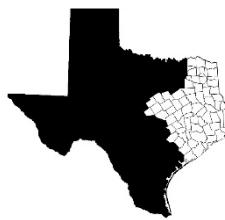


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June 14, 2023

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Re: Non-Rule Project No. 2022-033-OTH-NR; TCEQ's Proposed 2023 Amendment to the Concrete Batch Plant Standard Permit ("CBPSP")

Dear Sirs:

On behalf of its group clients, Commenters Super Neighborhood 48 "Trinity/ Houston Gardens" ("SN48", "Super Neighborhood 48"), Progressive Fifth Ward Community Association ("PFWCA"), and Dyersforest Heights Civic Club ("Dyersforest"), Lone Star Legal Aid ("LSLA") submits these comments to the Texas Commission on Environmental Quality ("TCEQ" or the "Commission") concerning the proposed 2023 amendment to the air quality standard permit for concrete batch plants ("CBPs") in Texas (the "2023 Amendment").

I. INTRODUCTION

LSLA's mission is to protect and advance the civil legal rights of the millions of Texans living in poverty by providing free advocacy, legal representation, and community education that ensures equal access to justice. Our service area encompasses one-third of the state of Texas, including 72 counties in the eastern and Gulf Coast regions of Texas. LSLA's Environmental Justice Team focuses on the right to fair distribution of environmental benefits and burdens and the right to equal protection from environmental hazards on behalf of impacted communities in LSLA's service area,

Serving the East Region of Texas since 1948
Beaumont, Belton, Bryan, Clute, Conroe, Galveston, Houston, Longview, Nacogdoches, Paris, Richmond,
Texarkana, Tyler, Waco

like Northeast Houston. LSLA represents three group clients in Northeast Houston with respect to the 2023 Amendment and submits these comments on their behalf.

A. Super Neighborhood 48 Trinity /Houston Gardens

Super Neighborhood 48 is an unincorporated nonprofit association representing residents of Super Neighborhood 48, a boundary defined by the City of Houston in the Northeast quadrant of the City of Houston, known as Trinity/Houston Gardens. SN48 is a community group that engages citizens and obtains information and resources for the community. SN48's membership includes individuals, civic clubs, and businesses within its boundaries in Trinity/Houston Gardens in Houston and Harris County, Texas.

This super neighborhood currently has one permitted concrete batch plant under the standard permit, Texas Concrete Ready Mix, which used to be permitted as two-collocated CBPs on Homestead Road operated by the same owner:

Table 1: Concrete Batch Plants in Super Neighborhood 48 Affecting Residents

Concrete Batch Plants	Location	CBPSP No.
Texas Concrete Ready Mix CBP 1	6001 Homestead Rd (77028)	CBPSP No. 150603
Texas Concrete Ready Mix	6523 Homestead Rd (77028)	CBPSP No. 136479 (Cancelled) Dated 4/21/2016-4/21/2026

The facility is now just one giant CBP facility on Homestead Road with SN48 homeowners directly behind the CBP and across from it. In addition to Texas Concrete Ready Mix in SN48, SN48 has two more co-located concrete batch plants permitted less than 1 mile from the boundaries of SN48:

Table 2: Concrete Batch Plants Near Super Neighborhood 48 Affecting Residents

Concrete Batch Plant	Location	CBPSP No.
Five Star Ready Mix CBP 1 SN150421	8001 Ley Rd (77028)	CBPSP No. 131665
Five Star Ready Mix CBP 2 SN181220	8001 Ley Rd (77028)	CBPSP No. 131665

In May 2021, TCEQ installed a state-run air monitor at the edge of SN48 to measure certain constituents—like coarse and fine particulate matter.¹ The monitor is located at 7330 ½ N. Wayside Drive, Houston, TX 77028 (“North Wayside Monitor”).² The North Wayside Monitor began measuring PM_{2.5} using Federally Equivalent Methods (“FEM”) beginning on May 4, 2021.³ Since this monitor was installed, the PM_{2.5} readings have consistently exceeded the National

¹ TCEQ Annual Air Monitoring Network Plan (Jul. 1, 2021) at 17.

² *Id.*

³ *Id.*

Ambient Air Quality Standards (“NAAQS”).⁴ According to TCEQ, the readings from the North Wayside Monitor exceed the NAAQS for PM_{2.5}, averaging at 12.5.⁵

The TCEQ identified several industrial users responsible for the problem—including three concrete batch plants in or near SN48.⁶ The following concrete batch plants are located near the North Wayside Monitor:

- Five Star Ready Mix is .37 miles NE of the North Wayside Monitor at 8001 Ley Rd. Houston, TX 77028;
- Texas Concrete Ready Mix is 1.4 Miles SW of the North Wayside Monitor at 6001 Homestead Rd. Houston, TX 77028 (co-located CBPs); and
- The Queen Ready Mix is 1.75 miles SE from the North Wayside Monitor at 8702 Liberty Rd. Houston, TX 77028.

Based on the data from the North Wayside Monitor, TCEQ has begun to identify individual members of industry in hopes of resolving the current NAAQS violations that are significantly burdening SN48’s air quality and throwing the region out of compliance. Over the past year, here are the highest PM_{2.5} readings for this monitor:⁷

- June 16, 2022: 38.8;
- June 13, 2022: 33.9;
- June 12, 2022: 30.9;
- July 17, 2022: 30.7;
- January 1, 2023: 33.7;
- February 27, 2023: 29.0;
- March 15, 2023: 43.8;
- April 14, 2023: 68.0; and
- May 23, 2023: 29.2.

⁴ “2012 PM2.5 NAAQS: Primary Annual Standard: 12.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$); Secondary Annual Standard: 15.0 $\mu\text{g}/\text{m}^3$; Primary and Secondary 24-Hour Standard: 35 $\mu\text{g}/\text{m}^3$; 2012 PM10 NAAQS: Primary and Secondary Standard 15.0 $\mu\text{g}/\text{m}^3$; On December 18, 2020, the United States Environmental Protection Agency (EPA) published a final rule retaining the primary and secondary standards for both PM2.5 and PM10.” TCEQ Presentation to Houston-Galveston Area Council Houston PM Advance Committee, “Houston North Wayside Particulate Matter” (Feb. 7, 2022). (hereinafter, “TCEQ HGAC PM2.5 Presentation”).

⁵ TCEQ Presentation, North Wayside Monitor Update May 2021-January 2022 (Feb. 8, 2022) at 3.

⁶ *Id.* at 13.

⁷ Highest 24-Hour PM-2.5 Concentrations in 2022 as of June 1, 2023, available at: https://www.tceq.texas.gov/cgi-bin/compliance/monops/pm25_24hr_4highest.pl.

This action, however, neither resolves the air quality issue caused by the CBPs in the area or resolves the deficient CBPSP, nor does it slow TCEQ’s issuance of this standard permit to concrete batch plant operators. Because the CBPSP specifically exempts CBPs from emissions limitations and the batch plants cluster in communities of color like SN48, it is significantly deteriorating air quality in these overburdened areas—as evidenced by the NAAQS exceedances at the North Wayside Monitor that demonstrate poor air quality and the potential for negative health impacts on SN48 residents from these CBP facilities. This poor air quality impacts the health of residents, interferes with their quality of life, and potentially poses negative health consequences for sensitive populations.

Because of the impacts these facilities have on its community, SN48 remains particularly committed to commenting on the terms and conditions under which the TCEQ will issue a standard permit for a concrete batch plant.

B. Progressive Fifth Ward Community Association

Progressive Fifth Ward Community Association (“Progressive Fifth Ward”) is an incorporated nonprofit focused on revitalizing the Fifth Ward community in Houston, Texas. Among the various purposes of this group are (1) to promote the civic engagement of the residents by encouraging coordination between residents and local municipal agencies, (2) to encourage improvements in the appearance of public and private properties in the area, and (3) to take concerted action in matters pertaining to the welfare of area residents.

The Fifth Ward community is relatively small, spanning a little less than 5 square miles with predominantly minority low-income residents. CBP Applicant Soto Ready Mix (“Soto”) has faced challenges finding a home in Houston’s minority low-income neighborhoods for years. Originally, Soto Ready Mix sought to open shop in Acres Home, a historically Black community, but after legislators, the Mayor of Houston, and other local advocates intervened, Soto withdrew its application in early 2020 and attempted to move somewhere else.⁸ After the first withdrawal, Soto targeted Houston’s Fifth Ward “subbing one less-protected community for another.”⁹ Once operational, Soto would be the fourth concrete batch plant in the Greater Fifth Ward’s less than five-square-mile footprint.

TCEQ issued a permit to Soto for its proposed Fifth Ward location; however, the plant required a variance from the City of Houston to use a street that dead-ended into its lot. In May 2021, the Houston Planning Commission entertained Soto’s request for a variance, but the residents of Fifth Ward opposed it, and ultimately Soto withdrew its variance request to the City.¹⁰ To date, Soto has not yet built its permitted facility: the lot currently remains vacant. Like Dyersforest, there is uncertainty for this community about the potential for harmful air emissions from another emissions-exempt concrete batch plant in their neighborhood.¹¹

⁸ TCEQ Docket No. 2019-0903-AIR, Order No. 2 Granting Motion to Remand and Dismissing Case (Jan. 22, 2020).

