



OFFICE OF THE
HARRIS COUNTY ATTORNEY
CHRISTIAN D. MENELEE

November 25, 2025

Via TCEQ E-Comments

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
P. O. Box 13087
Austin, Texas 78711-3087

Re: Harris County Attorney's Office Comments on Rule Project Number 2025-032-116-AI

To Ms. Gharis,

Harris County Attorney's Office (HCAO) submits these comments on Texas Commission on Environmental Quality (TCEQ) Rule Project Number 2025-032-116-AI. HCAO writes in support of TCEQ's proposed rule change, however, HCAO would respectfully request that TCEQ expand the scope of its rulemaking in three important ways. First, HCAO asks TCEQ to extend its rulemaking to all the different types of standard permits, particularly those standard permits that regulate industries generating significant amounts of airborne particulate matter such as temporary concrete batch plants, concrete batch plants with enhanced controls, temporary and permanent rock and concrete crushers, as well as temporary and permanent hot mix asphalt plants. Second, HCAO asks TCEQ to require an updated protectiveness review to be performed within a set time, preferably within two years of a change in National Ambient Air Quality Standards (NAAQS). Third, HCAO asks TCEQ allow for public participation in TCEQ's protectiveness review process, specifically by allowing interested members of the public to comment on TCEQ's modeling methods and conclusions.

Legal Background

The Clean Air Act requires the Environmental Protection Agency (EPA) to identify air pollutants that may reasonably be anticipated to endanger human health and the environment,

called “criteria pollutants.” EPA establishes NAAQS for criteria pollutants at levels sufficient to protect public health and welfare.¹ While EPA sets the NAAQS, states determine how the NAAQS are to be met within their own borders by implementing pollution control measures.² To that end, Texas legislators enacted the Texas Clean Air Act and crafted a State Implementation Plan (SIP) to ensure federal standards will be achieved. The Texas Clean Air Act requires all sources of air emissions to obtain a permit for their emissions. An important part of Texas’ SIP is the use of standard permits. Texas relies heavily on its standard permit program in its SIP, because these permits are generally much easier to obtain than site-specific New Source Review Permits. Because standard permits are easier to obtain, they are the primary vehicle for permitting air emissions for certain industries (such as concrete batch plants). Standard permits are a type of uniform permit which includes predetermined industry-specific operational conditions and pollution control measures. TCEQ presumes that if these conditions and control measures are adhered to by the permittee, the permittee’s facility will not contribute to an exceedance of the NAAQS and will be protective of human health and the environment. TCEQ’s presumption is based on a protectiveness review that analyzes the efficacy of control measures using an air quality analysis.

On May 30, 2024, HCAO submitted a Petition for Rulemaking requesting that TCEQ promulgate a rule requiring the performance of an updated protectiveness review for each standard permit within a designated amount of time after an update of the NAAQS.³ A new protectiveness review does not necessitate an underlying permit change, but provides a mechanism to ensure the permit reflects national standards and is appropriately protective. HCAO filed its Petition for Rulemaking out of concern that the protectiveness reviews that provided the basis for the standard permit program were performed using outdated standards. A protectiveness review was performed for the concrete batch plant standard permit in the years 2000, 2012, and 2023. The concrete batch plant standard permit was promulgated on September 1, 2000, and was amended on July 10, 2003, December 21, 2012, September 22, 2021, and January 24, 2024. Predictably, when a new

¹ 42 U.S.C. § 7409.

² 42 U.S.C. § 7410.

³ HCAO suggested this review occur within a year after a change in the NAAQS but indicated in its Petition for Rulemaking other amounts of time within 2-3 years would also be appropriate.

protectiveness review is performed, it's often accompanied by changes to the standard permit. TCEQ rejected HCAO's Petition for Rulemaking.

Texas Senate Bill 763 (89th Legislature), effective as of September 1, 2025, modified the Texas Clean Air Act to require new protectiveness reviews to be conducted at least every eight years for the concrete batch plant standard permit.⁴ Before the enactment of Senate Bill 763, TCEQ had discretion to decide whether and when to perform an updated protectiveness review. TCEQ proposed Rule Project Number 2025-032-116-AI to effectuate Senate Bill 763. This rule implements the new statutory command of the Texas Clean Air Act by requiring a protectiveness review for concrete batch plants to be performed at least once every eight years.

Argument

Rule Project Number 2025-032-116-AI is a step in the right direction. Regardless of a change in the NAAQS, TCEQ proposes to perform an updated protectiveness review for the concrete batch plant standard permit at least once every eight years. However, the scope of the proposed rule should be expanded to include all (or most) standard permits, TCEQ should include a provision expediting an updated protectiveness review if the NAAQS change, and TCEQ should allow the public an opportunity to comment on TCEQ's protectiveness reviews.

