

SAPNA AIYER
Directing Attorney



AMY DINN
KIMBERLY BROWN MYLES
Litigation Directors

CAROLINE CROW
NOOR MOZAFFAR
CHASE PORTER
AMANDA POWELL
Staff Attorneys

Mailing Address:
P.O Box 398
Houston, Texas 77001-0398

713-652-0077 x 8108
800-733-8394 Toll-free

**Lone Star Legal Aid
Equitable Development Initiative**

April 9, 2024

VIA E-FILING @ [title vi complaints@epa.gov](mailto:title_vi_complaints@epa.gov)

US Environmental Protection Agency
Office of External Civil Rights Compliance Office
Office of Environmental Justice and External Civil Rights
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: EPA Complaint No. 06RNO-22-R6; Civil Rights Complaint against the Texas Commission on Environmental Quality concerning the Air Quality Standard Permit for Concrete Batch Plants

Dear Sirs,

On behalf of the Complainants (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) (“(b) (6), (b) (7)(C)”),(b) (6), (b) (7)(C)
“(b) (6), (b) (7)(C)”),(b) (6), (b) (7)(C) (“(b) (6), (b) (7)(C)”),(b) (6), (b) (7)(C)
“(b) (6), (b) (7)(C)” and (b) (6), (b) (7)(C) (“(b) (6), (b) (7)(C)”) hereinafter collectively
referred to as “Complainants” or “Impacted Communities,” Lone Star Legal Aid (“LSLA”) refiles
this complaint (“Supplemental Complaint”) with the U.S. Environmental Protection Agency
(“EPA”) pursuant to Title VI of the Civil Rights Act of 1964 (“Title VI”) concerning actions by
the Texas Commission of Environmental Quality (“TCEQ”) in approving recent amendments to
the state-wide Air Quality Standard Permit for Concrete Batch Plants in spite of significant
deficiencies.

I. INTRODUCTION

In May 2022, four of the Complainants, (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) filed the above-referenced civil rights Complaint No. 06RNO-22-RG (the "Complaint"). The EPA accepted the Complaint for investigation in August 2022 on two issues: (1) concerns related to the CBPSP specific to Harris County, Texas, and (2) issues related to limited English proficiency populations in connection with the TCEQ's notice of its 2021

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amendments to the CBPSP.¹ On January 2, 2024, EPA administratively closed Issue 1 in the Complaint without prejudice because the TCEQ was amending the CBPSP.² EPA determined that there were changed circumstances that made continuing the investigation unjustified at that time.³

On January 24, 2024, TCEQ issued the Amended Air Quality Standard Permit for Concrete Batch Plants (hereinafter, the “Amended CBPSP”).⁴ Notice of the issuance of the Amended CBPSP was published in the Texas Register on February 9, 2024.⁵ EPA invited Complainants to re-file their complaints with the Office of External Civil Rights Compliance (“OECRC”) within 60 calendar days following the publication of the Amended CBPSP.⁶ Two additional complainants, [REDACTED] and (b) (6), (b) (7)(C) join the original four complainants in timely refiling Supplemental Complaint with EPA’s OECRC (hereinafter “EPA”) with a separate appendix (“Appendix V2”). Community Profiles for the additional Complainants, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) are attached in the Appendix.⁷ This Supplemental Complaint incorporates the original Complaint by reference herein, and, for brevity, has avoided repeating any background information or allegations made in the original Complaint. For reference, the original Complaint is included in Volume 2 of the Appendix.⁸

After reviewing the Supplemental Complaint, supporting documentation, and authority in the Appendices,⁹ Complainants respectfully request that EPA reopen its investigation of the allegations in the Complaint as supplemented. Specifically, Complaints seek a renewed investigation of TCEQ’s discriminatory actions against the communities in Harris County where TCEQ has permitted Concrete Batch Plants (“CBP” or “CBPs”) under the Amended CBPSP and its earlier versions (referenced by the year adopted, “2012 CBPSP” and “2021 CBPSP”). In doing so, Complainants ask EPA to grant the following relief considering the Amended CBPSP:

- 1) TCEQ should conduct an updated protectiveness review for the CBPSP for particulate matter from CBP operations given EPA’s recent updates to the National Ambient Air Quality Standards (“NAAQS”) for small Particulate Matter or PM_{2.5};
- 2) TCEQ should conduct BACT updates for CBP operations based on the NAAQS;
- 3) TCEQ should identify any CBPs currently operating under prior, unprotective standard permits (2012 CBPSP, 2021 CBPSP, and Amended CBPSP) and require them to come into compliance within six months of the updated amendment of the CBPSP requested in this Supplemental Complaint; and
- 4) TCEQ should (a) engage in additional air monitoring for particulate matter (“PM”) in Environmental Justice (“EJ”) communities in Harris County, Texas, because the county is

¹ APPX-V2_000022–75; APPX-V2_000533.

² APPX-V2_000533-35.

³ APPX-V2_000533-35.

⁴ APPX-V2_000642–53.

⁵ APPX-V2_000663–64.

⁶ APPX-V2_000536.

⁷ APPX-V2_000986-92; APPX-V2_000993-96.

⁸ APPX-V2_000022–75.

⁹ Complainants’ Appendix to the original 2022 Complaint is referenced as APPX-V1; Complainants’ Appendix to this Supplemental Complaint is referenced as APPX-V2.

out of attainment with the updated NAAQS for PM_{2.5} and (b) identify the cumulative impacts for these types of facilities as demonstrated in the regulatory monitors in Harris County, including the N. Wayside Monitor.

Complainants further request any other relief that EPA feels they are entitled after renewing its investigation to remedy TCEQ's discriminatory actions in adopting the Amended CBPSP.

II. WHY EPA SHOULD REOPEN ITS INVESTIGATION OF THIS CIVIL RIGHTS COMPLAINT

As explained in Complainants' original Complaint,¹⁰ the state-wide CBPSP is a problematic proposition as a standard permit because not all communities in Texas are the same. In the last three years, TCEQ amended the CBPSP twice, but its latest effort did not consider the new NAAQS adopted by EPA in early 2024. This failure left many communities in Harris County without the protections they deserve. In addition, at least 105 facilities in Harris County will not even have to comply with the protective setback requirements in the new CBPSP for many years, leaving them operating under a permit that TCEQ knows is not protective. At least sixteen of these facilities are in Complainants' neighborhoods, and some are not up for renewal until 2032. Even after TCEQ's most recent amendment of the CBPSP, the primary issue presented in the Complaint remains:¹¹

Whether TCEQ's criteria or methods of administering its Concrete Batch Plant permitting process for concrete batch plants in Harris County Texas, including its adoption of the Amended Concrete Batch Plant Permit, has the effect of subjecting persons to discrimination on the basis of race or national origin in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7.

