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See Attached.



OFFICE OF THE
HARRIS COUNTY ATTORNEY
CHRISTIAN D. MENEFFEE

December 6, 2024

Via TCEQ Electronic Comment Input

Gwen Ricco
Office of Legal Services, MC 205
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
P. O. Box 13087
Austin, Texas 78711-3087

Re: Harris County Comments; Texas Commission on Environmental Quality proposed new non-rule Air Quality Standard Permit for Temporary Public Works Projects; Non-Rule Project No. 2024-018-OTH-NR

Dear Ms. Ricco:

Harris County submits the following comment in reference to Texas Commission on Environmental Quality's (TCEQ) proposed new non-rule Air Quality Standard Permit for Temporary Public Works Projects (the Standard Permit). The Standard Permit covers temporary concrete batch plants that are built and operated to support public works projects. Harris County offers these comments to improve the protectiveness of the Standard Permit, thereby ensuring the health and safety of Harris County residents.

A. Background

1. Harris County Pollution Control Services Department

Harris County is a local subdivision of the State of Texas. In that capacity, Harris County works to protect public health and the environment. As a local government, Harris County has the authority to inspect facilities for compliance with various state environmental statutes, and TCEQ rules and orders issued thereunder.¹ In addition to these investigatory powers, Harris County has

¹ Tex. Health & Safety Code §§ 361.032, 382.111; and Tex. Water Code § 26.173. Harris County can investigate and/or pursue enforcement within its jurisdiction, which includes everything within the physical boundaries of Harris County.

the authority to file civil suits in the same manner as the TCEQ for injunctive relief, civil penalties, or both.²

Harris County Pollution Control Services Department (Pollution Control) is the county department designated to inspect facilities in Harris County for compliance with environmental laws and regulations (air, water, and waste), review permit applications, and submit comments to the TCEQ on permitting actions. Pollution Control works closely with the TCEQ's Houston regional office, which routinely refers a substantial portion of environmental complaints, including nuisance complaints, from Harris County citizens to Pollution Control. As a part of its mission, Pollution Control conducts routine and complaint driven investigations, issues Violation Notices when appropriate, and refers cases to the Harris County Attorney's Office or District Attorney's Office for civil or criminal enforcement. Based on Pollution Control's experience and specialized knowledge, Harris County submits these comments to TCEQ for consideration.

2. Harris County's Struggle to Attain Air Quality Standards

The Environmental Protection Agency (EPA) establishes National Ambient Air Quality Standards (NAAQS) for criteria pollutants at levels that are sufficient to protect public health and welfare.³ Harris County has struggled with NAAQS attainment since the early 1990s. Harris County is currently in severe nonattainment for the 2008 Ozone NAAQS, serious nonattainment for the 2015 Ozone NAAQS and is at-risk of nonattainment for the PM_{2.5} NAAQS. In 2012, the Annual PM_{2.5} NAAQS was lowered to 12.0 µg/m³. Utilizing data from the North Wayside Monitor in Harris County the average reading for 2023 was 13.1 µg/m³, putting Harris County on track to enter nonattainment. In 2024, the EPA further lowered the Annual PM_{2.5} NAAQS to 9.0 µg/m³ which will likely bring Harris County into nonattainment status. TCEQ staff's recommendation that Harris County be designated nonattainment for the Annual PM_{2.5} NAAQS is set to go before TCEQ Commissioners on December 18, 2024.⁴

3. Concrete Batch Plants in Harris County

The primary criteria pollutant emitted by concrete batch plants is PM_{2.5}. TCEQ permits are designed to keep facilities from causing or contributing to exceedances of the NAAQS. Unfortunately, concrete batch plants have a difficult time obtaining and maintaining compliance

² Tex. Water Code § 7.351.

³ 42 U.S.C. § 7409.

