mixer feed so that no outdoor visible emissions occur. Those options include a suction shroud or other pickup device that routes air to a fabric or cartridge filter, an enclosed batch mixer feed, or conducting the entire mixing operation inside an enclosed process building. He further testified that the Standard Permit requires the plant to receive washed sand and aggregate and to sprinkle stockpiles with water, use

[100] ED Ex. 1 (Hilla Dir.) at 8-9.

[101] ED Ex. 1 (Hilla Dir.) at 8.

a dust-suppressant chemical, or cover the stockpiles as needed to prevent flyaway dust.[102]

Mr. Hilla explained that these controls prevent fugitive emissions from leaving the plant property when properly used. For example, he stated that proper stockpile maintenance through water, chemical dust suppressant, or covers prevents wind and stockpile maintenance activities from creating flyaway dust. He also explained that water weighs down dust and prevents it from becoming airborne, while dust-collection systems route airborne dust through filtration baghouses where the dust is retained in a fabric or cartridge filter.[103]

Mr. Hilla defined nuisance dust as dust from a source in a high enough concentration and duration that it may tend to injure or adversely affect human health or welfare, animal life, vegetation, or property, or interfere with the normal use and enjoyment of animal life, vegetation, or property. He testified that the Standard Permit contains provisions to protect against nuisance dust, including best management practices such as using water on stockpiles and roads; requiring operators to ensure that equipment, including baghouses, is properly functioning; and imposing onsite setback requirements intended to ensure flyaway dust does not leave the property.[104]

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[102] ED Ex. 1 (Hilla Dir.) at 8.

[103] ED Ex. 1 (Hilla Dir.) at 8.

[104] ED Ex. 1 (Hilla Dir.) at 8-9.

Mr. Hilla confirmed that the Application identifies the dust collector model as LPR-6-5 for the Plant's filter systems. He testified that Applicant submitted manufacturer specifications for the low-profile round dust collection system and represented that the dust collector meets the Standard Permit's required control efficiency. Mr. Hilla stated that the Standard Permit requires a 99.5 percent control efficiency and that the LPR series was represented as capable of 99.99 percent control.[105]

Mr. Hilla acknowledged that the Application does not identify the specific placement of water sprays or provide an exact schedule for their use. However, he explained that the permit conditions require water sprays to control dust emissions and prevent nuisance dust from leaving the property. He testified that, based on his observations of other concrete batch plants, operators may use different systems, including a person with a water hose, sprinkler systems, or soaking hoses, but the purpose is to keep the aggregate wet while the plant is operating.[106]

According to Mr. Hilla, spraying stockpiles from the top can be sufficient to suppress fugitive dust because the top of a stockpile has the highest potential to emit fugitive dust. He acknowledged that the effectiveness of water control assumes the system is properly operated, consistently used, and maintained. He also stated that

[105] Tr. at 236, 240.

[106] Tr. at 237-38.

the Standard Permit does not require the application to include specific details about the water system.[107]

b) ED's Argument

The ED argues that the Draft Permit will be protective against dust emissions, including nuisance dust, because the Standard Permit was developed to be protective of air quality and requires compliance with the nuisance provisions of 30 Texas Administrative Code section 101.4. According to the ED, the nuisance rule prohibits the discharge of air contaminants in concentrations or for durations that may injure or adversely affect human health, welfare, animal life, vegetation, or property, or interfere with the normal use and enjoyment of property. The ED contends that, if the Plant is constructed and operated in accordance with the Standard Permit, nuisance conditions should not occur.[108]

The ED further argues that the Standard Permit contains site-specific requirements designed to prevent off-site impacts, including nuisance dust. Specifically, the Standard Permit requires all stationary equipment at the site to be located at least 50 feet from the property line and requires the central baghouse stack exhaust, storage silos, and generators to be located at least 100 feet from the property line. According to the ED, these setback requirements were incorporated into the

[107] Tr. at 240-41.

[108] ED Closing Br. at 8-9.

Standard Permit to ensure that the facility is protective at the property line, including with respect to nuisance conditions.[109]

4. OPIC's Position

OPIC argues that the Draft Permit will be protective against dust emissions, including nuisance dust, because the Plant will be required to comply with the operational limitations and emissions-control requirements of the Standard Permit. OPIC contends that the Standard Permit was developed following TCEQ's protectiveness review and incorporates dust-control measures, setback requirements, and other operating conditions designed to prevent off-site particulate emissions. OPIC further argues that the evidence demonstrates the Plant will operate within the Standard Permit's production limits and comply with its required control measures.[110]

5. ALJs' Analysis

The ALJs find that the Draft Permit will be protective against dust emissions generated by the Plant, including nuisance dust emissions. Protestants' concerns regarding nuisance dust are understandable, particularly in light of the dust they have observed from existing activities at Applicant's property. However, the issue before the ALJs is whether the Draft Permit authorizing this proposed Plant contains sufficient enforceable requirements to protect against nuisance dust emissions. Based on the record as a whole, the ALJs conclude that it does.

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[109] ED Closing Br. at 9.

[110] OPIC Closing Br. at 11.

The existing dust conditions described by Protestants do not establish that the Plant will cause nuisance dust. Those conditions arise from activities that are not the subject of this permitting action. The Draft Permit will authorize a specific concrete batch plant subject to specific operational limits and control requirements. Therefore, while the existing conditions provide context for the Protestants' concerns, they do not show that the Plant, as permitted, will be unprotective.

Nor does the Application's lack of additional detail regarding the stockpile watering system establish that the Draft Permit is deficient. Protestants' argument assumes that greater design detail is necessary to demonstrate protectiveness, but the Standard Permit does not impose that requirement. The relevant question is whether the Draft Permit will require compliance with enforceable dust-control measures. The ALJs conclude that it will. The same is true for concerns regarding potential equipment malfunction or high-wind conditions. Those concerns identify circumstances under which dust could occur if the Plant is not properly operated or maintained. They do not show that the Draft Permit lacks adequate conditions. Permit protectiveness is evaluated based on compliance with the permit, not on speculation that the permittee may fail to comply.

