State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

May 13, 2026

Duncan Norton **VIA EFILE TEXAS**

Nicholas Pilcher **VIA EFILE TEXAS**

Sheldon Wayne **VIA EFILE TEXAS**

David Tuckfield **VIA EFILE TEXAS**

RE: SOAH Docket Number 582-25-19115.TCEQ;
TCEQ Docket No. 2023-1590-WDW;
Application by U.S. Ecology Winnie LLC for Renewal and Amendment of Permit Nos. WDW344, WDW345, WDW346, WDW347, WDW348, WDW349, and WDW350

Dear Parties:

Enclosed are the Proposal for Decision (PFD) and Proposed Order in this case.

Within 20 days of the date of issuance of the PFD, any party may file exceptions or briefs. Replies to exceptions, briefs, or proposed findings of fact must be filed within 30 days of the date of issuance of the PFD. 30 Tex. Admin. Code § 80.257.

All exceptions, briefs, and replies must include a certificate of service and be served on all parties and the Administrative Law Judges. Filings must be submitted electronically to the Chief Clerk of the TCEQ at http://www14.tceq.texas.gov/epic/eFiling/, or by filing an original and seven copies with the Chief Clerk. Failure to comply with filing requirements may result in the pleadings not being considered.

CC: Service List

SOAH Docket No. 582-25-19115 **Suffix: TCEQ**
TCEQ Docket No. 2023-1590-WDW

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION BY U.S. ECOLOGY WINNIE LLC FOR RENEWAL AND AMENDMENT OF PERMIT NOS. WDW344, WDW345, WDW346, WDW347, WDW348, WDW349, AND WDW350

TABLE OF CONTENTS

I. Notice, Jurisdiction, and Procedural History 2
II. Applicable Law 3
A. Burden of Proof 3
B. Injection Well Act and UIC Rules 4
III. Evidence and Analysis 4
A. Background, Draft Permits, and Modeling 6
B. Protestants' Position 7
1. Claimed Property Right in Pore Space 7
2. Impairment Through Loss of the Right to Exclude 8
3. Evidence of Waste Migration 9
4. Expert Testimony on Migration Extent 10
C. Applicant's Position 11

1. No Showing of Impairment 11
2. Interpretation of Modeling 12
3. Critique of Protestants' Analysis 14
4. Alternative Modeling 16
5. Existing v. Future Use 17
D. ED's Position 18
1. Review Process and Scope of Evaluation 18
2. Interpretation of Modeling 19
E. OPIC's Position 20
1. Claimed Property Right in Pore Space and Evidence of Migration and Encroachment 20
2. Challenge to ED's Review 22
F. Protestants' Response 22
1. Existing Property Right 22
2. Applicant's Characterization of the Application and Modeling 23
3. Applicant's Alternative Modeling 24
4. Lack of TCEQ Evaluation 26
G. Applicant's Response 26
1. Existing Property Rights, Impairment, and Modeling 26
2. TCEQ's Review 28
3. Mischaracterization of Evidence 28
4. Response to OPIC 29
H. ALJs' Analysis 29
1. Existing Right 30
2. Impairment 30
IV. Transcript Costs 34
V. Conclusion 35
I. Findings of Fact 1
II. Conclusions of Law 6

SOAH Docket No. 582-25-19115 **Suffix: TCEQ**
TCEQ Docket No. 2023-1590-WDW

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION BY U.S. ECOLOGY WINNIE LLC FOR RENEWAL AND AMENDMENT OF PERMIT NOS. WDW344, WDW345, WDW346, WDW347, WDW348, WDW349, AND WDW350

PROPOSAL FOR DECISION

Applicant, U.S. Ecology Winnie, LLC, filed an application (Application) with the Texas Commission on Environmental Quality (Commission or TCEQ) for the renewals and amendments of multiple Class I Underground Injection Control (UIC) permits located in Winnie, Jefferson County, Texas. The Application was opposed by Pipkin Ranch Holdings, L.P., Grayson Eden Pipkin, and Bruce Fletcher Pipkin (collectively, Protestants). The State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs) recommend the Application and the draft permits (Draft Permits) issued by the Commission's Executive Director (ED) be granted without changes.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

No party contested jurisdiction or notice. Those matters are addressed in the Proposed Order attached to this Proposal for Decision (PFD).

TCEQ received the Application on May 28, 2019. The ED declared the Application administratively and technically complete and issued the Draft Permits.[1] At its February 2024 agenda, the Commission determined that each of the Protestants qualified as an affected person, granted their request for a contested case hearing, and referred the matter to SOAH.[2]

At the SOAH preliminary hearing on September 23, 2025, the Administrative Record (Tabs A–E) was admitted into evidence; and Applicant, the ED, Office of Public Interest Counsel (OPIC), and Protestants were named as parties to the proceeding. ALJs Katerina DeAngelo and Michelle Kallas convened a hybrid hearing on the merits in Austin, Texas on February 17-18, 2026. Applicant was represented by attorneys Duncan Norton, Jeffrey Reed, and Mattie Neira. The ED was represented by attorneys Nicholas Pilcher and Thomas Hopkins. OPIC was represented by attorney Sheldon Wayne. Protestants were represented by attorneys David Tuckfield and Mark Sparks. The record closed on March 27, 2026, following the filing of reply briefs.

[1] Administrative Record (Admin. Record) Tab C at 1-50.

[2] Admin. Record Tab A.

II. APPLICABLE LAW

A. BURDEN OF PROOF

Applicant bears the burden of proof by a preponderance of the evidence.[3] Because the Application was referred to SOAH under Texas Water Code section 5.556, Texas Government Code section 2003.047(i-1)–(i-3) applies.[4] Under that statute, the application, draft permit, and supporting administrative record establish a prima facie demonstration that the draft permit complies with applicable legal and technical requirements and, if issued, would protect human health and safety, the environment, and physical property.[5]

A party may rebut that demonstration by presenting evidence that relates to a referred issue and shows that the draft permit violates a specifically applicable requirement.[6] If rebutted, the applicant and ED may present additional supporting evidence.[7] This framework shifts the burden of production but not the ultimate burden of proof. Applicant retains the burden to prove, by a preponderance of the evidence, that the application complies with applicable requirements and that the permit, if issued, would be protective of human health and safety, the environment, and physical property.[8]

---

[3] 30 Tex. Admin. Code § 80.17(a).

[4] Tex. Water Code §§ 5.551(a), .556.

[5] Tex. Gov't Code § 2003.047(i-1).

[6] Tex. Gov't Code § 2003.047(i-2).

[7] Tex. Gov't Code § 2003.047(i-3).

[8] 30 Tex. Admin. Code § 80.17(a), (c); *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

In this case, the Application, the Draft Permits, and the other materials listed in Texas Government Code section 2003.047(i-1), which are collectively referred to as the prima facie demonstration, were offered and admitted into the record at the preliminary hearing.[9]

B. INJECTION WELL ACT AND UIC RULES

The Application is governed by chapter 27 of the Texas Water Code, known as the Injection Well Act (Act), which is intended to protect freshwater resources and regulate underground injection.[10] UIC wells are further governed by 30 Texas Administrative Code chapter 331.

A permit is required to drill or operate an injection well.[11] The Commission may issue a permit only if it determines, among other things, that no existing rights, including mineral rights, will be impaired.[12] A permit does not authorize injury to persons or property, or convey property rights or exclusive privileges.[13]

III. EVIDENCE AND ANALYSIS

The parties presented expert testimony and documentary evidence. Protestants had eight exhibits admitted, including testimony from

[9] *See generally* Admin. Record.