As EPA learned during its tour of permitted CBPSPs in Harris County, both constructed and yet-to-be-built facilities, the communities reflected by the Complainants in this case are disproportionately impacted by CBPs because of the lack of zoning in Harris County, Texas. Specifically, EPA toured Cherry Crush Concrete on Winfield Road and saw the impacts of these concrete operations on the nearby community and began to understand their ongoing concerns the facilities' impacts to their air and water quality.¹² EPA saw the overall effects from CBP operations in the (b) (6), (b) (7)(C) area from Yellow Jacket Concrete, which has a history of violations documented by Harris County Pollution Control Services. The group also visited the site of the newly permitted, but not yet constructed, Avant Garde CBP. The site of the new Avant Garde facility in (b) (6), (b) (7)(C) is less than a mile from Harris County's James R. Driver Park and adjacent to a number of residential properties. Further, the group observed the stormwater runoff, concrete materials dropped in the road, and the dust generated from trucks going in and out of Texas Concrete Ready Mix on Homestead Road in (b) (6), (b) (7)(C). Finally, in making the rounds through the Fifth Ward, the tour focused on the concentration of three existing CBP facilities—and one more on the way—in a span of just a few blocks; all are poorly integrated with neighborhoods and adversely affect important community assets, such as childcare facilities, churches, and the City's animal shelter.

¹⁰ APPX-V2_000022-75.

¹¹ APPX-V2_000535.

¹² APPX-V2_000464-531.

In addition to the overarching siting concerns due to the lack of zoning protections in Harris County, community members told EPA about the impacts of these facilities on the community's health and quality of life due to the lack of enforcement and regulation at these facilities by TCEQ. These concerns included adverse physical and mental health effects, diminished quality of life, and impacts to their property value. The residents in these areas also cited elevated levels of PM, water quality impacts from improper and/or poor run-off management, stormwater and flooding concerns, severe noise, heavy dust, hours of operation from late at night to early morning, and deficient public notice about permitting actions and operational changes.

After the most recent amendment to the CBPSP, this Supplemental Complaint focuses on the following three concerns:

- (1) The Amended CBPSP must be updated to comply with the new NAAQS for PM_{2.5};
- (2) In conducting an updated protectiveness review to incorporate the new NAAQS, TCEQ should also review BACT for CBPs, as some of this guidance has not been revised since 2008;
- (3) TCEQ permitted 105 facilities in Harris County that are still operating under the 2021 CBPSP or earlier; these facilities will not have to comply with the Amended CBPSP until their renewal date, which means these CBPs could continue operating under the old unprotective permit for up to eight more years—sixteen of these facilities are in Complainants' neighborhoods.¹³

As highlighted in the Complaint, TCEQ did not update the original protectiveness review the CBPSP relies on for almost twenty years. Although pressure from Complainants, Harris County, EPA, and "public concern"¹⁴ pushed TCEQ to amend the CBPSP with an updated protectiveness review in 2023, the Agency did not go far enough. First, the amendment left many facilities with the ability to delay compliance with the new regulations until their next renewal, which could be up to a ten-year window. Second, TCEQ ignored that reality that EPA would be updating the NAAQS for PM_{2.5} which EPA released two days before TCEQ published the Amended CBPSP.

In summary, TCEQ is still failing to keep up with its obligations to ensure that the statewide CBPSP is protective of all Complainants' Impacted Communities in Harris County, Texas. The most recent NAAQS amendments should require another amendment process for the CBPSP that includes an updated protectiveness review. In directing TCEQ to conduct an updated protectiveness review, EPA should also require that any future amendments to the CBPSP take effect within one year of the date of the amendment for all facilities to ensure more immediate compliance than the facility's next renewal period, which could be up to ten years for some facilities.¹⁵ For the same reasons, EPA should require TCEQ to update BACT for CBPs.

¹³ APPX-V2_000723-80; 30 TEX. ADMIN. CODE § 116.604(1).

¹⁴ APPX-V2_000638.

¹⁵ 30 TEX. ADMIN. CODE § 116.604(1).

III. STATUS OF TEXAS' CONCRETE BATCH PLANT STANDARD PERMIT

Concrete batch plants are sites constructed to produce concrete. Producing concrete generally requires mixing water, cement, and other aggregates such as sand and gravel, into a large drum.¹⁶ The cement is stored in silos, while the sand, gravel, and other aggregate materials are stored in bins, before all being combined into the drum, then into concrete trucks to be mixed with the water.¹⁷ The concrete is then transported to construction sites.¹⁸

The concrete production process causes significant air pollution in the neighborhoods where CBPs are sited.¹⁹ CBPs are cause for heightened concerns related to coarse and fine particulate matter (specifically PM₁₀ and PM_{2.5}), crystalline silica, and cement dust. A primary pollutant of concern from CBPs is PM, consisting of cement, pozzolan dust, coarse aggregate, and sand dust emissions. Fugitive sources of PM from CBPs include the transfer of sand and aggregate, cement unloading to storage silos, truck loading, transfer or mixing of materials, mixer loading, vehicle traffic, and wind erosion from sand and aggregate storage piles.²⁰ The inhalation of these pollutants are associated with heart and lung disease, increased respiratory symptoms, and other chronic diseases. Furthermore, cement dust can be composed of many harmful constituents in undefined quantities, for example: metal oxides including calcium oxide, silicon oxide, aluminum trioxide, ferric oxide, magnesium oxide, sand and other impurities.²¹ Due to the air pollution caused by CBPs, the facilities must obtain air permits from TCEQ to operate.



Photograph of Concrete Batch Plant Operating in Houston
(Credit: (b)(6) Privacy, (b)(7)(C) Enf. Privacy)

¹⁶ Guide to Air Quality Permitting for Concrete Batch Plants, University of Texas at Austin Environmental Clinic, First Edition at 2 (2018), available at <https://law.utexas.edu/wp-content/uploads/sites/11/2019/01/2019-EC-ConcreteBatchPlantsGuide.pdf>, (hereinafter, “UT Environmental Clinic, Guide for CBPs”).

¹⁷ UT Environmental Clinic, Guide for CBPs at 2.

¹⁸ UT Environmental Clinic Guide for CBPs at 2.

¹⁹ UT Environmental Clinic Guide for CBPs at 2.

²⁰ UT Environmental Clinic Guide for CBPs at 2.

²¹ Arshad H. Rahmani, *Effect of Exposure to Cement Dust among the Workers: An Evaluation of Health-Related Complications*, Open Access Maced J Med Sci. 6(6) (June 20, 2018) at 1159–1162, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6026423/>.

A. PERMITTING CBP OPERATIONS IN TEXAS

In Texas, there are two permitting vehicles for authorizing air pollution from a concrete batch plant: an individual New Source Review (“NSR”) permit and the CBPSP. With an NSR Permit, the permit terms are written for the specific facility seeking authorization. The CBPSP is a specific permit for concrete batch plant operations. Any facility that meets the terms of the standard permit can claim coverage and operate pursuant to its limits. There are two versions of the standard permit for concrete batch plants.