⁹ Emily Foxhall, “Houston’s dangerous concrete plants are mostly in communities of color. Residents are fighting back.” Houston Chronicle. (Apr. 10, 2022).

¹⁰ City of Houston Planning Commission Agenda No. 149 (May 27, 2021).

¹¹ City of Houston Planning Commission Agenda No. 127 (Jun. 10, 2021).

The City of Houston installed a Clarity air monitor to evaluate PM_{2.5}, and this monitor is a short distance from Texcon Ready Mix #2 & #3, a BARC animal shelter, and near a local park, Brewster Park. The highest readings over the past year are well above the NAAQS.

Table 3. PM_{2.5} from Clarity Monitor Near Fifth Ward—3300 Carr St. (77026)¹²

Date	PM _{2.5} (µg/m ³)
03/14/2023 19:00	43.65
12/31/2022 18:00	31.41
06/15/2022 19:00	30.07
12/21/2022 18:00	29.64
07/16/2022 19:00	27.38
02/22/2023 18:00	27.06
03/05/2023 18:00	26.54
06/13/2022 19:00	26.34
12/24/2022 18:00	26.11
06/06/2023 19:00	26.07
12/27/2022 18:00	24.92
06/16/2022 19:00	24.85
02/26/2023 18:00	23.87

The data collected by the City of Houston in the past year consistently exceeds the NAAQS, showing that the current standard permit is not protective of the community where there are two concrete batch plants located adjacent to a residential communities in Fifth Ward. The 2023 Amendment needs to be responsive to these ongoing public health concerns in Fifth Ward.

C. Dyersforest Heights Civic Club

Plaintiff Dyersforest Heights Civic Club (“Dyersforest”) is nonprofit civic club incorporated under the laws of the State of Texas. The group was created to promote civic and social welfare and well-being of the residents and property owners of Dyersforest Heights. Dyersforest Heights includes: Dyersdale, Forest Acres, and Houston Heights subdivisions which are all situated in the historic Dyersdale area in Houston and Harris County, Texas.

Dyersforest residents have a long history of trying to keep their community free from concrete facilities. Beginning in 2016, the community submitted comments and engaged in the public participation process to stop a massive concrete crushing plant, Cherry Crushed Concrete (“Cherry”), from becoming its neighbor. Overriding the community’s vehemently expressed concerns about environmental justice, air quality, and water quality, TCEQ issued the permit to Cherry in 2018 and placed 7,947,739 square foot Concrete Crushing Plant at the Western boundary of this community. As anticipated by Dyersforest, the Cherry facility has not been a good neighbor. It has contaminated water wells, decreased air quality, and caused noticeable differences in the health of the residents— such as asthma, lung issues, heart problems, shortness of breath, etc. The noise from the Cherry facility can be heard throughout the neighborhood both day and night, and

¹² Data available at <https://openmap.clarity.io/>.

residents complain of a persistent, white, dusty film covering their homes due to Cherry's air pollution.

In 2020-2022, another concrete facility, Rhino Ready Mix ("Rhino"), applied for a CBPSP in the Dyersforest community, to be located directly a few hundred feet down the street from the existing Cherry CBP. During the Rhino public participation process, the community amplified and echoed its concerns from 2016-2017 to TCEQ. Luckily by requesting a contested case hearing in 2022, Dyersforest stopped this permit when the applicant failed to appear for the preliminary hearing, requiring TCEQ to void the permit.

II. COMMENTERS' HISTORY OF SUBMISSION OF COMMENTS RELATED TO THE CBPSP

During the agency's amendment process related to the CBPSP in 2021 (the "2021 Amendment"), Commenters all submitted comments to the agency, both at public hearings on the permit and in writing. The TCEQ largely ignored this input and proceeded to adopt a permit without (1) issuing proper notice, (2) conducting a protectiveness review for crystalline silica or particulate matter to confirm the protectiveness of the permit, or (3) considering various potential suggested changes to the permit suggested by SN48 and other community members that would improve the permit's protectiveness and reduce impacts from operations. The TCEQ missed this opportunity despite the outpouring of public sentiment regarding this permit. This failure led Commenters and Harris County to sue the agency for its poorly conducted public notice process and other failures outlined with specificity in their petitions against the agency, which is still on administrative appeal.¹³ Also, the same groups initiated a civil rights complaint with the U.S. Environmental Protection Agency ("EPA") which is currently under investigation.¹⁴

On November 30, 2022, LSLA, on behalf of Commenter SN48, submitted to the agency timely informal comments on the CBPSP, which echoed the concerns of 2021. In the most recent Proposed 2023 Amendment, TCEQ addressed some of these concerns by undertaking a protectiveness review, requiring setbacks, and additional pollution controls. While Commenters are thankful that TCEQ is finally taking steps to make the permit more protective, Commenters still have many fundamental concerns about enforceability, the ability to monitor compliance, timely implementation of these changes, selection of pollution controls, siting issues, and control of nuisance conditions in residential neighborhoods. The 2023 Amendment still provides little accountability for either the permit holder or TCEQ to ensure that the CBPSP is enforceable or fully protective for these at-risk communities.

Commenters are hopeful for the 2023 Amendment that the TCEQ will hear these community concerns, take them seriously, and consider them in responding to comments. Specifically, Commenters remain particularly concerned about the concrete batch plants that are proliferating in low-income communities in Harris County, Texas given the absence of zoning restrictions, which directly impact the TCEQ's assumptions underlying the determination that 2023 Amendment will be sufficiently protective.

¹³ Cause No. D-1-GN-21-0066357; SN48 et al v. TCEQ et al. in the 200th Judicial District Court of Travis County, Texas (the "Lawsuit").

¹⁴ Harris County Complaints to EPA Civil Rights by Commenters and Harris County; Investigation Nos 05RNO-22-R6, 06RNO-22-R6 (the "Civil Rights Complaints").

III. COMMENTS ON THE 2023 AMENDMENT

Commenters offer the following comments on the proposed 2023 Amendment.

A. The current CBPSP is not protective, and TCEQ will not implement the 2023 Amendment expediently enough to ensure its protectiveness.

TCEQ has a statutory and court-recognized duty to protect the public's health and physical property while administering the law. Two different statutes require the TCEQ Commissioners to protect the quality of the environment. First, the Water Code states that "the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state." TEX. WATER CODE ANN. § 5.120. The Health and Safety Code specifically dictates that TCEQ must deny any requested air permit that does not protect the public's health and physical property: "If the commission finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the commission may not grant the permit, permit amendment, or special permit. . . ." TEX. HEALTH & SAFETY CODE ANN. § 382.0518(d). Subsection (b) states that the commission "shall grant" a permit or permit amendment if the commission finds that the facility will use BACT where possible and that there is "no indication that the emissions from the facility will contravene the intent of this chapter, *including protection of the public's health and physical property.*" *Id.* at § 382.0518(b) (emphasis added). Further, TCEQ's own regulations require that an applicant for an air permit must include in its application "information that demonstrates that emissions from the facility" are protective of "public health and welfare." 30 TEX. ADMIN. CODE § 116.111(a)(2).

Texas courts have interpreted the above statutes as requiring TCEQ to protect public health, but the courts have ever held that this protection must be reached through a "protectiveness review." The Austin Court of Appeals stated that a finding that the proposed facilities would not have a "negative impact on the health or property interests of the public in the surrounding area" was "necessary before the TNRCC may issue an air quality permit." *United Copper Indus., Inc. Grissom*, 17 S.W.3d 797, 800 (Tex. App.—Austin 2000, pet. dism'd) (citing to TEX. HEALTH & SAFETY CODE ANN. § 382.0518(b) and 30 TEX. ADMIN. CODE § 116.111(2)(A)(i)). In *Grissom*, the TNRCC reached a finding of protectiveness by reviewing data provided by the applicant but was also found arbitrary in denying a preliminary hearing to an affected person who wanted to present evidence to the contrary. *Grissom*, 17 S.W.3d at 800, 806.

The Austin Court of Appeals also recently held that the statutory requirements for the TCEQ are very general, leaving the Commission with a lot of discretion. *Tex. Comm'n on Env'l. Quality v. Friends of Dry Comal Creek*, No. 03-21-00204-CV, 2022 WL 4540955, at *3 (Tex. App.—Austin Sept. 29, 2022, no pet. h.). However, the court also cited the Administrative Code and stated that one of the few "detailed requirements" in the regulations is that the TCEQ will not grant applications that do not demonstrate that emissions will protect public health and property. *Id.*; see also *Tex. Nat. Res. Conservation Comm'n v. Accord Agric., Inc. v. Tex. Nat. Res. Conservation Comm'n*, No. 03-98-00340-CV, 1999 WL 699825, at *9 (Tex. App.—Austin Sept. 10, 1999, no pet.) ("As set out in the Water Code and the Health and Safety Code, the Commission's statutory mandate is to protect the quality of water and air in the state."); *Grissom*, 17 S.W.3d at 802 (stating

that the legislature mandated the Texas Clean Air Act, including the “the protection of public health, general welfare, and physical property,” be “vigorously enforced”).

