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These comments are submitted by Lone Star Legal Aid on behalf of its represented client, Super Neighborhood 48 Trinity/ Houston Gardens. Please see attached file.

Reference RPN 2025-032-116-AI

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**Lone Star Legal Aid
EQUITABLE DEVELOPMENT INITIATIVE**

November 24, 2025

VIA ELECTRONIC FILING *tceq.commentinput.com*

Gwen Ricco

MC 2025

Texas Commission on Environmental Quality

PO Box 13087

Austin, Texas 78711-3087

Re: Rule Project Number 2025-032-116-AI

Dear Sirs:

On behalf of our represented client, Stakeholder Super Neighborhood 48 Trinity/ Houston Gardens (Super Neighborhood 48), Lone Star Legal Aid (LSLA) provides the following formal comments to the Texas Commission on Environmental Quality (TCEQ) on the non-statutory changes included in the proposed rulemaking to amend Chapter 116 of Title 30 of the Texas Administrative Code.

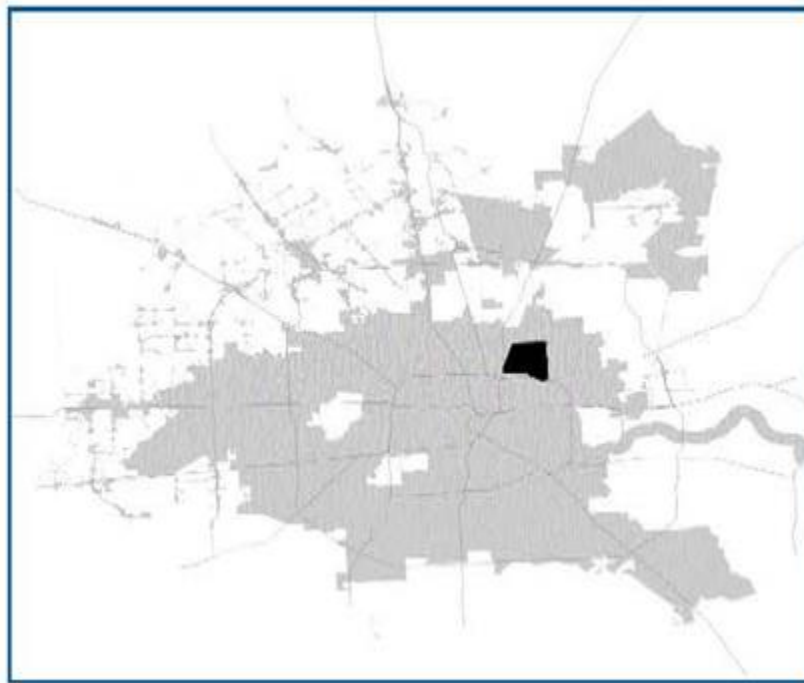
Super Neighborhood 48 strongly supports this public rulemaking and the proposed changes brought about by the recent adoption of Senate Bills 763 and 2351. We encourage TCEQ to act promptly to adopt these changes and make them effective as required by March 1, 2026.

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 to ensure equal access to justice. LSLA's service area encompasses one-third of the State of Texas, including 72 counties in the eastern and Gulf Coast regions of the state. LSLA's Environmental Justice team focuses on the right to the fair distribution of environmental benefits and burdens and the right to equal protection from environmental hazards. LSLA advocates for these rights on behalf of impacted individuals and communities in LSLA's service area. These comments are submitted on behalf of Super Neighborhood 48 Trinity/Houston Gardens in Houston, Harris County, Texas.