⁴ TCEQ Proposed December 18, 2024, Agenda. Item No. 4, available at <https://www.tceq.texas.gov/downloads/agency/decisions/agendas/backup/2024/2024-1660-mis.pdf>

with TCEQ standard permit conditions. Because of the rampant noncompliance, these facilities contribute to Harris County's nonattainment of the PM_{2.5} NAAQS. In order to protect air quality, Harris County strictly enforces compliance with permit conditions and has consistently advocated for strengthening new and existing permits.

B. Suggestions to improve the Standard Permit

Harris County offers the following suggestions to improve the Standard Permit:

1. Annual PM_{2.5} should be modeled and assessed in the Standard Permit's protectiveness review to ensure offsite impacts are minimal.

The modeling performed for the Standard Permit does not assess the impact of temporary concrete batch plants on the annual PM_{2.5} NAAQS. Instead, TCEQ has performed a "qualitative analysis" for annual PM_{2.5}, offering that "operations are intermittent" and that "the 12-hour per day operational limit and yearly throughput limit ensure[s] the operations are intermittent and unlikely to impact the annual PM_{2.5} concentrations."⁵ Harris County respectfully disagrees with this assessment. As described above, PM_{2.5} is a significant problem within Harris County. This is why Harris County will likely be designated as nonattainment for the annual PM_{2.5} NAAQS. Even small or intermittent contributions of PM_{2.5} into the ambient air in parts of Harris County could be detrimental to the health and safety of its residents.

TCEQ has already performed an annual analysis for various other pollutants, despite the "intermittent operations" of the facilities. For example, TCEQ performed an analysis of the annual effects of Nitrogen Dioxide (NO₂), Nickel particulates (Ni), formaldehyde (CHOH), and silica (SiO₂).⁶ Moreover, TCEQ admits that predicted concentrations of 24-hour PM_{2.5} emitted from a permitted facility will be greater than de minimis.⁷ As such, Annual PM_{2.5} should be modeled as a part of the protectiveness review, and the results of that modeling should be shared and available for public comment before the permit is given final approval.

2. The Standard Permit should further clarify and limit the ability of a covered facility to relocate.

Under the terms of Section 8(A) of the Standard Permit, "The TCEQ executive director may approve the relocation of a temporary concrete batch plant that has previously been

⁵ TCEQ Proposed New Non-Rule Air Quality Standard Permit for Temporary Public Works Projects Modeling Report, Page 6.

⁶ *Id.* at 2.

⁷ *Id.* at 1.

determined by the commission to be in compliance with the technical requirements of the public works standard permit version adopted at registration.”⁸ The term “relocation” is not defined or limited in any way. This is concerning because some public works projects (such as planned work for the North Houston Highway Improvement (NHHIP) Project) are anticipated to take a decade and will occur within an isolated area.⁹ The requirement that the relocated facility be within the same public works right-of-way or contiguous to it, is insufficient to ensure the protection of air quality. If a relocation occurs within close proximity, the 180-day limit could be circumvented, while the same areas air quality is impacted. For example, a temporary concrete batch plant working on multiple projects (and therefore subject to the 180-day limit) must be prevented from relocating 400 feet and then claiming its 180-day clock has restarted. This would create a glaring loophole. To that end, Harris County recommends that relocation only be permitted outside of a pre-determined minimum distance.

Moreover, Section 8(B) states that “relocations meeting subsection (8)(A) of this standard permit, the owner or operator must submit to the executive director at least 12 business days prior to locating at the site . . .”¹⁰ Harris County requests that this be amended to include notice to local air pollution agencies as well. Often it is the local government, such as Harris County Pollution Control, that investigates facilities for compliance with state and local law. Requiring notification to the local government would provide local regulators with the information they need to effectively enforce the law. Failing to notify local authorities will lead to delays in compliance inspections and enforcement as local investigators are forced to seek out relocated facilities.

