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To the members of the House Committee on Environmental Regulation.
Via hand delivery.

March 29, 2021

Re: HB 1627 by Rep. Senfronia Thompson - Supporting testimony of Public Citizen

Dear Chairman Landgraf and members of the committee:

Public Citizen appreciates the opportunity to support of HB 1627 by Rep. Senfronia Thompson, relating to the issuance of air quality permits for concrete plants located in certain areas.

We support HB 1627 because it will address the problem of concrete batch plants being sited near homes in Houston. This bill is narrowly tailored to a unique situation in Houston. It would grant city and county leadership a power they otherwise lack—to keep stop concrete batch plants from locating in neighborhoods and near homes.

I. The City of Houston should have zoning to protect its people.

Houston is the only major city in the United States without zoning. This is frankly inexcusable, and it represents a continued failure of Houston’s leadership to use every tool at its disposal to protect its people. The devastating impacts of this omission are evident in Houston’s poor and minority communities. Vulnerable people live in the literal shadow of massive industrial operations. There is a cost to this decision measured in lives lost and shortened.

Some state lawmakers have pointed to this failure on Houston’s part as evidence that the legislature doesn’t need to step in on behalf of people suffering in Houston. We take a different view. The Texas legislature is precisely the body who could solve this problem, at least as far as concrete batch plants are concerned. The City’s own failure to protect its people is not an argument against the legislature taking action.

We should note that the City of Houston attempted to address this problem via a city ordinance. That ordinance was challenged in court by a concrete company and nullified by the Texas Supreme Court.¹ This history isn’t an excuse for Houston’s lack of zoning, but it is evidence that the city tried to address the concrete batch plant problem in the recent past.

II. Concrete batch plants impact health in vulnerable communities in Houston.

Given the present situation, concrete batch plants are an unacceptable threat to residential communities in Houston that must be addressed. There are perhaps 180 concrete batch plants in Houston. They cluster in low-income communities of color that we know as “environmental justice” communities. Attached to these comments is a map of concrete batch plants in Houston that offers plain evidence that these facilities are located in poor communities of color.

¹ *Southern Crushed Concrete v. City of Houston*, 398 S.W.3d 676, 56 Tex Sup. Ct. J. 295 (Tex. 2013).



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The present inequity in industrial facility siting combined with Houston's lack of zoning leads unacceptable health and community impacts. The next attachment to these comments is photos of a concrete batch plant taking from the backyard of a home in Houston. The plant, known as Integrity Ready Mix, is located at 2219 Hartwick Rd., Houston, TX 77093. The metal fence in the photos separates the concrete batch plant from the backyard of a single family home. The photos show violations of the setback requirements for the stockpiles and the vehicles.

The final attachment to these comments is a June 2020 article in the Houston Chronicle describing the circumstances that led to the withdrawal of a concrete batch plant permit application in the Houston community of Acres Homes. The permit application was withdrawn only after the facility was opposed by Houston Mayor Sylvester Turner, U.S. Representative Sheila Jackson Lee, Texas Rep. Jarvis Johnson, and Texas Sen. John Whitmire.

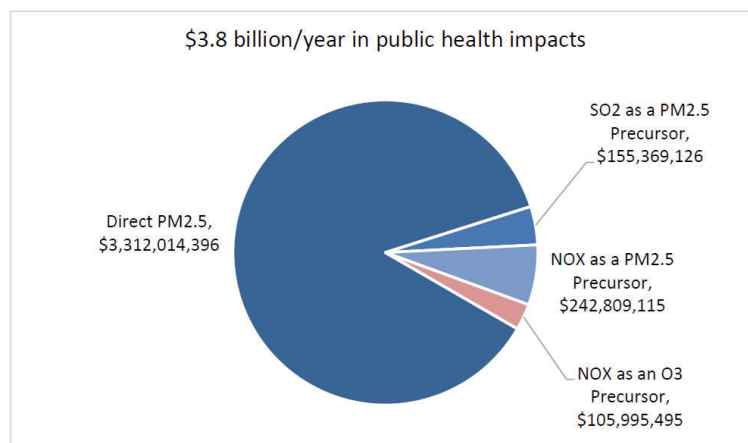
III. Particulate matter has serious health impacts

Concrete plants produce particulate matter pollution that is very hazardous to health. Air pollution policy conversations in Texas often focus on ozone because many areas of the state do not meet the federal Clean Air Act standards for ozone. But in fact the overall health impacts of particulate matter are far greater than those of ozone. Two examples follow:

A. PM health impacts in Central Texas

In a recent analysis of the health impacts of air pollution in Central Texas, the CAPCOG Clean Air Coalition attributed the vast majority of health impacts to fine particulate matter or PM_{2.5}:²

Figure 1. Estimated Monetized Impacts of Regional Emissions of NO_x, SO₂, and PM_{2.5}