Commenter Super Neighborhood 48 “Trinity/Houston Gardens” takes its name from two communities: Trinity Gardens and Houston Gardens in Houston, Texas, also known as the “Gardens.” Within the City of Houston, a super neighborhood is a geographically designated area where residents, civic organizations, institutions, and businesses work together to identify, plan, and set priorities to address the needs and concerns of their community. The boundaries of each super neighborhood rely on major physical features, such as bayous or freeways, to group together contiguous communities that share common physical characteristics, identity, or infrastructure. The City of Houston defines the area known as Super Neighborhood 48 by the geographic boundary shown below in Figure 1, which is within City Council District B and comprises 4,395 acres (6.87 sq. miles) in the Northeastern part of the City of Houston, Texas:

Figure 1: Relative Location of Super Neighborhood 48 in Northeast Houston, Harris County, Texas



In Houston, each Super Neighborhood elects a council comprised of area residents and stakeholders that serves as a forum to discuss issues and identify and implement priority projects for the area. Super Neighborhood 48 is comprised of leaders and community activists who have continually battled with the City to improve the existing living conditions of their community. Many of these residents were born and raised in the Gardens community and have lived in the Gardens their entire life, showing their commitment to investment in their community. These residents are property owners with both personal and financial interest at stake as a result of the continuous disinvestment in their community.

Commenter represents a community predominately of African American heritage. The group is comprised of parents, grandparents, community members, retirees, church leaders, community organizations, and the like. Deeply rooted in their neighborhood, these residents are committed

to improving the quality of life of their community. One of the threats to their quality of life is the proliferation of concrete batch plants (CBPs) in and nearby Super Neighborhood 48.

As a result of years of disinvestment in the Gardens community, the land values in the Gardens became inexpensive, creating the perfect opportunity for developers and industrial projects. Today, much of the east end of the Gardens has been converted to industrial use, changing the nature of the once single-family neighborhood for families, children, and seniors in the neighborhood. Super Neighborhood 48 has numerous industrial sites that contribute to the cumulative air quality risks in the area. These sites include Vulcan Materials Company, which operates a large aggregate storage area in the community where tall piles of various materials stretch for almost half a mile and sometimes generate large clouds of dust that pollute the neighboring residential area. There is also a large sand pit operation on Homestead Road which provides an additional source of particulate pollution in the area. These facilities, which typically generate higher levels of particulate matter, disproportionately expose the Gardens Community to environmental hazards such as air pollution which can lead to significant health issues. Out-of-hospital cardiac arrest is a health effect associated with short-term exposure to air pollutants, including ozone and particulate matter, which have been among the triggers associated with cardiac arrest.

Super Neighborhood 48 currently has one permitted CBP under the standard permit (SP), 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	CBP SP No.
Texas Concrete Ready Mix CBP 1	6001 Homestead Rd (77028)	CBP SP No. 150603
Texas Concrete Ready Mix	6523 Homestead Rd (77028)	CBP SP No. 136479 (Cancelled) Dated 4/21/2016-4/21/2026

The facility is now just one giant CBP facility on Homestead Road with Super Neighborhood 48 homeowners directly behind the CBP and across from it. In addition to Texas Concrete Ready Mix, Super Neighborhood 48 has two more co-located concrete batch plants permitted less than 1 mile from the boundaries of Super Neighborhood 48:

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

Concrete Batch Plant	Location	CBP SP No.
Five Star Ready Mix CBP 1 SN150421	8001 Ley Rd (77028)	CBP SP No. 131665
Five Star Ready Mix CBP 2 SN181220	8001 Ley Rd (77028)	CBP SP 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 Ambient Air Quality Standards (“NAAQS”).⁴ According to TCEQ, for 2021-2023, the readings from the North Wayside Monitor exceeded the NAAQS for PM_{2.5}, averaging at 12.5 µg/m³.⁵ For 2022-2024, the readings from the North Wayside Monitor also exceeded the NAAQS for PM_{2.5}, averaging at 12.7 µg/m³.

TCEQ has identified several industrial users responsible for the problem, including three concrete batch plants in or near Super Neighborhood 48.⁶ 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.