[10] Tex. Water Code § 27.003.

[11] Tex. Water Code § 27.011.

[12] Tex. Water Code § 27.051(a)(2).

[13] 30 Tex. Admin. Code § 305.122(c)-(d).

Bruce Fletcher Pipkin and Susan Litherland.[14] Applicant had 16 exhibits admitted, including testimony from Don Yezerski, Matthew Minnick, and Dr. Neil Deeds.[15] The ED had 12 exhibits admitted, including testimony from Pavan Bairu and Dan Hannah.[16] OPIC did not present evidence.

The Commission referred a single issue: whether any existing rights, including, but not limited to, mineral rights, will be impaired by Applicant's injection of industrial and municipal nonhazardous waste in accordance with Act section 27.051(a)(2).[17]

The dispute centers on whether Protestants' asserted pore space[18] interest constitutes an "existing right" and, if so, whether the proposed injection would impair that right.[19]

---

[14] Protestant (Prot.) Exhibits (Exs). 1, 1-1 through 1-6, 2. Mr. Pipkin is a managing member and general partner of Pipkin Ranch Holdings, L.P. Prot. Ex. 2 (Pipkin Direct (Dir.)) at 2.

[15] Applicant (Appl.) Exs. 1 through 3, 5, DY1 through DY7, MM1 through MM2, ND1 through ND2. Applicant's Exhibit 1 is marked as confidential.

[16] ED Exs. 1-12.

[17] Admin. Record Tab A.

[18] Ms. Litherland defined "pore space" as the void space in subsurface formations that can be occupied by fluids, including injected waste. Prot. Ex. 1 (Litherland Dir.) at 9. Mr. Yezerski similarly testified that pore space is the void space in subsurface rock occupied by non-solid phases, including air, fresh water, brine, oil, and natural gas. Appl. Ex. DY-1 (Yezerski Dir.) at 1606. The ED defined "pore space" as "the open space in a rock or soil, considered collectively." Admin. Record Tab C at 59 (citing DICTIONARY OF GEOLOGICAL TERMS (Robert L. Bates & Julia A. Jackson, eds., 3d ed. 1984)).

[19] Parties' briefing includes arguments regarding failure to identify an existing right; potential impacts to mineral and groundwater resources; a carbon sequestration agreement; trespass; and broader policy considerations. Those matters are not addressed further because they are not necessary to resolution of the central issue in this proceeding.

A. BACKGROUND, DRAFT PERMITS, AND MODELING

Applicant operates multiple Class I injection wells at a site in Jefferson County (the Site) under UIC Permit Nos. WDW344–WDW350. Wells WDW344-WDW346 are operating; Wells WDW347–WDW350 are permitted but not yet constructed. The permits allow Applicant to inject nonhazardous industrial waste and municipal landfill leachate into the subsurface.[20]

The Draft Permits would authorize continued operation with revised technical requirements, including changes to injection intervals and pressure limits, but would not increase the total authorized injection volume.[21]

Pipkin Ranch Holdings, L.P. owns approximately 17,000 acres immediately south of the Site (the Property).[22] There is no agreement permitting Applicant to use Protestants' pore space, and Protestants have not granted permission for Applicant to inject waste beneath the Property.[23]

The Application includes "extent of waste plume" calculations estimating potential lateral migration based on conservative assumptions (Waste Plume Model). Those calculations project that, over time, the modeled plume could extend

---

[20] Admin. Record Tab D at 22-98.

[21] Admin. Record Tab C at 5-50; Admin. Record Tab D at 22-98.

[22] Prot. Ex. 2 (Pipkin Dir.) at 2-3; Transcript (Tr.) Volume (Vol.) 1 at 13.

[23] Prot. Initial Brief (Br.) at 5–6; Prot. Ex. 2 (Pipkin Dir.) at 3. Protestants have entered into agreements with Chevron U.S.A. Inc. (Chevron) related to potential subsurface carbon sequestration beneath the Property. Prot. Ex. 2 (Pipkin Dir.) at 4; Appl. Exs. 1-3.

several thousand feet from the wells, including up to approximately 4,500 feet after 30 years. Under the Waste Plume Model, the waste plume currently extends 1,858 feet from WDW344 and 1,515 feet from WDW345.[24] Applicant also presented alternative modeling using different assumptions, which it contends better reflects expected conditions, although that modeling was not part of the Application submitted to TCEQ.[25]

B. PROTESTANTS' POSITION

Protestants argue that they own the pore space beneath the Property and that this ownership includes the right to exclude others from using it. They contend that Applicant's injected waste already occupies that space and will continue to do so if the Draft Permits are issued, in violation of the Act. Protestants request that the Application be denied.[26]

1. Claimed Property Right in Pore Space

Protestants argue that pore space beneath the Property is part of the surface estate and belongs to them.[27] They rely on *Myers-Woodward, LLC v. Underground Services Markham, LLC*,[28] which they describe as recognizing that subsurface storage

[24] Admin. Record Tab C at 64; Admin. Record Tab D at 699-700. Mr. Minnick explained that, even if the Draft Permit is for ten years, the standard industry practice is to model for 30 years, which is the life of the equipment. Tr. Vol. 1 at 174.

[25] Appl. Exs. DY-6; DY-7; Tr. Vol. 1 at 138, 140, 170.

[26] Prot. Initial Br. at 1-3.

[27] Prot. Initial Br. at 3.

[28] *Myers-Woodward, LLC v. Underground Services Markham, LLC*, 716 S.W.3d 461 (Tex. 2025).

space belongs to the surface owner absent a contrary agreement. In that case, a mineral owner and a surface owner disputed ownership of underground void space created through salt mining. The Court held that the space belonged to the surface owner, reasoning that the mineral owner owned the salt but not the surrounding formation. Based on *Myers-Woodward*, Protestants argue that they own the pore space beneath the Property and that Applicant has no right to use it.[29]

2. Impairment Through Loss of the Right to Exclude

Protestants argue that ownership of pore space includes the right to exclude others and that issuance of the Draft Permits would impede their ability to prevent Applicant from using that space.[30] Because the Act does not define "impairment," Protestants rely on its ordinary meaning and argue that impairment occurs when the value of property or a property right is reduced.[31] They contend that the loss of control over access to the Property constitutes impairment, even if the pore space is not currently in use.[32]

Mr. Pipkin testified that pore space is a valuable asset and that the Draft Permits would allow Applicant to use space that Protestants could otherwise sell or lease.[33] He described the pore space as similar to a "warehouse" that can be

---

[29] Prot. Initial Br. at 3-5; Prot. Reply Br. at 5-6 (citing *Myers-Woodward*, 716 S.W.3d at 469–70).

[30] Prot. Initial Br. at 6-7, 9.

[31] Prot. Initial Br. at 7 (citing https://www.merriam-webster.com/dictionary/impair).

[32] Prot. Initial Br. at 8–9.

[33] Prot. Ex. 2 (Pipkin Dir.) at 4.

used for storage, including carbon sequestration.[34] He further testified that, although Protestants have not yet developed specific plans for the pore space, they intend to preserve the ability to do so.[35]

According to Protestants, if Applicant occupies the pore space with waste, that space cannot be used by them or offered to others. They contend that two parties cannot occupy the same physical space simultaneously and that Applicant's use would reduce the value of the Property. They identify storage, including for waste or carbon dioxide, as a foreseeable use and point to their agreements with Chevron as evidence that such use is viable. They argue that Applicant's activities would interfere with that use.[36]

3. Evidence of Waste Migration

Protestants assert that the Application itself demonstrates that impairment will occur. They cite TCEQ's requirement for applicants to predict how injected waste will move underground and Applicant's Waste Plume Model.[37] They contend that, if the plume calculations show movement beyond the Site boundary, then such movement should be expected if the Draft Permits are issued.[38]

---

[34] Tr. Vol. 1 at 28–30.

