WESTWARD
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April 10, 2023

Ms. Gwen Ricco
Office of Legal Services, MC-205
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Rule Project No. **2022-034-116-AI**

Dear Ms. Ricco:

Thank you for the opportunity to provide comments to the Texas Commission on Environmental Quality (TCEQ) on the proposed rulemaking for the amendment of 30 Texas Administrative Code (TAC) §116.615(2) regarding the on-site movement of concrete batch plants authorized by the Air Quality Standard Permit for Concrete Batch Plants. Westward Environmental, Inc. (WESTWARD) endorses the comments submitted by the Associated General Contractors of Texas (AGC) and by the Texas Aggregates and Concrete Association (TACA) and respectfully submits the following.

WESTWARD is commenting to oppose this amendment. As it is currently worded, this amendment will require applicants to comply with public notice requirements if they propose to reposition the plant within the existing site such that its location is within 440 yards of any **property line**. According to the TCEQ's background summary, the intent is to prevent an applicant from initially representing the plant will be located greater than 440 yards from a **potentially affected person** but then subsequently moving the plant to be located within 440 yards of a potentially affected person. However, the proposed language does not reflect this intent. Thus, we propose that the proposed amendment be re-phrased as follows:

> §116.615(2)(B): For any request to move a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants to a new location on the authorized site, the owner or operator shall submit an amended registration and fee and comply with the public notice and hearing requirements in the standard permit, unless the new location is more than 440 yards from any *permanent residences that were in existence on the date that the original registration was filed*.

Further, we disagree with TCEQ's assessment that the anticipated effect on the regulated community will be "minor." TCEQ states that the problem the proposed rulemaking is intended to address is "not common." We agree that applicants are not, commonly or otherwise, circumventing public notice and

hearing requirements. But the intent of the rulemaking versus its impact is significant due to the currently proposed wording. The overwhelming majority of concrete batch plants, if not all except those few that might be co-located well within a larger operation such as a quarry site, are not located farther than 440 yards from **property lines**. Thus, any change to the location of *any* part of *any* concrete batch plant that will not be located exactly where it was initially proposed in an original application will require applicants to re-publish public notice, *every time*. Historically, and now currently in accordance with 30 TAC §116.615(2)(C), TCEQ has allowed applicants to make certain changes in representations to Standard Permits (that still meet the requirements of the corresponding Standard Permit and that do not cause any increases in emissions nor changes in the method or control of emissions) by notifying the TCEQ in writing after-the-fact without any new registration, fee, public notice, or approval. This will be a significant change to that process.

Currently, Texas Health & Safety Code §382.05195(k) requires anyone applying specifically for a Standard Permit for Concrete Batch Plants to submit a plot plan that clearly shows a distance scale, a north arrow, all property lines, all emission points, buildings, tanks, and process vessels and other process equipment on-site, along with at least two benchmark locations. Additionally, TCEQ's associated PI-1S-CBP Workbook (Form TCEQ-20871) required for all registrations for Standard Permits for Concrete Bach Plants requires the plot plan to "clearly mark all distances to other property or structures." For new Standard Permits, applicants must accurately predict where exactly on-site their future plant will be located. After a Standard Permit is issued, there is no mechanism to "truth" the as-built plant as TCEQ does not follow dual permitting offered by other states who separate Construction Permits from Operating Permits for minor sources. Often, site conditions, grading, topography, utilities, etc that are encountered during construction will necessitate the plant location on-site to be modified, whether it be by a few inches or several feet or yards. Under the currently proposed wording, if a plant is moving farther away on-site from any potentially affected persons, then the proposed public notice requirements are triggered even though not intended. Additionally, surrounding land use may change over time for which operators may choose to reposition any emission point (such as stockpiles etc) farther away from the adjoining land use, but are then subject to the proposed public notice requirements. Furthermore, Standard Permits are required to be renewed every ten years, and it may be discovered that a ground hopper, overhead bin, conveyor, silo, pig, dust collector, or stockpile is not located exactly where originally planned to be located in the original application ten years prior. If the applicant is now subject to public notice and hearing, what will be the process to ensure the applicant does not lose the ability to continue operation if a contested case hearing is requested? Especially if requested by someone who has moved into the area recently and would not have been considered an affected party originally.

Rather than working to accurately determine whether there will, in fact, be a newly affected person within 440 yards who was not previously affected (as was the intent of this rulemaking), TCEQ staff is creating an undue process and inflicting unnecessary burden upon all applicants. As previously stated above, applicants are required to submit plot plans which identify surrounding property and structures, for which TCEQ staff can use this information to determine if there will be any newly affected person. Instead, the site for concrete batch plants must now be greater than 126 acres in order to meet a distance of 440 yards (or 1,320 feet) from any property line as referenced in this rulemaking. In fact, this distance of 1,320 feet is greater than 26 times farther than the actual statutory property line distance requirement of 50 feet for all stationary equipment and stockpiles, per the Standard Permit for Concrete Batch Plants. These plants are typically located on sites that are less than three to five acres, much smaller than 126 acres. Therefore,

movement of *any* part of *any* concrete batch plant that will not be located exactly where it was initially proposed in an original application will require applicants to re-publish public notice, which was not the intent of this rulemaking or statute.

We appreciate the hard work and commitment of TCEQ staff to address and resolve the issues as noted herein.

Thank you again for the opportunity to provide comments. If you have any questions or need any additional information, please contact me by email (mfitts@westwardenv.com) or by phone (830-249-8284).

Respectfully Submitted,
WESTWARD ENVIRONMENTAL, INC.

Melissa Fitts
Senior Vice President