Importantly, neither the individual NSR permit nor either of the standard permits for concrete batch plants supersedes other TCEQ regulatory requirements or requirements of the Texas Clean Air Act (“TCAA”) or the Federal Clean Air Act (“FCAA”).²² Therefore, theoretically, the holder of an authorization to operate under the TCEQ standard permit may not do so in such a manner as to cause a nuisance. Nuisance operations are prohibited by TCEQ regulation.²³

TCEQ is tasked with administering the requirements of the TCAA, which is designed to safeguard the state’s air resources from pollution.²⁴ Under the TCAA, a permit is required for any person to construct a new facility or modify an existing facility that may emit air contaminants.²⁵ TCEQ is authorized to issue standard permits for the construction or modification of new or existing similar facilities that have similar operations, processes, and emissions, such as CBPs.²⁶

Under Texas law, standard permits must be enforceable, include adequate monitoring, and apply best available control technology or BACT.²⁷ TCEQ must grant an application for a CBPSP if it finds that it will satisfy BACT and there is “no indication that the emissions from the facility will contravene the intent of [the TCAA], including protection of the public’s health and physical property.”²⁸

As described more fully in Complainants’ Complaint,²⁹ TCEQ began issuing a new type of standard permit for CBPs in the year 2000, with only a handful of amendments to the permit over the last twenty-two years. In considering whether to amend the CBPSP, the commission shall consider the following: whether a condition of air pollution exists; the applicability of other state or federal standards that apply or will apply to the types of facilities covered by the standard permit; requests from the regulated community or the public to amend a standard permit consistent with the requirements of the TCAA; and whether the standard permit requires BACT.³⁰ With respect to the Amended CBPSP, this Supplemental Complaint will show that: (1) a condition of air pollution exists in Complainants’ communities; (2) Complainants are requesting that the CBPSP be amended consistent with the requirements of the TCAA and Federal CAA; and (3) the CBPSP requires BACT. All these conditions for another amendment of the CBPSP are met.

²² 30 TEX. ADMIN. CODE § 116.615(1).

²³ 30 TEX. ADMIN. CODE § 101.4.

²⁴ TEX. HEALTH & SAFETY CODE § 382.002.

²⁵ TEX. HEALTH & SAFETY CODE § 382.0518(a); 30 TEX. ADMIN. CODE § 116.110.

²⁶ 30 TEX. ADMIN. CODE, Chapter 116, Subchapter F, Standard Permits.

²⁷ TEX. HEALTH & SAFETY CODE § 382.05195(a).

²⁸ TEX. HEALTH & SAFETY CODE § 382.0518(b).

²⁹ APPX.V2_000083-86.

³⁰ 30 TEX. ADMIN. CODE § 116.605.

B. THE AMENDED CBPSP (2023-2024) PROVES THAT TCEQ VIOLATED COMPLAINANTS' CIVIL RIGHTS IN ADOPTING THE 2021 CBPSP.

The most recent amendments to the CBPSP occurred in 2021, which was the subject of Complainants' original Complaint, and in 2023-2024, which is the focus of this Supplemental Complaint. The original Complaint highlighted TCEQ's failure to update the protectiveness review associated with the CBPSP for more than twenty years. The Complaint detailed the concern that TCEQ had adopted the 2021 CBPSP without establishing that it was protective of public health.

In 2023, while the original Complaint was pending, TCEQ proposed the amendment to the CBPSP to "incorporate the results of an updated air quality analysis, AQA, that was conducted to address public concern about potential health impacts of CBPs registered under the standard permit."³¹ The AQA is "a report containing information that demonstrates the emissions at a CBP authorized by this standard permit would not cause or contribute to a violation of the NAAQS, exceed a state property line standard, or adversely affect human health and the environment."³² The TCEQ relied on the AQA "to demonstrate that the adopted amendment will be protective of human health and the environment."³³

With respect to Complainants' concerns about the 2021 CBPSP, TCEQ admitted that it began the amendment process in 2023 "to address public concern about potential health impacts of CBPs registered under the CBPSP."³⁴ After TCEQ conducted the updated air quality analysis ("AQA") or protectiveness review ("PR"), *as directly requested in Complainants' original Complaint and accompanying lawsuit in state court against the agency*, TCEQ determined that amendments to the CBPSP were necessary to ensure that emissions at a CBP authorized by the standard permit would not cause or contribute to a violation of the NAAQS, exceed a state property line standard, or adversely affect human health and the environment.³⁵ The TCEQ made the following statements about the reasons for the revisions reflected in the Amended CBPSP:

- As a result of the updated AQA, the TCEQ is adopting revisions to this standard permit.³⁶
- The proposed revisions to the standard permit are a result of the updated AQA, ensure that best available control technology is being utilized, and reflect updated operating requirements.³⁷
- The AQA identified changes necessary to demonstrate that emissions at a concrete batch plant authorized by the standard permit would not cause or contribute to a violation of the [NAAQS].³⁸

³¹ APPX-V2_000638.

³² APPX-V2_000638.

³³ APPX.V2_000636.

³⁴ APPX-V2_000638.

³⁵ APPX-V2_000638.

³⁶ APPX-V2_000638.

³⁷ APPX-V2_000638.

³⁸ APPX-V2_000335-43.

- Specifically, the updated PR considered representative background concentrations of pollutants authorized by the standard permit in communities throughout the state. The amendment incorporates findings from PR and includes the following changes: revised operational requirements, additional setback limitations, production limitations, and best management practices.³⁹
- Importantly, the PR and consequent proposed amendments require that if the CBP is located in Harris County, the minimum setback distance is 200 feet from any property line (twice the requirement for CBPs in general).⁴⁰

The amendments, approved in early 2024, included clarifying revisions to certain definitions, revised operational requirements, additional setback limitations, production limitations, and updated best management practices. Specifically, based on the updated protectiveness review, the TCEQ updated operational requirements to state a maximum annual production limit of 650,00 cubic yards (yd³) per year for all temporary and permanent plants and a reduction in the maximum hourly production limits for truck mix plants.⁴¹ In addition, operational requirements for specialty plants were updated to include a maximum annual production limit of 131,400 yd³ per year with a setback distance of 100 feet and a maximum annual production limit of 262,800 yd³ per year with a setback distance of 200 feet from the batch mixer feed exhaust to any property line.⁴² The amendments included options for additional controls.⁴³

The amendments introduced a definition of “setback distance”, which means the minimum distance required from the nearest suction shroud fabric/cartridge filter exhaust (truck mix plant), drum feed fabric/cartridge filter exhaust (central mix plant), batch mixer feed exhaust (specialty plant), cement/fly ash storage silos, and/or engine to any property line.⁴⁴ For Harris County, the amendments in the Amended CBPSP include mandatory setback distances as follows:⁴⁵

*Table 1: New Limitations on Production Rates and Setback Distances
Specific to Harris County in the Amended CBPSP*

CBP Operations Source	Production Rate	Setback Distance
Single Truck Mix Plant with Shrouded Mixer-Truck Receiving Funnel	200 yd ³ /hour	200 feet
Single Truck Mix Plant with Shrouded Mixer-Truck Receiving Funnel and Enclosure	200 yd ³ /hour	100 feet
Multiple Truck Mix Plants at Same Site with Enclosure	300 yd ³ /hour	200 feet
Central Mix Plants	300 yd ³ /hour	200 feet

³⁹ APPX-V2_000340-43.

⁴⁰ APPX-V2_000337.

⁴¹ APPX-V2_000539.

⁴² APPX-V2_000539.

⁴³ APPX-V2_000539.

⁴⁴ APPX-V2_000540.

⁴⁵ APPX-V2_000541; APPX-V2_000649.

