

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 3, 2023

Thru: Laurie Gharis, Chief Clerk
Erin E. Chancellor, Interim Executive Director

From: Richard C. Chism, Director
Office of Air

Docket No.: 2022-1252-RUL

Subject: Commission Approval for 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:

The Texas Commission on Environmental Quality (TCEQ or commission) is seeking to amend Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to ensure that owners or operators of concrete batch plants authorized under TCEQ's Air Quality Standard Permit for Concrete Batch Plants comply with certain public notice and hearing requirements if they propose to move the registered concrete batch plant to a new location on the site. 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.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The TCEQ proposes to amend §116.615(2) by adding 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 existing language and remaining paragraphs under §116.615(2) would be re-lettered or re-numbered as needed for administrative consistency.

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

The proposed amendment is not explicitly required by federal regulations or state statutes but 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:

TCEQ proposes the amendments under Texas Health and Safety Code:

- §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.

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Effect on the:

A.) Regulated community:

The anticipated effect on the regulated community is expected to be minor, as the situation the proposed rulemaking is intended to address is not common. However, in a limited number of cases, the proposed rule could result in a contested case hearing being granted where it would not have been under the existing rules. This could result in a longer permitting time and additional expenses for the applicant.

B.) Public:

The proposed rule would ensure that persons who would be affected by the relocation of a concrete batch plant have an opportunity to comment and request a contested case hearing.

C.) Agency programs:

The proposed rule change is not expected to have a significant effect on agency programs. Some revisions to internal and external guidance may be needed.

Stakeholder meetings:

No stakeholder meetings are planned for this rulemaking. The proposed rules will undergo the required 30-day public comment period and a public hearing will be held. Notice of the proposed rules 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, 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

A plain language summary and hearing notice will be provided in Spanish and if a need is identified, other documents may be translated into alternative languages. Notice of the proposed rulemaking will be published in English and Spanish in the Austin, Dallas, and Houston areas. It is anticipated that interpreters will be available at the public hearing.

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.

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

No.

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

If the rulemaking does not go forward the owner or operator of a concrete batch plant will have the flexibility to move the plant to a location that may be within 440 yards of a permanent residence without going through the public notice and hearing requirement process.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: February 22, 2023

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Anticipated *Texas Register* publication date: March 10, 2023
Anticipated public hearing date: April 06, 2023
Anticipated public comment period: March 10, 2023 through April 10, 2023
Anticipated adoption date: August 16, 2023

Agency contacts:

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Attachments:

None.

cc: Chief Clerk, 2 copies
Executive Director's Office
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