The Plant's operation within, and in several respects more restrictively than, the Standard Permit's minimum requirements supports the conclusion that it will be protective against nuisance dust emissions. Although Protestants raised sincere and specific concerns, they did not establish that the Draft Permit's requirements are insufficient to prevent nuisance dust emissions from the Plant. Accordingly, the

ALJs find that Applicant met its burden of proof on Referred Issue E, including as to the use-and-enjoyment concerns.

D. REFERRED ISSUE F: COMPLIANCE WITH NOTICE REQUIREMENTS

1. Protestants' Position and Evidence

a) Mayor Elackatt's Testimony

Mayor Elackatt, the Mayor of Missouri City, opposed the Draft Permit in part because he believed the legally required notice was not provided to his office.[111] He stated that, as mayor, he should have received timely formal notice so that his office could inform constituents, review the Application, and participate meaningfully in the public process.[112] Mayor Elackatt testified that the notice was sent to Post Office (P.O.) Box 666, which he did not consider to be the City's address. He identified the City's address as 1522 Texas Parkway, Missouri City, Texas 77489, and testified that he did not receive any notice related to the Application at that address.[113]

Mayor Elackatt acknowledged that an "Agenda Request, Business of the City Council" for the October 21, 2024 City Council meeting included a September 12, 2024 letter addressed to the City's Public Works Department at P.O. Box 666, Missouri City, Texas 77459. He also acknowledged that the project's

[111] The City is not a party to this proceeding.

[112] Prot. Ex. RJE (Elackatt Dir.) at 204.

[113] Tr. at 73-76, 82-83, 90-91.

technical specifications identified the Director of Public Works and Construction Manager at P.O. Box 666 as the designated recipient for project-related correspondence. Mayor Elackatt testified, however, that he had not previously seen those documents and maintained that he had not seen P.O. Box 666 used by the City during his tenure as mayor.[114] He further stated that, based on his experience, mail sent to P.O. Box 666 would not make it to his desk.[115]

Moreover, Mayor Elackatt testified that the Application was not publicly available at the Fort Bend Chamber of Commerce (Chamber of Commerce) as indicated in the public notice.[116] He acknowledged, however, that he did not personally visit the Chamber of Commerce during the relevant time period to determine whether the Application was available there.[117]

According to Mayor Elackatt, these alleged notice deficiencies undermined transparency, limited public participation, and deprived the City of sufficient time to hear from residents and present its concerns. He testified that, although the City ultimately participated in the permitting process, such participation did not excuse compliance with the applicable notice requirements. In his opinion, the alleged

[114] Tr. at 77-89; Appl. Ex. 400.

[115] Tr. at 94.

[116] Prot. Ex. RJE (Elackatt Dir.) at 204.

[117] Tr. at 72-73.

notice deficiencies warranted denial of the permit or, alternatively, withdrawal of the Application and re-notice with a new public comment and hearing period.[118]

b) Commissioner Pearson's Testimony

Commissioner Pearson of the City Planning and Zoning Commission opined that the notice to the City and the public regarding the Application and the Draft Permit was not legally sufficient or timely. He stated that notice was sent to the wrong address for the City and that the Application materials were not available where Applicant represented they would be available.[119] He acknowledged, however, that he did not personally visit the location identified in the notice to determine whether the Application was available there.[120]

Commissioner Pearson testified that public notice is not merely a procedural formality, but the foundation of informed and accountable decision-making. He stated that a transparent process helps ensure permit conditions are tailored to local conditions and that potential impacts are meaningfully considered. In his opinion, proceeding without full compliance with the notice requirements undermines public trust and risks creating an incomplete record.[121]

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[118] Prot. Ex. RJE (Elackatt Dir.) at 204.

[119] Prot. Ex. RP (Pearson Dir.) at 208.

[120] Tr. at 101-02.

[121] Prot. Ex. RP (Pearson Dir.) at 208.

Commissioner Pearson acknowledged that the City Ordinance No. O-95-29 provided that, for purposes related to that ordinance, notice to the City shall be sent to the City Manager at P.O. Box 666, Missouri City, Texas 77459.[122] He also acknowledged that a City "Curb Numbering Application and Permit" listed P.O. Box 666 as one of the City's mailing addresses and was a document the City used to conduct business with its constituents.[123]

Commissioner Pearson testified that, to his knowledge, materials sent to the Planning and Zoning Commission would be sent to 1522 Texas Parkway because public notices are displayed and public hearings are held at that location.[124] He also stated that, to his knowledge, the City's website would identify 1522 Texas Parkway because it is the physical location of the City Hall.[125] Finally, Commissioner Pearson acknowledged that the ordinance, the Application, and correspondence shown to him listed P.O. Box 666 as a valid address for communicating with the City.[126]

c) Ms. Allison Sullivan's Testimony

Ms. Sullivan testified that Applicant represented throughout the permitting process that the Application was available for public review at the Chamber of Commerce. She stated that, despite those representations, the Application was not

[122] Tr. at 102-04; Appl. Ex. 401.

[123] Tr. at 105-07; Appl. Ex. 402.

[124] Tr. at 111-12.

[125] Tr. at 113-14.

[126] Tr. at 114-15.

available there. She believed that the complete Application, as well as related materials such as revisions, the ED's preliminary decision, and the Draft Permit, preliminary determination summary and air analysis were required to remain available in-county until the Commission acts on the matter or referred it to SOAH. She asserted that the Application was not available on the online platform.[127]

Ms. Sullivan testified that she raised concerns with both Applicant and TCEQ regarding the availability of the Application but, in her view, those concerns were not addressed until the Revised Notice of Hearing was issued in December 2025. She stated that she later went to a local library to review the Application after it was made available there. She testified that library staff initially informed her that the records could be viewed but not copied. According to Ms. Sullivan, after she referred staff to the Revised Notice of Hearing, she was permitted to review the materials and take photographs. She further testified that the documents appeared to have been delivered to the library without instructions regarding public access. Based on these circumstances, Ms. Sullivan believed that Applicant did not satisfy the applicable public notice requirements.[128]

d) Protestants' Argument

Protestants argue that Applicant failed to substantially comply with the applicable notice requirements because notice was sent to P.O. Box 666 rather than 1522 Texas Parkway. Protestants contend that P.O. Box 666 is designated for the

[127] Prot. Ex. ATS (Allison Sullivan Dir.) at 1-2.