This action, however, fails to resolve the air quality issue caused by the CBPs in the area or the deficient CBP SP. Nor does it slow TCEQ’s issuance of this standard permit to CBP operators. Because the CBP SP specifically exempts CBPs from emissions limitations and the batch plants cluster in communities of color like Super Neighborhood 48, 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 Super Neighborhood 48 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, Super Neighborhood 48 remains particularly committed to commenting on the terms and conditions under which TCEQ will issue

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

² *Id.*

³ *Id.*

⁴ “2012 PM_{2.5} NAAQS: Primary Annual Standard: 12.0 micrograms per cubic meter (µg/m³); Secondary Annual Standard: 15.0 µg/m³; Primary and Secondary 24-Hour Standard: 35 µg/m³; 2012 PM₁₀ NAAQS: Primary and Secondary Standard 15.0 µg/m³; On December 18, 2020, the United States Environmental Protection Agency (EPA) published a final rule retaining the primary and secondary standards for both PM_{2.5} and PM₁₀.” TCEQ Presentation to Houston-Galveston Area Council Houston PM Advance Committee, “Houston North Wayside Particulate Matter” (Feb. 7, 2022). (hereinafter, TCEQ, HGAC PM_{2.5} Presentation”).

⁵ TCEQ, Interoffice Memo, Commission Approval for the 2024 Primary Annual Fine PM_{2.5} NAAQS State Designations (Nov. 26, 2024) at B-1, available at https://www.tceq.texas.gov/downloads/air-quality/sip/pm/designations/20240250th_2024pm_statedesig_backup.pdf

⁶ TCEQ, HGAC PM_{2.5} Presentation at 13.

a standard permit for a concrete batch plant. Super Neighborhood 48 Trinity/ Houston Gardens is a stakeholder in submitting formal comments on these proposed rule changes to Chapter 116 of Title 30 Texas Administrative Code because: (1) the group’s members are directly impacted by concrete batch plants, such as the one operating at 6001 Homestead Road, within its boundaries designated by the City of Houston; (2) the group has raised concerns about TCEQ’s CBP SP (a) during the permit amendment processes in 2021 and 2023-2024 through written comments, (b) a civil rights complaint filed in 2022, (c) in pending litigation over the 2021 amendment of the CBP SP; and (3) has actively engaged in ongoing litigation regarding TCEQ’s implementation of the 2024 CBP SP (Case No. D-1-GN-24-001116; *Harris County, Texas, et al. v. TCEQ*, in the 126th Judicial District Court of Travis County, Texas, now on appeal to the Fifteenth Court of Appeals).

II. Proposed Changes to 30 Texas Administrative Code § 116.605.

Super Neighborhood 48 submits the following comments on the proposed changes to Section 116.605(d) of Title 30 of the Texas Administrative Code (TAC). All rule references below are to TCEQ’s rules found in Chapter 116 of 30 TAC.

A. *Comments on Proposed New Rule 116.605(d)(4)*

As to TCEQ’s proposed changes to 30 Texas Administrative Code Chapter 116 to comply with Senate Bill 763, Super Neighborhood 48 offers the following comments:

An important part of how Texas’ State Implementation Plan (SIP) attempts to satisfy the NAAQS is by the implementation of a standard permit that industry can register to operate under so long as they adhere to the specified general and specific conditions. Texas transposes the Federal Clean Air Act (FCAA) Air Quality Analysis requirements into their state regulations as part of its SIP.⁷ Under the Texas Clean Air Act (TCAA), TCEQ is authorized to issue state-wide standard permits for the construction or modification of new or existing facilities with similar operations, processes, and emissions.⁸ Standard Permits are a type of uniform permit which includes predetermined industry-specific operational conditions based on TCEQ’s presumption that these conditions will ensure that the facility does not contribute to an exceedance of the NAAQS and will be and is protective of human health.⁹

TCEQ’s presumption that a facility will be protective of public health is based on a Protectiveness Review or Air Quality Analysis (“AQA”). The purpose of the Protectiveness Review is to analyze different emissions control measures to determine what controls can be uniformly applied to an industry such that all registrants under the standard permit will not exceed the NAAQS. When a standard permit is promulgated, TCEQ performs this Protectiveness Review to ensure that the NAAQS will not be exceeded through the operations of any proposed facility statewide.

