

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 24, 2024

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: Richard C. Chism, Director *RCC*
Office of Air

Docket No.: 2024-1168-MIS

Subject: Commission Approval for Proposed Non-Rulemaking
Air Quality Standard Permit for Temporary Public Works Projects
Rule Project No. 2024-018-OTH-NR

Background and reason(s) for the proposed non-rule standard permit:

Section 3 of Senate Bill (SB) 1397, 88th Legislative Session, amended Chapter 382 of the Texas Health and Safety Code (THSC) to require the Texas Commission on Environmental Quality (TCEQ or commission) to issue an air quality standard permit for temporary concrete plants that perform wet batching, dry batching, or central mixing to support public works projects. The proposed Temporary Public Works Standard Permit (TPWSP) is intended to meet this legislative and statutory requirement for TCEQ to issue a standard permit authorizing facilities meeting the criteria specified in THSC, §382.051985, Standard Permit for Certain Temporary Concrete Plants for Public Works.

This non-rule air quality standard permit is proposed under the authority of THSC, §382.05195, Standard Permit; THSC, §382.051985, Standard Permit for Certain Temporary Concrete Plants for Public Works; 30 Texas Administrative Code Chapter 116, Subchapter F, Standard Permits; and Texas Government Code, Chapter 2001, Subchapter B.

Scope of the proposed standard permit:

A.) Summary of what the proposed permit would do:

The proposed TPWSP will implement SB 1397 and THSC, §382.051985 by creating a new, non-rule standard permit for concrete batch plant facilities associated with temporary public works projects. The standard permit will contain conditions to satisfy the statutory criteria established in THSC, §382.051985 and additional conditions to protect human health and the environment and ensure the enforceability of the standard permit.

B.) Scope required by federal regulations or state statutes:

As required by THSC, §382.051985, the new standard permit will provide for the authorization of temporary concrete plants that perform wet batching, dry batching, or central mixing to support a public works project. The proposed standard permit includes conditions to ensure compliance with the criteria specified in THSC, §382.051985. Specifically, these criteria stipulate that a plant operating under the new standard permit must be located in or contiguous to the right-of-way of the public works project; may occupy a designated site for not more than 180 consecutive days or to supply material for a single project; and may not support a project that is not related to the public works project. The proposed standard permit also contains conditions to ensure that the applicable statutory requirements of THSC, §382.05195 are met, including but not limited to enforceability of the standard permit, monitoring of compliance, and use of appropriate emission control technology.

Re: Docket No. 2024-1168-MIS

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.

Statutory authority:

The amendments to the standard permit would be proposed under THSC, Texas Clean Air Act:

- §382.011, General Powers and Duties;
- §382.023, Orders;
- §382.051, Permitting Authority of the Commission; Rules;
- §382.0513, Permit Conditions;
- §382.05195, Standard Permit; and
- §382.051985, Standard Permit for Certain Temporary Concrete Plants for Public Works.

Effect on the:

A.) Regulated community:

The proposed TPWSP is not expected to have a major impact on the regulated community. Currently, concrete batch plants supporting public works projects may be authorized by the existing non-rule Air Quality Standard Permit for Concrete Batch Plants, or by case-by-case Chapter 116 permits. If the proposed standard permit is adopted by the commission, the regulated community would have a new option to authorize these types of facilities. The new standard permit will contain requirements that are more focused and relevant for facilities supporting public works.

B.) Public:

The proposed TPWSP would have no significant effect on the public. Concrete batch plants supporting public works projects are currently authorized by the existing Air Quality Standard Permit for Concrete Batch Plants, and the proposed standard permit will include generally similar control requirements and supporting conditions. As already established by statute, concrete batch plants that support public works projects are exempt from public notice and hearing requirements, and will remain so under the proposed standard permit. The proposed standard permit is protective of human health and the environment.

C.) Agency programs:

No significant fiscal implications are anticipated for the agency or the state. The issuance of the new standard permit may require preparation of updated or new guidance, workbooks, or applicable checklists.

Stakeholder meetings:

No stakeholder meetings are planned. The proposed standard permit will undergo the required 30-day public comment period, and a public meeting will be held. Notice of the draft standard permit will be published in the *Texas Register*, the commission's publicly accessible electronic media, and in the newspapers of the largest general circulation in the following metropolitan areas: Austin, Dallas, San Antonio, and Houston.

Public Involvement Plan:

In addition to the statutory public notice requirements, TCEQ will develop a public involvement plan to encourage public participation. A plain language summary will be provided.

Alternative Language Requirements:

Notice of the proposed standard permit will be published in both English and Spanish in the Austin, Dallas, San Antonio, and Houston areas. If requested, interpreters will be made available at

Re: Docket No. 2024-1168-MIS

the public meeting scheduled for December 6, 2024. A plain language summary will be provided in Spanish and if a need is identified, other documents may be translated into alternative languages.

Potential controversial concerns and legislative interest:

There has been significant interest in standard permits for concrete batch plants from elected officials, local governments, industry, advocacy groups, and citizens of the state.

Would this non-rulemaking action affect any current policies or require development of new policies?

If issued, the new TPWSP may require minor revisions to internal policies, guidance, and procedures.

What are the consequences if this proposed standard permit revision does not go forward? Are there alternatives to non-rulemaking?

The issuance of a standard permit for temporary public works projects is a requirement of THSC, §382.051985. If a standard permit for these types of facilities is not issued, the commission could be considered out of compliance with the statute.

Key points in the proposed standard permit schedule:

Anticipated *Texas Register* publication date: November 1, 2024

Anticipated public meeting date: December 6, 2024

Anticipated public comment period: November 1, 2024, through December 6, 2024

Anticipated adoption date: May 28, 2025

Agency contacts:

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Attachments:

None.

cc: Chief Clerk, 2 copies
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