3. Several definitions in the Standard Permit should be clarified and strengthened.

“Temporary Concrete Batch Plants”

Definition (J) states that a “Temporary Concrete Batch Plant . . . is a concrete batch plant that occupies a designated site for not more than 180 consecutive days or that supplies concrete for a single project (single contract or same contractor for related project segments), but not for other unrelated projects.”¹¹ This definition does not adequately limit the scope of a temporary concrete facility. While the 180 consecutive day requirement is sufficient, allowing for a temporary facility to operate for the duration of a “single project” would allow a

⁸ Proposed Air Quality Standard Permit for Temporary Public Works Projects, Page 7.

⁹ NHHIP Segment 3 – Footprint and Timeline found at <https://www.txdot.gov/nhhip/about/segment-3.html>

¹⁰ Proposed Air Quality Standard Permit for Temporary Public Works Projects, Page 7.

¹¹ *Id.* at 2.

temporary facility to operate for a long indefinite time period. It's not unreasonable to suspect that a facility could operate for two or more years to cover a single project, depending only on how large of a project it is. NHHIP Segment 3 in Harris County is an example of one such project that will take many years to complete and meets the definition of a single project.

It is not uncommon for temporary concrete batch plants permitted under the original (non-public works) Temporary Concrete Batch Plant Standard Permit to last for long periods of time. Williams Brothers Construction Company has at least two temporary concrete batch plants in Harris County, both operating under a standard permit. TCEQ Air Quality Registration Nos. 91223L001 (Permit L001) and 52424L006 (Permit L006). Permit L001 was permitted in 2019 and is still active today. The permit is not set to expire until 2029. Permit L001 facility was permitted to support TxDOT Project STP2019(952). Permit L006 was permitted in July 2023 and also supports a TxDOT project (C-389-5-87). This facility has been permitted for the entirety of 2024 and is continuing into 2025. Thus, it is not uncommon for temporary concrete batch plants authorized under the current permit to operate far beyond 180-days.

Administrative Requirement (G) states that "Owners or operators shall keep written records on-site for a rolling 24-month period."¹² This is an acknowledgement by TCEQ that some (if not most) facilities will be in operation for more than 180 days. Otherwise, there would be no need for a 24-month timeframe to keep all records. Harris County doesn't find any fault with this requirement; it is simply further evidence that "a single project" can have a significant duration.

If a single project will have a duration longer than 180-days it's not truly temporary, and the permittee should be required to obtain a permit with a longer duration and sufficient controls to ensure public health and safety are protected. To ensure that temporary concrete batch plants actually operate on a temporary basis, Harris County recommends having a definite end-date for the permit. The simplest way to do this would be to remove any language tying the duration of the permit to a project, instead requiring a temporary concrete batch plant to operate for no more than 180 consecutive days.

¹² *Id.* at 3.

4. The Standard Permit should require covered facilities to notify the public of their location or relocation.

Administrative Requirement (D) states that “Owners or operators of temporary concrete batch plants seeking registration under the standard permit are exempt from public notice requirements.”¹³ Harris County requests that TCEQ reconsider exempting this permit from public notice requirements. As stated above temporary concrete batch plants can be located at a single site for many years. If the facility were truly temporary and were only allowed to operate for 180-days there would be an argument for exempting public notice, although best practice would still be to inform the community. However, in this circumstance, where facilities can exist for the duration of “a single project” regardless of whether that project takes ten weeks or ten years, failing to require public notice is completely unreasonable. At a minimum, residents must be notified of potential health risks associated with locating the permitted facility near their home. Ideally any affected resident should be able to speak up (for or against) the granting of the permit. Under the current language of the Standard Permit, residents won’t have any advanced warning that a concrete batch plant is being sited near them and will have no idea what their recourse is if the facility negatively impacts them. Harris County appreciates that facilities permitted under the Standard Permit will have operation limitations placed upon them, but in our experience as an enforcement agency, concrete batch plants often fail to comply with permit specifications. When noncompliant facilities operate, they pose a much greater risk to the surrounding community than modelled. As such, Harris County requests that notice be required for *at least* those residents within one mile of the facility. Moreover, the permitted facility must be required to give notice any time it relocates for the same reasons.