⁷ 30 TEX. ADMIN. CODE § 116.160.

⁸ TEX. HEALTH & SAFETY CODE §§ 382.051(b)(3), 382.05195(a).

⁹ TEX. HEALTH & SAFETY CODE § 382.05195; 30 TEX. ADMIN. CODE § 116, Subchapter F.

The AQA evaluates modeled emissions from a generic facility operating under TCEQ's operational requirements. These control measures can take various forms such as distance limitations placed on the facility (for example, the facility cannot operate within a certain distance of a residence, school, or place of worship), emission control technologies (such as requiring all emissions to be funneled through a special filter), and mandatory best practices (like paving all the main traffic areas of a facility as a way of controlling dust). This evaluation should establish a standard permit's criteria for operating a facility by predicting the highest concentration of air pollutants at or beyond the property line and then confirming that these concentrations will not cause a NAAQS violation.¹⁰

New Rule 116.605(d)(3) provides that TCEQ should conduct an AQA or protectiveness review under the CBP SP ***at least*** every at 8 years. Rule 116.605(d)(3) already requires that an amendment to the standard permit should be considered under 4 circumstances:

- if conditions of air pollution exist;¹¹
- if the NAAQS changes;¹²
- the general public or the regulated industry requests an amendment to comply with Texas Clean Air Act requirements;¹³ and/or
- to keep up with improvements in best available control technology (BACT).¹⁴

When considered with the existing provisions in Rule 116.605(d)(3), the 8 years stated in new Rule 116.605(d)(4) is ***not*** the minimum time between protectiveness reviews. That period would only be 8 years if none of the 4 circumstances listed above from Rule 116.605(d)(3)(A)-(D) prompted an earlier amendment and corresponding protectiveness review.

Importantly, TCEQ should adhere to all applicable rules under Rule 116.605(d) when adopting and then implementing this new Rule 116.605(d)(4). TCEQ should not overlook other provisions that also bear on the appropriate timing of an amendment of the CBP SP. In considering whether an amendment should be pursued, existing Rule 116.605(d)(3) must continue to control that determination. If a protectiveness review would also be necessary in connection with an amendment to determine whether conditions of air pollution exist or to ensure compliance with updated NAAQS, then TCEQ should conduct that protectiveness review to ensure that its SP remains protective of human health even if the amendment process is triggered earlier than 8 years before the agency conducted its last protectiveness review.

And that distinction is important because, as shown in Table 3 below, TCEQ did wait too long in the past to move forward with amending this standard permit and had not conducted a protectiveness review in over 22 years despite changes in the NAAQS and other updates.

¹⁰ TCEQ's Air Quality Modeling Guidelines, APDG 6232 ("TCEQ APDG 6232") at page 17; *see also* TCEQ, RG-25, Air Modeling Guidelines, Section 3.6. at Page 40 of 144 (Feb. 1999).

¹¹ 30 TEX. ADMIN. CODE § 116.605(d)(3)(A).

¹² 30 TEX. ADMIN. CODE § 116.605(d)(3)(B).

¹³ 30 TEX. ADMIN. CODE § 116.605(d)(3)(C).

¹⁴ 30 TEX. ADMIN. CODE § 116.605(d)(3)(D).