[35] Tr. Vol. 1 at 31–33.

[36] Prot. Initial Br. at 8-9; Prot. Reply Br. at 5-6.

[37] 30 Tex. Admin. Code § 331.42; Prot. Initial Br. at 9-13; Prot. Reply Br. at 9; Appl. Ex. 5.

[38] Prot. Reply Br. at 6, 10.

4. Expert Testimony on Migration Extent

Ms. Litherland testified that, based on the Application and related materials, injected waste has migrated and will continue to migrate beyond the Site and into pore space beneath the Property.[39] She stated that the distances reflected in the Application indicate that waste could reach the Property and, over time, affect a substantial portion of it, potentially up to approximately 1,250 acres.[40] Ms. Litherland further testified that subsurface flow is influenced by geologic conditions in the area, including the Big Hill Salt Dome, which tends to direct fluid movement to the west and south, toward the Property.[41]

Moreover, Ms. Litherland testified that she used the plume-distance calculations reported in the Application, together with Google Earth measurement tools, to prepare the figures in Exhibits 1-3 and 1-4. She explained that she plotted circles extending outward from the injection wells using the migration distances identified in the Application in order to illustrate her opinion regarding the current and projected lateral extent of waste plume migration. According to Ms. Litherland, the figures showed that injected waste from all seven wells had migrated, or would migrate, beneath portions of the Property. She further testified that some of the figures reflected her interpretation that plume migration would occur in a directional or semicircular pattern, rather than in a uniform 360-degree pattern around each well. She acknowledged that the figures were two-dimensional representations and

[39] Prot. Ex. 1 (Litherland Dir.) at 8–9, 30–32; Tr. Vol. 1 at 44, 53–54.

[40] Prot. Ex. 1 (Litherland Dir.) at 14–15.

[41] Prot. Ex. 1 (Litherland Dir.) at 16–17; Tr. Vol. 1 at 85–86.

did not depict the three-dimensional location of waste relative to other geologic formations.[42]

C. APPLICANT'S POSITION

Applicant argues that Protestants' opposition is based on speculative assertions that injected waste might migrate beneath the Property and impair a future, undefined right, rather than any demonstrated impairment of an existing right.[43] Applicant contends that, even if Protestants have identified an existing right, they have failed to show that such right is or will be impaired and instead rely on the assertion that the presence or potential presence of injected waste beneath the Property is itself sufficient to establish impairment.[44]

1. No Showing of Impairment

Applicant argues that, under Act section 27.051(a)(2), migration of injectate alone does not constitute impairment of an existing right. Applicant relies on *FPL Farming, Ltd. v. Texas Natural Resource Conservation Commission*,[45] where the court rejected the argument that migration of a waste plume onto neighboring property, standing alone, established impairment of subsurface rights. Applicant notes that, in *FPL Farming*, the protestant argued that migration would impair its asserted rights "to exclude, possess, control, and use the deep subsurface,"

---

[42] Prot. Ex. 1 (Litherland Dir.) at 12-16, 18-20; Prot. Exs. 1-3, 1-4; Tr. Vol. 1 at 49-50, 64-66, 70-71.

[43] Appl. Initial Br. at 4; Appl. Reply Br. at 5.

[44] Appl. Initial Br. at 7.

[45] *FPL Farming, Ltd. v. Tex. Nat. Res. Conservation Comm'n*, No. 03-02-00477-CV, 2003 WL 247183 (Tex. App.—Austin Feb. 6, 2003, pet. denied).

regardless of whether those rights were actually exercised. Applicant contends that Protestants make the same argument here by asserting that the possible presence of injectate beneath their property, alone, constitutes impairment. According to Applicant, as in *FPL Farming*, Protestants failed to identify any actual harm or impairment to a specific existing or reasonably foreseeable subsurface use. Applicant emphasizes that the *FPL Farming* court held that "some measure of harm must accompany the migration for there to be impairment;" therefore, migration alone, without a showing of harm, is insufficient to establish impairment under section 27.051(a)(2).[46]

2. Interpretation of Modeling

Applicant argues that Protestants have not presented reliable evidence that waste has migrated or will migrate beneath the Property and that their conclusions are based on a misinterpretation of the Application's modeling.[47]

Mr. Yezerski testified that the Waste Plume Model is intentionally conservative and designed to estimate a maximum potential extent of injected fluids for purposes of protecting underground sources of drinking water (USDW).[48] He explained that the model uses conservative assumptions, including maximum injection rates, porosity, and formation thickness, which increase the calculated plume size.[49] He further testified that the model assumes a per-well injection rate

---

[46] Appl. Initial Br. at 7-8; Appl. Reply Br. at 3 (citing *FPL Farming*, 2003 WL 247183 at *4).

[47] Appl. Initial Br. at 8–9.

[48] Appl. Ex. DY-1 (Yezerski Dir.) at 1609–17; Tr. Vol. 1 at 106–07.

[49] Appl. Ex. DY-1 at 1609–17; Tr. Vol. 1 at 110, 121-22.

that exceeds how injection is authorized under the Draft Permits, which allow that rate on a cumulative basis, thereby overstating plume extent.[50] Mr. Yezerski emphasized that the purpose of the Waste Plume Model is regulatory—to identify a broad area that could be evaluated in the event of a contamination incident, not to determine the actual location of injected waste.[51]

Mr. Minnick similarly testified that the Waste Plume Model is designed to evaluate risks to USDW and is not appropriate for assessing potential interference with pore space.[52] He explained that the analytical plume calculations assume idealized conditions, including uniform geology and circular plume geometry, and do not account for actual subsurface variability such as faults, permeability differences, or formation thickness.[53] He testified that the model represents an intentionally conservative, worst-case scenario for the evaluation of environmental risk, rather than actual plume behavior.[54]

Dr. Deeds likewise testified that the Waste Plume Model is based on simplified assumptions about fluid movement and is not intended to reflect actual subsurface conditions at the Site. He explained that the model is appropriate for

[50] Tr. Vol. 1 at 154.

[51] Tr. Vol. 1 at 118, 121–22.

[52] Appl. Ex. MM-1 (Minnick Dir.) at 1695–96; Tr. Vol. 1 at 176.

[53] Appl. Ex. MM-1 (Minnick Dir.) at 1696–97.

[54] Appl. Ex. MM-1 (Minnick Dir.) at 1696; Tr. Vol. 1 at 166–67.

regulatory purposes, including protection of USDW, but is not designed to determine whether injected fluids will reach a specific property.[55]

Dr. Deeds further testified that evaluating fluid movement requires consideration of site-specific geologic structure, including faults and the salt dome, which are not captured by the simplified plume calculations.[56] He referenced the fault block model presented in the geology section of the Application, explaining that it does not calculate migration distance but instead compares injected volumes to available pore space within a defined geologic block.[57] He opined that, under this framework, waste could be contained within the fault block, although he could not determine with certainty whether the fault block extends beneath the Property.[58]

3. Critique of Protestants' Analysis

Applicant argues that Protestants' expert, Ms. Litherland, misapplied the Waste Plume Model and used simplified two-dimensional figures that do not accurately depict the actual extent or location of plume migration beneath the Property.[59]

Mr. Yezerski testified that Ms. Litherland's analysis misinterpreted the Waste Plume Model calculations and overstated potential plume extent by treating

---

[55] Appl. Ex. ND-1 (Deeds Dir.) at 1714–17.