[128] Prot. Ex. ATS (Allison Sullivan Dir.) at 2.

Department of Public Works and does not satisfy the requirement that public notice be provided to the City's elected officials. Protestants further argue that Applicant previously communicated with the Planning and Zoning Commission at 1522 Texas Parkway when seeking a zoning change and, therefore, should have used that address for notice.[129]

According to Protestants, the City's documents relied upon by Applicant do not establish that P.O. Box 666 was the proper address for notice of the Application. They stated that Ordinance No. O-95-29 is more than 30 years old, was specific to GTE Southwest Incorporated, and does not apply to the Application. Protestants further argue that the remaining documents referencing P.O. Box 666 relate to unrelated City business and, therefore, do not demonstrate that P.O. Box 666 was the appropriate mailing address for the Application.[130]

Protestants also argue that the Chamber of Commerce did not satisfy the requirement for a public location where the Application could be viewed. They contend that Applicant established only that the Application was sent to the Chamber of Commerce through a Federal Express receipt and photographs of a binder and did not establish that the Chamber of Commerce confirmed receipt of the Application. Protestants further assert that the Application was not available through TCEQ's online portal during the public comment period, impairing public participation.[131]

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[129] Prot. Closing Br. at 7-8; Prot. Reply Br. at 5.

[130] Prot. Closing Br. at 8-9; Prot. Reply Br. at 5.

[131] Prot. Closing Br. at 9; Prot. Reply Br. at 5.

According to Protestants, these alleged notice deficiencies delayed the City's participation in the permitting process, interrupted the public participation process, and deprived the public of a meaningful opportunity to review the Application and participate during the public comment period. Protestants, therefore, argue that the procedural deficiencies justify denial of the Application.[132]

2. Applicant's Position and Evidence

a) Ms. de la Garza's Testimony

Ms. de la Garza testified that TCEQ rules establish several notice requirements designed to inform both government officials and the public about pending applications.[133] She explained that the applicant must place a copy of the application at a building that is open to the public and located in the county where the proposed plant will be located, and that the address of that location must be included in the published newspaper notice. She opined that Applicant complied with all applicable public notice requirements for the Application.[134]

Regarding the mailed notice, Ms. de la Garza testified that the applicant is not responsible for mailing notice to elected state and local officials. Rather, TCEQ mails the notice, using information provided by the applicant in its permit application. She testified that the applicant's responsibility is to provide the

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[132] Prot. Closing Br. at 8-10; Prot. Reply Br. at 5.

[133] Although the parties' testimony and briefing also addressed compliance with the newspaper publication and sign posting requirements, those aspects of the public notice process were not materially disputed. Accordingly, they are not discussed further in this PFD.

[134] Appl. Ex. 200 (de la Garza Dir.) at 21, 25.

information necessary for TCEQ to prepare the mailed notice. Specifically, the application must include the name and district number of the State Senator and State Representative for the district in which the proposed plant will be located, the name and mailing address of the county judge for the county where the plant is proposed, and, if the plant is located within a municipality or its extraterritorial jurisdiction, the name and mailing address of the municipality's presiding officer, such as the mayor.[135]

Ms. de la Garza testified that Applicant included all required mailed notice information in the Application, which listed the applicable State Senator, State Representative, Fort Bend County Judge, and the Mayor of the City, together with their mailing addresses. The Application listed the mailing address for the Mayor of the City as 1522 Texas Parkway.[136]

Ms. de la Garza testified that she proposed placing a copy of the Application at the Chamber of Commerce because her consulting firm had previously used the Chamber of Commerce as the public review location for applications submitted on behalf of other clients. She explained that the Chamber of Commerce offices are open to the public and located in Fort Bend County, where the Plant would be located. She stated that she prepared a binder containing the Application and arranged for it to be delivered by Federal Express to the Chamber of Commerce on June 20, 2024. Ms. de la Garza testified that the Federal Express delivery

[135] Appl. Ex. 200 (de la Garza Dir.) at 21.

[136] Appl. Ex. 200 (de la Garza Dir.) at 22; Admin. Record Tab D at VCH7.

confirmation demonstrated that the Application had been successfully delivered to the Chamber of Commerce.[137]

Ms. de la Garza further testified that she later received a letter from the Chamber of Commerce indicating that it believed it had not received proper notice regarding posting the Application. In response, she telephoned the Chamber of Commerce and she confirmed the chamber would retain the Application for the public notice period.[138] Ms. de la Garza stated that, in addition to the Federal Express delivery receipt, she relied on Mr. Hohnbaum's later visit to the Chamber of Commerce, during which he observed that the Application binder remained at the Chamber, as evidence that the Application had been available there for public review.[139]

According to Ms. de la Garza, the published newspaper notice identified the Chamber of Commerce as the location where the public could review a copy of the Application and included the Chamber's address. She testified that the newspaper notice also identified her as the contact person and provided her telephone number for anyone seeking additional information about the Application. She stated that no

[137] Appl. Ex. 200 (de la Garza Dir.) at 24; Appl. Exs. 207, 208; Tr. at 180-81.

[138] Tr. at 181. According to Ms. de la Garza, the conversation occurred on the same day the newspaper notice was published. She did not any written documentation of her telephone conversation with the Chamber of Commerce. Tr. at 181-82.