In addition, owners or operators operating multiple concrete batch plants on the same site must comply with specific setback limits set forth in sections (8) and (9) of the new CBPSP.⁴⁶ ***Compared to other CBPs in the state, setbacks for CBPs in Harris County are double those of CBPs in general because of the severity of the background air concentrations in the area.***⁴⁷ Notably, in modeling these conditions for Harris County, TCEQ's updated AQA did not use the N. Wayside Monitor, which is closest to [REDACTED] and [REDACTED]. That monitor has been out of compliance with the prior PM_{2.5} NAAQS since it was installed in May 2021.⁴⁸ These updates to the Amended CBPSP only proves Complainants' original concern that the 2021 CBPSP is not protective of vulnerable populations in Harris County, like Complainants' communities, or even statewide.

Before approving the Amended CBPSP, in response to public comments, TCEQ did make some significant changes from its original proposal to differential central mix plants from truck mix plants, which have different emissions characteristics.⁴⁹ TCEQ revised the proposed definition of setback distance to include a reference to storage silos and increased the maximum hourly and annual production rates for specialty concrete plants if the CBP complies with greater setback distance.⁵⁰ TCEQ also revised certain permit provisions relating to CBPs in or contiguous to the right-of-way of a public works project.⁵¹ Permit language was added to limit the total surface area of stockpiles.⁵² Language was added to require that the owner or operator maintain records to demonstrate that sand or aggregate material has been pre-washed prior to delivery to the site.⁵³ Language was added to require the owner or operator to maintain a copy of the manufacturer's specification for engines.⁵⁴ Language was added to ensure that dust suppression controls (such as fencing or equivalent barriers) are maintained in good working order.⁵⁵ A reference to the commission rule on nuisance⁵⁶ was added to the general requirements in the Amended CBPSP.⁵⁷

In summary, the Amended CBPSP addressed some of Complainants' concerns with the 2021 CBPSP by undertaking an updated AQA or protectiveness review, requiring greater setbacks, and adding additional pollution controls. Complainants consider all these revisions to the CBPSP to be positive steps made by the Agency to make the standard permit more protective, which was Complainants' principal concern in filing their original Complaint with EPA. However, TCEQ did not go far enough to ensure Complainants' communities in Harris County are protected from negative impacts of these facilities.

⁴⁶ APPX-V2_000541.

⁴⁷ See APPX-V2_000024; APPX-V2_000056-62 (Harris County's Original Title VI Civil Rights Complaint discussing modeling and background concentrations in Harris County); see also APPX-V2_000350 (EPA's Comments on the Amended CBPSP) compare with APPX-V2_000540-49.

⁴⁸ See *infra*, Section III-C, at 20-21.

⁴⁹ APPX-V2_000542.

⁵⁰ APPX-V2_000542.

⁵¹ APPX-V2_000542.

⁵² APPX-V2_000542.

⁵³ APPX-V2_000542.

⁵⁴ APPX-V2_000542.

⁵⁵ APPX-V2_000542.

⁵⁶ 30 TEX. ADMIN. CODE § 101.4.

⁵⁷ APPX-V2_000542.

IV. COMPLAINANTS HAVE UNADDRESSED CONCERNS ABOUT THE AMENDED CBPSP THAT JUSTIFY REOPENING THIS COMPLAINT TO ADDRESS TCEQ'S CONTINUING VIOLATIONS OF TITLE VI

Even with the advancements of the Amended CBPSP by TCEQ, there are three significant issues remaining with the CBPSP, which justify EPA reopening its investigation.

A. TCEQ FAILED TO UPDATE THE AMENDED CBPSP TO MATCH EPA'S REGULATION OF PM: RECENT CHANGES TO THE PM_{2.5} NAAQS FOR ADMITTEDLY IMPACT THE PR.

The FCAA requires EPA to set National Ambient Air Quality Standards or NAAQS.⁵⁸ The purpose of these standards is to “protect the public health” with “an adequate margin of safety.”⁵⁹ Consistent with this, the purpose of the TCAA is “to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.”⁶⁰

The FCAA includes an NSR Program. The purpose is to track new sources of pollution and ensure that newly constructed facilities are not contributing to violations of applicable air quality standards—like the NAAQS.⁶¹ And, logically, to accomplish this, new sources of pollution would be subject to new and more stringent controls.⁶²

Texas implements its NSR Program via its State Implementation Plan (“SIP”).⁶³ The Texas legislature added standard permits under a 1999 amendment to the TCAA.⁶⁴ The amendment authorized TCEQ's predecessor agency, Texas Natural Resource Conservation Commission, to identify related categories of air-contaminant emitting facilities and issue a standard permit for the entire category of facilities.⁶⁵

The authority to issue standard permits, such as the CBPSP, are included in Texas' SIP and approved by EPA.⁶⁶ As such, standard permits should contain uniform terms and emissions control technologies *that have proven to be compliant with NAAQS, BACT, and state public health standards*.⁶⁷ Complainants' original Complaint highlighted this issue regarding the 2021 CBPSP approved by TCEQ. And during TCEQ's 2023 amendment process, EPA expressed concern about the same—directing TCEQ to “reevaluate the protectiveness review for rule and non-rule actions especially when these actions occur at irregular intervals and there are changes in either attainment or in the National Ambient Air Quality Standards.”⁶⁸

⁵⁸ 42 U.S.C. §§ 7408, 7409.

⁵⁹ 42 U.S.C. § 7409(b)(1).

⁶⁰ TEX. HEALTH & SAFETY CODE § 382.002(a).

⁶¹ TEX. HEALTH & SAFETY CODE § 382.0518(b)(2).

⁶² TEX. HEALTH & SAFETY CODE § 382.0518(b)(1).

⁶³ 42 U.S.C. § 7407(a).

⁶⁴ Approval and Promulgation of Implementation Plans, Texas, 68 Fed. Reg. 64543 (Nov. 14, 2003).

⁶⁵ TEX. HEALTH & SAFETY CODE § 382.05195(a).

⁶⁶ TEX. HEALTH & SAFETY CODE § 382.05195(a)(3).

⁶⁷ Approval and Promulgation of Implementation Plans, Texas, 68 Fed. Reg. 64543 (Nov. 14, 2003); TEX. HEALTH & SAFETY CODE § 382.0518(b)(1), (b)(2).

⁶⁸ APPX-V2_000350.

TCEQ had notice during the 2023 amendment process that the NAAQS were likely to change. Chronologically, EPA had already published materials about the upcoming change to the NAAQS for PM_{2.5} beginning in 2022, and TCEQ first posted public information about the PM_{2.5} NAAQS changes in March 2023 well after Complainants' Complaint had been filed, accepted, and the EPA had its first meeting with TCEQ regarding the Complaint.⁶⁹ TCEQ then began the CBPSP Amendment process in April 2023 with notice, public meetings on May 18 and May 22, 2023, and a public comment period that ended June 14, 2023.⁷⁰ The NAAQS revisions and the CBPSP Amendment happened contemporaneously. Accordingly, many public comments expressed concerns about the Amended CBPSP and its ability to comply with the upcoming PM_{2.5} NAAQS revisions, which were also in progress.⁷¹

During the 2023-2024 amendment process for the CBPSP, EPA, Harris County, LSLA and other public commenters noted that EPA had proposed to revise the NAAQS for PM_{2.5} to a level within the range of 9.0 – 10.0 µg/m³, and stated that if the PM_{2.5} standard is lowered, there could be significant impact on the protectiveness review for the standard permit.⁷² TCEQ conducted the protectiveness review for Amended CBPSP using the PM_{2.5} standard (12 µg/m³).⁷³ In response to public comment, TCEQ further acknowledged its responsibility to re-evaluate the protectiveness review and take necessary steps to ensure compliance with the NAAQS.⁷⁴

In approving the CBPSP amendment at the January 24, 2024 Commission Hearing, the Commission even acknowledged the reality that it will likely need to amend the CBPSP again in the near future. Specifically, the Commission Chair Jon Niermann stated:⁷⁵

I think we may find ourselves revising this authorization once again when the new PM NAAQS arrives...I also want to thank the Executive Director's staff for not waiting for the new PM NAAQS and not tying this effort to something beyond our control...

