



AGC of TEXAS

Highway, Heavy, Utilities & Industrial Branch
JENNIFER WOODARD, Chief Executive Officer



June 14, 2023

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

RE: Non-Rule Project Number 2022-033-OTH-NR

Dear Ms. Ricco:

The Associated General Contractors of Texas (AGC of Texas) Highway, Heavy, Utilities, and Industrial Branch is an organization comprised of nearly 700 member firms across Texas, and one of more than 32,000 networking firms comprising the Associated General Contractors of America. AGC of Texas' members build and maintain state, city, and county roads and bridges, as well as civil projects such as airports, bridges, dams, and municipal utilities.

AGC of Texas' members are regulated by the Texas Commission on Environmental Quality (TCEQ) across all environmental media. Their operations can include both permanent and temporary concrete batch plants, including temporary plants that are located in or contiguous to the right-of-way of a public works project. Thank you for the opportunity to provide the following comments on the proposed amendments to the Non-Rule Air Quality Standard Permit for Concrete Batch Plants (CBP SP).

General Comments

AGC of Texas supports TCEQ conducting a new air quality analysis (AQA) of the CBP SP. AGC of Texas recommended that TCEQ perform a new AQA both in its comments to the agency on the revision to the CBP SP in 2021 and in subsequent communications with TCEQ's management and the individual commissioners. A new AQA will increase the confidence of the general public that the permit is protective of human health and the environment. A revised standard permit will also give operators regulatory certainty and an appropriate authorization mechanism for these minor sources of emissions.

Concrete batch plants, particularly permanent operations located in certain counties, can be controversial. The general public and their elected representatives often express concerns about adverse impacts on human health and the environment, particularly from plants sites that are in close proximity to one another. However, the actual impacts from concrete batch plants can be misunderstood or overstated.

TCEQ, therefore, should take this opportunity to try to allay public concerns and establish a clear and holistic record through this administrative action. To this end, we make the following comments:

- AGC of Texas urges TCEQ to provide more context and information related to concrete batch plants and their relative risk to human health and the environment.
- We request that TCEQ develop the Response to Comments, final Technical Support Document, and final Standard Permit using all of its available resources and technical disciplines (e.g., its Toxicology and Air Quality Planning Programs).
- AGC of Texas respectfully comments that TCEQ should clearly explain to the public how it monitors ambient air quality, and what the ambient data indicates about overall air quality in the State of Texas, particularly with regard to the current National Ambient Air Quality Standard for particulate matter. In this, TCEQ should include discussion of the data from the two specially placed PM 2.5 monitors in the TCEQ San Antonio Region.
- The public has expressed concern about crystalline silica emissions from these operations and the potential that they can cause silicosis.
 - TCEQ should include relevant information from its extensive discussion of crystalline silica and particulate matter health risks that were part of the response to comment on the amendment to the concrete batch plant standard permit adopted in September 2021.
 - TCEQ should summarize the findings described in its report on crystalline silica issued in December 2020, including its agreement that silicosis is a rare, well-documented occupational disease.
 - TCEQ is currently conducting an ambient monitoring study of crystalline silica and should discuss the results of the Interim Study issued on March 15, 2023, that show that all 24-hour measurements at the selected monitoring sites are well below the health-based 24-hour air monitoring comparison value (AMCV) for crystalline silica.
 - Finally, AGC of Texas requests that TCEQ include information on the development of the AMCV for crystalline silica, the Effects Screening Level (ESL) for crystalline silica, and the overall processes for developing AMCVs and ESLs.
- The primary pollutant of concern with concrete batch plants is fine particulate, or PM 2.5, mainly in the form of dust emissions. There are, however, many different forms of PM 2.5, and the potential health impacts from concrete batch plants may be conflated with the potential impacts from other regulated sources and types of PM 2.5. AGC of Texas requests that TCEQ address these important differences in emissions and discuss the relative risks of concrete batch plants compared to other sources of PM 2.5 commonly permitted by TCEQ. More broadly, TCEQ should discuss concrete batch plants' relative contributions to overall emissions and sources regulated by the TCEQ.
- TCEQ should explain the hierarchy of air permitting, including the purpose of standard permits, how they are developed, and how they are distinct from individual permits. Further, TCEQ should explain that concrete batch plants that are eligible for the standard permit are minor State-regulated sources under New Source Review permitting.
- TCEQ should explain that the AQA is a conservative modeling exercise, and that the air quality monitors around the state actually show ambient air quality meets the health based National Ambient Air Quality Standard for PM 2.5.
- A common misconception is that TCEQ does not take "cumulative impacts" into account in air permitting. AGC of Texas requests that TCEQ clearly describe how it considered "cumulative impacts" in the development of the standard permit, as well as provide information on how TCEQ determines that all air permits are protective at the property line.