[139] Tr. at 182-83. Mr. Hohnbaum testified that he visited the Chamber of Commerce on October 7, 2025, where a Chamber employee located the Application binder delivered by Ms. de la Garza, and he confirmed that it remained available for public review. Appl. Ex. 100 (Hohnbaum Dir.) at 5-7; Appl. Exs. 101, 102.

one ever contacted her to report that the Application was unavailable for review at the Chamber of Commerce.[140]

Finally, Ms. de la Garza testified that Applicant submitted a Public Notice Verification Form to TCEQ verifying that it had timely published the newspaper notice, properly posted the required signs, and made the Application available for public review at the Chamber of Commerce.[141] She stated that the Application generated 237 public comments, five requests for a public meeting, 20 requests for a contested case hearing, a public meeting, and ultimately the contested case hearing before SOAH.[142]

b) Applicant's Argument

Applicant argues that it fully complied with all applicable public notice requirements governing the Application.[143]

Applicant argues that the Protestants' arguments improperly focus on the address to which TCEQ ultimately mailed the notice rather than on whether the Applicant complied with its own responsibilities. Applicant contends that it satisfied its obligations regarding mailed notice because TCEQ's rules assign responsibility for mailing the required notices to the TCEQ Chief Clerk, not the applicant.

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[140] Appl. Ex. 200 (de la Garza Dir.) at 25.

[141] Appl. Ex. 200 (de la Garza Dir.) at 25; Admin. Record Tab B at 67-73.

[142] Appl. Ex. 200 (de la Garza Dir.) at 25-26; Appl. Exs. 209, 210. The City's comment filed by E. Joyce Iyamu is at Appl. Ex. 210 at 4.

[143] Appl. Closing Br. at 27; Appl. Reply Br. at 9.

According to Applicant, its obligation was limited to providing the names and mailing information for the required elected officials in the Application, which it contends it did. Applicant further argues that the ED's Response to Public Comment confirms that TCEQ mailed the required notices to the appropriate elected officials, including the Mayor of the City.[144]

Applicant disputes the Protestants' contention that the mailed notice was deficient because it was allegedly sent to an incorrect address. Applicant argues that no party demonstrated that Applicant provided an incorrect mailing address in the Application. Applicant further contends that, even assuming the notice was mailed to P.O. Box 666 rather than the mayor's street address, the record demonstrates that both addresses were recognized by the City for official communications. Accordingly, Applicant argues that the mailed notice complied with the applicable notice requirements.[145]

Applicant also argues that the Protestants failed to demonstrate that the City suffered any prejudice as a result of the alleged mailing deficiency. Applicant contends that, regardless of which mailing address was used, the City had actual notice of the Application and actively participated throughout the permitting process. Applicant notes that the City submitted public comments on the Application through its City Attorney and received a response from the ED.

[144] Appl. Closing Br. at 27-30; Appl. Reply Br. at 5-6; Admin. Record Tab C at 56.

[145] Appl. Closing Br. at 30-31; Appl. Reply Br. at 5-7.

Applicant, therefore, argues that the record demonstrates the City was aware of the Application and fully participated in the permitting process.[146]

Regarding the public availability of the Application, Applicant argues that it satisfied its obligation by making the Application available at the Chamber of Commerce, a public location within Fort Bend County identified in the published notice. Applicant contends that it arranged for delivery of the Application to the Chamber, confirmed that it had been delivered, and later verified that the Application remained available for public review. Applicant notes that no complaints were received from members of the public that the Application was unavailable.[147]

According to Applicant, Protestants failed to present credible evidence demonstrating that the Application was not available for public review during the notice period. Applicant asserts that the testimony of Protestants' witnesses was speculative because neither witness personally visited the Chamber of Commerce to determine whether the Application was available.[148]

[146] Appl. Reply Br. at 7-8.

[147] Appl. Closing Br. at 28, 33-34; Appl. Reply Br. at 5, 8-9.

[148] Appl. Closing Br. at 34-35; Appl. Reply Br. at 9.

3. ED's Position and Evidence

a) Mr. Hilla's Testimony

Mr. Hilla opined that the Applicant complied with the applicable public notice requirements.[149] Mr. Hilla confirmed that Applicant represented that the Application was available at the Chamber of Commerce throughout the public comment period. According to Mr. Hilla, copies of the Application were also available at the TCEQ Houston Regional Office, the TCEQ Central Office, and through TCEQ's online air permitting webpage during the public comment period.[150]

b) ED's Argument

The ED argues that Applicant substantially complied with all applicable public notice requirements governing the Draft Permit.[151]

With respect to public access to the Application, the ED argues that Applicant satisfied its obligation to make the Application available for public review by providing copies of the application at the Chamber of Commerce, the TCEQ Houston Regional Office, and the TCEQ Central Office. The ED contends that these locations satisfied the applicable public access requirements.[152]

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[149] ED Ex. 1 (Hilla Dir.) at 14.

[150] ED Ex. 1 (Hilla Dir.) at 14.

[151] ED Closing Br. at 9, 13

[152] ED Closing Br. at 11-12.

Regarding notice to public officials, the ED argues that the required mailed notice was sent to the appropriate elected officials, including the Mayor of the City. In response to the Protestants' contention that the notice should have been mailed to the mayor's street address rather than P.O. Box 666, the ED argues that the record demonstrates P.O. Box 666 has been used by the City as an official mailing address for many years and continued to appear on official City documents. Accordingly, the ED contends that the mailed notice complied with the applicable notice requirements.[153]

4. OPIC's Position

OPIC argues that the record demonstrates Applicant substantially complied with the applicable public notice requirements. OPIC contends that the evidence establishes that P.O. Box 666 was an accepted means of communication with the City. OPIC further argues that the Application was made available for public review in Fort Bend County as required. OPIC also asserts that the record reflects meaningful public participation throughout the permitting process, including the submission of numerous public comments, requests for a contested case hearing, a public meeting, and participation by the City through the submission of comments and other involvement in the permitting process.[154]

[153] ED Closing Br. at 12-13.

[154] OPIC Closing Br. at 14.

5. ALJs' Analysis

Here, the inquiry is whether Applicant substantially satisfied the notice obligations imposed by the applicable statutes and rules such that the purposes of those requirements were fulfilled.

The main dispute concerns the mailed notice provided to the City. Protestants' arguments focus primarily on the address to which the notice was ultimately mailed. However, the applicable statutes and rules distinguish between Applicant's obligation to provide the information necessary for mailed notice and the Commission's responsibility for issuing that notice. The relevant question, therefore, is whether Applicant fulfilled the obligations imposed upon it by the governing statutes and rules. The evidence shows that Applicant identified the required elected officials and provided the required mailing information in the Application, including listing the Mayor of the City at 1522 Texas Parkway. Protestants do not dispute that Applicant supplied that information.