TCEQ’s Air Quality Modeling Guidelines define “protectiveness review” as a demonstration by the applicant “that the proposed operation, as represented in the air permit application, would not cause or contribute to a NAAQS or Prevention of Significant Deterioration (“PSD”) Increment violation and would be protective of public health, general welfare, and physical property.” AQA Modeling Guidelines (2019) at 11.¹⁵ The Guidelines state that “[u]nder 30 TAC 116.111, all construction permits and amendments for facilities require an air quality impacts analysis.” *Id.* The air quality impacts analysis is “the means for the applicant to make the demonstration” of protectiveness. *Id.* The Guidelines also state the following:

During the course of the technical review of an air permit application, the permit reviewer and air dispersion modeling staff evaluate air quality impacts analysis requirements and confirm that the applicant has conducted an appropriate air quality impacts analysis and properly determined off-property impacts for the project facilities and associated sources. The applicant’s air quality impacts analysis, along with the permit reviewer and air dispersion modeling staff’s evaluation and final recommendation, provide a record that demonstrates that the operation of a proposed facility will not cause or contribute to a condition of air pollution and will comply with all applicable federal and state rules and regulations, as well as with the intent of the TCAA.

Id. at 10. For Minor NSR permits, the “air quality analysis consists of the following elements and modeling as applicable: NAAQS analysis; State Property Line Standard analysis; and Health Effects analysis. Also known as effects screening level (ESL) analysis and includes consideration of welfare effects.” *Id.* at 16.

Commenters’ Lawsuit and Civil Rights’ Complaint detailed the concerns over the TCEQ’s failure to update the protectiveness review for the CBPSP during the 2021 Amendment. The 2023 Amendment includes a protectiveness review reflected in a TCEQ Interoffice Memorandum dated February 24, 2023 (“2023 Protectiveness Review”). While not commenting on the sufficiency of the 2023 Protectiveness Review, Commenters note that the results of the 2023 Protectiveness Review demonstrate that the current CBPSP is not protective for the air pollutants of concern in Harris County and other counties. Thus, TCEQ is not currently meeting the standards it must abide by to protect the environment in issuing a standard permit for CBPs.

The 2023 Protectiveness Review recognized and incorporated concerns by Commenters and other stakeholders during the 2021 Amendment that background levels for CBPs may not all be the same and may vary by county or regionally. Specifically, in some communities in Houston, where there is no zoning, like SN48 and Fifth Ward, TCEQ has permitted multiple existing facilities—including two CBPs next door to each other—that are adjacent to neighborhoods, parks, schools and sensitive populations. Based on the 2023 Protectiveness Review, the 2023 Amendment requires minimum setback distances for each region as determined by background air monitoring

¹⁵ Available at: <https://www.tceq.texas.gov/assets/public/permitting/air/Modeling/guidance/airquality-mod-guidelines6232.pdf>.

analysis for that region. Notably, there are higher setback distances shown in Table 21 of the 2023 Protectiveness Review for TCEQ Region 12 as a result of elevated background concentrations. These findings are consistent with the concerns raised by Commenters and Harris County in the Lawsuit and Civil Rights Complaints. The 2023 Protectiveness Review will also require additional controls for co-located facilities like in SN48 and Fifth Ward.

Moreover, the 2023 Protectiveness Review noted that the CBPSP must also impose annual production caps to ensure that the TCEQ's modeling holds up. As the production rate (yd^3/hr) increases, Table 21 demonstrates that the setback distances must also increase to maintain the same level of protectiveness in the model. Without a partial truck enclosure, then there is even more of a reason for increased setback distances.

Currently, as adopted, the CBPSP does not include or require: (1) partial enclosures for truck loading; (2) setback distances reflected in Table 21 for Region 12; or (3) hourly limits on the production rate. If the 2023 Protectiveness Review shows that these constraints are necessary for a minimally protective permit; then, without these constraints, the existing CBPSP is not protective. Moreover, Commenters have identified the following deficiencies with the current CBPSP:

- The 2000 Protectiveness Review is outdated and inapplicable;
- The 2000 Protectiveness Review that the current CBPSP is based on violates the NAAQS for $\text{PM}_{2.5}$ because the emission limits on the CBPSP do not comply with NAAQS;
- The 2000 Protectiveness Review did not competently evaluate or model crystalline silica emissions;
- The 2000 Protectiveness Review does not account for the EPA's amended NAAQS standards from $15.0 \mu\text{g}/\text{m}^3$ to $12.0 \mu\text{g}/\text{m}^3$;
- The 2000 Protectiveness Review may not incorporate background air emissions;
- The 2000 Protectiveness Review relied on outdated air modeling that does not comport with EPA preferred dispersion model;
- The 2000 Protectiveness Review uses AP-42 emission factors, which the EPA specifically warned against using in place of more representative source-specific emission values for permitting and compliance; and
- The 2000 Protectiveness Review underestimates emissions of $\text{PM}_{2.5}$, PM_{10} , and crystalline silica.

These known, and now confirmed, deficiencies in the 2000 Protectiveness Review raise an adjacent concern in this context. The 2023 Amendment does not require existing permitted facilities to comply with the standard permit on the later of (i) two years from the effective date or (ii) the date the facility's registration is renewed. *See* 2023 Amendment at (3)(F). Under the General Conditions for standard permits, CBPs do not have to renew their permits but every 10

years. 30 TEX. ADMIN. CODE § 116.604(1). Thus, if the 2023 Amendment is approved in 2024, there are facilities that may not have to comply with the new CBPSP until eight years later. That wait is too long given that these CBPs are already operating in a manner that is not protective as proven by the 2023 Protectiveness Review.

Because the TCEQ has now demonstrated that the current CBPSP, approved with the 2021 Amendment, is not protective, the TCEQ needs to take immediate action to fix these concerns and cannot allow these facilities to operate in communities in Harris County without appropriate protections. Commenters raised their concerns during the 2021 Amendment that the TCEQ had not done a protectiveness review. Now that some protectiveness review has been done – demonstrating that Commenters' fears were justified – the TCEQ needs to require earlier adoption of the pollution controls and setbacks in the 2023 Amendment to ensure that the existing facilities are protective. Thus, Commenters suggest that the language in the 2023 Amendment be modified as follows:

(F) Renewals shall comply with this standard permit on the *earlier* of: (i) two years from the effective date; or (ii) the date the facility's registration is renewed.

Given that the TCEQ knew in 2021 that it failed to conduct a protectiveness review on this permit for over 21 years (since 2000) and then declined to do a protectiveness analysis despite Commenters' objections in 2021, TCEQ does not have any more discretion under these applicable statutory requirements to protect the environment. It cannot postpone the implementation of these needed changes to make this permit protective under the standards and statutory requirements cited above. The 2023 Amendment, which will not be adopted until January 10, 2024, would not require industry to comply with these changes until January 10, 2026 at the earliest. Some facilities would not have to comply with these changes until their permit was renewed (within 10 years of January 2024 or before 2034). That type of leniency cannot be justified given that the TCEQ knows the permit that these CBPs operate under now is not protective of the communities that live on the fenceline in Harris County.

Moreover, in January 2023, after carefully reviewing the most recent available scientific evidence and technical information and consulting with the Agency's independent scientific advisors, EPA announced its proposed decision to revise the primary (health-based) annual PM_{2.5} standard from its current level of 12.0 $\mu\text{g}/\text{m}^3$ to within the range of 9.0 to 10.0 $\mu\text{g}/\text{m}^3$ (EPA-HQ-OAR-2015-0072: Review of the National Ambient Air Quality Standards for Particulate Matter). EPA proposed not to change the current secondary (welfare-based) annual PM_{2.5} standard, primary and secondary 24-hour PM_{2.5} standards, and primary and secondary PM₁₀ standards. In addition, EPA proposed revisions to other key aspects related to the PM NAAQS, including revisions to the Air Quality Index (AQI) and monitoring requirements. Provided the EPA adopts these changes, the eventual lowering of the annual PM_{2.5} standard from 12.0 to between 9.0-10.0 $\mu\text{g}/\text{m}^3$ will have an impact on the CBPSP as the TCEQ will need to comply with this updated standard once finalized.