Table 3: Chronology of TCEQ’s Prior Failure to Update its Protectiveness Review for the CBP SP

Year	Events	Protectiveness Review Yes/No	Years Elapsed Since Last, Full Protectiveness Review
2000	TCEQ Amendments to CBP SP	Yes	0 Years
2003	TCEQ Amendments to CBP SP	No	3 Years
2006	<i>NAAQS for PM_{2.5} adopted of 15 µg/m³</i> ¹⁵	No	6 Years
2012	TCEQ Amendments to CBP SP	Limited ¹⁶	12 Years
	<i>NAAQS for PM_{2.5} adopted of 12 µg/m³</i> ¹⁷		
2021	TCEQ Rulemaking Amendment to CBP SP	No	21 Years
2023	TCEQ Rulemaking Amendment to CPB SP <i>Updated Air Quality Analysis (AQA) based on PM_{2.5} NAAQS of 12 µg/m³</i>	Yes	23 Years
2024	<i>NAAQS for PM_{2.5} adopted of 9 µg/m³</i> ¹⁸	No	1 Year

At the informal stakeholder meeting for the 2023 Amendment of the CBP SP in the fall of 2023, TCEQ staff acknowledged then existing CBP SP’s protectiveness review was conducted “long ago.” This situation is exactly what the Texas Legislature in enacting SB 763 is attempting to prevent. During TCEQ’s Commissioner’s Agenda Meeting adopting the most recent CBP SP Amendment in January 2024, then Chairman Jon Niermann stated:

I think we may find ourselves revising this authorization once again when the new PM NAAQS arrives.¹⁹

As Table 3 reflects, EPA has consistently lowered the NAAQS for PM_{2.5} to become more protective of human health. TCEQ should be responsive to those changes in the laws designed to protect air quality as reflected existing Rule 116.605(d)(3)(B) to consider an amendment to the SP if there are changes in applicable state or federal standards.²⁰

¹⁵ EPA, National Ambient Air Quality Standards for Particulate Matter, 71 Fed. Reg. 61,144 (Oct. 17, 2006).

¹⁶ TCEQ did not model PM_{2.5} as part of this limited protectiveness review in 2012.

¹⁷ EPA, National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3,085 (Jan. 15, 2013).

¹⁸ EPA, Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3,086 (Feb. 7, 2024).

¹⁹ TCEQ Commissioners’ Agenda Meeting – January 24, 2024, Item 3 Discussion begins at 22:15; [Commissioners’ Agenda Meeting - January 24th, 2024 \(youtube.com\)](#).

²⁰ 30 TEX. ADMIN. CODE § 116.605(d)(3)(B).

Section 116.602 of 30 TAC requires that “all standard permits issued by the commission under this chapter shall require best available control technology.”²¹ According to TCEQ, “BACT for any particular industry is not static and is subject to change over time. BACT progresses as technology progresses or as process developments occur.”²² Thus, as recognized in Rule 116.605(d)(3)(D), BACT applicable to the CBP SP must be updated to be lawful.²³

Put another way, new Rule 116.605(d)(4) should not be read on its own but in the context of existing TCEQ rules related to the amendment of the CBP SP. TCEQ needs to follow the rules already in place, notably in the same subsection (d) of Rule 116.605, and not defer any future protectiveness reviews until 2030 because it has not yet been 8 years from the last AQA. If there are conditions that should trigger an earlier amendment of the permit, such as the new NAAQS for PM_{2.5} adopted in 2024, then TCEQ should conduct an updated protectiveness review and move forward with an amendment of the standard permit.