Moreover, the record does not establish that the use of P.O. Box 666 rendered the mailed notice legally deficient. At most, the evidence reflects a disagreement regarding which of two City mailing addresses should have been used. The evidence shows that P.O. Box 666 was identified in the City's own ordinance and appeared on other official City documents as a mailing address used for City business. The ALJs are not persuaded that the address issue demonstrates a failure to substantially comply with the applicable notice requirements.

The ALJs are likewise not persuaded that Applicant failed to satisfy the requirement to make the Application available for public review. Although Protestants contend that the Application was unavailable at the Chamber of Commerce during the public comment period, the greater weight of the evidence demonstrates that Applicant delivered the Application to the Chamber of Commerce, confirmed that it remained available for public review, and also made copies available at the TCEQ Houston Regional Office and TCEQ Central Office. Accordingly, Protestants did not establish that Applicant failed to satisfy the applicable public-access requirements.

The record's evidence of participation is consistent with, and reinforces, the conclusions above. The City had actual notice of the Application, submitted comments, received a response from the ED, and actively participated throughout the permitting process, indicating that the alleged mailing deficiency did not impair the City's opportunity to participate. The broader record reflects the same pattern: numerous public comments, requests for a public meeting, requests for a contested case hearing, a public meeting, and ultimately this contested case proceeding, all consistent with a notice process that fulfilled its intended purpose and did not deprive affected persons of a meaningful opportunity to participate.

Considering the record as a whole, the ALJs conclude that Applicant demonstrated substantial compliance with the applicable notice requirements. Accordingly, Applicant met its burden of proof on Referred Issue F.

IV. TRANSCRIPT COSTS

Under 30 Texas Administrative Code section 80.23(d), transcript costs may be allocated among the parties, excluding the ED and OPIC. In determining allocation, the ALJs must consider: which party requested the transcript; the financial ability of each party to pay; the extent of each party's participation in the hearing; the relative benefits each party gained from having the transcript; the budgetary constraints of any state or federal agency participating in the proceeding; and any other factor relevant to a just and reasonable assessment of costs.[155]

Applicant requests that a portion of the transcript costs be assessed against Protestants. Applicant arranged for preparation of the transcript, elected to obtain it on an expedited basis, and incurred transcript expenses totaling $4,144.25. Applicant further contends that Protestants actively participated in the hearing and derived benefits from use of the transcript in preparing post-hearing filings.[156]

The ALJs ordered the parties to arrange for a court reporting service to transcribe the hearing. Both Applicant and Protestants participated extensively in the hearing and both benefited from access to the transcript. Neither party's use of the transcript was so disproportionate as to warrant allocating costs based solely on transcript usage. Applicant is the party seeking the regulatory benefit at issue and stands to receive the direct benefit associated with permit issuance. Applicant was represented by counsel, retained expert witnesses, presented extensive technical

[155] 30 Tex. Admin. Code § 80.23(d).

[156] Appl. Closing Br. at 35-36, Attachment A.

evidence in support of the Application, and devoted substantial resources to obtaining the requested authorization. Protestants, by contrast, participated primarily as private citizens opposing the requested authorization.

Although the record contains limited evidence regarding the parties' financial resources, Protestants represented that they incurred substantial expenses in connection with their participation in this proceeding, including expert-witness fees, travel expenses, and lost work time, and asserted that assessment of transcript costs would impose a financial hardship.[157] By contrast, Applicant elected to obtain an expedited transcript and incurred those costs in furtherance of its effort to obtain the requested authorization. The ALJs do not find that Protestants' participation in the proceeding, standing alone, warrants shifting transcript costs to them.

Considering the nature of the proceeding, the parties' relative interests in the outcome, the resources devoted to the litigation, and the factors identified in section 80.23(d), the ALJs conclude that it is just and reasonable to allocate 100 percent of the transcript costs to Applicant. Applicant is the party seeking the requested authorization and the direct regulatory benefit associated with permit issuance. Under the circumstances presented here, shifting transcript costs to Protestants would not be equitable.

[157] Prot. Reply Br. at 21-22.

V. CONCLUSION

The ALJs conclude that Applicant met its burden of proving that the Draft Permit complies with all applicable legal and technical requirements. Accordingly, the ALJs recommend that the Commission adopt the attached proposed order containing Findings of Fact and Conclusions of Law and issue the Draft Permit to Applicant.

Signed July 10, 2026

Katerina DeAngelo
Administrative Law Judge

Monica Garza
Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING THE APPLICATION BY VERTI-CRETE HOUSTON, LLC FOR AIR QUALITY STANDARD PERMIT REGISTRATION NO. 176289 SOAH DOCKET NO. 582-26-06288 TCEQ DOCKET NO. 2025-1292-AIR

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Applicant, Verti-Crete Houston, LLC for the Air Quality Standard Permit Registration No. 176289 to construct and operate a concrete batch plant in Missouri City, Fort Bend County, Texas. A Proposal for Decision (PFD) was presented by Administrative Law Judges (ALJs) Katerina DeAngelo and Monica Garza with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the matter on April 14, 2026.

After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

Application and Draft Permit

1. On May 8, 2024, Applicant submitted an application (Application) to the Commission for authorization under TCEQ's Air Quality Standard Permit for Concrete Batch Plants (Standard Permit) to construct and operate a permanent specialty concrete batch plant (Plant).

2. The ED reviewed the Application and determined that it met the applicable requirements of the Standard Permit.

3. The ED issued the Draft Permit and preliminary decision recommending approval of the Application and issuing Proposed Standard Permit Registration No. 176289 (Draft Permit).

4. The Plant will use a central mixer to manufacture precast concrete products, including concrete panels, walls, and columns, rather than producing ready-mix concrete for delivery by mixer trucks.

5. The Plant is authorized for a maximum production rate of 20 cubic yards per hour (yd^3/hr) and 40,000 cubic yards per year (yd^3/yr) and will operate no more than eight hours per day, five days per week, and 2,000 hours annually.