Further, given the announced proposed changes by EPA to the PM NAAQS (EPA-HQ-OAR-2015-0072), TCEQ's plan for the 2024 adoption and delayed implementation proposed in the 2023 Amendment is not feasible. Counsel for Commenters asked TCEQ's modeler about this concern at the informal meeting regarding the 2023 Amendment on May 22, 2023 without receiving any substantive response. It remains an important concern. This proposed timeline almost ensures that

communities like those that Commenters live in near large or multiple CBPs will still not be protected by the CBPSP. A best case scenario would be if an existing CBP is an early adopter of the new requirements in the 2023 Amendment. By 2026, it is likely that the EPA will have revised the PM NAAQS, requiring a more stringent permit to comply with NAAQS and ensure protectiveness. Because of its failure to keep up with its protectiveness review requirements under the CBPSP, the Commission is now in an endless game of catchup with the real concern that Harris County will be out of attainment for PM before the TCEQ can start its next amendment process. As noted in the Introduction to these Comments, a preview of this reality appears on multiple air monitors (both TCEQ monitors and community-based monitors) across the City of Houston and Harris County located near CBPs like SN48 and Fifth Ward.

Further, Commenters remain concerned that the TCEQ is not requiring the implementation of these changes by existing permitted facilities (many of which are operating out of compliance with the 2021 Amendment CBPSP) fast enough to make any headway out of this problem that the agency created by ignoring its protectiveness review obligations for the CBPSP for so many years. While Commenters have concerns about the 2023 Protectiveness Review itself as being sufficient to protect communities, we are not in a technical position to evaluate that model and defer to Harris County Pollution Control Services and their expertise to provide comments on the modeling for the 2023 Amendment.

B. TCEQ cannot enforce the CBPSP or monitor compliance with the CBPSP under Texas Health & Safety Code Section 382.05195(A).

The Commission may issue a standard permit for new or existing similar facilities if the commission finds that: (1) the standard permit is enforceable; (2) the commission can adequately monitor compliance with the terms of the standard permit; and (3) use effective control technologies (depending on the date of application). *See TEX. HEALTH & SAFETY CODE § 382.05195(a).* Based on experience with the agency and more particularly, CBP operators, Commenters lack confidence that the agency can enforce the CBPSP or adequately monitor compliance with its terms.

To satisfy subsections (1) and (2) of Section 382.05195(a) and justify a standard permit for concrete batch plants across Texas, the Commission must commit the resources to monitor compliance with the terms of the CBPSP, which leads to question about its enforceability. Historically, the agency has failed to deploy the enforcement or compliance resources necessary to ensure that the impacts of the standard permit are truly standard across communities when the agency is aware of how Harris County lacks residential zoning.

Harris County Pollution Control Services (“HCPCS”) estimates that there are over 130 authorized and active concrete batch plants in Harris County. Beginning in February 2020, HCPCS investigated 122 batch plants and sent 144 Notices of Violation. HCPCS’ almost two-year investigation documented the most common and significant violations at CBPs. In short, when these facilities fail to comply with the CBPSP, PM emissions increase.

In contrast to Harris County’s investigations and Notices of Violations, the Commission’s current pending enforcement actions for the entire State of Texas¹⁶ includes only an approximated handful of CBPs with active enforcement:

- Campbell Concrete & Materials LLC, RN10622434 (Air Quality)
- Lone Star Dirt & Paving Enterprises, LLC, RN104024054 (Air Quality)
- J-III Concrete Co., Inc., RN106393515 (Water Quality)
- True Grit Concrete Batch Plant, RN104348933 (Air Quality)

Similarly, a review of Administrative Orders issued since 1998¹⁷ reveals that the Commission has historically not enforced against concrete batch plants, specifically, searching for “Concrete” or among the 965-page list of Administrative Orders returns 78 results and searching for “Ready Mix” returns 30 results, and searching for “Crush” returns only 31 results.

HCPCS’ investigation resulted in almost one violation per facility since February of 2020, totaling 144 noticed violations in Harris County alone; but, searching historic Commission records statewide returns, only an estimated 151 administrative orders ever entered into following violations by concrete batch plant and crushing facility violations since 1998. These numbers suggest that the TCEQ is wholly unable to adequately monitor compliance with the CBPS on a state-wide basis, much less in Harris County. The TCEQ’s failure causes the Impacted Communities to suffer preventable increases in PM in their neighborhoods.

Despite community complaints and testimonies regarding large plumes of dust leaving these facilities’ property line for more than 30 consecutive seconds (which is a clear violation of the standard permit for a concrete batch plant), these facilities are almost never cited by TCEQ for these violations due to the lack of enforcement. At a public meeting regarding a concrete batch plant in SN48, Don Nelon in the TCEQ Air Permits division suggested that the agency relies on the community to police these facilities through the complaint and investigation process. In practice, this approach is not functional, in part because many people do not know that the process exists, and also because it is not suited to the types of violations that cause the most problems. An individual in the neighborhood recently complained about excess emissions from Texas Concrete Enterprise Ready Mix—large clouds of particulate crossing the property line, a clear violation of permit terms—but the emissions had ceased by the time the TCEQ investigator arrived, some days later. The investigator did cite the operator for a few minor violations of other rules, but these citations have had little effect on the intermittent particulate pollution episodes that plague this facility and others like it. This story is common result throughout Harris County, and Harris County Pollution Control Services does not even receive many complaints from TCEQ to investigate until days after they are reported to TCEQ.

Moreover, the lack of code compliance by the City of Houston has continuously subjected vulnerable populations, such as children, to incessant and high levels of exposure to harmful pollutants. Sensitive populations like children and the elderly are particularly susceptible to

¹⁶Track Pending Enforcement Actions

<https://www.tceq.texas.gov/assets/public/compliance/enforcement/penenfac/penenfac.pdf>

¹⁷ Administrative Orders issued since September 1, 1998, available at:

<https://www.tceq.texas.gov/assets/public/compliance/enforcement/penenfac/AdministrativeOrdersIssued.pdf>

particulate pollution, which exist near these types of facilities. For example, Ernest McGowen Sr. Elementary School, attended by 433 children ages 5 to 12, and Lyndon B. Johnson General Hospital, are both less than half of a mile from Texas Concrete. Kashmere High School, with over 550 students ages 14 to 18, and Houston Gardens Park are each less than three-quarters of a mile from Texas Concrete. In addition, Scarborough Elementary School is located directly across the street from a concrete batch plant and industrial yard. Elementary students inhale concrete dust from batch plants while they play at recess. The TCEQ's disregard for these sensitive populations is also evidenced through its permitting of a concrete batch plant near Emerald Apartment, a federally subsidized housing project. On many occasions due to proximity, the dust from batch plants is visible in the air.

To counteract these concerns, the TCEQ should improve monitoring requirements under the CBPSP and require the following:

- Review and monitoring of potential dust sources and control & mitigation measures should be undertaken on regular basis, both on and off site, to ensure no migration of dust. Monitoring will check for visible signs of dust emissions and deposition originating from site.
- Regular reviews of mitigation methodology to be undertaken by Environmental Manager and Project Manager for site.
- Regular evaluation of compliance history and violations for problematic or poorly sited CBPs and consideration of rescinding permits for facilities that are regularly out of compliance.
- Increased oversight and review of a CBP's deviations from the CBPSP.

Commenters include these additional requests below as an illustration of how the CBPSP remains unenforceable without TCEQ's active participation to monitor compliance with the standard permit's terms. The Commission cannot just approve the standard permit and then fail to regulate these facilities further.

(1) Inspection and Verification of Any Proposed Expansions of CBP facilities

In some instances, CBPs have expanded onto neighboring property without incurring any sort of fine, penalty, or exposing the CBP operator to an enforcement action by the TCEQ. TCEQ should do more to ensure that operators are abiding by the CBPSP provisions and not deviating from their permits.

For example, Lone Star Legal Aid has handled a case where a CBP was acquired by a new operator who almost immediately began to stray from the Standard Permit. This new operator was either woefully unaware of its requirements or simply chose to ignore them, counting on the TCEQ's lax enforcement and generous interpretation of relevant regulations that favored his own business interest over the interests of the community.

At the time the CBP was acquired the then in-force Standard Permit called for only three stockpiles as sources of emissions: a coarse rock bunker, a sand bunker, and a fine rock bunker. According to the plot plan, each of these three stockpiles was to be placed at the center of the permitted property well away from residential properties. The new CBP operator began to lease a portion of a neighboring property and almost immediately moved stockpiles of raw material onto this same portion of property. Suddenly, instead of only three stockpiles of material there were four. Instead of the stockpiles being centered on the permitted property, they were against the fenceline and thus had been brought directly across from residential properties and homes. Two of these four stockpiles were now on newly leased property where there had previously been no CBP activities. Not only that, but the operator began storing all sorts of equipment associated with the day-to-day operations of a CBP on the leased premises: trucks, jackhammers, etc. The operator did this while the plot plan of his was still active and the then in force Standard Permit limited his operations to the property he owned, which did not include the leased portion of a neighboring property.

Prior to the expiration of the Standard Permit, the new operator submitted his Permit Renewal Application for a New Standard Permit which reflected the expansion onto the leased property—an expansion which had already taken place. Stated another way, the application amounted to a request that the TCEQ give its blessing to all the ways in which the new operator had strayed from the previous Standard Permit. Better to ask for forgiveness than permission.