1. TCEQ should require every standard permit's protectiveness review to be updated at least every eight years.

There has been constant community pressure on regulators to reign in concrete batch plants, because they contribute to poor air quality in Harris County and throughout Texas.⁵ This permit has been amended and gone through multiple protectiveness reviews, in part due to the high level of public awareness and concern regarding concrete batch plant pollution. However, standard permits for other industries receive much less public and legislative attention. This is problematic,

⁴ Tex. Health & Safety Code § 382.05195(e-1)

⁵ Clarissa Ayala, *Acre's Homes Community Breathes Easier as Concrete Batch Plant Abandons Plans*, LONESTARLEGAL.ORG (Jan. 24, 2020) <https://www.lonestarlegal.org/news/2020/01/acres-homes-community-breathes-easier-as-concrete-batch-plant-abandons-plans/>; Natalie Hee, *Aldine residents say they don't want to see another concrete batch plant*, FOX26HOUSTON.COM (Apr. 7, 2022, 6:47 PM) <https://www.fox26houston.com/news/aldine-residents-concerned-over-proposal-to-build-a-ninth-concrete-batch-plant-facility-in-area>; Natalie Weber, *Fort Bend County residents, elected officials push back against proposed concrete plants* (last updated Aug. 26, 2025, 4:23 PM) <https://www.houstonpublicmedia.org/articles/news/fort-bend/2025/08/25/529184/as-companies-look-to-open-new-concrete-plants-in-fort-bend-elected-officials-push-back>.

because other industries are just as capable of emitting dangerous levels of pollution if left under-regulated.

For example, the standard permit for permanent rock and concrete crushing facilities, of which there are many, hasn't been updated since 2008. A protectiveness review for that permit was performed twice in 2006, nearly twenty years ago. Much like concrete batch plants, permanent rock and concrete crushers contribute to the high concentration of particulate matter in the ambient air. Considering the nature of this industry and its ability to contribute to air pollution, which causes negative health effects, protectiveness reviews for permanent rock and concrete crushers should have to perform updated protectiveness reviews at least as often as is being suggested in this rulemaking. This discrepancy is found throughout the standard permit program. No protectiveness review has been performed for the permanent hot mix asphalt plant standard permit since the original was performed in 2002. The concrete batch plant with enhanced controls apparently has never had its own individual protectiveness review, instead relying upon the findings of protectiveness reviews performed for standard concrete batch plants, despite the different control measures used at these facilities. Unsurprisingly, the concrete batch plant with enhanced controls permit has not been updated since 2004. It is very unlikely these permits are protective under current relevant standards, and implementing a rule requiring reviews at set, frequent intervals would prevent standard permits from becoming even further outdated.

TCEQ's policy has been to perform protectiveness reviews as needed based on TCEQ rules found in Texas Administrative Code Chapter 116 Subchapter F, but this new rule has been enacted pursuant to the legislature's decision to amend the Texas Clean Air Act. While Governor Abbot has vetoed past legislative efforts to codify the requirement that TCEQ perform a revised protectiveness review at least once every six years for each standard permit,⁶ TCEQ has the authority to expand the scope of this rulemaking to include all standard permits. TCEQ is only *required* to perform regular updates to the protectiveness review for concrete batch plants, but nothing *prevents* TCEQ from making a rule requiring an updated protectiveness review for each standard permit every eight years. TCEQ has performed every other protectiveness review subject to their existing authority under Texas Health and Safety Code § 382.05195 and established TCEQ rules.

⁶ See Senate Bill 1399 (88th Legislature).

TCEQ should utilize its current authority under these sections to promulgate a rule requiring a protectiveness review for each standard permit to be performed at regular and frequent intervals. This rule is needed given the extensive amount of time that often elapses between protectiveness reviews.⁷ The delay in performing new protectiveness reviews causes a delay in updating standard permits. Moreover, standard permits are less protective when they rely on older protectiveness reviews that used older modeling methods, older public health data, older background levels of pollution, and older federal standards. As such, this rulemaking is necessary to protect human health and the environment.

2. TCEQ should expedite an updated protectiveness review if NAAQS change.

Harris County renews its previous call for TCEQ to update its protectiveness review for the concrete batch plant standard permit and all standard permits within a certain timeframe of a change in NAAQS, ideally within two years. Protectiveness reviews are designed to ensure their underlying permits comply with the NAAQS and by extension are protective of human health and the environment. If the NAAQS change there must be an expeditious assessment to determine whether the current permit is still protective based on the updated standard. Anything less will not guarantee the safety of our communities.