6. Washed sand and gravel (aggregate) will be delivered by truck and stockpiled on-site, and the stockpiles will be watered as needed to control dust emissions.

7. During production, a front-end loader will transfer aggregate to the hopper, from which it will be conveyed to the elevated aggregate bin and then into the weigh batcher before entering the central mixer. Cement and fly ash will be pneumatically conveyed from delivery tankers into three silos and then transferred, through enclosed equipment, to the cement weigh batcher before being introduced into the central mixer.

8. Emission sources associated with the Plant include fugitive dust emissions from stockpiles and material handling operations, and particulate matter (PM) emissions from the cement silos, weigh batcher/hopper, and central mixer.

9. The Plant will not rely on diesel-powered engines to power its operations, and its principal emission sources will be located approximately 137 feet from the nearest property line.

10. The Draft Permit authorizes emissions of PM, including PM with diameters of ten micrometers or less (PM_{10}), PM with diameters of 2.5 micrometers or less ($PM_{2.5}$), aggregate dust, cement dust, and road dust.

11. Applicant voluntarily prepared emissions calculations using TCEQ's Concrete Batch Plant Emission Rate Calculation Workbook to estimate emissions from the proposed Plant.

12. Applicant's emissions calculations estimate that loading fugitives are the largest source of particulate emissions, at 0.087 tons per year of PM and 0.024 tons per year of PM_{10}, followed by stockpiles, at 0.036 tons per year of PM, 0.018 tons per year of PM_{10}, and 0.003 tons per year of $PM_{2.5}$. All remaining emission points are estimated to emit less than 0.001 ton per year of PM.

Notice and Jurisdiction

13. On May 9, 2024, the TCEQ Executive Director (ED) mailed the notification titled Registration Under an Air Quality Standard Permit for Concrete Batch Plants to Senator Borris L. Miles, Representative Ron Reynolds, Missouri City Mayor Robin Elackatt, and Fort Bend County Judge KP George.

14. On June 5, 2024, TCEQ's Chief Clerk issued a Consolidated Notice of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, which reflected the ED's determination that the Application met all requirements and recommended issuance of the Draft Permit, and provided a copy of the Standard Permit.

15. On June 5, 2024, TCEQ's Chief Clerk directed Applicant to publish newspaper notice of the Draft Permit, post signs regarding the Application, and make a copy of the Application available for review and copying at a public place in the county in which the Plant is located.

16. Applicant published the Consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in English on June 19, 2024, in the *Fort Bend Star* and in Spanish on June 23, 2024, in *La Prensa de Houston*.

17. Applicant posted required signs, including alternative language signs, at the site of the Plant. The signs were posted by the date that the newspaper notice of the Application was published and remained in place through December 2024.

18. Applicant delivered a copy of the Application to the Fort Bend Chamber of Commerce on June 20, 2024.

19. On October 7, 2025, Applicant's representative visited the Fort Bend Chamber of Commerce and observed that the Application binder delivered by Applicant remained at that location.

20. TCEQ held a public meeting regarding the Application in Missouri City, on December 12, 2024, and the public comment period on the Application closed on December 16, 2024.

21. On May 8, 2025, the ED issued its Response to Public Comment and stated that the ED had made a decision that the Application meets the requirements of applicable law.

22. The Commission considered requests for hearing and requests for reconsideration at its October 8, 2025 agenda meeting.

23. The Commission determined that Allison Sullivan, Karen Sullivan, Michael Sullivan qualified as affected persons and referred the Application to SOAH for a contested case hearing on the following issues:

A) Whether the Draft Permit will be protective of the health and safety of the requesters and their families;

B) Whether the Draft Permit will negatively affect air quality;

C) Whether the Draft Permit will be protective of the environment, including vegetation;

D) Whether the Plant will adversely affect the use and enjoyment of the requesters' property;

E) Whether the Draft Permit will be protective against dust emissions generated from the proposed plant, including nuisance dust emissions; and

F) Whether Applicant substantially complied with applicable notice requirements.

Procedural History

24. At the SOAH preliminary hearing on January 12, 2026, the Administrative Record (Tabs A-E) was admitted into evidence; jurisdiction was noted; and Allison Sullivan, Karen Sullivan, Michael Sullivan, Guangpei Anderson, Tynisha Wright, Xavier Wright, Stephanie Bush, Andre Bush, Janai Buxton, Annette Simmons, Rochelle Emanuel, Ham Garza, and Irene Breeden (collectively, Protestants), Applicant, the ED, the Office of Public Interest Counsel (OPIC) were named as parties to the proceeding.

25. ALJs DeAngelo and Garza convened a hybrid hearing on the merits in Austin, Texas on April 14, 2026.

26. Applicant was represented by attorneys Whitney Swift and Kevin Collins. The ED was represented by attorneys Katelyn Ding and Contessa Gay. OPIC was represented by attorney Pranjal Mehta. Protestants Xavier Wright and Allison Sullivan appeared on behalf of Protestants.

27. The record closed on May 14, 2026, following the filing of reply briefs.

Standard Permit and Protectiveness Review

28. The Commission adopted the Air Quality Standard Permit for Concrete Batch Plants (Standard Permit) to authorize qualifying concrete batch plants that satisfy specified operational limitations, emissions controls, setback distances, and recordkeeping requirements.

29. Under the Standard Permit, specialty concrete batch plants are limited to a maximum production rate of 60 yd^3/hr and 262,800 yd^3/yr.

30. For specialty concrete batch plants, the Standard Permit's regulated emission sources include stockpiles, material handling operations, the batch mixer feed exhaust, and fabric or cartridge filter systems.

31. The Standard Permit establishes minimum setback distances and limits the location of stationary equipment, stockpiles, and vehicles used in plant operations. For a specialty plant producing up to 30 yd^3/hr, the batch mixer feed exhaust must be located at least 100 feet from any property line, and stationary equipment, stockpiles, and plant vehicles generally may not be located within 50 feet of a property line, except for incidental traffic and site entrances and exits.

32. Before adopting the 2024 amendments to the Standard Permit, TCEQ conducted an updated protectiveness review and Air Quality Analysis using conservative assumptions regarding emissions, production rates, operating scenarios, meteorological conditions, and facility configurations to evaluate whether facilities operating in compliance with the Standard Permit would be protective of human health and the environment.