The New Standard Permit also sought a maximum production rate of 963,600 cubic yards a year--an increase from the previous 120,000 cubic yards per year. Additionally, the new operator sought expanded 24/7 operations hours whereas the previous operator had kept his hours from 7 a.m. to 7 p.m., Monday through Friday. The TCEQ classified the Permit Renewal Application that was being sought as a “no increase in emissions renewal” and eventually awarded the New Standard Permit to the new CBP operator in spite of all of the above *See supra* Section 5, where TCEQ determined there was no right to a contested case hearing despite these unauthorized changes.

To address the situation described above and ensure that situations like it are not repeated, the TCEQ must take a stronger stance in the face of operators who look to expand—whether that expansion be an increase in the footprint of the facility or an increase in the number and/or placement of sources of emissions, especially stockpiles. The TCEQ must also exercise its plenary authority of enforcement against those CBP operators who submit renewal applications that seek to have the TCEQ incorporate, retroactively, operations that stray from the requirements and conditions of previous, enforceable Standard Permits. Furthermore, TCEQ should re-evaluate its 10-year renewal window for CBPSPs. This extended time period before the renewal review can allow for a facility’s deviations from to become the accepted norm by the owner, TCEQ, and unfortunately, by the community.

(2) Improving Stormwater Management

Many communities are suffering wastewater impacts from concrete batch plants. For example, there have been multiple runoff events from Texas Concrete Enterprise Ready Mix, which are currently under investigation and enforcement by TCEQ based on a citizen complaint from Houston Gardens Civic Club within SN48. Likewise, the Cherry Crush facility in the Dyersforest area is causing water contamination to nearby water wells. To address these types of scenarios, the

TCEQ should also require the following stormwater management strategies under the CBPSP to prevent stormwater commingling with process water or otherwise becoming polluted:

- Implement a program to prevent the commingling of stormwater and process water that results in the generation of additional process water. This could include curbing and grading the site to prevent the commingling of process water and stormwater.
- For process water that is discharged, implement site features to ensure that the discharge complies with all aspects of the discharge requirements of the plant's permit. If appropriate, establish a settling basin system with appropriate solids removal facility, pH treatment area, and discharge location. Line sedimentation basins to minimize potential seepage. It may be helpful to engage an environmental manager or consultant about establishing a new, or modifying an existing, process water treatment system. An alternative might be to use slatted conveyor belts to remove solids from process water. Diatomaceous earth rollers and flocculants may serve similar purposes.
- Structural strategies that will help minimize the commingling of stormwater with process water include:
 - to provide paved, curbed and appropriately graded surfaces at the following main process locations: truck loading; truck rinse station; truck slump rack; truck washout area, preferably lined; reclaiming unit area; reclaimed solids storage area; returned concrete processing area; and/or aggregate storage bins; and
 - to install and maintain underground stormwater drainage systems (catch basins and pipes).
- Operational strategies that will help minimize the commingling of stormwater with process water include:
 - minimize traffic, vehicle and employee, through process water collection areas; and
 - appropriately locate and/or contain aggregate stockpiles.
- Collect and use stormwater for batching and other plant operations.
 - ensure that stormwater leaving the concrete plant site (being discharged) is as clean as possible by avoiding contact with source materials and is in compliance with all discharge requirements of the plant's stormwater discharge permit.
 - avoid commingling of stormwater with process water; and
 - collect stormwater whenever possible to supplement fresh water obtained from municipal, surface water or groundwater sources, a technique known as stormwater harvesting.

The likelihood of flooding in Houston also poses unique challenges for these facilities. Specifically, the CBP located on Homestead Road operated by Texas Concrete Ready Mix has an insufficient detention pond, so the site regularly floods and is underwater after large storms. Such flooding contaminates nearby stormwater leading to contaminated runoff. The site is less than one mile from Ernest McGowen Sr. Elementary School and Kashmere High School and adjacent to residential areas.

(3) Regulation of Chemicals and Petroleum Products at CBPs

The CBPSP should contain some requirements for the successful management of chemical and petroleum products stored at a ready mixed concrete plant and should incorporate the following elements:

- Designate specific contacts and emergency coordinators.
- Order and store chemicals in the smallest quantities possible.
- Store chemicals (including admixtures) and fuel within a bundled, covered and signed area.
- Always clearly label all chemicals and keep safety data sheets.
- Prepare a spill response plan and keep clean-up equipment close to chemical and fuel storage areas.
- Properly designed and maintained facilities for storage and transfer.
- Adequate spill containment.
- Adequate spill cleanup supplies and equipment.
- Periodic inspections.
- A documented employee training plan.
- Established emergency response procedures.

Best management practices for chemical and petroleum product management at CBPs include:

- Provide overfill alarms on all Above-ground Storage Tanks (AST) and Underground Storage Tanks (UST).
- Provide spill containment (curbing or a fuel port) at AST, or underground tank fill locations.
- Provide breakaway hose connections at fueling stations.
- Pave the truck/equipment fueling area.
- Provide adequate lighting at fueling stations.

- Provide and clearly label the emergency shut off switch at the fueling station.
- Provide security fencing of the plant perimeter or at a minimum for all required exterior petroleum storage tanks, pumps, piping, and hoses.
- Protect ASTs from impact by installing bollards or other barriers.
- Store admixture tanks in a covered or enclosed location.
- Clearly identify and label the contents of all tanks and drums.
- Maintain emergency response equipment, materials, and an Emergency Spill Kit in a central and accessible location.

The TCEQ should require CBPs to adopt strategies for secondary containment like:

- Provide appropriately sized secondary containment for all petroleum products and chemicals.
- Provide a locking valve at all secondary containment discharge locations.

TCEQ should require CBP facilities should develop an Employee Training Program for chemicals and petroleum products. This requirement should include:

- Review of MSDS sheet terminology and sheet location.
- Review of site plan and storage locations for chemicals and petroleum products.
- Provide written safety and handling requirements of chemicals and petroleum products.
- Review locations of spill response and personal protective equipment.
- Provide a written emergency contact list in the event of a spill.

TCEQ should require CBPs to write and post Emergency Response Procedures (or equivalent) for chemical and petroleum product spills. These requirements should include:

- Written emergency contact list (including 24 hr phone numbers) of plant personnel or other emergency contacts.
- Verbal and written notification requirements for federal, state, and local agencies in the event of a spill or discharge (including the information required to be submitted in the report).
- Designated Emergency Spill Coordinator and Alternate Emergency Spill Coordinator responsible for ensuring the reports are submitted in a complete and timely manner.
- Step-by-step response procedures in the event of a spill.

Despite Commenters repeatedly offering these suggestions for better contaminant of the impacts of these facilities on the local communities, the TCEQ has not incorporated these concerns into the CBPSP. Such requirements should be considered to ensure proper regulation of these facilities.

(4) Implementation of the Amended CBPSP and Ways to Monitor Compliance

In addition to the concerns around how quickly the new permit will be implemented, Commenters also have questions over TCEQ's ability to ensure compliance with these new permit terms by the operators. Experience with these types of facilities have informed the community that some operators will take short cuts around the regulatory requirements in the CBPSP until they are caught, if they are caught. Further, many make modifications to their facility layout or stockpiles without ever notifying TCEQ. Again, adopting a policy of asking forgiveness of than the permission from the regulatory agency. In approving the 2023 Amendment, the Commission needs to consider how it will implement these changes and educate CBP operators of the requirements of the new permit to ensure that the additional controls and protections that the agency is including do not fall by the wayside because of poor adoption practices by the industry. Again, if TCEQ is not regularly inspecting these facilities – 100+ in Harris County alone – then how will it know if the operators are following the CBPSP. For these reasons, Commenters make the following suggestions to the agency regarding its rollout of the new CBPSP once adopted in 2024:

- Offer outreach and training through its small business program designed for CBP operators and owners to learn about the new pollution controls, setbacks and production limits required in the 2023 Amendment. TCEQ should also consider making attendance at such a training required as part of the application or renewal process for the CBPSP.
- In advance of any upcoming renewal process for the facility, prepare a physical inspection of the CBP to inspect and review existing facilities to troubleshoot concerns over compliance with the new requirements under the 2023 Amendment.
- Require CBP operators to report monthly their annual production (on a rolling 12-month period) to ensure compliance with production limits in the 2023 Amendment. While TCEQ requires a CBP facility to maintain records, if TCEQ never looks at the records on a regular basis, there is no way to confirm there is compliance with this new limitation.
- The 2023 Amendment specifically requires the operator to maintain record of production rate for hourly and annual operations to meet the limitations in Section 8(A) of the CBPSP. To verify this compliance, the CBP operator could simply submit an online form monthly to the agency to confirm that its production was below the annual operations limit (on a rolling 12-month period).
- Having the monthly operations limit submission made to TCEQ would provide a record that the public could request and confirm that there was adherence to these limits by an operator. Right now, the public has no right to inspect the records. If TCEQ does not inspect the records or investigate the facility, the public has no access to records to ensure that the operator is in compliance.