SB 763 alters the Texas Clean Air Act to state “commission shall *at least once* every eight years conduct a protectiveness review of the permit.”⁸ The legislature’s use of the wording “at least” makes clear their intent to give TCEQ discretion to perform a protectiveness review sooner if needed. This aligns with TCEQ’s mandate to consider changes to federal standards in their decision to amend a standard permit and perform a protectiveness review.⁹ Thus, Texas law and regulations require TCEQ to perform an updated protectiveness review whenever there is a change to the NAAQS. TCEQ should expand the scope of their current rulemaking to ensure they are complying with federal standards.

NAAQS have changed multiple times since many of Texas’ standard permits have last been amended and since their last protectiveness review has been performed. These permits do not comply with federal standards. Because the standard permits don’t comply with federal standards,

⁷ See Table 1 on Page 8.

⁸ Tex. Health & Safety Code § 382.05195(e-1) (emphasis added).

⁹ 30 Tex. Admin. Code § 116.605(d)(3)(B).

they dangerous to the communities that live and work near them. Harris County has many communities that share a fence line with industries that operate under standard permits. TCEQ's failure to enact this rule puts our communities at higher risk of health complications because the facilities near their homes and businesses are not required to meet federal standards.

3. TCEQ should allow the public to comment on protectiveness reviews.

Whether TCEQ alters the rule to require more frequent protectiveness reviews for all standard permits or maintains their current rule, TCEQ should allow the public to comment on their protectiveness reviews. Currently, interested parties only have an opportunity to comment on a new standard permit, but are not given an opportunity to comment on the underlying protectiveness review. The result is that when community comments on the standard permit (or an entity's registration under the standard permit), they are often raising concerns about the underlying protectiveness review. It would be more efficient for communities to raise their concerns earlier so that TCEQ can address actual and perceived deficiencies in the protectiveness review before changes are made to the standard permit. Ultimately, receiving community input at an earlier stage would benefit TCEQ and would ensure that protectiveness reviews are as comprehensive as possible. HCAO urges TCEQ to modify the current rulemaking or adopt a new rule to effectuate this suggestion.

Conclusion

Harris County Attorney's Office commends the progress TCEQ has made in requiring updated protectiveness reviews for the concrete batch plant standard permit to be performed every eight years. However, HCAO urges TCEQ to extend this requirement to the other standard permits as well, such as the standard permit for temporary concrete batch plants, concrete batch plants with enhanced controls, temporary and permanent rock and concrete crushers, as well as temporary and permanent hot mix asphalt plants. Further, HCAO reiterates its call for TCEQ to require an expedited protectiveness review when the NAAQS are updated. HCAO also urges TCEQ to allow for greater public participation in the permitting process by allowing the public to comment on TCEQ's protectiveness reviews. Putting these requirements in place will ensure that protectiveness reviews for all standard permits incorporate the most updated air quality standards and modeling

methods. By doing so, TCEQ would ensure that the underlying standard permits that rely on these protectiveness reviews are fully protective of human health and the environment.

Sincerely,

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Standard Permit Type	Date Last Protectiveness Review was Performed
Air Quality Pollution Control Projects	No Protectiveness Review
Anhydrous Ammonia Storage and Distribution Operations	June 24, 2008
Animal Carcass Incinerators	Unknown – Presumably before the permit went into effect on January 16, 2006
Boilers	October 14, 2005
Concrete Batch Plants	August 24, 2023
Concrete Batch Plant with Enhanced Controls	Has not been independently performed, tied to the protectiveness review for standard Concrete Batch Plants.
Cotton Gin Facilities and Cotton Burr Tub Grinders	March 11, 2009
Dry Bulk Fertilizer Handling Operations	June 25, 2008
Electric Generating Units	Has not been independently performed, tied to the protectiveness review performed for Stationary Engines and Turbines under Permit- by-Rule 30 Tex. Admin. Code § 106.512.
Feedmills, Portable Augers, and Hay Grinders	June 30, 2008
Grain Elevator / Grain Handling Operations and Portable Grain Augers	June 26, 2008
Marine Loading Operations	March 6, 2020
Municipal Solid Waste Landfills	March 14, 2006
Oil and Gas Handling and Production Facilities	December 30, 2010
Peanut Handling Operations	June 30, 2008
Permanent Hot Mix Asphalt Plants	August 1, 2002
Permanent Rock and Concrete Crushers	March 27, 2006
Sawmills	Unknown – Presumably before the permit went into effect on February 6, 2008
Temporary Hot Mix Asphalt Plants	Has not been independently performed, tied to the protectiveness review performed for Permanent Hot Mix Asphalt Plants
Temporary Public Works Projects	May 30, 2025
Temporary Rock and Concrete Crushers	Has not been independently performed, tied to the protectiveness review performed for Permanent Hot Rock and Concrete Crushers
Temporary and Permanent Polyphosphate Blenders	March 3, 2010

NOTE: Dates for these protectiveness reviews were procured via public information act requests submitted by HCAO to TCEQ, any inaccuracies enclosed herein are accidental.