33. TCEQ's protectiveness review evaluated emissions from material handling operations, truck loading, stockpiles, cement silos, and internal combustion engines, and assessed carbon monoxide, nitrogen dioxide, sulfur dioxide, PM, PM_{10}, $PM_{2.5}$, nickel particulate, formaldehyde, and crystalline silica.

34. TCEQ compared modeled concentrations from the protectiveness review with applicable National Ambient Air Quality Standards, Effects Screening Levels, and other applicable standards, and concluded that facilities operating in compliance with the Standard Permit would be protective of human health, including sensitive subgroups such as children, elderly persons, and individuals with preexisting health conditions, public welfare, and the environment.

35. TCEQ's protectiveness review considered cumulative impacts from nearby facilities, and the Standard Permit includes site-wide production limits and setback requirements applicable to nearby rock crushers, concrete crushers, and hot-mix asphalt plants.

36. TCEQ concluded that compliance with the Standard Permit's cumulative-impact limitations adequately addresses potential cumulative impacts, and that additional review of off-site sources is not required when evaluating an individual application under the Standard Permit.

37. The Standard Permit requires measures to minimize fugitive dust and nuisance emissions, including use of washed sand and aggregate, enclosed operations, fabric or cartridge filter systems, water or chemical dust suppression, setback requirements, and best management practices for roads, stockpiles, and dust-control equipment. Operators are also required to comply with 30 Texas Administrative Code section 101.4.

38. TCEQ concluded that facilities operating in compliance with the Standard Permit are not expected to create nuisance conditions or significant fugitive dust emissions beyond the property line.

39. The ED's review of a Standard Permit application consists of an administrative review, evaluating application completeness, company information, mailing addresses, fees, and compliance status, and a technical review, evaluating compliance with Standard Permit requirements, including required forms, checklists, process descriptions, maps, plot plans, compliance history, and public notice compliance.

Referred Issues A through D

40. TCEQ's protectiveness review used background air-quality monitoring data from a Harris County monitor.

41. The Harris County monitor used in TCEQ's protectiveness review is located more than five miles from the Plant and in a different county than the Plant.

42. A nearby existing concrete batch plant was not specifically evaluated in connection with the Plant's emissions during the protectiveness review or Application review process.

43. The original Application incorrectly stated that no school was located within 3,000 feet of the Plant.

44. During technical review, TCEQ requested clarification regarding certain maps and diagrams that did not print correctly in the original Application submission. Revised maps, updated plot plans, and a clearer process-flow diagram were subsequently provided, after which TCEQ requested no further information.

45. TCEQ's technical review of the Application concluded that the Application satisfied the requirements of the Standard Permit.

46. Protestants expressed concerns regarding potential impacts to human health and safety; $PM_{2.5}$, silica, cumulative emissions, and other air contaminants; impacts on children, elderly individuals, and persons with respiratory conditions; local air quality and the cumulative effects of nearby emission sources; impacts to gardens, landscaping, trees, and vegetation; and impacts on outdoor activities and the use and enjoyment of their properties.

47. The Plant falls within the category of facilities evaluated by TCEQ during its protectiveness review.

48. The Plant will operate at lower production rates, fewer operating hours, and fewer operating days than the specialty concrete batch plants evaluated during TCEQ's protectiveness review.

49. The Plant will include setbacks and operational limitations that satisfy Standard Permit requirements.

Referred Issue E

50. The Plant will be subject to the operational limitations, emissions controls, monitoring, maintenance, setback requirements, and visible-emissions limitations contained in the Standard Permit.

51. Dust emissions from the stockpiles will be controlled through water application as needed, and emissions from the silos, weigh batcher, and mixer will be controlled through cartridge filter systems.

52. The Plant will utilize three-sided stockpile enclosures, an eight-foot perimeter wall, and fabric filters with a manufacturer's guaranteed control efficiency of 99.99 percent.

53. The existing dust conditions described by Protestants arise from activities currently occurring on the property and are not operations authorized by the Draft Permit.

Referred Issue F

54. Applicant identified the required elected officials and provided the required mailing information in the Application, including listing the Mayor of Missouri City at 1522 Texas Parkway.

55. TCEQ, not Applicant, was responsible for mailing notice to the required elected officials.

56. Post Office (P.O.) Box 666 was identified in a City ordinance and appeared on other official City documents as a mailing address used for City business.

57. Applicant identified the Fort Bend Chamber of Commerce as the public location where the Application would be available for review and copying.

58. The Fort Bend Chamber of Commerce is located in Fort Bend County.

59. Applicant arranged for the Application to be delivered to the Fort Bend Chamber of Commerce and later verified that the Application binder remained at that location.

60. Copies of the Application were also available at the TCEQ Houston Regional Office and the TCEQ Central Office.

61. On August 2, 2024, Applicant submitted a CBP Standard Permit Public Notice Verification Form to TCEQ verifying that required signs were posted in accordance with the regulations and instructions of TCEQ.

62. The City of Missouri City had actual notice of the Application, submitted comments and received a response from the ED.

63. The permitting process generated numerous public comments, requests for a public meeting, requests for a contested case hearing, a public meeting, and this contested case proceeding.

Transcript Costs

64. The ALJs directed the parties to arrange for preparation of a hearing transcript.

65. Applicant arranged for preparation of the transcript and incurred transcript costs.

66. Applicant and Protestants were the primary participants in the contested case hearing.

67. Both Applicant and Protestants utilized the transcript in post-hearing briefing.

68. No party submitted evidence documenting financial ability or inability to pay transcript costs. Protestants asserted in briefing that participation in the proceeding imposed financial burdens, including expert-witness expenses, travel expenses, and lost work time.

69. Applicant seeks the direct regulatory benefit associated with issuance of the requested authorization.

70. A just and reasonable allocation of transcript costs is to assess 100 percent of transcript costs to Applicant.

II. CONCLUSIONS OF LAW

1. TCEQ has jurisdiction over the emission of air contaminants and authority to issue a permit under Texas Health and Safety Code sections 382.011 and .0518.

