

# TCEQ Interoffice Memorandum

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**To:** Air Permits Division Staff  
Regional Office Staff

**From:**  Michael Wilson, P.E., Director  
Air Permits Division

**Date:** March 27, 2018

**Subject:** Clarification of Right-of-Way Public Works Projects

The Texas Clean Air Act § 382.058(b) and Title 30 Texas Administrative Code (30 TAC) § 116.178 identify the ability to locate a portable facility contiguous or adjacent to a Right-of-Way (ROW) Public Works Project and be waived from 30 TAC Chapter 39 public notice requirements. This memo serves as a clarification for what is considered a ROW project and what is contiguous or adjacent to a ROW project.

The agency has defined a public works project as “any project or work which is designed for public use, protection, or enjoyment” and is funded by the public.

ROW projects can be identified as projects with a form of transmission. Common examples of ROWs are road and highway projects, taxiway and runway projects at airports, water and wastewater pipeline projects, and electrical utility line projects. These are some of the common types of projects that the agency reviews; however, it is not a complete list and other types of projects have to be evaluated on a case-by-case basis. Certain facilities used to construct public buildings such as schools, post office buildings, or other types of commonly identified public works are not exempted from the public notice requirements identified in 30 TAC Chapter 39.

In addition, temporarily authorized portable facilities that are located in or adjacent to a ROW public works project may be waived from agency public notice requirements. A temporary facility is one that occupies a designated site for not more than 180 days or supplies materials for a single project (single contract or same contractor for related project segments), but not other unrelated projects. Some examples of single projects that would exceed 180 days to construct are bridges, large paving project segments, or other projects that would be impracticable to complete in 180 days. For these cases, as long as the permit holder can demonstrate that the project is under the same bid, the 180 day time frame may be exceeded and still be considered temporary.

The plant providing the material to the ROW project must also be contiguous or adjacent to that ROW project. Furthermore all vehicular traffic associated with the facility (i.e., haul trucks, cement trucks, etc.) must remain either on the property identified as the facility's property or in the ROW of the public works project.

If the applicant can demonstrate that a contractual agreement exists requiring the permit holder to maintain and repair specific public roadways between the facility's property and the ROW project then those roadways are eligible for travel to and from the public works project. This is considered contiguous or adjacent to the ROW project and the facility may be exempted from public notice requirements.