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VIA ELECTRONIC SUBMISSION

<https://tceq.commentinput.com/>

Texas Commission on Environmental Quality

Gwen Rico, MC 205

Office of Legal Services

TCEQ

P.O. Box 13087

Austin, TX 78711-3087

RE: Public Comments on the TCEQ Rulemaking on Proposed Revisions to 30 TAC Chapter 116 and to the State Implementation Plan to Implement the Requirements of SB 763 and SB 2351 - RPN 2025-032-116-AI.

On behalf of 30,000 members and supporters in Texas, Public Citizen appreciates the opportunity to comment on the proposed rulemaking to implement the requirements of SB 763 and 2351 (89R).

We support the proposed amendments to 30 TAC Chapter 116, Subchapter F, requiring a protectiveness review of the Air Quality Standard Permit for Concrete Batch Plants at least once every eight years (SB 763). Nothing prohibits the agency from conducting this review more frequently, and we encourage the TCEQ to do so to ensure the permit remains as protective of public health and the environment as possible. The TCEQ's Office of Public Interest Council has, for many years, raised concerns about the impact of these facilities on Texas communities and has advocated for stronger rules to protect communities from pollution from concrete batch plants. More frequent protectiveness reviews ensure that permits are based on the most up-to-date science available.

We also support the proposed amendment to add 30 TAC §116.605(f)(1) and (2) that would outline criteria of how the commission requires an operator of a permanent facility that is authorized to begin new construction under the former standard permit to update the permanent facility's plans for the new construction to comply with the amended standard permit (SB 2351).

We would like to note a discrepancy between the language in the proposed rule and in the statute. The proposed rule refers to a facility operator who, "filed a request *under §116.120 of this title, (relating to Voiding of Permits)* for an extension..." Whereas SB 2351 states, "the facility operator filed a request *under commission rules* for an extension..." (*Emphasis added in both citations.*)

This means that SB 2351 is technically broader than the proposed rule, as it would cover any extension granted under any rules, not just under 30 TAC §116.120. However, we asked during



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the Q&A session at the November 20 public hearing whether there were any other agency rules that would grant an extension. We were told that there are not. So, to the extent that the proposed rule is just as inclusive as the statute, but simply more exact in its language, we have no concerns. However, if there ever were a future rule created that allowed an extension by other means, this rule would have to be updated to reconcile that discrepancy with the statute.

It should also be noted that the bill's author, State Representative Armando Walle, has expressed in his comments to this agency under this rulemaking that the legislature intended to encourage TCEQ to make this requirement mandatory rather than permissive. We agree that the TCEQ has clear authority to require compliance and believe that if a facility has not begun construction, the agency should require it to meet any revised standards. Like Rep. Walle, we strongly believe that requiring permit holders to comply with the most up-to-date standards would better protect the health of Texas communities. We also urge TCEQ to incorporate this requirement into its rulemaking.

As recently seen in the lawsuit brought by Harris County against the TCEQ, the court disfavors arbitrary delay, where, in that instance, the agency's attempt to give concrete batch plant operators up to 10 years to comply with new pollution standards was found to be a violation of Texas law requiring the agency to protect human health. *Harris County, Tex. v. Tex. Comm'n on Env't Quality*, Cause No. D-1-GN-24-001116 (Travis Cnty., Tex. 126th Jud. Dist. Ct. 2025). Any delay by the TCEQ in implementing or requiring compliance with a revised standard could similarly be regarded as arbitrary.

The agency also does not indicate whether it would issue guidance on when it would or would not exercise permissive authority to grant an earlier compliance date, or how it would consistently and fairly do so. If the agency does not incorporate the mandatory requirement into its rulemaking, guidance would provide regulatory certainty to applicants about whether and when they will need to comply with new permit terms. To avoid confusion, however, we strongly support the commission adopting the mandatory requirement for compliance with revised standards.

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