Just two weeks later, on February 7, 2024, EPA announced that the new standards for PM_{2.5} annual limits were lowered, from 12 µg/m³ to 9 µg/m³.⁷⁶ Thus, the TCEQ's most recent protectiveness review supporting the Amended CBPSP no longer coincides with the applicable NAAQS for PM_{2.5}. Timing wise, EPA's announcement about the new NAAQS for PM came out just two days before the TCEQ published notice of the Amended CBPSP in the Texas Register.⁷⁷

⁶⁹ APPX-V2_000303–30.

⁷⁰ APPX-V2_000549.

⁷¹ APPX-V2_000580–81; *see also* APPX-V2_000350 (EPA's Public Comments on Amended CBPSP); APPX-V2_000376–77 (Harris County's Public Comments on Amended CBPSP); *and see* APPX-V2_000386–90 (LSLA's Public Comments on Amended CBPSP).

⁷² APPX-V2_000580.

⁷³ APPX-V2_000580.

⁷⁴ APPX-V2_000580.

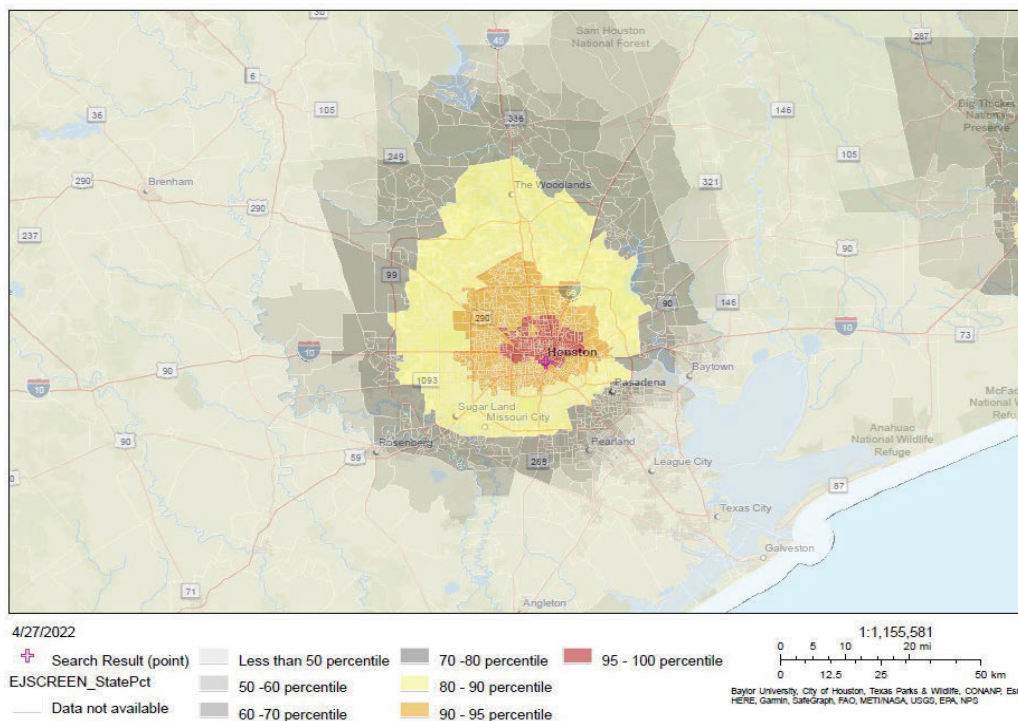
⁷⁵ TCEQ Commissioners' Agenda Meeting – January 24, 2024, Item 3, available at <https://www.youtube.com/watch?v=1Us-WHvrzOM> (discussion begins at 22:15).

⁷⁶ APPX-V2_000656–62; APPX-V2-000781–985.

⁷⁷ APPX-V2_000663–64.

Complainants and their communities in Harris County deserve to be protected from the harmful health effects of PM associated with CBPs at the level of protectiveness reflected in the current NAAQS. Data maps extracted from EJ Screen confirm that the City of Houston has some of the worst exposure to PM_{2.5} in Texas:

Figure 3: City of Houston Exposure to PM_{2.5}



The map demonstrates Houston falls within the 95th to 100th percentile of geographic areas exposed to PM_{2.5} in the air compared to the rest of the state. And it's been well documented and publicly recognized that these Harris County Complainants are already contending with enormous amounts of PM_{2.5} from the aggregate industry—contributing anywhere between 38-111 tons of PM_{2.5} emission/year.⁷⁸ As explained in the original Complaint⁷⁹ and as EPA learned on its May 2023 tour, because of the lack of zoning in Harris County, these facilities are often located in neighborhoods, near residences, churches, and schools.

TCEQ was on notice of this pending change during the 2023-2024 amendment process and decided not to take action that could have tied any amendment to the updated AQA or PR to the new standards. Instead, the agency left this concern for another day, knowing that the Amended CBPSP would no longer be protective before formal notice was even issued to the public on February 9, 2024.⁸⁰ In refiling this Complaint, Complainants are asking EPA to find that the Amended CBPSP does not reflect the level of protectiveness required by the NAAQS.

⁷⁸ Nikolaos Ziropiannis, *Polluting Under the Radar: Emissions, Inequality, and Concrete Batch Plants in Houston*, 57 Env't Sci. & Tech. 11410, 11412-13 (2023) (discussing estimated PM emissions from CBPs in Houston and discriminatory patterns of citing), <https://pubs.acs.org/doi/10.1021/acs.est.3c04412>.

⁷⁹ APPX-V2_000087-88, 118; APPX-V2_00407-09.

⁸⁰ APPX-V2_000663-64.

B. TCEQ SHOULD ALSO UPDATE BACT TO ENSURE THE PROTECTIVENESS OF THE CBPSP.

Second, some elements of BACT for the CBPSP have not been updated since 2008. Under Texas law, standard permits must be enforceable, include adequate monitoring, and apply BACT.⁸¹ Specifically, “all standard permits issued by the commission” require *best available control technology*.⁸² TCEQ’s guidance provides: “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.”⁸³ Thus, the BACT applicable to the CBPSP must be updated to be lawful. Figures 1 and 2 below show the current status of BACT.

Figure 1⁸⁴

TCEQ Mechanical Sources

Historical Best Available Control Technology (BACT) Requirements

Concrete Batch Plants

Year	Source Type	Pollutant	Minimum Acceptable Control	Control Efficiency or Details
2008	Concrete Batch Plant	Particulate Matter (PM)	85% reduction	Truck drop point - typically water fog ring
			95% reduction or 0.01 gr/dscf; suction shroud and minimum 4000 acfm;	Truck drop point or central mix - typically a fabric filter. 5% opacity on fabric filters.
			70% reduction; prewashed aggregate	Material handling processes and stockpiles (typically water sprays on stockpiles).