[56] Appl. Ex. ND-1 (Deeds Dir.) at 1717–19, 1725–26; Tr. Vol. 2 at 19, 27–29.

[57] Tr. Vol. 2 at 18-19.

[58] Tr. Vol. 2 at 33-34.

[59] Appl. Initial Br. at 9.

conservative regulatory screening calculations as realistic predictions of actual waste migration. He explained that the calculations were intended to depict worst-case scenarios rather than the expected location of injected waste in the subsurface.[60] According to Mr. Yezerski, Ms. Litherland's figures oversimplified subsurface geology and plume behavior, because they did not reflect the complexity of actual geologic conditions affecting fluid migration.[61] He further testified that the Waste Plume Model assumed continuous maximum injection at individual wells and combined that assumption in a manner inconsistent with the Draft Permits, creating plume extents that could not occur under the permitted operational limits.[62]

Mr. Minnick similarly testified that Ms. Litherland relied on analytical models developed for environmental protection purposes, and that using those models to predict actual plume extent or pore-space interference was inappropriate. He explained that Ms. Litherland's figures reflected highly conservative analytical calculations intended to evaluate potential impacts to USDW rather than the actual location of injected waste. Mr. Minnick further testified that the circular plume depictions represented simplified worst-case boundary scenarios and did not account for actual geology, site-specific conditions, or the three-dimensional nature of subsurface fluid movement.[63]

---

[60] Appl. Ex. DY-1 (Yezerski Dir.) at 1605, 1609–13, 1617; Tr. Vol. 1 at 106–08, 116–18.

[61] Appl. Ex. DY-1 (Yezerski Dir.) at 1615–17; Tr. Vol. 1 at 122–23.

[62] Tr. Vol. 2 at 127–28.

[63] Appl. Ex. MM-1 (Minnick Dir.) at 1696–97; Tr. Vol. 1 at 168–70, 176.

Dr. Deeds likewise testified that Ms. Litherland's figures overstated potential plume migration because they relied on an "overly simplistic and overly conservative" interpretation of the plume calculations. He explained that the Waste Plume Model calculations assumed waste movement within a narrow interval and a semicircular flow pattern extending away from the fault block, assumptions that increased predicted migration distances.[64] Dr. Deeds further testified that more realistic subsurface conditions would involve both vertical and radial spreading within the injection zone, which would reduce horizontal migration distances and result in plume behavior different from the simplified circular depictions shown in Ms. Litherland's figures.[65]

4. Alternative Modeling

Mr. Yezerski prepared additional modeling using different assumptions from those in the Waste Plume Model to estimate plume extent under more realistic conditions.[66] He testified that his modeling used different assumptions regarding dispersion and formation characteristics and showed that the majority of injected fluids would remain within the Site boundaries.[67] His model assumed zero percent dispersion, which he explained can be appropriate where dispersion fronts are

---

[64] Appl. Ex. ND-1 (Deeds Dir.) at 1713–14, 1717–19, 1723-24.

[65] Appl. Ex. ND-1 (Deeds Dir.) at 1720–26.

[66] Mr. Yezerski's additional modeling was not included in the Administrative Record and, as such, is not part of the prima facie demonstration.

[67] Appl. Ex. DY-1 (Yezerski Dir.) at 1620–24; Appl. Exs. DY-6, DY-7.

minimal.[68] He testified that he could not determine with certainty whether waste has migrated onto the Property; but he stated that, based on his model, it had not.[69]

Mr. Yezerski acknowledged that limited encroachment beyond the Site boundary may occur under certain conditions; but he testified that any such encroachment would be minor and could be managed or avoided through operational adjustments within permitted limits. He further testified that any fluids migrating beyond the Site would likely consist of displaced formation brine rather than injected waste.[70]

5. Existing v. Future Use

Applicant argues that Protestants' concerns relate to potential future business opportunities, rather than a presently existing right.[71] Applicant contends that the Act requires impairment of an "existing" right and that rights dependent on uncertain future events or opportunities are insufficient.[72]

Mr. Minnick testified that carbon sequestration would require a different formation that is not in communication with Applicant's injection zone and,

---

[68] Tr. Vol. 1 at 142-43. Mr. Minnick testified that the best practice is to use a dispersion coefficient. Tr. Vol. 1 at 174-75. Dr. Deeds testified that, if he were modeling for the Application, he would include dispersion because it is a conservative assumption; and he testified that some minimal dispersion likely occurs in nature. He further testified that the extent of dispersion could not be evaluated with the available data in this case. Tr. Vol. 2 at 31–32. Mr. Hannah testified that, based on subsurface geology, dispersion of the waste plume is expected in this case. Tr. Vol. 2 at 65–66.

[69] Tr. Vol. 1 at 124.

[70] Appl. Ex. DY-1 (Yezerski Dir.) at 1625–26; Tr. Vol. 1 at 145, 150.

[71] Appl. Initial Br. at 4–5.

[72] Appl. Initial Br. at 5–6.

therefore, would not be affected by Applicant's operations.[73] Dr. Deeds similarly testified that the Application's modeling does not demonstrate interference with potential future carbon sequestration use and that such use would require separate, site-specific analysis.[74]

D. ED'S POSITION

The ED asserts that the Application satisfies all applicable statutory and regulatory requirements and demonstrates that Applicant's injection activities will not impair any existing rights. The ED further states that issuance of a permit is a regulatory authorization only and does not authorize injury to persons or property, or the invasion of property rights. According to the ED, a permit does not convey property rights and does not shield the permittee from potential civil liability. The ED, therefore, recommends that the Draft Permits be issued. [75]

1. Review Process and Scope of Evaluation

Mr. Bairu testified that, based on his review, the Application complies with applicable statutes, rules, and regulations. He stated that all existing and proposed wells are located within the Site and do not deviate beyond those boundaries, and that the Application includes Applicant's representation that no existing rights will be impaired.[76]

---

[73] Appl. Ex. MM-1 (Minnick Dir.) at 1697–1702.

[74] Appl. Ex. ND-1 (Deeds Dir.) at 1727–32.

[75] ED Closing Br. at 3, 5.

[76] ED Ex. 1 (Bairu Dir.) at 5-7.

Mr. Bairu further testified that he did not independently evaluate whether non-mineral property rights would be impaired and, instead, relied on the information provided in the Application. He explained that TCEQ's review process does not include a formal determination of impairment of existing rights and that the agency relies on the applicant's responses in the application on that issue.[77]

The ED also represented that identifying "pore space" is neither an application requirement nor a consideration in determining whether to grant a Class I injection well permit.[78]

2. Interpretation of Modeling

With respect to modeling, the ED asserts that the Waste Plume Model calculations satisfy regulatory requirements for protection of USDWs and are not intended to determine whether property rights are impaired.[79]

Mr. Bairu testified that the Waste Plume Model provides a mathematical approximation of the maximum possible extent of injected waste and is designed as a conservative, worst-case scenario to ensure protection of USDWs. He explained that the model intentionally overestimates plume size by using assumptions such as

---

[77] Tr. Vol. 2 at 50–53.

[78] Admin. Record Tab C at 59. Mr. Yezerski testified that pore space is not clearly identified in the regulatory framework as a protected right for purposes of permit review. Appl. Ex. DY-1 (Yezerski Dir.) at 1609, 1611; Tr. Vol. 1 at 103, 119. Mr. Minnick similarly testified that pore space utilization and interference are not specific requirements under the applicable regulatory rules and statutes. Appl. Ex. MM-1 (Minnick Dir.) at 1694; Tr. Vol. 1 at 164.