2. The Application was referred to SOAH under Texas Water Code section 5.556.

3. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by TCEQ under Texas Government Code section 2003.047.

4. The filing of the Administrative Record established a prima facie demonstration that: (1) the Draft Permit meets all state and federal legal and technical requirements; and (2) the permit, if issued consistent with the Draft Permit, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code §§ 80.17(c)(1).

5. A party may rebut the prima facie demonstration by presenting evidence that: (1) relates to an issue directly referred; and (2) demonstrates that one or more provisions in the draft permit violates a specifically applicable state or federal requirement. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2).

6. If a party rebuts the prima facie demonstration, the Applicant and the ED may present additional evidence to support the Draft Permit. Tex. Gov't Code § 2003.047(i-3); 30 Tex. Admin. Code §§ 80.17(c)(3).

7. Applicant retains the burden of proof on the issues regarding sufficiency of the Application and compliance with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).

8. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

The Texas Clean Air Act (Act) and TCEQ Rules

9. The Act prohibits the emission of air contaminants without authorization from TCEQ. Tex. Health & Safety Code § 382.0518(a).

10. The Commission may issue a standard permit for categories of similar facilities if the Commission determines that: (1) the standard permit is enforceable; (2) compliance with the standard permit can be adequately monitored; and (3) facilities authorized under the standard permit will utilize control technology at least as effective as that required under section 382.0518(b) of the Act. Tex. Health & Safety Code § 382.05195(a); 30 Tex. Admin. Code § 116.602(a).

11. To obtain authorization under a standard permit, an applicant must demonstrate compliance with the applicable requirements and conditions of the standard permit. 30 Tex. Admin. Code §§ 116.110(a)(2)(A), .615.

12. Upon issuance of the authorization, the representations made in the application become binding and enforceable permit conditions. 30 Tex. Admin. Code § 116.615(2).

13. An applicant seeking authorization to construct a permanent concrete batch plant under the Standard Permit must comply with the notice and public hearing requirements established by the Act and the Commission's implementing rules. *See* Tex. Health & Safety Code §§ 382.05199, .0516; 30 Tex. Admin. Code ch. 39.

14. The applicant must publish notice of the application in accordance with the statutory deadlines and in the manner prescribed by the Commission's rules. The published notice must include the information required by statute, including a description of the proposed plant, contact information for the ED and the applicant, the location where the application may be reviewed, and information regarding the public comment process and public hearing. Tex. Health & Safety Code § 382.05199(b)-(d).

15. The Commission is responsible for providing mailed notice of the application to the state senator and state representative representing the area where the proposed facility will be located. For applications involving a proposed concrete batch plant, the Commission must also provide notice to the county judge of the county where the facility is proposed to be located and, if applicable, to the presiding officer of the municipality in which the facility will be located. Tex. Health & Safety Code § 382.0516.

16. The applicant is responsible for providing the information necessary for the Commission to issue the required mailed notices, publish newspaper notice, post signs at the proposed site, and make a copy of the application available for public review and copying at a public place in the county where the proposed facility will be located. 30 Tex. Admin. Code §§ 39.405(g), .413, .602, .603, .604, .605.

17. No person may discharge air contaminants "in such concentration and of such duration" that they may adversely affect human health, welfare, vegetation, animal life, or property, or interfere with the normal use and enjoyment of property. 30 Tex. Admin. Code § 101.4.

Referred Issues A through D

18. Protestants did not establish that the Draft Permit violates a specifically applicable state or federal requirement.

19. The Plant, if constructed and operated in accordance with the Application and the Draft Permit, will be protective of the health and safety of Protestants and their families.

20. The Plant, if constructed and operated in accordance with the Application and the Draft Permit, will not negatively affect air quality.

21. The Plant, if constructed and operated in accordance with the Application and the Draft Permit, will be protective of the environment, including vegetation.

22. The Plant, if constructed and operated in accordance with the Application and the Draft Permit, will not adversely affect Protestants' use and enjoyment of their property.

23. Applicant proved by a preponderance of the evidence that the Application demonstrates compliance with the applicable requirements of the Standard Permit and that the Draft Permit complies with applicable state and federal legal and technical requirements.

Referred Issue E

24. Protestants did not establish that operation of the proposed Plant in compliance with the Draft Permit will cause nuisance dust emissions or otherwise interfere with the normal use and enjoyment of neighboring property.

25. Applicant proved by a preponderance of the evidence that the Draft Permit will be protective against dust emissions generated by the Plant, including nuisance dust emissions.

26. The Plant, if constructed and operated in accordance with the Application and the Draft Permit, will be protective against dust emissions generated from the proposed plant, including nuisance dust emissions.

Referred Issue F

27. Applicant satisfied its obligation to provide the information necessary for TCEQ to issue mailed notice to the required elected officials.

28. The use of P.O. Box 666 for mailed notice to the City did not establish a failure by Applicant to substantially comply with the applicable notice requirements.

29. Applicant substantially complied with the requirement to make the Application available for public review and copying.

30. Applicant demonstrated substantial compliance with the applicable public notice requirements.

Transcript Costs

31. No transcript costs may be assessed against the ED or OPIC because the TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. 30 Tex. Admin. Code § 80.23(d)(2).

32. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d).

33. Considering the factors in 30 Texas Administrative Code section 80.23(d), Applicant shall bear 100 percent of the reporting and transcription costs.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

34. The application of Verti-Crete Houston, LLC for the Air Quality Standard Permit Registration No. 176289 is granted, and the registration shall be issued in accordance with the Draft Permit.

35. Verti-Crete Houston, LLC must pay all the reporting and transcription costs.

36. The Commission adopts the ED's Response to Public Comment in accordance with 30 Texas Administrative Code section 50.117. If there is any

conflict between the Commission's Order and the ED's Responses to Public Comment, the Commission's Order prevails.

37. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

38. The effective date of this Order is the date the Order is final, as provided by Texas Government Code section 2001.144 and 30 Texas Administrative Code section 80.273.

39. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.

40. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Brooke Paup, Chair for the Commission