Figure 2⁸⁵

Unit Type	Date of Last Update	MSS	PM
Control: bag filter/baghouse	10/1/2018	<p>Fabric filters should be in good repair with an acceptable pressure drop prior to the start of operation.</p> <p>Removal of spent filters in such a manner to minimize PM emissions and placing the spent filters in sealable bags or other sealable containers prior to removal from the site. Bags or containers shall be kept closed at all times except when adding spent filters.</p>	<p>Opacity shall not exceed 5% and/or no visible emissions from each stack or vent. 99% reduction or outlet grain loading of 0.01 gr/dscf</p>

⁸¹ TEX. HEALTH & SAFETY CODE § 382.05195(a).

⁸² 30 TEX. ADMIN. CODE § 116.602.

⁸³ TCEQ, Air Permit Reviewer Reference Guide APDG 6110 Air Pollution Control How to Conduct a Pollution Control Evaluation at 11, available at https://www.tceq.texas.gov/assets/public/permitting/air/Guidance/NewSourceReview/fnsr_app_determ.pdf.

⁸⁴ TCEQ, Ten-Year-Old BACT for Specific Industries, available at: <https://www.epa.gov/toxics-release-inventory-tri-program>.

⁸⁵ TCEQ, Current BACT Spreadsheet for all Mechanical, Agricultural, and Construction Type Units, available here: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.tceq.texas.gov%2Fassets%2Fpublic%2Fpermitting%2Fair%2FGuidance%2FNewSourceReview%2Fbact%2Fbact-mac.xlsx&wdOrigin=BROWSELINK>

Moreover, in its materials supporting the Amended CBPSP, TCEQ defined Current Tier I BACT for CBPs as the use of the following minimum acceptable controls:⁸⁶

- Dry material storage silo vents and weigh hopper vents – emissions controlled by dust collector with an outlet grain loading of no greater than 0.01 grains per dry standard cubic foot (gr/dscf) or control efficiency of at least 99%.
- Aggregate material handling – 70% reduction, all aggregate material prewashed prior to delivery.
- Aggregate stockpiles – 70% reduction typically using water spray system.
- Truck drop point – emissions captured with a suction shroud with minimum of 5,000 actual cubic feet per minute of air flow exhausted to a dust collector with an outlet grain loading of no greater than 0.01 gr/dscf or control efficiency of at least 99%.
- Central mixer – emissions controlled by a dust collector with an outlet grain loading of no greater than 0.01 gr/dscf or control efficiency of at least 99%, minimum of 5,000 actual cubic feet per minute of air flow.
- Visible emissions – no visible emissions shall leave the property from filter systems, mixer loading, batch truck loading, silo loading, engine/generator, transfer points on belt conveyors, material storage or feed bins, stockpiles, internal roads, or work areas. Visible emissions are determined by a standard of no visible emissions exceeding 30 seconds in duration in any six-minute period as determined using EPA Test Method 22 or equivalent.
- Engine – fired using liquid fuel with a sulfur content of no more than 0.0015 percent by weight and not consisting of a blend containing waste oils or solvents.

Beginning in February 2020, Harris County began a Concrete Batch Plant Initiative, aimed at inspecting and enforcing against batch plants to ensure the innumerable batch plants in Harris County complied with the terms of the standard permit.⁸⁷ Harris County generated a list of BACT requirements that would improve the CBPSP Amendment and submitted these recommendations in public comments to TCEQ.⁸⁸ TCEQ's Amended CBPSP failed to adopt or include these BACT requirements in enforceable terms.

The following BACT requirements would further protect these vulnerable communities and should be required under Section 382.05195(a)(1)-(3) of the Texas Health and Safety Code:

1. Prior to operation, require a facility to submit an As-Built Certification, signed and sealed by an engineer, to the TCEQ and the local pollution control authority;

⁸⁶ APPX-V2_000576.

⁸⁷ Harris County Pollution Control Services Website, available at <https://pcs.harriscountytexas.gov/>.

⁸⁸ APPX-V2_000367-69.

2. Addition of language similar to that contained in TCEQ Permit TXR050000 at Part III, Section E(2)(1): “Need to Halt or Reduce not a Defense. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the general terms of the permit;”
3. Prohibit co-location and set a minimum distance from another concrete batch plant, or aggregate producing, handling, or processing facility;
4. Further expand buffer zones for a concrete batch plant authorized by the CBP Standard Permit facility;
5. Establish emission limits or place other operational restrictions on plant emission sources for those that are not limited by throughput restrictions (i.e., the baghouse), such as the conveyors and stockpiles;
6. Increase the frequency operators are required to conduct visible emissions observations under Method 22 from quarterly to daily and require the observations to occur during peak operations;
7. Require annual training for both managers and employees regarding permit compliance requirements, specifically including housekeeping requirements and procedures;
8. Require the annual training to be conducted in an alternative language if employees are Limited English Proficient;
9. Require the Permittee to maintain records of all manager and employee training;
10. Require a designated point of contact with an available name and phone number to the surrounding community by a sign at the facility gate;
11. Require the Permittee to post and enforce a speed limit of 5 mph (8 km/h) on facility grounds;
12. Require CBPs to use two or more best management practice methods to prevent tracking of sediment onto adjacent roadways and reduce the generation of dust listed in the Proposed CBP Standard Permit ¶ (8)(G);
13. Require all trucks entering and exiting the facility carrying loose material to be covered;
14. Require Permittees to designate a paved area of the facility for parking and equipment maintenance to help isolate spills and leaks;
15. Expand setback requirements for mixing equipment and silos from the property lines;
16. Require the Permittee to minimize drop heights of materials to reduce dust;
17. Require all material stockpiles:
 - a) to be covered when not in use;
 - b) to be a set distance from the property boundary;
 - c) to be enclosed in bins; and
 - d) limit the height of the enclosed stockpiles to 2 feet below the top of the bins;
18. Install a dust-suppressing barrier as a border around roads, traffic areas, and work areas along any portions of the facility that share a property line with a residential property, neighborhood, school, or medical facility;
19. Require a fixed schedule of water sprays for roads and stockpiles to control dust;

20. Require the use of a vacuum sweeper to sweep paved areas and for sweeping to occur on a fixed schedule at all facilities;
21. Require additional dust suppression activities during dry or windy periods;
22. List circumstances that would trigger a dust control water spray and require facilities to continuously monitor for conditions during operational hours; and
23. Consider whether proximity to a church, school, medical facility, residence, or other sensitive populations should result in an increased buffer distance.⁸⁹

For these reasons, EPA should find that any updated protectiveness review required by the NAAQS changes for PM_{2.5} should also require re-evaluation of BACT and available control options.

C. TCEQ DID NOT IMPLEMENT THE AMENDED CBPSP FAST ENOUGH TO PROTECT PUBLIC HEALTH

Finally, the Amended CBPSP does not require existing CBPs operating under the 2021 CBPSP version of the CBPSP to register or reapply under the Amended CBPSP in order to implement the new, supposedly safe, operational requirements until they are up for renewal. These currently operating CBPs would not be mandated to implement the Amended CBPSP operational requirements until their respective registration expires, which could be a very lengthy window of time.