[79] ED Closing Br. at 3-4; Admin. Record Tab C at 60.

maximum injection rates and conservative geologic parameters.[80] Mr. Bairu stated that, based on the information in the Application, he could not determine whether injected waste has entered the Property.[81]

Mr. Hannah similarly testified that the Waste Plume Model reflects assumptions intended to overestimate plume extent, rather than predict actual migration. He explained that the model relies on maximum injection rates and conservative values for parameters such as reservoir thickness and porosity.[82]

E. OPIC'S POSITION

OPIC recommends that the Draft Permits be denied or, alternatively, that the Application be remanded to the ED for further technical review.[83]

1. Claimed Property Right in Pore Space and Evidence of Migration and Encroachment

OPIC agrees with Protestants that pore space beneath the Property constitutes an existing property right belonging to the surface estate.[84]

---

[80] Tr. Vol. 2 at 46, 49. Mr. Bairu confirmed that Applicant's alternative modeling was not considered. Tr. Vol. 2 at 49-50.

[81] Tr. Vol. 2 at 53.

[82] Tr. Vol. 2 at 63-65.

[83] OPIC Closing Br. at 1, 16-21.

[84] OPIC Closing Br. at 17–18 (citing *Myers-Woodward*, 716 S.W.3d 461).

OPIC asserts that the preponderance of the evidence shows that Applicant's operations have resulted in, or will result in, injected waste entering the pore space beneath the Property.[85] OPIC relies on Ms. Litherland's testimony that, based on calculations using conditions reflected in the Application, injected waste has already migrated beneath the Property and will continue to migrate there.[86]

OPIC acknowledges Applicant's position that the modeling reflects a worst-case scenario but emphasizes that the conditions underlying that scenario are permitted under the Draft Permits. OPIC further notes that the modeling contained in the Application was accepted by the ED for purposes of predicting waste fate and transport.[87]

OPIC also relies on Applicant's alternative modeling, which reflects that injected waste may migrate into the pore space beneath the Property. Although that modeling reflects only limited encroachment, OPIC asserts that the extent of encroachment is not determinative. According to OPIC, any encroachment into Protestants' pore space constitutes impairment of an existing right, regardless of whether measurable economic harm has occurred.[88]

OPIC further notes that there is no evidence of increased well pressure, despite continued injection activity, and argues that this indicates injected waste is

[85] OPIC Closing Br. at 18–19.

[86] OPIC Closing Br. at 5–9.

[87] OPIC Closing Br. at 18–19.

[88] OPIC Closing Br. at 19-20.

migrating away from the injection zone. OPIC asserts that, given the geologic conditions and surrounding formations, the likely direction of that migration is toward the Property.[89]

2. Challenge to ED's Review

Finally, OPIC argues that the ED did not independently evaluate whether Applicant's activities would impair existing rights but instead relied on Applicant's representation in the Application that no rights would be impaired. OPIC contends that this approach is insufficient because the statute requires the Commission to make an independent determination regarding impairment of existing rights.[90]

F. PROTESTANTS' RESPONSE

1. Existing Property Right

Protestants contend that their asserted interest is not speculative because they are claiming an existing property right in the pore space beneath their land, including the right to exclude unauthorized subsurface use.[91]

Protestants also argue that Applicant's reliance on *FPL Farming* is misplaced. They contend that *FPL Farming* predates *Myers-Woodward* and did not address pore space as a clearly recognized property right. They further argue that, unlike

[89] OPIC Closing Br. at 19.

[90] OPIC Closing Br. at 17.

[91] Prot. Reply Br. at 5-6.

in *FPL Farming*, the record here reflects both a recognized property interest and evidence that Applicant's operations would physically occupy that space, which they assert constitutes harm beyond mere migration.[92]

Protestants maintain that the existence of a right does not depend on whether landowners frequently enforce it and that, after *Myers-Woodward*, pore space rights are now clearly recognized. Protestants underscore that all models show Applicant's operations impacting the pore space beneath the Property.[93] Protestants argue that their ownership of pore space exists regardless of whether or how they use it; and, in any case, the record shows they have used it and intend to use it.[94]

2. Applicant's Characterization of the Application and Modeling

Protestants respond that Applicant improperly attempts to discredit the Waste Plume Model calculations contained in its own Application by characterizing them as unrealistic or merely worst-case scenarios. Protestants emphasize that those calculations were included in the Application, were relied upon by TCEQ in issuing the Draft Permits, and represent the only modeling presented to the agency to "confidently predict" waste fate and transport.[95]

---

[92] Prot. Reply Br. at 7-8.

[93] Prot. Reply Br. at 11.

[94] Prot. Reply Br. at 11.

[95] Prot. Initial Br. at 15-17.

Protestants argue that nothing in the Application states that these calculations are unrealistic, and they question why Applicant would submit modeling it now claims is not representative of actual conditions. They further contend that, even if the model reflects conservative assumptions, it still depicts conditions that are permitted under the Draft Permits and, therefore, must be treated as possible outcomes.[96]

Protestants maintain that the permit must be evaluated based on what the Application shows and authorizes, not on post-Draft Permit reinterpretations.[97] They assert that disregarding the plume calculations would effectively remove a required component of the Application and undermine the basis on which TCEQ evaluated the permit.[98]

Protestants also reject Applicant's position that the modeling is relevant only to freshwater protection, arguing that regardless of its regulatory purpose, it demonstrates how far injected waste can travel and, therefore, whether it could enter the Property.[99]

3. Applicant's Alternative Modeling

Protestants argue that Applicant's reliance on alternative modeling is improper and should be rejected. They emphasize that this modeling was not

---

[96] Prot. Initial Br. at 15.

[97] Prot. Reply Br. at 2–3.

[98] Prot. Initial Br. at 16.

[99] Prot. Initial Br. at 20.

included in the Application, was not presented to TCEQ, and was not considered in issuing the Draft Permits.[100]

Protestants further contend that the alternative modeling rests on assumptions that are inconsistent with the Draft Permits and the record. Protestants argue that limiting injection rates by dividing them across wells does not reflect the permit's authorization, which allows injection of up to 295 gallons per minute into a single well. They also argue that excluding dispersion understates plume extent and is inconsistent with regulatory expectations that both dispersed and undispersed flow be considered.[101] Protestants also challenge the use of different geologic assumptions, including a greater caprock thickness than that used in the Application and supported by site-specific data.[102] They note that, even under Applicant's alternative modeling, waste is shown to cross onto the Property, which they argue independently supports a finding of impairment.[103]

Protestants further assert that other concepts relied on by Applicant, including the fault block model referenced by Dr. Deeds, do not address the extent of migration and therefore do not rebut the plume calculations.[104]

---

[100] Prot. Initial Br. at 15, 17, 20.

[101] Prot. Initial Br. at 17-18.

[102] Prot. Initial Br. at 19.

[103] Prot. Initial Br. at 20.

[104] Prot. Initial Br. at 20.

4. Lack of TCEQ Evaluation

Protestants point out that TCEQ did not independently evaluate whether the Draft Permits would impair existing rights and, instead, relied on Applicant's assertion that no impairment would occur. They contend that the Act requires the Commission to make its own determination regarding impairment and that the absence of such an evaluation supports denial of the Application.[105]

G. APPLICANT'S RESPONSE

1. Existing Property Rights, Impairment, and Modeling

Applicant responds that Protestants rely too heavily on *Myers-Woodward* and overstate its significance. Applicant argues that *Myers-Woodward* did not change or clarify the law because Texas courts have long recognized that the surface owner owns subsurface geological structures and underground storage space. Applicant further states that *Myers-Woodward* was a contract dispute about whether pore space rights had been transferred to a mineral interest owner and did not involve permitting or the Act.[106]

Applicant argues that Protestants failed to identify any actual measure of harm resulting from the alleged migration of injectate beneath the Property and instead rely solely on the assertion that subsurface migration itself constitutes impairment

[105] Prot. Initial Br. at 21–22.