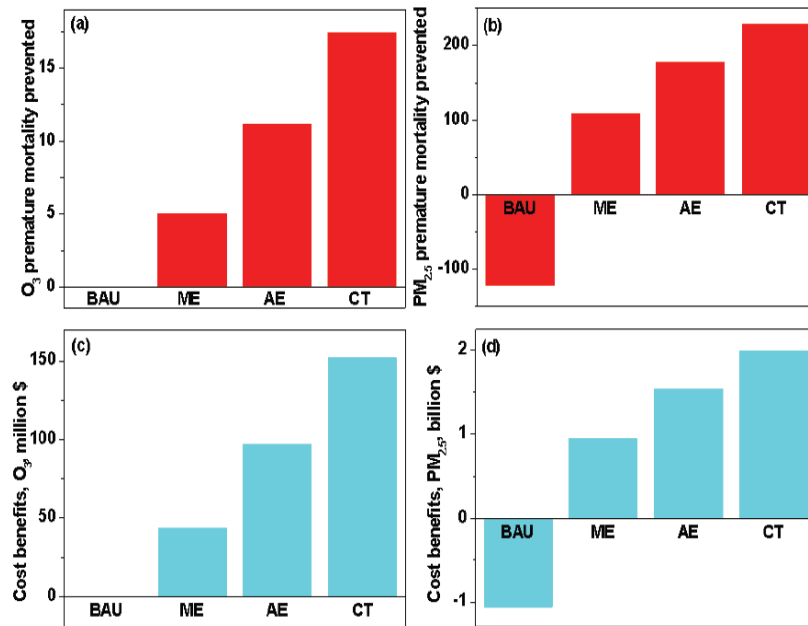


² Hoekzema, Andrew, "CAC Meeting 8/12/2020 Item 6: Consider Participation in EPA's Particulate Matter Advance Program" CAPCOG Clean Air Coalition (3 Aug. 2020).



B. PM impacts in Houston by 2040

In a study comparing the impacts of various transportation electrification scenarios in the year 2040,³ researchers at the University of Houston calculated the following health impacts of ozone and particulate matter:



C. Concrete plants produce particulate matter pollution “hot spots”

Some concrete plants—those that do not adequately control their emissions—are responsible for a significant amount of highly localized air pollution. Most of Texas, including all of the Houston region, meets the federal Clean Air Act standards for particulate matter. But in fact compliance is based on sparse data that misses localized “hot spots” of pollution.

Concrete plants are often responsible for hot spots of particulate matter, and the problem is compounded when plants cluster, which they do frequently. Here is one example of a cluster of facilities in a residential area along Schurmier Rd. in South Houston. The facility with the red pin was permitted despite the four existing facilities in the area.

³ Choi, Yunsoo et. al., “Evaluation of the air quality impacts of clean combustion technologies, emissions controls and fleet electrification in the Houston Metropolitan Area for the year 2040” (October 2018) available at <https://www.citizen.org/wp-content/uploads/migration/public-citizen-air-quality-transportation-houston-report-october-2018.pdf>.



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The federal Clean Air Act pollution standard is (without going into too much detail) $12 \mu\text{g}/\text{m}^3$ for a year and $35 \mu\text{g}/\text{m}^3$ for 24-hours. I have personally conducted extensive air monitoring campaigns in neighborhoods and discovered local violations of particulate matter standards. I have used handheld PM monitors near cluster of concrete batch plants, including along Schumier Road, and seen instantaneous PM readings of several hundred $\mu\text{g}/\text{m}^3$. These locally hazardous conditions are not captured by the state's ambient air monitoring network.

IV. HB 1627 is narrowly tailored to the problem in Houston.

Many cities would address such a dangerous local situation with zoning. Houston has not. Setting aside the question of why Houston cannot implement zoning to fix at least this issue, HB 1627 offers a solution by state lawmakers.

A concrete batch plant application in the City of Houston or Harris County will be forwarded by the Texas Commission on Environmental Quality (TCEQ) to the city and county for review. The city and county will have 31 days to review the application. If they deny the permit, it cannot be issued by TCEQ. If they approve the permit or take no action, it can be approved by TCEQ. This is the same process used elsewhere in state law when local approval for a state authorization is desirable.

After a decade of advocacy on concrete batch plant permits in Houston, I believe that HB 1627 is a narrowly tailored solution that will give the city the authority it needs to keep concrete batch plants out of neighborhoods where they do not belong.

We support HB 1627 as a sensible restriction on concrete batch plant permitting in Houston designed to keep polluting facilities away from homes.

I appreciate the opportunity and welcome questions at ashelley@citizen.org, 512-477-1155.



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Respectfully,

Adrian Shelley, Texas Office Director, Public Citizen

CC: Rep. Alex Dominguez, Rep. Jay Dean, Rep. Vikki Goodwin, Rep. Kyle J. Kacal, Rep. John Kuempel, Rep. Penny Morales Shaw, Rep. Geanie W. Morrison, Rep. Ron Reynolds

Attachments:

- Map of concrete batch plants by House district in the Houston area.
- Photos of Integrity Ready Mix, 2219 Hartwick Rd. Houston, TX 77093.
- Erin Douglas and Perla Trevizo, Houston Chronicle, "Company withdraws application to build concrete batch plant in Houston neighborhood" (22 Jan. 2020) *available at* <https://www.houstonchronicle.com/business/article/Company-withdraws-application-to-build-concrete-14995968.php>.