NAAQS changes are a particularly important statutory guiding principle that may occur more frequently than every 8 years. Specifically, NAAQS should be federally evaluated at least every five years.²⁴ TCEQ must react to these changes when considering whether to conduct an AQA or amend the CBP SP for several reasons. First, NAAQS are lawful limits scientifically developed to ensure human health is protected and constitute the legal standard for protecting public health.²⁵ Criteria pollutants with established NAAQS include PM_{2.5}, PM₁₀, SO₂, CO, O₃, and NO₂.²⁶ Second, no less than every 5 years, EPA is required to review scientific evidence and adjust the NAAQS as necessary to protect public health and the environment.²⁷ In addition, every 5 years, regions are also evaluated and designated as either in attainment (meeting the NAAQS for its area for criteria pollutants) or in nonattainment (failing to meet the NAAQS for its area for criteria pollutants). As the NAAQS change, areas are evaluated for compliance with the new standard and so their designations may also change.²⁸ Once a designation is made, the state and local governments in areas of nonattainment must work to develop plans to reduce emissions and meet attainment—which could include adding controls to something like the CBP SP. Accordingly, it seems obvious that when a NAAQS standard becomes more stringent for a criteria pollutant released by a CBP (like PM₁₀ or PM_{2.5}) the underlying AQA must also be re-evaluated and the CBP SP may need to be amended. As such, AQA’s must track with the changes to the changes to NAAQS—and those could occur as frequently as every 5 years.

²¹ TEX. HEALTH & SAFETY CODE § 382.05195(a)(3) (emphasis added).

²² Air Permit Division, Texas Commission on Environmental Quality, “Air Permit Reviewer Reference Guide APDG 6110 Air Pollution Control How to Conduct a Pollution Control Evaluation” at 11.

²³ 30 TEX. ADMIN. CODE § 116.605(d)(3)(D).

²⁴ 42 U.S.C. § 7409.

²⁵ 42 U.S.C. §§ 7408(a), 7409(b); *see also Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 466, 465 (2001) (interpreting the Clean Air Act as requiring EPA to set NAAQS at a level to protect “the health of the public” and that NAAQS represents the “maximum airborne concentration of [the] pollutant that the public health can tolerate”); *see also Alaska Dept. of Env’t Conservation v. EPA*, 540 U.S. 461, 469 (2004) (“NAAQS ‘define [the] levels of air quality that must be achieved to protect public health and welfare.’”) (internal citations omitted).

²⁶ 40 C.F.R. §§ 50.4-50.19.

²⁷ 42 U.S.C. § 7409.

²⁸ 42 U.S.C. §§ 7407(d), 7410(a)(1).

Notably, based on the last AQA conducted by TCEQ in 2023, the current CBP SP is not protective under the new NAAQS or even the 2012 NAAQS for facilities in Harris County. Specifically, the 2023 annual PM_{2.5} design values for Texas reveal that at least one county, Harris County, where Super Neighborhood 48 is located, had a design value above the 12 µg/m³ Annual PM_{2.5} NAAQS that was used for the 2023 Protectiveness Review underlying the CBP SP amended in early 2024.²⁹ Thus, based on the 2012 Annual PM_{2.5} NAAQS, TCEQ cannot establish that its current CBP SP remains protective of those residents in Harris County like Super Neighborhood 48 that live near the North Wayside regulatory monitor that is the source of that design value as noted above.³⁰

Moreover, recent air modeling performed in Dallas County by EPA Region 6 as part of a Cumulative Impacts Assessment of Concrete Batch Plants³¹ found that three of the four operating Dallas CBP facilities evaluated in that study were out of compliance with the current Annual PM_{2.5} NAAQS of 9 µg/m³ adopted in 2024.³² Appendix G from that recent EPA Study below indicates the disparity in operations actually measured and modeled by EPA and the current nonprotectiveness of the CBP SP, measuring unlawful NAAQS exceedances at three of four facilities studied.

[Table continues on next page]

²⁹ TCEQ, Interoffice Memo, Commission Approval for the 2024 Primary Annual Fine PM_{2.5} NAAQS State Designations (Nov. 26, 2024) at B-1, available at https://www.tceq.texas.gov/downloads/air-quality/sip/pm/designations/2024025oth_2024pm_statedesig_backup.pdf.

³⁰ *Id.*

³¹ EPA, Fact Sheet for Cumulative Impacts Assessment – Pilot Project, Background & Project Outline for Dallas, Dallas County, Texas (May 2024), available at <https://www.epa.gov/system/files/documents/2024-06/fact-sheet-dallas-cia-updated-v3-public.pdf>.