[106] Appl. Reply Br. at 2.

or trespass.[107] Applicant further argues that Texas courts have not recognized an absolute right to exclude deep subsurface migration of fluids and that ownership of property does not necessarily include the right to exclude every subsurface intrusion.[108]

Applicant further argues that Protestants rely almost entirely on the Waste Plume Model calculations. Applicant contends that this is not enough to satisfy Protestants' burden, particularly in light of testimony from Applicant's and the ED's witnesses explaining the purpose and limitations of the model.[109] Applicant asserts that the Waste Plume Model provides a confident prediction of what the ED requested: a conservative, worst-case scenario used to protect USDW. Applicant states that the most effective way to make that prediction confidently is to use conservative assumptions.[110] Moreover, Applicant argues that the alternative model was not required to be included in the Application and was properly offered in response to Protestants' rebuttal case.[111]

Applicant emphasizes that neither its own, nor the ED's, witnesses agreed that the waste plume currently extends into the Property and will continue to invade it. Specifically, Applicant's experts testified that the Waste Plume Model does not

---

[107] Appl. Reply Br. at 3.

[108] Appl. Reply Br. at 4-5 (citing *Lightning Oil Co. v. Anadarko E&P Onshore, LLC*, 520 S.W.3d 39, 46 (Tex. 2017); *FPL Farming*, 2003 WL 247183 at *3–4).

[109] Appl. Reply Br. at 5.

[110] Appl. Reply Br. at 5-6.

[111] Appl. Reply Br. at 6 (citing Tex. Gov't Code § 2003.047(i-3); 30 Tex. Admin. Code § 80.17(c)(3)).

predict where the waste plume currently is or where it will be with certainty, but instead reflects a worst-case scenario intended to protect USDW; and Mr. Bairu stated that he could not determine whether injected fluid had migrated onto the Property.[112] Moreover, according to Applicant, Mr. Yezerski testified only that the Waste Plume Model shows migration onto the Property under a certain set of assumptions—the model's worst-case input values—not actual current conditions.[113]

2. TCEQ's Review

Applicant argues that two technical witnesses being unqualified to offer legal opinions and not independently evaluating impairment does not, alone, establish that the Commission made no determination. Applicant argues that TCEQ does not merely rely on an applicant's statement without independent analysis.[114]

3. Mischaracterization of Evidence

Applicant disputes Protestants' description of pore space as a "warehouse." Applicant notes that pore space is not an empty void but is occupied by brine. Applicant argues that, if pore space is analogized to a warehouse, it must be understood as a full warehouse, meaning any additional storage would displace existing brine. It is Applicant's contention that any fluid leaving the Site due to injection operations would most likely be displaced formation brine, not injected

[112] Appl. Reply Br. at 8-9; Tr. Vol. 1 at 106, 166; Tr. Vol. 2 at 19, 46-47, 53.

[113] Appl. Reply Br. at 10; Tr. Vol. 1 at 110.

[114] Appl. Reply Br. at 7.

waste; and that there is no material difference between what is already present and what may be displaced in the future.[115]

4. Response to OPIC

Applicant argues that OPIC improperly shifts the burden to Applicant. Applicant states that the ED's determination of the Application's technical completeness, together with the admission of the Administrative Record, establishes a prima facie demonstration that no existing rights will be impaired. Relying on Texas Government Code section 2003.047(i-1), Applicant argues that Protestants bear the burden to rebut that demonstration by a preponderance of the evidence. Applicant contends that Protestants failed to do so and that the initial demonstration remains uncontroverted.[116]

H. ALJs' Analysis

The referred issue is whether issuance of the Draft Permits would impair any existing rights under Act section 27.051(a)(2). The parties dispute whether Protestants identified an existing right protected under Act section 27.051(a)(2) and, if so, whether Applicant's proposed injection activities would impair that right.

[115] Appl. Reply Br. at 8.

[116] Appl. Reply Br. at 11.

1. Existing Right

Relying primarily on *Myers-Woodward*, Protestants assert ownership of the pore space beneath the Property as an existing right protected under Act section 27.051(a)(2). Applicant does not meaningfully dispute that the surface owner may hold property rights in subsurface pore space—a principle well established under Texas law. Texas courts have recognized that the surface owner owns the geological structures beneath the surface together with structures suitable for underground storage.[117] The ALJs conclude that Protestants established an existing property interest in the pore space beneath the Property. Nothing in the record suggests that Protestants conveyed or otherwise transferred that interest.

2. Impairment

Protestants argue that the Waste Plume Model calculations and related testimony demonstrate that injected waste has migrated, or will migrate, beyond the Site boundary and into pore space beneath the Property. The filing of the Administrative Record established a prima facie demonstration, under Texas Government Code section 2003.047(i-1), that the Draft Permits meet all legal requirements. Protestants then presented rebuttal evidence and argument that Applicant's proposed injection activities would impair Protestants' existing property rights in the pore space beneath the Property, precluding issuance of the permits under Act section 27.051(a)(2). Throughout, Applicant retained the burden

[117] *See Myers-Woodward*, 716 S.W.3d at 469–70; *Regency Field Services, LLC v. Swift Energy Operating, LLC*, 622 S.W.3d 807, 820 (Tex. 2021); *Humble Oil & Refining Co. v. West*, 508 S.W.2d 812, 815 (Tex. 1974).

to demonstrate compliance with the applicable statutory and regulatory requirements, and to overcome Protestants' rebuttal evidence.

Even assuming some degree of migration or limited encroachment beyond the Site boundary may occur under certain conditions, the dispositive issue is whether the record, considered as a whole, establishes impairment of existing rights within the meaning of Act section 27.051(a)(2). As the court explained in *FPL Farming*, "some measure of harm must accompany the migration for there to be impairment" under the Act.[118] Although *Myers-Woodward* recognizes pore space as a property interest belonging to the surface owner, nothing in that decision addresses the impairment standard under Act section 27.051(a)(2) or establishes that any subsurface migration or intrusion automatically constitutes impairment under the Act.

The main evidence relied upon by Protestants consists of the Waste Plume Model calculations and Ms. Litherland's interpretation of those calculations, including the figures she prepared using plume-distance values reported in the Application. The ALJs do not find that evidence sufficient to establish impairment under the Act, on this record. The more persuasive evidence demonstrates that the Waste Plume Model was developed as a conservative regulatory screening tool intended to estimate the maximum potential lateral extent of injected fluids for protection of USDW, not to determine the actual present or future location of injected waste beneath a particular property. Although Protestants correctly note

[118] *FPL Farming,* 2003 WL 247183 at *4.

that the model was included in the Application and reviewed by the ED, the record reflects that the calculations intentionally incorporate conservative, worst-case assumptions designed to overestimate potential plume extent.

The ALJs likewise do not find that Ms. Litherland's figures establish impairment. The figures were derived from the plume-distance calculations contained in the Application and were used to illustrate Protestants' interpretation of potential plume migration. However, the ALJs find persuasive the testimony that the figures relied on simplified assumptions and represented two-dimensional depictions of complex subsurface conditions. The evidence further reflects that the figures treated conservative screening calculations as though they represented realistic predictions of actual plume behavior and plume location beneath the Property.