Air Quality Standard Permit for Certain Temporary Concrete Plants for Public Works

The Legislature recently enacted Senate Bill 1397, which includes a requirement that TCEQ develop a standard permit for temporary concrete batch plants that support public works projects and are located in or contiguous to the right-of-way of that public works project. Given the intent of the Legislature, the new AQA, and the fact that the duly noticed proposed standard permit already covers these types of operations, we request that TCEQ implement the new statute through this administrative action by issuing the separate standard permit contemplated by the new statute at the same time it issues the revised CBP SP.

That said, it is important to consider that not all concrete batch plants that support public works projects can operate in or contiguous to the right-of-way of public works projects, so provisions related to those operations should be retained the CBP SP or established in their own standard permit for temporary concrete batch plants, similar to the structure for hot mix asphalt plants and crushers.

Existing CBP Compliance

TCEQ should provide existing CBPs with sufficient time to come into compliance with the amendments to the standard permit. Texas Health and Safety Code, §382.05195(f) and 30 Texas Administrative Code §116.601(e) provide TCEQ the ability to establish a reasonable deadline for compliance. AGC of Texas recommends a minimum of 12 months to allow existing facilities to come into compliance.

AGC of Texas is, however, concerned that there could still be operations that will not be able to achieve compliance with the proposed new controls as presently configured. Such operations may be operating in full compliance with regulations and have no actual impact whatsoever on an ambient air quality monitor. We understand that such operations could obtain an individual permit in lieu of a standard permit to continue to operate. Nonetheless, AGC of Texas urges TCEQ to consider providing for an alternative means of compliance whereby an applicant can make a demonstration using actual ambient air quality monitoring data or modeling showing that it will not have an adverse impact on air quality.

Fiscal Impacts

TCEQ should include information on the potential costs of compliance with the proposed new control requirements.

Issues Raised at TCEQ Comment Hearing and Informational Meeting

A number of comments were made at the formal public hearing and informational meeting held on May 18, 2023 and May 22, 2023, respectively. AGC submits the following comments on select issues raised at those meetings.

- AGC of Texas would oppose any provision that would require operators to post operating records online for compliance monitoring or any other purpose. TCEQ has adequate tools through its complaint, investigation, and enforcement processes to address noncompliance. Further, no other industrial sector is required to post such information, and this sector, a minor source of emissions, should not be singled out for such a novel requirement.
- One commenter represented that stockpiles are a significant source of emissions. TCEQ staff later acknowledged that they are not significant sources. AGC of Texas understands that stockpiles do not drive the impacts review in the AQA. TCEQ should clearly explain that stockpiles are not major sources of emissions under the standard permit.
- AGC of Texas requests that TCEQ obtain from Harris County information on common issues they have allegedly identified at concrete batch plants. We would support TCEQ developing

compliance assistance tools describing common violations and how they can be avoided. AGC of Texas also agrees with comments made at the informational meeting that TCEQ should conduct outreach and education on the new requirements of the CBP SP.

Proposed Amendments to the Air Quality Standard Permit for CPBs

Sections (1) and (2) Applicability and Definitions, respectively. AGC of Texas supports the proposed clarifying amendments and the addition of a definition of “setback distance.”

Section (3) Administrative Requirements. AGC of Texas supports the conforming amendments referring to the CBP workbook and in Subsection (J)(iii), concerning the demonstration of compliance with production limitations. Finally, AGC of Texas believes that monthly silo warning device or shut-off system tests is appropriate and supports the proposed change to Subsection (J)(viii).

Section (4) Public Notice. AGC of Texas submitted detailed comments on TCEQ’s separate rulemaking to require certain CBP SP applications to go back through public notice (Rule Project No. 2022-034-116-AI). TCEQ’s own data shows that the problem the proposed rule intended to address is uncommon. We recommend that instead of through rulemaking, TCEQ include provisions that address this rare occurrence in the standard permit.

Section (5) General Requirements. AGC of Texas supports the proposed changes in Section (5) of the permit.

Section (6) Engines. AGC of Texas understands that the proposed NO_x limit in Subsection (6)(E) of the permit is the interim Tier IV Engine Standard. As drafted, we are concerned that the language does not adequately account for smaller engines that may have lower overall emissions. AGC of Texas would like to work with TCEQ on possible alternatives to prescribing a specific grams per horsepower hour limit. Further, due to supply chain issues, the availability of engines that meet the Tier IV standard may be limited. AGC of Texas respectfully recommends that TCEQ phase this requirement in over time, particularly since engines are not a significant source in the AQA.