- For co-located facilities, the CBP operators should have to report their collective production limits to ensure compliance.
- TCEQ should require at least one unnoticed inspection by TCEQ staff of the CBP operator before the permit is renewed. That inspection report should be included in the decision packet associated with that renewal for the facility reviewed by the Commission or the Executive Director.
- Make a plan to inspect facilities timely if the agency receives public complaints and have these complaints reflected in the operator's compliance history. If TCEQ fails to inspect, then this information about the operator's compliance (or noncompliance) with the permit is not included in the public record and thus is missing from the compliance history when the facility comes up for renewal.
- CBP facilities with multiple complaints should trigger automatic, unnoticed inspections by TCEQ at least yearly or, at the minimum, an annual records review.
- For facilities with multiple violations or complaints, TCEQ should require that facility to adopt more pollution controls, conduct more frequent unnoticed inspections, and records reviews for that facility at least every 12 months to ensure compliance the annual emissions limitations.
- If the TCEQ does not have the manpower to inspect CBPs throughout the state to ensure compliance with the CBPSP, it needs to be prepared to delegate this authority to local authorities and make these referrals to local government inspectors timely so that the conditions generating the complaint are still likely to exist at the time the complaint is referred. For example, when the TCEQ does not inspect a facility or refer a complaint for 2-3 days, it is unlikely that the conditions generating that complaint will still exist at the time of the inspection.

Because the 2023 Protectiveness Review appears depending on the annual production cap to make the CBPSP protective, the TCEQ must do more than simply require the CBP operator to retain records to ensure compliance with these limits if the TCEQ has no intention of ever reviewing or accessing these records as it has no regular inspection requirements or records reviews for these facilities built into the CBPSP. Thus, the permit likely does not comply with Section 382.05915(a) of the Texas Health & Safety Code. The TCEQ should continue adopting these safeguards to ensure compliance with its CBPSP given how important the annual caps are to the 2023 Protectiveness Review.

C. TCEQ failed to provide an adequate forum for meaningful public participation at the May 18, 2023 formal hearing on the 2023 Amendment.

On May 18, 2023 in connection with the public engagement for the 2023 Amendment, TCEQ held a hybrid formal hearing to seek formal public comments on the 2023 Amendment. During this in-person and virtual event, only speakers that appeared in person were able to provide formal comments on the record and ask questions of TCEQ staff due to technical difficulties with the audio by the agency. Speakers that had registered in advance for the formal hearing to provide

public comments were unable to make formal comments or participate at this hearing. Because of these technical difficulties, the public was denied meaningful participation at this formal hearing. Unfortunately, this May 18, 2023 event was the only formal hearing noticed for this permit so the TCEQ failed to conduct an accessible public hearing on this proposed amendment. For this reason, the TCEQ needs to re-notice a formal hearing on the 2023 Amendment and extend the comment period on the 2023 Amendment so that the public may submit formal comments at the hearing as they were denied the opportunity to do so on May 18, 2023 unless they appeared in person. For a state-wide permit, this opportunity was insufficient public engagement.

D. TCEQ must prevent nuisance issues emanating from its permitted CBPs.

Under 30 TEX. ADMIN. CODE § 101.4, “no person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health, or as to interfere with the normal use or enjoyment of property.” The 2023 Amendment adds minimal and alternative dust control measures on adjacent roadways. 2023 Amendment at 8(G)(i)-(iv). Commenters appreciate the inclusion of these mitigation solutions, but the 2023 Amendment allows the operator to choose the control method. *Id.* The CBP operator and TCEQ should be making sure that the proposed operating facility creating a nuisance that would pose a detriment to the enjoyment of nearby properties.

(1) Dust

Specifically, nuisance conditions may be caused by (1) emissions from the facility and (2) trucks re-suspending emissions from the roads when picking-up finished product at the facility. As such conditions are largely impacted by weather conditions and wind direction, these impacts may be seen in nearby neighborhoods, posing a nuisance to nearby properties—interfering with the use and enjoyment of their homes and exposing residents to health risks associated with particulate matter, even at concentrations below NAAQS. These considerations are particularly important when determining whether to site multiple CBPs in the same area.

Material stockpiles for concrete batch plants are essentially big piles of dirt and dust and are a significant source of wind-borne particulate pollution from concrete batch plants into the neighborhood. If a facility keeps its stockpiles uncovered and too close to the property line, it can cause violations of emissions limits and threatens the health of nearby residents. Watering the stockpiles to prevent these emissions is often ineffective, especially on a hot summer day when the water evaporates nearly as fast as it can be sprayed on. Recent drives by either of the CBP facilities in SN48 suggest that most of the industry keeps their stockpiles uncovered for convenience. Many of these facilities are permitted to operate 24 hours/ 7 days a week, increasing the chance of emissions off property due to these uncovered stockpiles.

Although the Proposed 2023 Amendment outlines various methods of dust suppression, watering is an allowable method. Consequently, many facilities will continue to engage in watering even though it has been shown to be an ineffective dust suppression method. TCEQ should seriously consider requiring watering and an additional dust suppression method in order to effectively combat the issue.

For example, Residents in Dyersforest and SN48 repeatedly observe “dust clouds” which consist of clouds of white dust around existing CBP facilities, particularly on hot days. Those dust clouds are not contained at the fence line. Although there are methods to control fugitive dust emissions contemplated by the CBPSP to address these nuisance conditions, it is largely left up to the operator to decide when to employ these methods. The CBPSP should require more regular monitoring or stricter controls to ensure that dust does not leave the property.

For SN48, the subdivisions immediately adjacent to twin existing facilities on Homestead Road are directly impacted by these “dust clouds”. As hike and bike trails are also proposed in this area near the detention pond, the potential impacts of these “dust clouds” will likely start to impact bicyclists and pedestrians frequenting the area on the trail for recreational purposes in addition to the residents living in the subdivision nearby off Bennington.

Finally, the trucks have impacts in the community after leaving these CBP facilities. In addition to increasing fugitive dust emissions, some trucks leave the facility too full and end up dumping hot concrete on the side of the road and in the driveway of the facility. The dropping of this concrete on the street not only destroys and degrades the condition of the street, but also has impacts on cars traveling on the road behind such trucks that are in the process of dropping concrete. Hoods of vehicles and other parts of the car owned by residents in the area have been damaged by concrete trucks leaving the facility because of the mounds and mounds of concrete falling out of these trucks that were overloaded. Some regulation needs to be added to ensure that these off-site impacts do not pose further nuisance to vehicles and city streets.

TCEQ should consider additional, mandatory measures in the 2023 Amendment to minimize dust sources and prevent nuisances from the CBP, such as the following:

- Keep the cement in completely enclosed silos.
- Keep the mixing equipment, stockpiles, and silos away from the property lines.
- Add cartridge or bag filters to the silos, so the air that is pushed out when the silo is filled does not carry dust with it.
- Enclose the cement conveyor belts, so dust does not blow away as the cement is moved to the silos or mixing drum.
- Use filters called baghouses where the concrete is mixed and where it is dropped into the trucks. Like large vacuum cleaners, these filters suck the dust out of the air before it can blow away.
- Spray down the plant roads and stockpiles.
- Take other measures when needed to minimize dust from other sources.

Additional fugitive dust emissions reduction strategies include:

- Dust suppression with water spray on plant roadways and yard.

- Plant enclosure.
- Post and enforce a speed limit of 5 mph (8 km/h) on plant grounds.
- Pave roadways and necessary process areas.
- Sweep paved areas with vacuum sweeper or mist paved areas.
- Use chlorides or other dust control chemicals on unpaved process areas where allowed by applicable regulatory agencies.
- Add vegetative cover on non-paved plant grounds.
- Cover conveyor belts(s).
- Install drive-over hopper(s).
- Install underground aggregate bunkers.
- Enclose aggregate stockpiles in bins (the height of the enclosed stockpiles should not exceed the height of the bins).
- Sprinkle coarse and lightweight aggregate stockpiles.
- Use of water sprays to damp down dry/dusty working areas as required.
- Suppression activity to be increased during dry and/or windy periods.
- Use of hoardings and/or sheeting of stockpiles to reduce dust migration.
- Deliveries of dusty materials to be sprayed with water.
- Keep cement and fly ash out of stormwater drains and waterways.
- Prevent storage silos from overfilling with an automatic shutdown switch.
- Use equipment such as a reverse pulse filter to control dust from storage silos.
- Install an emergency shutdown on storage silos to prevent spills.
- Dampen materials delivered to control dust.
- Shield stockpiles from the wind or store them in bins.
- Enclose or cover conveyors and fit them with belt cleaners.
- Clean up spilt material immediately to prevent contamination of waterways.

Process source emissions reduction strategies include:

- Regulate the loading rate of materials (loading more slowly may reduce dust emissions).
- Regulate the loading sequence of materials.
- Enclose the batch plant.
- Develop and post procedures for delivery and off-loading of cement and aggregate.

Batching, slumping, and delivery strategies include:

- Roof and enclose truck loading bays.
- Install dust control equipment at loading bays.
- Use recycled water for slumping.
- Use wheel-wash facilities to stop the spread of waterway contaminants.