The ALJs also do not rely on Applicant's alternative modeling as independently establishing that injected waste will remain within the Site boundaries. That modeling was not part of the Application reviewed by the ED, and Protestants identified valid concerns regarding several of its assumptions. Those concerns do not alter the outcome here, however, because the issue is not whether Applicant conclusively disproved all possible migration. Rather, after considering the entire record, including the prima facie demonstration, the competing expert testimony, and the parties' arguments, the ALJs conclude that the evidence does not sufficiently establish the extent, character, or legal significance of any actual subsurface intrusion beneath the Property so as to support a finding of impairment under Act section 27.051(a)(2).

Protestants further argue that any unauthorized subsurface occupation, in and alone, constitutes impairment because it interferes with their right to exclude others from the pore space. The ALJs recognize the significance of the property interest asserted by Protestants. However, the evidentiary record in this proceeding does not establish with sufficient certainty the nature or extent of any actual intrusion beneath the Property, nor does it establish a demonstrated present interference with an existing or sufficiently definite reasonably foreseeable subsurface use. To the extent Protestants argue that the right to exclude others from pore space is itself an independent basis for impairment regardless of demonstrated harm, that theory is inconsistent with *FPL Farming*, which requires some measure of actual harm under Act section 27.051(a)(2). The record evidence does not establish the type or extent of interference contemplated by *FPL Farming*.

The ALJs also decline to deny or remand the Application based on OPIC's and Protestants' criticism of the ED's review process. The evidence shows that the ED relied substantially on the information provided in the Application and did not independently analyze whether non-mineral property rights or pore space interests would be impaired. However, the parties fully litigated that issue during the contested case hearing. Any limitations in the ED's initial review, therefore, do not independently establish impairment or require remand.

Accordingly, after considering the entire record, the ALJs conclude that Applicant demonstrated, by a preponderance of the evidence, compliance with Act section 27.051(a)(2) and that issuance of the Draft Permits would not impair existing rights within the meaning of the Act. Therefore, the Draft Permits should be issued.

IV. TRANSCRIPT COSTS

Under 30 Texas Administrative Code section 80.23(d), transcript costs may be allocated among the parties, excluding the ED and OPIC. In determining allocation, the ALJs must consider: which party requested the transcript; the financial ability of each party to pay; the extent of each party's participation in the hearing; the relative benefits each party gained from having the transcript; the budgetary constraints of any state or federal agency participating in the proceeding; and any other factor relevant to a just and reasonable assessment of costs.[119]

In this case, the ALJs ordered that the hearing be transcribed. No evidence was presented regarding the total cost of transcription or the financial ability of the parties to pay such costs. Applicant and Protestants were the primary participants in the hearing and both derived benefit from the transcript. Applicant represents that it bore the cost of the court reporting service and its own copy of the transcript and does not seek reimbursement from Protestants.[120] Protestants represent that they paid approximately $824 for their own copy of the transcript and request that no additional transcript costs be assessed to them.[121] Based on the factors and considering the parties' representations, the ALJs find that it is appropriate to make no further allocation of transcript costs.

---

[119] 30 Tex. Admin. Code § 80.23(d)(1).

[120] Appl. Reply Br. at 12.

[121] Prot. Initial Br. at 22.

V. CONCLUSION

The ALJs conclude that Applicant met its burden of proving that the Draft Permits comply with all applicable legal and technical requirements. Accordingly, the ALJs recommend that the Commission adopt the attached proposed order containing Findings of Fact and Conclusions of Law and issue the Draft Permits to Applicant.

Signed May 13, 2026

Katerina DeAngelo
Administrative Law Judge

Michelle Kallas
Administrative Law Judge

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING THE APPLICATION BY U.S. ECOLOGY WINNIE LLC FOR RENEWAL AND AMENDMENT OF PERMIT NOS. WDW344, WDW345, WDW346, WDW347, WDW348, WDW349, AND WDW350 SOAH DOCKET NO. 582-25-19115, TCEQ DOCKET NO. 2023-1590-WDW

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Applicant, U.S. Ecology Winnie, LLC, for the renewals and amendments of Class I Underground Injection Control (UIC) permits located in Winnie, Jefferson County, Texas (Site). A Proposal for Decision (PFD) was presented by Administrative Law Judges (ALJs) Katerina DeAngelo and Michelle Kallas with the State Office of Administrative Hearings (SOAH), who conducted an evidentiary hearing concerning the matter on February 17-18, 2026.

After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

Background, Application, and Draft Permit

1. Applicant operates multiple Class I injection wells at the Site under UIC permit numbers WDW344, WDW345, WDW346, WDW347, WDW348, WDW349, and WDW350 (Permits).

2. Wells WDW344-WDW346 are operating. Wells WDW347–WDW350 are permitted but not yet constructed.

3. The Permits allow Applicant to inject nonhazardous industrial waste and municipal landfill leachate into the subsurface.

4. On May 28, 2019, Applicant filed an application (Application) with the Commission for the renewal of the Permits for an additional ten years.

5. The Commission's Executive Director (ED) declared the Application administratively complete on August 15, 2019.

6. The Notice of Receipt of Application and Intent to Obtain a Permit was published on September 7, 2019, in the *Beaumont Enterprise* in Jefferson County, Texas.

7. During the technical review period, at the request of the ED, Applicant submitted revisions to the Application in response to Notices of Deficiencies, which resulted in the Application being classified as an amendment application.

8. The ED declared the Application technically complete on March 9, 2023; prepared the draft permits (Draft Permits) based on the Application; and made the Draft Permits available for public review and comment.

9. The Draft Permits would authorize continued operation with revised technical requirements, including changes to injection intervals and pressure limits, but would not increase the total authorized injection volume.

10. The Application was opposed by Pipkin Ranch Holdings, L.P., Grayson Eden Pipkin, and Bruce Fletcher Pipkin (collectively, Protestants).

11. The Application includes Waste Plume Model calculations estimating the maximum potential lateral extent of injected fluids using conservative assumptions intended to protect underground sources of drinking water.

12. The ED accepted the Waste Plume Model calculations as part of its technical review of the Application.

13. The Waste Plume Model was prepared as a conservative regulatory tool and was not designed to determine the actual present or future location of injected waste beneath a particular property.

14. The Waste Plume Model used conservative assumptions and simplified geologic conditions that tend to overestimate potential plume extent.

15. The Waste Plume Model did not incorporate all site-specific geologic conditions relevant to predicting actual subsurface fluid movement beneath a particular property.

16. The ED reviewed the Application for compliance with applicable technical and regulatory requirements but did not independently evaluate whether non-mineral property rights or pore-space interests would be impaired.

17. Pipkin Ranch Holdings, L.P. owns approximately 17,000 acres immediately south of the Site (the Property).

18. There is no agreement permitting Applicant to use Protestants' pore space and Protestants have not granted permission for Applicant to inject waste beneath the Property.

Notice and Jurisdiction

19. The Notice of Application and Preliminary Decision was published on April 12, 2023, in the *Beaumont Enterprise* in Jefferson County, Texas.

20. The public comment period for the Application ended on May 12, 2023.

21. The Chief Clerk mailed the ED's Response to Public Comment on July 18, 2023.

22. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was August 17, 2023.

23. The TCEQ Chief Clerk's office received timely hearing requests from Protestants.

24. At its February 2024 agenda, the Commission determined that Protestants each qualified as an affected person, granted their request for a contested case

hearing, and referred the matter to SOAH on the following issue: Whether any existing rights, including, but not limited to, mineral rights, will be impaired by Applicant's injection of industrial and municipal nonhazardous waste in accordance with Texas Water Code section 27.051(a)(2).

