

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 19, 2025

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

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

Docket No.: 2025-1152-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 116, Control of Air Pollution by Permits for New Construction or
Modification
Senate Bills (SBs) 763 and SB 2351: Update to Protectiveness Review and
Amendment Requirements for Concrete Batch Plants
Rule Project No. 2025-032-116-AI

Background and reason(s) for the rulemaking:

Legislation enacted through SB 763 and SB 2351, 89th Regular Texas Legislature, 2025, have amended Texas Health and Safety Code (THSC), §382.05195 and §382.05198, to enhance oversight and environmental protections associated with concrete batch plants (CBPs) in Texas.

SB 763, effective September 1, 2025, amends THSC, §382.05195 requiring the Texas Commission on Environmental Quality (TCEQ or commission) to conduct a protectiveness review at least once every eight years for standard permits authorizing permanent concrete batch plants using wet batching, dry batching, or central mixing processes. If the Air Quality Standard Permit for Concrete Batch Plants (CBP SP) is amended following such a review, TCEQ must provide a reasonable timeframe for existing facilities operating under the previous permit conditions to comply with the amended standard permit.

SB 2351, effective May 24, 2025, further amends THSC, §382.05195 and §382.05198, addressing both the CBP SP and the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls (CBPEC SP). These amendments authorize that the commission, upon amending a standard permit, may require facility operators that have not yet begun construction—and have requested an extension to start of construction—to update their construction plans to meet the revised permit requirements.

Summary of Rulemaking Need:

These statutory changes necessitate rulemaking by TCEQ to implement new requirements for the required periodic protectiveness reviews, compliance timelines for amended standard permits, and submittal of construction plan updates under revised standard permit conditions. Although TCEQ currently performs protectiveness reviews as required for all standard permits prior to issuance or amendment, SB 763 requires the commission to conduct a protectiveness review for the CBP SP on a recurring cycle of at least once every eight years. To implement these changes, TCEQ is required to adopt rules by **March 1, 2026**. Additionally, while SB 2351 does not require the commission to adopt new or amended rules, the commission is conducting rulemaking to implement the requirements of the bill.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The proposed rulemaking establishes new requirements under 30 Texas Administrative Code (TAC) §116.605. Specifically, 30 TAC §116.605(d)(4) would require a protectiveness review of the CBP SP at least once every eight years to ensure continued environmental and public health safeguards.

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Additionally, new provisions under 30 TAC §116.605(f)(1) and (2) would apply when the commission issues amendments to the CBP SP or the CBPEC SP. These provisions would establish criteria where the commission may require operators of permanent facilities—who have not begun construction under a prior permit and have requested an extension—to update their construction plans to meet the new standards of the amended standard permit. These changes would not apply to temporary or specialty plants authorized under the CBP SP. The remaining paragraphs under §116.605 will be re-lettered or re-numbered as needed for administrative consistency.

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

The rulemaking is not explicitly required by federal regulations but is required to comply with amended §382.05195 and §382.05198 in the THCS.

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

None.

Statutory authority:

TCEQ proposes the amendments under Texas Water Code:

- §5.013, General Jurisdiction of Commission;
- §5.102, General Powers;
- §5.103, Rules;
- §5.105, General Policy.

Texas Health and Safety Code:

- §382.002, Policy and Purpose
- §382.011, General Powers and Duties;
- §382.012, State Air Control Plan;
- §382.017, Rules;
- §382.023, Orders;
- §382.051, Permitting Authority of the Commission; Rules; and
- §382.05195, Standard Permit
- §382.05198, Standard Permit for Certain Concrete Plants.

Effect on the:

A.) Regulated community:

Authorized facilities operating under a CBP SP may be impacted by amendments to the standard permit resulting from updated protectiveness reviews. Potential impacts may include modifying operations or physical components to comply with the amended standard permit.

Facilities authorized to begin new construction under a CBP SP or CBPEC SP may be impacted when the standard permit is amended if they have not begun construction at the time the amended standard permit is adopted. Potential impacts include submitting updated facility plans for construction authorization in compliance with the amended standard permit.

B.) Public:

The rule would ensure that the potential impacts to the public from existing or planned concrete plants are evaluated based on current protectiveness data and that authorized facilities are constructed and operating under the current standard permit.

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C.) Agency programs:

The rule change is not expected to have a significant effect on agency programs. There may be an increase in permit reviews associated with amendments to standard permits, but these can be anticipated and conducted in alignment with planned activities. Revisions to internal and external guidance may be needed.

Stakeholder meetings

No stakeholder meetings are planned for this rulemaking. The 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 also be provided.

Alternative Language Requirements

The agenda item announcement for proposal and adoption at the commissioners' Agenda Meeting will be provided in English and Spanish. A plain language summary, the Executive 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. The public will have an opportunity to request additional communication accommodations, including live translation services, for 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?

The commission could decide not to adopt the rules; however, if the rulemaking is not completed, TCEQ will not meet the legislative requirement for SB 763.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: October 8, 2025

Anticipated *Texas Register* publication date: October 24, 2025

Anticipated public hearing date: November 20, 2025

Anticipated public comment period: October 24, 2025 - November 25, 2025

Anticipated adoption date: February 25, 2026

Agency contacts:

David Munzenmaier, Rule Project Manager, Air Permits Division, (512) 239-6092

Elizabeth Black, Staff Attorney, Environmental Law Division, (512) 239-5423

Amanda Kraynok, Staff Attorney, Environmental Law Division, (512) 239-0633

Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-2678

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Attachments:

SB 763
SB 2351
Plain Language Summary
Plain Language Summary (Spanish)

cc: Chief Clerk, 2 copies
Executive Director's Office
Jessie Powell
Partick Lopez
Krista Kyle
Aubrey Pawelka Carlton
Office of General Counsel
David Munzenmaier
Amy Browning
Elizabeth Black
Amanda Kraynok
Gwen Ricco