Section (8) Operational Requirements for Permanent and Temporary Concrete Plants

- AGC of Texas generally supports TCEQ’s approach to develop custom set-back distances for different regions of the state. AGC of Texas also supports the flexibility afforded by proposed Paragraph 8(A)(ii). The controls described in Subsections 8(E) and (F) are technically feasible and provide a protective alternative means of compliance with the proposed set-back requirements.
- AGC of Texas notes that the proposed amendments to the standard permit do not appear to differentiate between “central mix” or “wet batch” plants and other types of plants. Central mix plants have lower emissions than dry mix plants and should be specifically accounted for in the standard permit. Further, since their emissions are lower, current allowable production rates should be maintained. A common portable wet batch plant used by contractors is an Erie Strayer MC-11, which is rated at 330 cy/yds hour, with a batch time of two minutes. On jobs where trucking and placement are unconstrained, such as a greenfield highway project or a mass pour for a bridge pylon, plant production can reach 300 cy/hr. It is also not uncommon for central mix plants to run at 250 to 280 cy/hr.

Further, if TCEQ intends to add an additional table for central mix plants, AGC of Texas also recommends that the current setback of 100 feet for the dust collector exhaust be retained and

applied statewide. Further, shrouds for central mix plants are not necessary since the material handled at the drop point is wet concrete. Shrouds on central mix plants are not required in the current permit.

- AGC of Texas supports proposed Subsection (8)(B) and requests two clarifications. First, AGC requests language that adds temporary concrete batch plants that are located *contiguous to* the right-of-way of a public works project. This would be consistent with how such facilities are described in Texas Health and Safety Code, Chapter 382 and 30 TAC §116.178(b). Second, AGC interprets the intent of the proposed language to also provide that, in addition to the minimum setback requirements, Subsections (8)(E) and (F) also do not apply to temporary concrete batch plants located in or contiguous to the right-of-way of a public works project. AGC of Texas, therefore, proposes the following clarifying changes to Subsection (8)(B) as proposed:
 - (B) Temporary concrete *batch* plants approved to operate in *or contiguous to* the right-of-way of a public works project are exempt from subsections (8)(E) and (F) and the minimum setback requirements.
- AGC of Texas supports the proposed best management practices in Subsection 8(G) but will request one clarification. Truck track-out can be a concern for the general public, and the proposed management practices can minimize dust emissions on adjacent roadways. Each measure, however, may not be feasible or necessary in certain regions of the state. Therefore, AGC of Texas recommends a clarifying change that would allow one or more of the options listed to be used. With this change, subsection (8)(G) could read:
 - (G) For permanent plants, the owner or operator shall prevent tracking of sediment onto adjacent roadways and reduce the generation of dust by one or more of the following:
- As proposed, Subsection (8)(H) appears to increase the buffer for stockpiles and vehicles from the current 50 feet. AGC of Texas recommends that the current language of the standard permit be restored for the following reasons:
 - As drafted, this would render large portions of a property unusable.
 - These requirements could adversely affect current operations as they may not have enough property to relocate stockpiles and/or have to reconfigure their entire site.
 - If an operator is required to bunker stockpiles away from the property line, this could create a significant safety issue for plant personnel.
 - The proposed provision could also require an operator to obtain an individual permit, a significant resource commitment to both the operator and the agency; or shut down.
 - At the May 22, 2023 informational meeting in Houston, TCEQ acknowledged that stockpiles are not a significant source of emissions. Additionally, as noted above, stockpiles do not drive the impacts review. Further, TCEQ has adequate authority to address any nuisance conditions that may arise.

Section (10) Temporary Concrete Plants Relocation Requirements. AGC of Texas understands that these requirements are largely derived from current Subsection (8)(F). The exceptions are the addition of Paragraph 10(B)(vi), concerning a representation of maximum hourly and annual site production; and proposed new Subsection (C), concerning the proper form to be submitted to the appropriate TCEQ

region. AGC of Texas supports this reorganization of the permit and the new provisions. AGC of Texas does request that TCEQ provide more detail on what would be required for the representation of maximum hourly and annual production.

Streamlining Approval Process for Certain Temporary Batch Plants

Additionally, AGC of Texas requests that the approval process under Section (10) for a temporary concrete batch plant proposed to be located in or contiguous to the right-of-way of a public works project be streamlined to the greatest extent possible. For example, the Notice of Intent process under stormwater general permitting is an effective approval mechanism for that type of authorization. Given that a standard permit is similar to a general permit, a similar approach could be appropriate. As an alternative, Section (10) could be amended to add a provision that a relocation of a temporary concrete batch plant under proposed paragraph (10)(A)(i) is considered approved within five business days of submittal if there is no action taken by the appropriate regional office.

Thank you again for the opportunity to provide comments on the proposed amendments to the Air Quality Standard Permit for Concrete Batch Plants. Please do not hesitate to contact me at (512) 478-4691 if you have any questions or require additional information.

Sincerely,



Jennifer Woodard
Chief Executive Officer
AGC of Texas