Under 30 TAC Section 116.605(d), TCEQ has the authority to require all operators to comply with the CBPSP amendment as soon as possible “when it is necessary to protect public health.”⁹⁰ However, in adopting the Amended CBPSP, TCEQ opted to allow CBP facilities to come into compliance with the amended standard permit by the furthest out date allowed under the statute, which would be the date the registration to use the standard permit is required to be renewed.⁹¹ This situation will leave many CBPs in Harris County operating under both the 2012 CBPSP and 2021 CBPSP until their registrations are up for renewal. These facilities may be emitting PM and/or crystalline silica at dangerous concentrations, impacting nearby residents. As explained above,⁹² the protectiveness review and related AQA prepared by TCEQ for the most recent CBPSP amendment demonstrates that the 2012 protectiveness review and the 2021 CBPSP are not protective of human health.

TCEQ’s rules allow registered CBPs to hold their permits for **10 years** before expiration or renewal.⁹³ Presently, Harris County has 105 active permitted concrete batch plants. Many of these CBPs will be able to continue to operate under the dangerous, outdated requirements of the previous CBPSPs— legally and without changes until potentially 2032. As an example, Table 2 below summarizes the status of the permitted CBPs facilities directly connected to Complainants’ communities.

⁸⁹ APPX-V2_000367–69.

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

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

⁹² See *supra*, Section II-B, at 7-9.

⁹³ 30 TEX. ADMIN. CODE § 116.604(1); see also APPX-V2_000644.

Table 2: Permitted Batch Plants in Harris County and Regulatory Status

Permit No.	Permit Type	Operator Name	Renewal Date	Physical Location (Harris County)	Impacted Community
78606	2012 STDPMT	Integrity Ready Mix Concrete n/k/a Yellow Jacket Readymix	3/15/2027	(b)(6) Privacy, (b)(7)(C) Enf. Privacy	
116476	2012 STDPMT	Texas Concrete Enterprise/ Tex Con Ready Mix #3	6/12/2024		
121798	2012 STDPMT	Texas Concrete Enterprise/ Tex Con Ready Mix #2	12/16/2024		
122677	2012 STDPMT	CEMEX Construction Materials South	11/20/2024		
131665	2012 STDPMT	Five Star Ready Mix	9/15/2025		
135498	2012 STDPMT	CEMEX Construction Materials South	12/8/2025		
136479	2012 STDPMT	Texan Concrete Enterprise Ready Mix	4/21/2026		
136883	2012 STDPMT	Houston Ready Mix / SMYRNA	2/16/2026		
148312	2012 STDPMT	Baker Ready Mixed Concrete	11/17/2027		
150603	2012 STDPMT	Texan Concrete Enterprise Ready Mix	3/1/2029		
157195	2012 STDPMT	Rocket Materials	12/10/2029		
89909	2012 STDPMT	Wilbert Vaults Of Houston	5/20/2020		
138309	2021 STDPMT	CemTech Concrete Ready Mix	2/11/2029		
164280	2021 STDPMT	Always Ready Concrete	6/30/2031		
167400	2021 STDPMT	CS Concrete Ready Mix	4/12/2031		
167453	2021 STDPMT	Avant Garde Construction	5/16/2032		

As the chart above illustrates, at least twelve CBPs in Complainants' neighborhoods are still operating under the 2012 CBPSP as that permit did not require compliance until two years after its adoption or the date of the registration renewal, whichever is later.⁹⁴ And at least four CBPs in Complainants' communities are operating under the 2021 CBPSP, which also did not require compliance with the updated permit until two years after its adoption or the date of the registration renewal, whichever is later.⁹⁵ Moreover, TCEQ is still allowing CBP registrations with renewal dates prior to January 24, 2026 to renew under the 2021 CBPSP, a permit that TCEQ knows is *not protective*. Specifically, TCEQ has announced on its website:⁹⁶

Current CBP Standard Permit registrations that have a renewal date prior to January 24, 2026 have the option to renew under the previous CBP Standard Permit (Effective Date September 22, 2021). Renewing under the previous 2021 CBP Standard Permit will only authorize operations for the facility until January 24, 2026. Applicants will be notified approximately 6 months prior to January 24, 2026, to renew their registration under the current 2024 CBP Standard Permit.

By failing to require existing CBPs to comply with the Amended CBPSP in a timely manner, TCEQ all but ensured environmental justice communities such as (a) (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) in Northeast Houston, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) in North Houston, and (c) (b)(6) Privacy, (b)(7)(C) Enf. Privacy are disproportionately exposed to toxic air pollutants. The effects of the Amended CBPSP will disparately impact Black and Hispanic residents of the Impacted Communities who continue to suffer from health issues and decreased property values at higher rates than Whiter, more affluent communities nearby.⁹⁷ Recent air pollution monitoring observed within the boundaries of the neighborhood exemplifies the cumulative impacts resulting from TCEQ's failure to consider environmental injustice in the Impacted Communities.

In May 2021, TCEQ installed a state-run air monitor in (b)(6) Privacy, (b)(7)(C) Enf. Privacy which borders (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) to measure certain constituents—like coarse and fine particulate matter.⁹⁸ The monitor is located at (b)(6) Privacy, (b)(7)(C) Enf. Privacy Houston, TX 77028 ("N. Wayside Monitor").⁹⁹ The N. Wayside Monitor began measuring PM_{2.5} using Federally Equivalent Methods ("FEM") beginning on May 4, 2021.¹⁰⁰ Since this monitor was installed, the PM_{2.5} readings have consistently exceeded NAAQS standards.¹⁰¹

The N. Wayside Monitor has shown concerning air quality for the nearby environmental justice communities since its inception. In February 2022, about eight months after the installation of the

⁹⁴ APPX.V-1_00320.

⁹⁵ APPX.V-1_00361.

⁹⁶ TCEQ, available at <https://www.tceq.texas.gov/permitting/air/newsourcereview/mechanical/cbp.html>.

⁹⁷ APPX-V2_000062-75 (Harris County's Original Complaint detailing demographics of impacted communities & disproportionate impacts); APPX-V2_000087-101 (Complainants' Demographics) *compare with* APPX-V2_000112-17 (Complainants' Demographics contrasted with wealthier white neighborhoods).

⁹⁸ TCEQ Annual Air Monitoring Network Plan (Jul. 1, 2021) at 17.

⁹⁹ TCEQ Annual Air Monitoring Network Plan (Jul. 1, 2021) at 17.

¹⁰⁰ TCEQ Annual Air Monitoring Network Plan (Jul. 1, 2021) at 17.

¹⁰¹ APPX-V2_000007; APPX-V2_000672.