Procedural History

25. At the SOAH preliminary hearing on September 23, 2025, the Administrative Record (Tabs A–E) was admitted into evidence; and Applicant, the ED, Office of Public Interest Counsel (OPIC), and Protestants were named parties to the proceeding.

26. By agreement of the parties, with the approval of the ALJs, the deadline for issuance of the PFD was extended beyond 180 days from the preliminary hearing, until May 26, 2026.

27. ALJs DeAngelo and Kallas convened a hybrid hearing on the merits in Austin, Texas on February 17-18, 2026.

28. Applicant was represented by attorneys Duncan Norton, Jeffrey Reed, and Mattie Neira. The ED was represented by attorneys Nicholas Pilcher and Thomas Hopkins. OPIC was represented by attorney Sheldon Wayne. Protestants were represented by attorneys David Tuckfield and Mark Sparks.

29. Protestants presented rebuttal evidence and argument concerning whether Applicant's proposed injection activities would impair existing rights under Texas Water Code section 27.051(a)(2).

30. The record closed on March 27, 2026, following the filing of reply briefs.

Existing Right and Impairment

31. Protestants have an ownership interest in the pore space beneath the Property.

32. Protestants' expert, Ms. Litherland, relied primarily on the Waste Plume Model calculations to support her opinion that injected waste has migrated, or will migrate, beneath the Property.

33. Ms. Litherland prepared figures using the plume-distance calculations reported in the Application to illustrate her opinion regarding the current and projected lateral extent of waste plume migration beneath the Property.

34. Ms. Litherland's figures relied on simplified assumptions and did not account for site-specific geologic conditions affecting subsurface fluid movement.

35. Applicant presented alternative modeling regarding plume extent and fluid movement that was not part of the Application but tended to negate Ms. Litherland's findings.

36. The preponderant evidence did not establish the existence, nature, or extent of any subsurface intrusion beneath the Property.

37. The record did not establish any existing, currently planned, or sufficiently definite reasonably foreseeable subsurface use of the pore space beneath the Property that would be incompatible with Applicant's permitted operations.

Transcription Costs

38. Reporting and transcription of the hearing on the merits were warranted because the hearing was scheduled to last more than one day.

39. The ALJs ordered that the hearing be transcribed.

40. No evidence was presented regarding the total cost of transcription or the financial ability of the parties to pay such costs.

41. Applicant and Protestants were the primary participants in the hearing and both derived benefit from the transcript.

42. Applicant bore the cost of the court reporting service and its own copy of the transcript and does not seek reimbursement from Protestants.

43. Protestants paid approximately $824 for their own copy of the transcript and requested that no additional transcript costs be assessed to them.

II. CONCLUSIONS OF LAW

Jurisdiction and Notice

1. TCEQ has jurisdiction over underground injection wells and authority to issue permits under Texas Water Code chapter 27.

2. The Application was referred to SOAH under Texas Water Code section 5.556.

3. SOAH has jurisdiction to conduct a hearing and to prepare a PFD in contested cases referred by TCEQ under Texas Government Code section 2003.047.

4. Proper notice was provided. Tex. Water Code § 27.018; Tex. Gov't. Code §§ 2001.051-.052.

Burden of Proof

5. The filing of the Administrative Record established a prima facie demonstration that: (1) the Draft Permits meet all state and federal legal and technical requirements; and (2) permits, if issued consistent with the Draft Permits, would protect human health and safety, the environment, and physical property. Tex. Gov't Code § 2003.047(i-1); 30 Tex. Admin. Code §§ 80.17(c)(1), .117(c)(1).

6. A party may rebut the prima facie demonstration by presenting evidence that: (1) relates to an issue directly referred; and (2) demonstrates that one or more provisions in the draft permit violates a specifically applicable state or federal requirement. Tex. Gov't Code § 2003.047(i-2); 30 Tex. Admin. Code §§ 80.17(c)(2), .117(c)(3).

7. If a party rebuts the prima facie demonstration, the Applicant and the ED may present additional evidence to support the Draft Permits. Tex. Gov't Code § 2003.047(i-3); 30 Tex. Admin. Code §§ 80.17(c)(3), .117(c)(3).

8. Applicant retains the burden of proof on the issues regarding sufficiency of the Application and compliance with the necessary statutory and regulatory requirements. 30 Tex. Admin. Code § 80.17(a).

9. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

Injection Well Act and UIC Rules

10. The Application is governed by chapter 27 of the Texas Water Code, the Injection Well Act, which is intended to protect freshwater resources and regulate underground injection. Tex. Water Code § 27.003.

11. UIC wells are further governed by 30 Texas Administrative Code Chapter 331.

12. A permit is required to drill or operate an injection well. Tex. Water Code § 27.011.

13. The Commission may issue a permit only if it determines, among other things, that no existing rights, including mineral rights, will be impaired. Tex. Water Code § 27.051(a)(2).

14. A permit does not authorize injury to persons or property, or convey property rights or exclusive privileges. 30 Tex. Admin. Code § 305.122(c)-(d).

Existing Right and Impairment

15. Protestants have an existing property interest in the pore space beneath the Property for purposes of Texas Water Code section 27.051(a)(2).

16. Proof of possible injectate migration, alone, does not establish impairment under Texas Water Code section 27.051(a)(2) absent some demonstrated harm or interference. *FPL Farming, Ltd. v. Tex. Nat. Res. Conservation Comm'n*, No. 03-02-00477-CV, 2003 WL 247183, at *4 (Tex. App.—Austin Feb. 6, 2003, pet. denied).

17. *Myers-Woodward, LLC v. Underground Services Markham, LLC*, 716 S.W.3d 461 (Tex. 2025), does not hold that any subsurface intrusion automatically constitutes impairment under Texas Water Code section 27.051(a)(2).

18. The preponderance of the evidence does not establish that issuance of the Draft Permits would impair existing rights under Texas Water Code

section 27.051(a)(2).

19. Applicant demonstrated, by a preponderance of the evidence, compliance with Texas Water Code section 27.051(a)(2).

20. Any limitations in the ED's technical review do not independently establish impairment under Texas Water Code section 27.051(a)(2) and do not require denial or remand of the Application.

Transcription Costs

21. No transcript costs may be assessed against the ED or OPIC because the TCEQ's rules prohibit the assessment of any cost to a statutory party who is precluded by law from appealing any ruling, decision, or other act of the Commission. 30 Tex. Admin. Code § 80.23(d)(2).

22. Factors to be considered in assessing transcript costs include: the party who requested the transcript; the financial ability of the party to pay the costs; the extent to which the party participated in the hearing; the relative benefits to the various parties of having a transcript; and any other factor which is relevant to a just and reasonable assessment of the costs. 30 Tex. Admin. Code § 80.23(d)(1).

23. Considering the factors in 30 Texas Administrative Code section 80.23(d)(1), no further allocation of transcript costs is warranted.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application of U.S. Ecology Winnie, LLC for the renewals and amendments of Class I Underground Injection Control permit numbers WDW344, WDW345, WDW346, WDW347, WDW348, WDW349, and WDW350 is granted as set forth in the Draft Permits.

2. No additional transcription costs shall be assessed against Protestants.

3. The Commission adopts the ED's Response to Public Comment in accordance with 30 Texas Administrative Code section 50.117. If there is any conflict between the Commission's Order and the ED's Responses to Public Comment, the Commission's Order prevails.

4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

5. The effective date of this Order is the date the Order is final, as provided by Texas Government Code section 2001.144 and 30 Texas Administrative Code section 80.273.

6. TCEQ's Chief Clerk shall forward a copy of this Order to all parties.

7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Brooke Paup, Chairwoman, For the Commission