³² See Table 4 labeled Appendix G, *infra*, at 9. LSLA obtained Appendix G and other documents related to the EPA Cumulative Impacts Assessment on CBPs through a Freedom of Information Act request to EPA, 2025-EPA-01273.

Table 4: Appendix G from EPA Cumulative Impacts Assessment of CBPs in Dallas County

Appendix G – Permitted Model Emission Rates and Results

Table G-10. Annual PM_{2.5} NAAQS Results

Facility	Facility Impact (µg/m ³) ^a	Process Impact (µg/m ³) ^a	Mobile Source Impact (µg/m ³) ^a	Background Concentration (µg/m ³)	Model Design Value (µg/m ³)	NAAQS (µg/m ³)	Exceeds NAAQS?
Per Facility							
Facility A	13	2.3	13	10	23	9	Yes
Facility B	1	1	0.2	10	11	9	Yes
Facility C	2	1	1	10	11	9	No
Facility D	20	20	1	10	30	9	Yes
Combined Facilities							
Joppa Facilities ^b	13	N/A	N/A	10	23	9	Yes
West Dallas Facilities ^b	20	N/A	N/A	10	30	9	Yes

^a Modeled result represents the annual average concentration averaged over the 5-year meteorological dataset.

^b Joppa Facilities considers the impacts from both the Facility A and Facility B modeled together. West Dallas Facilities considers the impacts from both the Facility C and Facility D modeled together.

This recent EPA Cumulative Impacts Assessment reveals that the current design values in multiple counties across Texas, including Harris County and Dallas County, will result in the CBP SP no longer being protective under the new NAAQS. As listed in Table 5 below, TCEQ has already verified this reality in recent communications to EPA, revealing that Harris County is above the 2012 PM_{2.5} NAAQS standard of 12 µg/m³ and 12 Texas counties (including Harris) are above the Annual PM_{2.5} NAAQS of 9 µg/m³ adopted in 2024.³³

Table 5: 2023 Annual PM_{2.5} Design Values by County³⁴

County	Certified 2023 Annual PM _{2.5} Design Value (micrograms per cubic meter)
Harris	12.5
Cameron	10.9
Bowie	10.3
Dallas	9.9
Kleberg	9.9*
Webb	9.7
Hidalgo	9.6
Tarrant	9.6

³³ TCEQ, Interoffice Memo, Commission Approval for the 2024 Primary Annual Fine PM_{2.5} NAAQS State Designations (Nov. 26, 2024) at B-1, available at https://www.tceq.texas.gov/downloads/air-quality/sip/pm/designations/20240250th_2024pm_statedesig_backup.pdf

³⁴ *Id.* (asterisks are original).

County	Certified 2023 Annual PM _{2.5} Design Value (micrograms per cubic meter)
Travis	9.6**
Harrison	9.5***
Atascosa	9.0
El Paso	9.0
Bexar	8.9
Jefferson	8.8

The last two counties listed in Table 5 are within range of the 2024 Annual PM_{2.5} NAAQS based on the Significant Impact Level for Annual PM_{2.5}.³⁵ Bexar and Jefferson County are within 0.2 of the new Annual PM_{2.5} NAAQS of 9.0 µg/m³.

As acknowledged by former TCEQ Chairman Niermann³⁶ and already stated in Rule 116.605(d)(3),³⁷ the recent change in the Annual PM_{2.5} NAAQS should be a key consideration in determining whether TCEQ needs to amend the CBP SP again. Given that TCEQ acknowledged that its 2023 AQA for the CBP SP was based on the 12 µg/m³ Annual PM_{2.5} NAAQS, now that the new Annual PM_{2.5} NAAQS is 9.0 µg/m³ a full NAAQS analysis and protectiveness review needs to be done to ensure that the CBP SP is not violating the TCAA. This work should not wait 8 years. Nor should TCEQ use the adoption of new Rule 116.605(d)(4) to justify the delay of this important work and ignore the mandates in its existing rules like Rule 116.605(d)(3). Please take these public comments as another request from Super Neighborhood 48 and the public: (1) to amend the CPB SP, and (2) to conduct a protectiveness review in 2026 to ensure that the CBP SP can comply with the Annual PM_{2.5} NAAQS of 9.0 µg/m³.³⁸

