

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** June 30, 2023

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Interim Executive Director *KK*

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

**Docket No.:** 2022-1252-RUL

**Subject:** Commission Withdrawal of Proposed Rulemaking Chapter 116, Control of Air Pollution by Permits for New Construction or Modification Concrete Batch Plant Standard Permit Distance Limitations and Public Notice Rule  
Project No. 2022-034-116-AI

### **Background and reason(s) for the Rulemaking Withdrawal:**

The Texas Commission on Environmental Quality (TCEQ or commission) is seeking to withdraw a proposed amendment to Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. The proposed amendment to §116.615(2) would have added language under a new paragraph (2)(B) to require that, for any requested on-site movement of a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants, the owner or operator shall submit a new or amended registration and fee and comply with the public notice requirements, including the opportunity to request a contested case hearing, unless the new location is greater than 440 yards from any property line.

The executive director has elected to cancel this rulemaking project to ensure any proposed rule language remains consistent with existing statute under Texas Health and Safety Code (THSC) §382.058(c) and further evaluate options for addressing this potential issue that were not included for consideration in the proposed rule.

### **Scope of the rulemaking:**

#### **A.) Summary of what the Rulemaking Withdrawal will do:**

If approved by the Commission, the previously proposed amendment relating to §116.615(2) would be withdrawn and no further action would be taken on this rulemaking item.

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

There are no required federal regulations or state statutes associated with this rulemaking withdrawal. The withdrawal is intended to ensure that the intent of state statutes and rules governing affected person status and public notice for concrete batch plants is preserved.

#### **C.) Additional staff recommendations that are not required by federal rule or state statute:**

None.

### **Statutory authority:**

The rulemaking will be adopted under THSC:

- §382.011, General Powers and Duties;
- §382.023, Orders;
- §382.051, Permitting Authority of the Commission; Rules;
- §382.0513, Permit Conditions; and
- §382.05195, Standard Permit.

**Effect on the:**

**A.) Regulated community:**

There is no anticipated effect on the regulated community as the withdrawal of the project will maintain existing regulatory requirements and permitting processes.

**B.) Public:**

There is no anticipated effect on the public as the withdrawal of the project will maintain existing regulatory requirements and permitting processes.

**C.) Agency programs:**

The withdrawal of the rule change is not expected to have a significant effect on agency programs as existing regulatory requirements and permitting processes will remain in effect.

**Stakeholder meetings:**

No stakeholder meetings were held for this rulemaking; however, a rule public hearing was held during the comment period in Austin on April 6, 2023. Notice of the proposed rules was 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, and Houston.

TCEQ received three comments during the comment period, all expressing concern that the proposed rule was not consistent with THSC §382.058(c) as a means for measuring the distance to determine whether a person may be an affected person. No comments were received in support of the proposed rule change.

**Public Involvement Plan**

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

**Alternative Language Requirements**

A plain language summary and hearing notice was provided in Spanish. Notice of the proposed rulemaking was published in English and Spanish in the Austin, Dallas, and Houston areas. An interpreter was also available at the public hearing.

**Significant changes from proposal:**

There are no changes as the project is being withdraw from consideration.

**Potential controversial concerns and legislative interest:**

There has been significant interest in concrete batch plant facilities from elected officials, local governments, industry, advocacy groups, and citizens of the state.

**Will the withdrawal of this rulemaking affect any current policies or require development of new policies?**

No.

**What are the consequences if this rulemaking withdrawal does not go forward? Are there alternatives to withdrawing?**

If the Commission does not approve this withdrawal, the proposed rulemaking could either: (1) continue to adoption in its current form; or (2) have no action taken. If the proposed amendment is adopted in its current form, it would be inconsistent with current statute under THSC §382.058(c). If no action is taken by September 10, 2023, the rulemaking would not meet the six-month *Texas Register* filing deadline.

**Key points in the proposal rulemaking schedule:**

***Texas Register* proposal publication date:** March 10, 2023

**Anticipated Rulemaking Withdrawal Agenda date:** July 19, 2023

**Six-month *Texas Register* filing deadline:** September 10, 2023

**Agency contacts:**

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**Attachments:**

None.

cc: Chief Clerk, 2 copies  
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