April 10, 2023

Re: TCEQ Concrete Batch Rulemaking

Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
PO Box 13087
Austin, TX 78711-3087

Via Electronic Filing at https://tceq.commentinput.com/comment/search.

RE: TCEQ Proposed Rulemaking for Project No. 2022-034-116-AI

Dear Sir or Madam:

The Texas Aggregates and Concrete Association ("TACA") respectfully submits the following comments in your consideration of the changes to the Concrete Batch Plant Standard Air Quality Permit in TCEQ's proposed rulemaking project, No. 2022-034-116-AI.

TACA is a statewide trade organization comprised of over 150 producer companies that represent approximately 80% of the aggregates, 75% of the concrete, and 100% of the cement produced in Texas today. TACA also represents over 100 allied companies that provide services to the aggregates, concrete, and cement industries. In Texas alone, the aggregates, concrete, cement, and related construction industries contribute more than 75,000 jobs to the state economy. TACA's members prepare and supply aggregates, concrete, and other materials for developers, builders and landowners who, in turn, use these materials to develop and construct commercial and residential property. TACA members routinely obtain operational permits from TCEQ and rely on TCEQ's permitting procedures, rules, regulations, and orders. Accordingly, TACA's members are likely to be affected this rulemaking.

Summary of Project No. 2022-034-116-AI: The proposed rulemaking project would require concrete batch plants authorized under TCEQ's "Air Quality Standard Permit for Concrete Batch Plants" to comply with certain public notice and hearing requirements if the batch plant is moved to a new location on the registered site, and this location is less than 440 yards from any ***property line***. Specifically, this rulemaking project would require the owner or operator of such batch plant to submit a new or amended registration application, an additional registration fee and verify that it complied with the public notice requirements, including the opportunity to subject the application to requests for contested case hearing.

TACA's Position: The "440 yard measurement to property line" is not consistent with State Law.

To permit a concrete batch plant in Texas, a standard air permit is required (See Tex. Health & Safety Code (THSC) § 382.058; *see also* THSC § 382.05199(a)(1), and THSC § 382.05195). To obtain this permit, a combination of public notice(s) are mandated by statute (See THSC § 382.056). According to state law, "only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing." (See THSC § 382.058(c). Therefore, the proposed rulemaking is not legally supported by current statutes, and it should be revised.

1. **TCEQ's proposed rulemaking uses the concept of "property line" as a means for measuring the distance to ensure a legal hearing request is filed.**

   According to the plain language of the statute defining a legally sufficient hearing requestor, the term "property line" is irrelevant. In fact, the term "property line" is not used at all in THSC § 382.058(c), which is the organic statute affording a right to a contested case hearing. Moreover, the correct measurement is not concerned with the distance from the proposed plant to a property line, and it is legally required to measure from the plant to the "permanent residence" of the hearing requestor.

2. **TCEQ proposed rulemaking does not define the term "property line" to mean the "property line of a permanent residence."**

   As drafted, the proposed rulemaking would subject a proposed plant relocation to a contested case hearing if it was located to *any* property line that is presumably less than 440 yards. This rulemaking ignores the plain statutory language in THSC § 382.058, which requires that the only legally sufficient basis for a valid hearing requestor is that he or she must actually reside in a "permanent residence" less than 440 yards from the proposed plant. In short, the rulemaking would create a hearing request opportunity –anytime a plant is moved within 440 yards of a public road, walking path, or other structure not ever used by any person as a permanent resident.

3. **TCEQ's proposed rulemaking would create more contested case hearings, which are expensive, time-consuming and an inefficient use of State resources.**

   Because it is not consistent with State law, which restricts hearing request opportunities to those "affected persons," this rulemaking will create new categories of hearing requestors

-e.g., property owners, neighbors, politicians, activists from in-state and out-of-state, and other entities. TACA believes the administrative permitting process, including the contested case hearing process, should be equitable. In short, the process should balance the State's interests in administering effective, streamlined permitting processes along with the rights of persons truly impacted by a new plant, namely a real person who lives in his or her home withing 440 yards of the proposed plant.

TACA's Solution: The "440 yard measurement to property line" should be revised to be a "440 yard measurement to proposed residence."

TACA asks the TCEQ to revise the proposed rule language in 30 TAC § 116.615(2)(B) as follows:

> (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 site, the owner or operator shall submit a new or 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 ~~property line~~ existing permanent residence.

Respectfully submitted,

RIGBY SLACK, PLLC

By: /s/ *Chris Pepper*
Christopher B. Pepper
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