Process source emissions control devices (in good working order) should include:

- Silo top baghouse or central vacuum collector system for cement/SCM silos.
- Silo overfill warning system (high bin indicators) for cement/SCM silos.
- Pinch valve, alarm system, or other high pressure protection system for cement/SCM silos.
- Batcher filter vent or central dust collector at weight batcher(s).
- Underground or covered transfer for coarse and fine aggregates.
- Adjustable boot at truck loading hopper or mixer loading.
- Shroud or central dust collector at truck loading hopper (dry batch plant).
- Spray bar used at truck loading hopper (dry batch plant).
- Central dust collector or baghouses at central mixer (central mix plant).
- Dust collected in the filter system should be recycled back into the respective silo storage.

Covering dust piles is an alternative provided under the Section (5)(F) of the CBPSP called General Requirements, but it is one of the most effective in minimizing dust emissions. It should be a mandatory requirement for all CBPs. Further, the size of the piles or location of the piles should be considered to advise the operator whether more stringent measures need to be adopted in certain situations where operators are maintaining larger piles, or the piles are placed closer to the property boundaries.

(2) Traffic

- Traffic to and from CBP facilities is not only a significant source of dust and fugitive emissions from a facility, but also contributes to the nuisance character of these CBP facilities when operating in residential neighborhoods. The following list provides suggestions for minimizing traffic impacts from these facilities:
 - All construction traffic will follow routes that minimize travel distance and avoid residential areas, where possible.
 - Speed limits will be put into place on site for all vehicular movements of 5 mph on unsurfaced site roads and 10 mph on properly surfaced and maintained site roads.
 - All vehicles carrying loose material will be covered.
 - Reducing the need for vehicle movements through residential areas where possible.
 - Site visitors and operators should be discouraged from car use and encouraged to walk or bicycle. In poor weather, the use of a golf cart may be required to transport operatives to/from the site.
 - Minimizing the requirement for night transport.
 - All operatives will be advised to drive considerately at sensible speeds and with due care for other road users, including cyclists and pedestrians.
 - Adequate safety signage in the vicinity of the site entrance to warn road users.
 - Remind operatives of the need for careful driving and vigilance.
 - Use of a road sweeper to ensure that road movements associated with the CBP do not give rise to mud or materials on the roads.
 - Wheelwashing facilities should also be provided if required.
 - i. Employee Parking
 - Designate reserved parking spaces for carpool vehicles (2 or more passengers). The number of designated carpool spaces should be equal to at least 5% of the total parking capacity, or 2 parking spaces, whichever is greater.
 - Designate reserved parking spaces for hybrid and/or alternative fuel vehicles. The number of designated hybrid and/or alternative fuel vehicle spaces should be equal to at least 5% of the total parking capacity, or 2 parking spaces, whichever is greater.
 - Facilitate a vanpool program to reduce single occupant vehicle use and/or develop a carpooling program and provide assistance in coordinating rideshares for employees.

- Have a plant location within $\frac{1}{4}$ mile of a commuter rail station, subway station or bus station.
- Provide at least one incentive to encourage employees to use public transportation or alternate transportation modes. Potential incentives could include transit passes or vanpool subsidies, purchase of public transportation passes on a pretax basis or an Emergency Ride Home program to assist employees who carpool to leave work in the event of an emergency.

ii. Highways

- Where appropriate, use of road sweepers should be incorporated to ensure highways remain clear of dust and mud.
- Road edges and pathways will be swept by hand and damped down as necessary.
- Retrofit trucks using engines that meet current emissions standards.
- Track fleet maintenance intervals.
- Park vehicles and maintain equipment in the same locations, to help locate spills and leaks.
- Pave parking and maintenance areas, where possible.
- Use alternative fuels and/or high-efficiency fuel types such as ultra-low sulfur diesel/biodiesel and/or natural gas.

(3) Noise

The CBPSP does not require that the operator specify working hours, and, in fact, allows for 24-hour operations. The Standard Permit even allows a CBP to operate 7 days a week. Some CBPs in the Houston area have taken full advantage of the standard permit's lack of restrictions on hours of operation by beginning their work early in the morning and continuing it well into the evening. With operations beginning as early as 1:30 AM on some mornings, and ending as late as 11:30 PM, some CBP operators have shown themselves to be without any regard for the residential make-up of the neighborhoods that play host to their facilities. Many of these same operators insist on working 7 days a week while keeping the same hours just described thereby completely eliminating any weekend respite that residents of a residential neighborhood would naturally come to expect on Friday, Saturday and Sunday nights. Texas nuisance law recognizes that, the objective standard of a person of ordinary sensibilities along with the unreasonableness of an interference's effect on another's comfort or contentment, are the primary focus when considering private nuisance claims—which often involve allegations of excessive noise at all hours.¹⁸

These all-day, every-day operations cause terrible nuisance level noise that emanates from CBP properties. Audible intrusions associated with CBP often include, but are not limited to, the following: high-pitched beeping noises from vehicles and machinery alarm systems; the crash of

¹⁸ *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W. 580, 596 (Tex. 2016).

concrete and feedstock material against metallic machinery; irritating, intrusive and constant jack-hammering; and the low-level but constant hum of vehicles as they move from one spot to another on CBP property. Again, these are just a handful of the types of noises that keep residents up at night or wake them from their slumber. Depending on the operator, these sounds amount to more than just a trifle annoyance or minimal interference: they can constitute a nuisance condition that completely deprives nearby residents of the quiet and peaceful enjoyment of their properties and homes.

All of the above issues are only compounded and intensified in un-incorporated areas of large metropolitan cities like Houston, where city ordinances that limit hours and days of operation are not applicable. While SN48 and Fifth Ward are completely within Houston city limits and thus theoretically protected by the City of Houston's Sound Ordinance,¹⁹ these comments nevertheless highlight how some CBP are able to circumvent reasonable expectations of quiet enjoyment of residential property by setting-up shop in residential neighborhoods that are not protected by such ordinances.

The TCEQ can remedy this situation by forcing CBPs located in primarily residential neighborhoods to limit their hours and days of operation. One such solution would be to establish a default limit on hours and days of operation for all CBPs and then require that CBP operators who wish to extend those hours of operation justify that doing so will not adversely affect the ability of third parties, but especially residential third parties, from quietly and peacefully enjoying their properties. The TCEQ can look at City Ordinances on noise and sound pollution as guidance as to what hours are appropriate for operations. The TCEQ can further ensure that the expectations of residential communities and that the character of their neighborhoods will be respected by prohibiting operations on Saturday and Sundays.

The CBPSP should require applicants and operators to adopt the following noise management measures to control the nuisance impacts from the facility to ensure operations comply with 30 TEX. ADMIN. CODE § 101.4:

- Temporary acoustic barriers for static activities, where necessary and practicable.
- Well-maintained plant and equipment which complies with state and city noise emission limits.
- Selection of quieter plant.
- Reduction of need for reversing of equipment.
- Acoustic covers on plant equipment should be closed at all times.
- Materials to be delivered to the site during the daytime, where possible.
- Specific training for all personnel regarding noise reduction.

¹⁹ Code of Ordinances, City of Houston Chapter 30.

- Minimizing drop heights of materials.
- No idling engines.
- No use of vehicle horns except in an emergency.
- Limit noise at night and in the early morning.
- Use broadband reversing alarms on trucks and front-end loaders.
- Enclose stationary noise sources such as compressors, motors and pumps.
- Use acoustic screens or barriers around noise sources such as aggregate loading bins, truck loading bays or slumping stands.

Structural strategies to reduce noise include:

- Strategically locate plant and significant noise sources, such as the truck rinse/slump rack and aggregate handling facilities, to minimize possible disturbance to existing and potential future neighbors.
- Construct berms, sound walls or solid fencing to serve as effective sound barriers for the plant.
- Plant vegetation to serve as sound barriers for the plant.

Operational strategies to reduce noise include:

- Replace buzzers, horns and/or loudspeakers with lights and directional arrows.
- Set truck backup alarms to the minimum legal limit.
- Only use silo and baghouse vibrators during normal work hours.

(4) Light

Commenter recommends that the TCEQ make recommendations in the CBPSP to minimize lighting impacts:

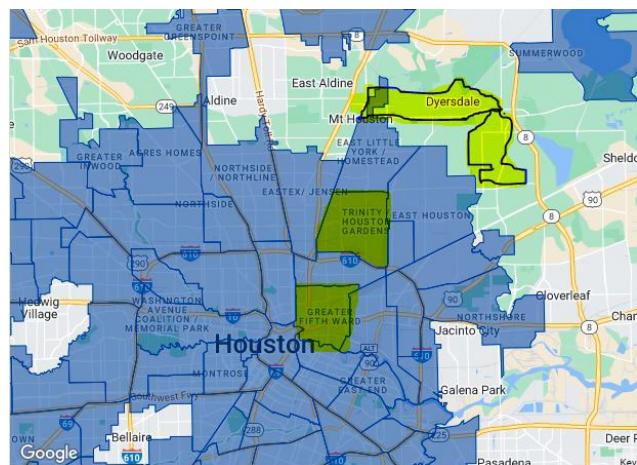
- Safe and suitable lighting for the task.
- Lighting should be directed towards the working area and away from site boundaries to minimize light spills.
- Erect shields or install screens or barriers to keep lights within the facility.
- Lights switched off when not required (this will also help to save energy).
- Lighting should be regularly assessed for need and appropriateness.