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Integrity Ready Mix

2219 Hartwick Rd. Houston TX 77093



CURRENTLY READING

Company withdraws application to build concrete batch plant in Houston neighborhood

BUSINESS

Company withdraws application to build concrete batch plant in Houston neighborhood

Erin Douglas and Perla Trevizo

Jan. 22, 2020 | Updated: Jan. 22, 2020 8:10 p.m.



Soto Ready Mix's site is shown from the yard of Donna and David Williams. Residents in the Acres Homes neighborhood have been fighting the concrete company's proposal to build a batch plant at the site for nearly two years. On Wednesday, the company withdrew its application.

Photo: Steve Gonzales, Houston Chronicle / Staff photographer

In a win for residents, a concrete company will end its efforts to gain an environmental permit to build a concrete mixing plant in northwest Houston neighborhood — just one day before an administrative judge was set to hear arguments from the community against the plant.

Soto Ready Mix, a small Houston company, had planned to build the plant near homes and a park in Acres Homes, a historically black neighborhood. On Wednesday, however, the company's lawyers filed a motion with the administrative judge to send the case back to the state's environmental agency, so that the company could withdraw its application to build the plant.

Soto Ready Mix sought an air emissions permit from the Texas Commission on Environmental Quality, the state's environmental agency, to build a batch plant, where concrete is mixed. For nearly two years, residents fought the permit for the plant, which they said would release particulates harmful to human health into the air. The prospect of a concrete plant in the neighborhood had already hurt property values, residents said.

TCEQ granted a hearing to the residents, allowing them to argue their case before a state administrative judge. That hearing, scheduled for Thursday, was canceled.

The permit had become a test of the environmental permitting process in the state for advocates. Often, communities are unaware or unable to amass the resources needed to stop a company from obtaining one of the state's environmental permits.

But in Acres Homes, residents have engaged in the permitting process, tirelessly rallying politicians and pressuring regulators to host several public meetings.

"I'm overjoyed," said Donna Williams, who lives next door to the proposed site and whose family has been fighting the batch plant for years. "I feel our prayers have been answered and that all of our efforts have not been in vain."

Winning model

The success for Acres Homes could become a model for other communities confronting proposals to build concrete plants near their homes, environmental advocates said. Corey Williams, research and policy director at Air Alliance Houston, a nonprofit that opposed the Acres Home permit, estimated that more than 100 concrete batch plants operate in Houston.

"I think we found something that works," he said. "We will organize around other facilities in a similar manner in the future. These facilities don't belong in residential

neighborhoods.”

On HoustonChronicle.com: One Houston neighborhood is fighting Texas’ air quality rules

Air Alliance Houston is following another concrete batch permit application in a largely Hispanic community in the Aldine area, Williams said. It has the potential to affect nearly twice as many residential properties as the proposed Soto Ready Mix plant in Acres Homes.

The proposed Soto Ready Mix plant would have been notably close to many homes as well as daycare facilities, parks and churches. Building such plants in Houston exists in a blind spot between state and local laws.

TCEQ only has jurisdiction over emissions from the plant, not where it is sited. That’s not a problem in many communities, where zoning laws prohibit industry from locating so close to residences.

Houston, however, doesn’t have zoning laws. Over the last five years, TCEQ received more than 100 requests for concrete batch plant air emissions permits in Houston, according to the agency. Only two were denied.

“It’s fantastic news for the community,” said Collin Cox, an attorney with Lone Star Legal Aid working on behalf of one resident of Acres Homes. “These things are almost never defeated. The way the law is written, it is next to impossible to stop them.”

More to be done

Public pressure to block the plant steadily escalated over the last year. Earlier this month, Mayor Sylvester Turner spoke out against the project at a news conference. U.S. Rep. Sheila Jackson Lee (D-Houston), state Rep. Jarvis Johnson (D-Houston) and state Sen. John Whitmire, (D-Houston), spoke at TCEQ meetings and hosted town halls on the issue.

In the letter to regulators, Birch, Becker & Moorman, the law firm representing Armando Soto, the owner of the business, wrote that Soto had determined, based on conversations with “interested persons” this week, that moving forward with the permit was not in the

company's best interest. Neither Soto nor his attorney responded to requests for comment Wednesday.

Johnson, who spoke with Soto Wednesday, and Whitmire said their offices will continue to negotiate with the company, and work with it to find a location that is more suitable for a concrete plant. Whitmire said convincing the TCEQ to refer the issue to a state hearing was a major step in applying pressure.

"You don't win at the TCEQ often, because the law favors business," Whitmire said. "I'm glad the people won one today. We need more wins like this."

Johnson called the withdrawal of the permit application a victory for the community. But he said more needs to be done — namely, passing legislation that would prohibit concrete batch plants from operating in residential neighborhoods.

"Unfortunately," Johnson said, "Soto Ready Mix Inc. is not the only concrete batch plant aiming to operate in residential neighborhoods in Houston."

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