Finally, Super Neighborhood 48, Harris County, and other community neighborhoods from Harris County, Texas, recently prevailed against TCEQ in a Travis County District Court decision³⁹ concerning TCEQ's delayed implementation of the 2024 CBP SP Amendments. This result confirms TCEQ's duty to protect public health⁴⁰ and need to move faster with the implementation of an amendment to a SP if the Protectiveness Review or AQA shows that there are public health issues in communities like Super Neighborhood 48 in Harris County.⁴¹ As it adopts these new initiatives from the legislature around ensuring that TCEQ conducts protectiveness reviews for the CBP SP when appropriate, we encourage TCEQ to continue to review its SP scheme and decide whether it remains appropriate for many Texas counties with design values above the current applicable NAAQS.

³⁵ The Significant Impact Level for Annual PM_{2.5} of 0.13 µg/m³ is a reference number found in TCEQ APDG 6232 at 37.

³⁶ TCEQ Commissioners' Agenda Meeting – January 24, 2024, Item 3 Discussion begins at 22:15; [Commissioners' Agenda Meeting - January 24th, 2024 \(youtube.com\)](#).

³⁷ 30 TEX. ADMIN. CODE § 116.605(d)(3)(A)-(B).

³⁸ 30 TEX. ADMIN. CODE § 116.605(d)(3)(C).

³⁹ See October 23, 2025 Order in Case No. D-1-GN-24-001116; *Harris County, Texas, et al. v. TCEQ*, in the 126th Judicial District Court of Travis County, Texas. TCEQ is appealing this decision in the Fifteenth Court of Appeals.

⁴⁰ TEX. HEALTH AND SAFETY CODE § 383.002.

⁴¹ 30 TEX. ADMIN. CODE § 116.605(d)(1).

B. *Comments on Proposed Rule 116.605(f)*

As to the proposed changes to 30 Texas Administrative Code Section 116.605(f) to comply with Senate Bill 2351, Super Neighborhood 48 offers the following comments:

Super Neighborhood 48 approves of the proposed new Rule 116.605(f). The rule realistically requires a concrete batch plant operator to have met two requirements to trigger this rule: (1) the operator must have asked for an extension, and (2) the operator must not have started construction. In this specific situation, the operator cannot be relying on the existing permit terms, and the operator itself has decided voluntarily to delay the implementation of the permit. In such as case, it is absolutely fair to require them to demonstrate their compliance with the newest standard permit adopted at the time they start construction. This new policy follows basic BACT principles.

Further, this new rule avoids the problem of an operator applying for a permit years before it actually plans to begin construction in order to be able to apply with older protectiveness requirements or standards. Right now we have too many CBPs still operating under the 2012 and 2021 CBP SPs when we have already adopted the 2024 CBP SP. It is time to move this industry forward and ensure that the standard permit is protective of all of our Texas communities, including Super Neighborhood 48 in Harris County. This new rule as proposed is an equitable way to proceed.

III. *Conclusion*

Lone Star Legal Aid and Super Neighborhood 48 appreciate the opportunity that TCEQ is providing this comment period to inform the agency on its proposed rules for Chapter 116 of Title 30 of the Texas Administrative Code related to TCEQ's implementation of Senate Bills 763 and 2351. Please do not hesitate to contact the undersigned counsel to the extent any of these comments require additional explanation or information. Thank you to TCEQ staff who worked on this Rule Project.

Respectfully submitted,

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