According to TCEQ, the readings from the N. Wayside Monitor exceed the NAAQS standard for PM_{2.5}, averaging at 12.5.¹⁰⁸ Specifically, the N. Wayside Monitor has continuously given high readings — the highest in Harris County. For the nearly nine months of 2021 that the monitor was installed (May 3 – December 31), the annual mean was 12.7 µg/m³. The annual mean for the 2022 calendar year was 11.8 µg/m³. The mean for January 2023 was 12.4 µg/m³, the mean for February 2023 was 12.1 µg/m³, and the annual mean for 2023 as of March 20th is 13.4 µg/m³.¹⁰⁹

Based on the data from the N. Wayside Monitor, TCEQ identified several industrial users responsible for the problem—including several concrete batch plants near (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). The N. Wayside Monitor is near the following CBPs:

- Five Star Ready Mix is .37 miles NE of the N. Wayside Monitor at (b) (6) Privacy, (b) (7)(C) Ent. Priv. Houston, TX 77028;
- Texas Concrete Ready Mix is 1.4 Miles SW of the N. Wayside Monitor at (b) (6) Privacy, (b) (7)(C) Ent. Priv. Houston, TX 77028;
- Texas Concrete Ready Mix is 1.4 Miles SW of the N. Wayside Monitor at (b) (6) Privacy, (b) (7)(C) Ent. Priv. Houston, TX 77028; and
- The Queen Ready Mix is 1.75 miles SE from the N. Wayside Monitor at (b) (6) Privacy, (b) (7)(C) Ent. Priv. Houston, TX 77028.

TCEQ has begun to engage these facilities in hopes of resolving the current NAAQS violations that are significantly burdening Northeast Harris County’s air quality and throwing the region out of compliance. However, this does not resolve 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, it is significantly deteriorating air quality in these overburdened areas—as evidenced by the NAAQS exceedances. This Supplemental Complaint targets the heart of problem: the Amended CBPSP’s lack of a protectiveness review that coincides with current NAAQS and the delayed implementation of the Amended CBPSP means that communities are going to be exposed to facilities that are operating under prior versions of the standard permit that are already proven to be not protective of public health.

Despite public comments submitted throughout 2023 specifically cautioning TCEQ that the proposed amendment failed to address existing dangerous CBPs, as well as Complainants’ and Harris County’s request that all CBPs be required to register under the newly amended CBPSP within six months, TCEQ chose not to address this major failure in the Amended CBPSP. Consequently, because TCEQ does not require existing CBP permit holders to register under the new Amended CBPSP, and the exiting permits do not expire for up to ten years, TCEQ is allowing potentially hundreds of CBPs statewide to continue unsafe operations without any changes until 2032. This situation leaves Complainants and similarly impacted environmental justice

¹⁰⁸ APPX-V2_000672 *compare with* APPX-V2_000001–21.

¹⁰⁹ APPX-V2_000362.

¹¹⁰ APPX-V2_000013.

communities throughout the state in just as much peril as they were before the Amended CBPSP was adopted.

Further, during the comment period for the Amended CBPSP, EPA and the City of Dallas raised concerns that the protectiveness review relied on outdated air modeling that does not comport with EPA's preferred dispersion model.¹¹¹ Specifically, EPA and the City of Dallas have recently partnered on a cumulative impacts assessment about CBP operations in City of Dallas that may inform about parameters for air modeling for CBPs and study of cumulative impacts based on that pilot program.¹¹² This report, once publicly available later this year, should also be considered to inform issues around any future amendments of the CBPSP.

For these reasons, Complainants are asking EPA to find that TCEQ should require compliance with any future amended CBPSP within six months is "necessary to protect public health."¹¹³

V. CONCLUSION AND RELIEF REQUESTED

TCEQ needs to amend the CBPSP (again) to make sure that it is protective of Complainants' communities in Harris County given the changes to the NAAQS for PM_{2.5} adopted by EPA in 2024, adopt updated BACT for CBPs, and address the delayed implementation of the Amended CBPSP for existing facilities under the 2021 CBPSP until they reach their renewal date. For these reasons, Complainants (b) (6), (b) (7)(C)

, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) respectfully request EPA:

- (1) reopen Complaint No. 06RNO-22-R6;
- (2) investigate the allegations in this Complaint regarding the discriminatory actions by TCEQ taken against the communities represented by Complainants where TCEQ has permitted CBPs, including the TCEQ's process and January 24, 2024 approval of the Amended CBPSP; and
- (3) direct TCEQ regarding the following relief to resolve this Complaint:
 - a. TCEQ should conduct an updated protectiveness review for the CBPSP for particulate matter from CBP operations given EPA's recent updates to the NAAQS for PM_{2.5};
 - b. TCEQ should conduct BACT updates for CBP operations based on the new NAAQS;
 - c. TCEQ should identify any CBPs currently operating under prior, unprotective standard permits (2012 CBPSP, 2021 CBPSP, and Amended CBPSP) and require

¹¹¹ APPX-V2_000576.

¹¹² APPX-V2_000462-63.

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

them to come into compliance within six months of the updated amendment of the CBPSP requested in this Supplemental Complaint; and

- d. TCEQ should increase air monitoring for particulate matter in EJ communities in Harris County, Texas, in areas determined to be out of compliance with the updated NAAQS for PM_{2.5} to mitigate cumulative impacts as seen in the N. Wayside Monitor and other regulatory monitors in Harris County, Texas.

Complainants would further request any other and further relief that EPA feels they are entitled to after conducting its investigation to remedy TCEQ's discriminatory actions in adopting the Rulemaking Amendment. For more information, please contact the undersigned counsel for Complainants.

Respectfully submitted,

Lone Star Legal Aid
Environmental Justice Team
Equitable Development Initiative

Amy Catherine Dinn, Litigation Director
adinn@lonestarlegal.org
Phone: (713) 652-0077 ext. 1118

Caroline Crow, Staff Attorney
ccrow@lonestarlegal.org
Phone: (713) 652-0077 ext 1011

Noor Mozaffar, Staff Attorney
nmozaffar@lonestarlegal.org
Phone: (713) 652-0077 ext 1017

P.O. Box 398
Houston, Texas 77001-0398
Fax: (713) 652-3141

ATTORNEYS FOR COMPLAINANTS

(b) (6), (b) (7)(C)

Attachments

Appendix, Volume 2

cc: **VIA EMAIL TO EPA ADMINISTRATORS AND EMPLOYEES**

Lilian Dorka, Director, OECRC, Dorka.Lilian@epa.gov

Earthea Nance, PhD, PE, Regional Administrator, Region 6, Nance.Earthea@epa.gov

Ariadne Goerke, Deputy General Counsel, Civil Rights & Finance Law Office, Office of General Counsel, U.S. EPA, Goerke.ariadne@epa.gov

Stacey Dwyer, Deputy Regional Administrator, Deputy Civil Rights Official, U.S. EPA Region 6, dwyer.stacey@epa.gov

Patricia Welton, Regional Counsel, U.S. EPA Region 6, welton.patricia@epa.gov

Anhthu Hoang, Acting Director, OECRC, Anhthu.Hoang@epa.gov

Aimee Wilson, Air Permitting, U.S. EPA Region 6, wilson.aimiee@epa.gov

David Garcia, Air Permitting, U.S. EPA Region 6, garcia.david@epa.gov

Rebecca Gillman, gillman.rebecca@epa.gov

Dharma Khalsa, dharm.khalsa@epa.gov

Lawrence Pittman, U.S. EPA Region 6, pittman.lawrence@epa.gov

Jonathan Stein, stein.jonathan@epa.gov