5. The Standard Permit should include more robust best management practices to ensure emissions from in-plant roads and traffic areas are controlled.

General Requirement (E) states that “Owners or operators shall control emissions from in-plant roads and traffic areas at all times by one or more of the following methods” and lists as options “(i) watering them . . . (ii) treating them with dust suppressant chemicals . . . or (iii) covering them with materials such as, (but not limited to), roofing shingles or tire chips and used in combination with (i) or (ii) of this subsection.”¹⁴ While this is a good start, Harris County would

¹³ *Id.*

¹⁴ *Id.* at 5.

recommend that more requirements be in place. In Harris County's experience with concrete batch plants, road emissions are among the biggest contributors to air pollution escaping the fence line, and best management practices to control those emissions are often overlooked. As such, Harris County would recommend changing the provision as follows:

Owners or operators shall control emissions from in-plant roads and traffic areas at all times by three or more of the following methods until there are no visible emissions during any time of operation:

- (i) watering, sweeping, and cleaning the plant roads and entrances;
- (ii) treating them with dust-suppressant chemicals as described in the application of aqueous detergents, surfactants, and other cleaning solutions in the Air Permits Division List of De Minimis Facilities or Sources;
- (iii) covering them with a material such as (but not limited to), roofing shingles or tire chips and used in combination with (i) or (ii) of this subsection;
- (iv) a rumble grate (or equivalent) that is placed at least 50 feet from a public road to dislodge sediment from the wheels and undercarriage of trucks that haul aggregate, cement, and/or concrete;
- (v) the use of a vacuum truck (or equivalent) to clean all in-plant roads and entrances at least once per day for each day of operation;
- (vi) implementation of a tire-wash system to remove sediment from the wheels and undercarriage of trucks that haul aggregate, cement, and/or concrete.
 - a. the tire-wash station must be located in front of some form of traffic restriction, such as a scale, gate, or stop sign.
 - b. the tire-wash station shall be set back at least 50 feet from any public road.
 - c. this permit does not authorize the construction and/or use of a truck washing system under Texas Water Code Chapter 26.
- (vii) dust suppressant fencing or another barrier of not less than 12 feet high around the operational areas, maintained in good working order; and/or
- (viii) maintaining stockpiles at a three to five percent moisture level at all times.

6. The Standard Permit should require visible emissions observations to be made daily rather than quarterly.

General Requirement (H) states that “Observations for visible emissions shall be performed and recorded quarterly.”¹⁵ Relatedly, Administrative Requirement (G)(ix) states that “Records shall be maintained onsite for . . . quarterly visible emissions observations and any corrective actions required to control excess visible emissions.”¹⁶ Both these requirements should be modified to require daily visible emissions observations and maintaining the associated records. Daily observations are more protective, and that added protection is essential if the permit is to be promulgated without requiring dispersion modeling. If visible emissions are only required to be monitored quarterly, a facility that operates for only 180-days may only have to make two observations during the entire lifespan of the facility. Such infrequent observations would allow problems with pollution abatement equipment to go undiagnosed for an extended period of time, thereby putting nearby communities at risk.

7. The Standard Permit should make it clear that pollution abatement equipment failure and visible emissions must be reported to the TCEQ and local pollution control agencies.

Administrative Requirement (H) states that “Owners or operators shall document and report abatement equipment failure or visible emissions deviations in excess of paragraph (4)(B)(iii) in accordance with 30 TAC Chapter 101, General Air Quality Rules as appropriate.”¹⁷ While this statement is a good start, additional language explicitly notifying permit holders of requirements to notify local governments of emission events are recommended to improve compliance. To that end, Harris County requests that the rule be re-written to include the following: “Owners or operators shall document and report abatement equipment failure or visible emissions deviations in excess of paragraph (4)(B)(iii) in accordance with 30 TAC Chapter 101, General Air Quality Rules as appropriate; notifying the local office of the commission for the region in which the regulated entity is located, and all appropriate local air pollution control agencies with jurisdiction.” Given that Harris County performs the majority of inspections at concrete batch

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

plants within its jurisdiction, this small change could have a significant positive effect on local air quality.