E. Harris County poses unique problems and environmental justice concerns for the 2023 Amendment to the CBPSP.

Despite being the fourth most populous city in America, the City of Houston is the only major American city that has no zoning regulations.²⁰ Moreover, the City of Houston makes up the majority of Harris County (roughly the size of the State of Rhode Island), which also has no zoning protections. Due to Houston's lax zoning, the effects of systemic discrimination persist and are evident today.

One of the few tools that exists to combat the lack of zoning are deed restrictions. Deed restrictions are a legal mechanism which limit land use in certain geographic areas to prevent unwanted and incompatible land uses. However, in the early 20th century, nearly all communities afforded the protection of deed restrictions were also perpetuating discrimination.²¹ Commenters who joined in the Petition and the Civil Rights Complaint against TCEQ on the 2021 Amendment represent historically unprotected and without deed restrictions. Because deed restrictions were originally a repugnant tool to keep people of color out of white neighborhoods, many historically Black and Hispanic communities of Houston remain unprotected today. This discrimination forced Communities of Color out into unrestricted areas. According to the Federal Housing Authority's ("FHA") underwriting manual at the time, "inharmonious racial groups" could cause "instability and a decline in values."²² The FHA recommended that subdivision developers with federally-backed construction loans use deed restrictions to control the race of residents.²³ Below is a demonstrative map showing the approximate location of Commenters' communities in Northeast Houston.

Commenters' Represented Northeast Houston Communities in Yellow



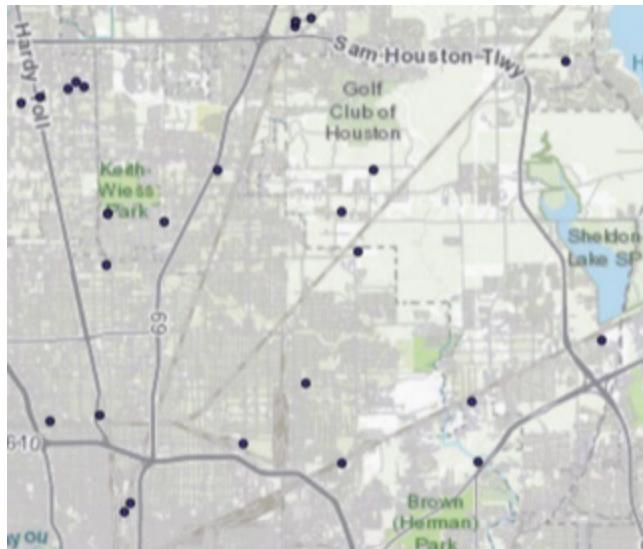
²⁰ Robert D. Bullard & Beverly Wright, *The Wrong Complexion for Protection: How the Government Response to Disaster Endangers African American Communities*, 13, (2012).

²¹ R.A. Schuetz, "It's so damn offensive': More Houston neighborhoods push to remove racist deed language" The Houston Chronicle (Apr. 16, 2021).

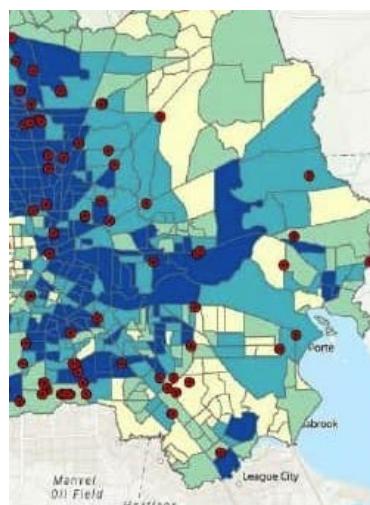
²² FHA 1938a, sec. 937.

²³ R.A. Schuetz, "It's so damn offensive': More Houston neighborhoods push to remove racist deed language" The Houston Chronicle (Apr. 16, 2021).

Existing concrete batch plants mapped in Northeast Houston



Since there are no regulations and these Northeast Houston communities are historically unrestricted communities, nothing exists to protect these communities from undesirable and incompatible land uses in their area. This circumstance, in turn, has subjected predominately minority communities in what should be residential neighborhoods to unprecedented amounts of environmental, health, and safety hazards at the hands of industrial and commercial businesses. Because these deed restricted communities originally excluded minorities, Commenters represent neighborhoods with undervalued and unrestricted land. In Houston, the Commenters' communities also specifically victim to concrete batch plants which are incentivized by TCEQ to choose these communities over sites in white, more affluent neighborhoods, where restrictions historically insulated these communities from industry encroachment. Today, there are over 100 permitted concrete batch plants in Harris County affecting environmental justice communities like Trinity/Houston Gardens, Fifth Ward and Dyersforest. Here is what socially vulnerable East Harris County (with more socially vulnerable areas in darker colors) looks like with all of these concrete batch plants denoted by red dots:



Without zoning or other land use restrictions preventing where CBPs can be proposed in the City of Houston or Harris County, Commenters' communities are at risk that other CBP facilities will be proposed in their community in areas unsuitable for industrial encroachment, such as residential areas or across from greenspaces.

- Environmental justice communities in Harris County like Trinity/ Houston Gardens, Fifth Ward and Dyersforest are specifically adversely impacted by CBPs;
- TCEQ should implement siting controls which consider communities without zoning. For example, siting requirements should include an evaluation of the nearby community buildings and the distance from those buildings to the proposed CBP. The evaluation of community buildings should specifically consider sensitive areas like homes, schools, churches, nursing homes, and possibly age demographic of the community. The community makeup of sensitive groups like the elderly and children should be considered in the permitting process.
- As part of the CBPSP application review process, TCEQ needs to evaluate the number of industrial operations already in particular areas of concern;
- As part of the CBPSP application review process, TCEQ needs to evaluate an applicant's history of violations before issuing permits;
- Co-location concerns, like other heavy PM producing facilities already in the area, should be considered. For example, the number of other industrial facilities already in a residential area, or in a community without zoning, should be evaluated prior to siting a CBP there.
- An environmental evaluation of the site itself needs to be conducted, including whether the facility can implement appropriate mitigation measures given the site, whether the site is located in a floodplain which could affect water quality, and other characteristics that could affect the site's safety.
- The CBPSP must have a process to ensure meaningful opportunities for the community to engage early on in the process during the TCEQ's review of the proposed location for the site.
- As part of ensuring compliance with the CBPSP, TCEQ needs to monitor emissions in residential communities near multiple or larger CBPs like in Houston Gardens, Fifth Ward and Dyersforest.

Commenters hope that TCEQ will consider these environmental justice concerns and effectuate change in minority communities facing daily environmental justice concerns because of the operations of the CBPs and other industrial facilities in their neighborhood.

F. Reducing Engine Emissions from CBPs.

Finally, Commenters urge TCEQ to limit diesel engine emissions created by CBPs in communities. The majority of pollutants from diesel engines are emitted into the atmosphere through the exhaust,

including nitrogen oxides, carbon monoxide, and particulates, meaning visible emissions (such as smoke) and non-visible emissions.²⁴ Exposure to diesel exhaust can lead to serious health concerns (asthma, respiratory illnesses, exacerbation heart and lung disease, etc.) and environmental impacts (ground level ozone, acid rain, damage to crops, soil, bodies of water, etc.).²⁵ Such limitation methods include:

- Prohibiting truck idling outside of concrete facilities;
- Rerouting, limiting, or prohibiting truck traffic, specifically through residential areas; and
- Prohibiting truck parking and/or speeding in residential areas.

Commenters would ask TCEQ to consider adopting some of these requirements for the 2023 Amendment to reduce these diesel emissions impacts on facilities situated in neighborhoods like Houston Gardens, Fifth Ward and Dyersforest.

IV. CONCLUSION

For these reasons, Commenters Super Neighborhood 48 Trinity / Houston Gardens, Progressive Fifth Ward Community Association, and Dyersforest Heights Civic Club ask the TCEQ to consider these comments on the 2023 Amendments Please contact the undersigned counsel if you have any questions or need clarification regarding the comments contained herein.

Respectfully submitted,

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²⁴ AP-42, Vol. I, 3.4: Large Stationary Diesel And All Stationary Dual-fuel Engines, available at: <https://www3.epa.gov/ttnchie1/ap42/ch03/final/c03s04.pdf>

²⁵ See, U.S. EPA, Learn About Impact of Diesel Exhaust and the Diesel Emissions Reduction Act (DERA) available at <https://www.epa.gov/dera/learn-about-impacts-diesel-exhaust-and-diesel-emissions-reduction-act-dera>