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To the members of the House Committee on Environmental Regulation.

Via hand delivery.

March 29, 2021

Re: HB 3603 by Rep. Leach - Supporting testimony of Public Citizen

Dear Chairman Landgraf and members of the committee:

Public Citizen appreciates the opportunity to testify in support of HB 3603 by Chairman Leach, relating to the eligibility of a concrete batch plant for a standard permit with enhanced controls following the withdrawal of an application for a standard permit.

We support HB 3603 because it closes something of a loophole in the current permit application process for concrete batch plants. In order to understand how, a brief explanation of concrete batch plant permitting is necessary.

The vast majority of concrete batch plant permit applications are under the authorization of Health & Safety Code § 382.05195.¹ This is a standard permit application process used by many polluting facilities, not just concrete batch plants.² A small number, less than 9%, of concrete batch plant permit applicants apply for a permit under Health & Safety Code § 382.05198, the so-called “enhanced controls” permit. In either case, the intent of the permits is to limit air pollution and the impact to public health of the facility. As a matter of policy, we note our belief that permits in Texas are not sufficiently protective of human health. But certainly we agree that there should not be unintended consequences or loopholes within the process as it stands.

HB 3603 prevents a permit applicant from withdrawing a standard permit application filed under § 382.05195 and refiled within one year for a permit under § 382.05198. Why would an applicant try to do this? This is speculation on my part, but there is one significant procedural difference between the two processes: the standard permit is eligible for a contested case hearing, the enhanced controls permit is not.³

It is conceivable that a standard permit applicant could begin the process, see that a contested case hearing was possible based on public feedback, and then attempt to avoid that hearing by submitting instead under the “enhanced controls” provisions. In order to do that, the applicant would have to make sure the proposed facility met the enhanced controls requirements under §

¹ Public Citizen reviewed concrete batch plan permit applications during a five-year period 2013-2018 and found 981 standard permit application under § 382.05195 and 94 applications under § 382.05198.

² For an explanation of the standard permit process for concrete batch plants, see <https://www.tceq.texas.gov/permitting/air/newsourcesreview/mechanical/cbp.html>.

³ Healthy & Safety Code §382.05199.



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382.05198. One example of such a requirement is the firm 440-yard setback for the baghouse, which is a main source of particulate matter pollution emissions.⁴

Doing this would defeat the legislature's intent in providing for a permitting process with public involvement. Withdrawing and resubmitting an application under a slightly different statute is not faithful to the spirit of the administrative permit process. For this reason we agree that an applicant should be prevented from withdrawing a standard permit application and resubmitting an enhanced controls application in less than a year.

We support HB 3603 because it will improve the air permitting process for concrete batch plants by preventing applicants from gaming the system by quickly withdrawing and resubmitting applications.

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

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

⁴ Health & Safety Code § 382.05198(a)(19). As a general matter, we do not believe that the enhanced controls permit is significantly more protective of human health. But that issue is outside the scope of this bill.