8. The Standard Permit should require that personnel qualified to perform EPA Test Method 22 are present at the facility during all hours of operation.

General Requirement (B)(iii) states that “Owners or operators shall maintain fabric or cartridge filters and collection systems in good working condition by . . . meeting a performance standard of no visible emissions exceeding 30-seconds in any six minute period as determined using United States Environmental Protection Agency (EPA) Test Method (TM) 22 in Appendix A-7 to Part 60 – Test Methods 19 through 25E.”¹⁸ Harris County agrees with this provision but would add that during all hours that the regulated facility is operating, it be required to have personnel certified to perform Test Method 22 on-site. These certified individuals would be qualified to identify and determine the extent of particulate matter emissions any time there is an emissions event.

9. The Standard Permit should require the permittee to comply with illumination standards set by the Illuminating Engineering Society.

General Requirement (B)(iv) states that “Owners or operators shall maintain fabric or cartridge filters and collection systems in good working order by . . . sufficiently illuminating silo filter exhaust systems when cement or fly ash silos are filled during non-daylight hours to enable a determination of compliance with the visible emissions requirement in paragraph 4(B)(ii) of this standard permit.”¹⁹ Harris County requests that language be added to the Standard Permit requiring installation of outdoor lighting at the facility that complies with standards adopted by the Illuminating Engineering Society (IES).

10. The Standard Permit should include pugmills and other soil stabilization plants in its distance limitations to prevent cumulative impacts from nearby facilities.

General Requirement (I) states that “The owner or operator shall locate the temporary concrete batch plant operating under the standard permit at least 550 feet from any crushing plant or hot mix asphalt plant at the time the application was submitted.”²⁰ This requirement is designed to mitigate the cumulative effects of industry grouping in a single discrete area. TCEQ is required

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 5.

to consider the effects of cumulative impact in their decisions per the Texas Water Code.²¹ Harris County recommends including permanent concrete batch plants, other temporary concrete batch plants, as well as pugmill/soil stabilization plants to the list of facilities that cannot be located within 550 feet of the facility covered by the Standard Permit. This requirement would spread out facilities to different areas and would prevent all the pollution associated with these public works projects from being borne by a single community. Harris County is aware that concrete batch plants often co-locate with one another and with soil stabilization plants, hence the need for the requirement. This requirement will spread concrete facilities out such that less of the pollution burden is concentrated in any particular area. Without this requirement the Standard Permit will run afoul of the Texas Water Code.

11. The Standard Permit should ensure that stationary equipment at a permitted facility is located a safe distance away from the nearest off-site receptor.

Harris County also recommends that the setback distance required between the permitted facility's stationary equipment and the nearest off-site receptor be increased. Operational Requirement (E)(ii) states that "Stationary equipment (excluding the suction shroud fabric/cartridge filter exhaust, cement/fly ash storage silos, and engine), stockpiles and vehicles used for the operation of the temporary concrete batch plant on in-plant roads (except for incidental traffic and the entrance and exit to the site), shall be located at least 50 feet from the nearest off-site receptor."²² Harris County recommends that the setback distance be extended to 100 feet to match the requirements of Operational Requirement (E)(i). The reason for this suggestion is that stockpiles and in-plant roads can generate significant emissions that would negatively impact the surrounding community. An extra 50 feet of distance would help to negate those negative effects.

Thank you for the opportunity to comment on the Application. If you have any questions, please feel free to contact Ryan Cooper at Ryan.Cooper@harriscountytexas.gov.

Respectfully submitted,

CHRISTIAN D. MENEFEE

Harris County Attorney

²¹ Texas Water Code § 5.130.

²² Proposed Air Quality Standard Permit for Temporary Public Works Projects, Page 7.

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