

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 29, 2024

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: **IN THE MATTER OF THE APPLICATION BY US ECOLOGY  
WINNIE, LLC FOR UIC PERMIT NOS. WDW344, WDW345,  
WDW346, WDW347, WDW348, WDW349, AND WDW350  
TCEQ DOCKET NO. 2023-1590-WDW**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2023-1590-WDW**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>US ECOLOGY WINNIE, LLC</b>	<b>§</b>	
<b>FOR UIC PERMIT NOS. WDW344,</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>WDW345, WDW346, WDW347,</b>	<b>§</b>	
<b>WDW348, WDW349, AND</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>WDW350</b>	<b>§</b>	

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE  
TO REQUESTS FOR HEARING**

**To the Members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (Commission or TCEQ) files this response to requests for hearing in the above-captioned matter and would respectfully show as follows:

**I. Introduction**

**A. Summary of Position**

Before the Commission is an application by US Ecology Winnie, LLC (Applicant or US Ecology) for renewal and major amendment of seven nonhazardous commercial Class I Underground Injection Control (UIC) Permits (WDW344, WDW345, WDW346, WDW347, WDW348, WDW349 and WDW350), for the disposal by injection of nonhazardous industrial and municipal wastes received from off-site sources on a commercial basis and generated on-site. OPIC notes that the TCEQ Chief Clerk’s office received timely hearing requests from Pipkin Ranch Holdings, LP; Grayson Pipkin; and Bruce Pipkin (collectively, the Pipkins). For the reasons stated herein, OPIC respectfully recommends the Commission grant the Pipkins’ hearing requests and refer this application for

a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-3 and 6-12 contained in §III.B.

**B. Description of Application and Facility**

US Ecology operates an existing commercial nonhazardous UIC facility in Jefferson County located at 26400 Wilber Road, Winnie, 77665. US Ecology disposes nonhazardous industrial solid waste and nonhazardous municipal solid waste by injection in three constructed UIC wells, WDW344, WDW345 and WDW346. Wastes disposed via injection include nonhazardous municipal landfill leachate, aqueous nonhazardous Class 1, 2, and 3 industrial solid waste and contaminated groundwater and rainwater.

If granted, the application, would authorize the continued operation of Class I injection wells WDW344, WDW345, and WDW346 which are installed, and the construction and operation of Class I injection wells WDW347, WDW348, WDW349, and WDW350. Waste that would continue to be authorized for disposal by injection includes water-based injection fluid generated from physical processing and chemical treatment of commingled Class 1, 2, and 3 nonhazardous industrial wastes, nonhazardous municipal landfill leachate, contaminated groundwater, contaminated rainwater, and wastes generated from well construction, cleaning, servicing, and closure. The Application also requests to lower the base of the injection zone to 4,000 feet below ground level (BGL) for all permits, to lower the top of the injection zone for WDW346 from 952 feet BGL to 1,076 feet BGL, and to change the Maximum Allowable Surface Injection Pressure (MASIP) for WDW346, WDW347, WDW348, WDW349, and WDW350 to

allow a range of maximum pressures based upon the varying specific gravity of the injected fluids.

### **C. Procedural Background**

The TCEQ received the application on May 28, 2019, and declared it administratively complete on August 15, 2019. On September 7, 2019, the Notice of Receipt of Application and Intent to Obtain a Nonhazardous Waste UIC Permit Renewal was published in Jefferson County in the *Beaumont Enterprise*. The ED completed the technical review of the application on March 9, 2023. On April 12, 2023, the Notice of Application and Preliminary Decision for Nonhazardous Waste UIC Permit Renewal and Amendment was published in Jefferson County in the *Beaumont Enterprise*. The public comment period ended on May 12, 2023. The Chief Clerk mailed the ED's Response to Public Comment on July 18, 2023. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was August 17, 2023. The TCEQ Chief Clerk's office received multiple timely hearing requests from the Pipkins.

## **II. Applicable Law**

This application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015) (SB 709). Under Title 30, Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

Under 30 TAC § 55.203(a), an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. As provided by § 55.203(b), governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the ED; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by

the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

### **III. Analysis of Hearing Requests**

#### **A. Whether the requestors are affected persons**

Through their attorneys, Pipkin Ranch Holdings, LP, Grayson Pipkin, and Bruce Pipkin submitted timely hearing requests during the public comment period and a timely hearing request following issuance of the ED's RTC. Their requests state that the Pipkins own property immediately adjacent to Applicant—a fact confirmed by the map created by the ED's staff.

The Pipkins explain that issuance of the permits sought by Applicant will result in loss of use and enjoyment of, and trespass to, their property because they allege that the waste injected into wells located on Applicant's property has migrated below the Pipkins' property, and issuance of this renewal and major amendment will further reduce the amount of subsurface space available for the Pipkins' use. They are specifically concerned with the horizontal and vertical migration of the waste and further explain that this action will interfere with a contract that the Pipkins have entered into with Chevron to inject carbon dioxide under their property.

The Pipkins argue that TCEQ's definition of facility includes all land used for disposal of waste and dispute that the Applicant owns all of the land that the waste has migrated to and is projected to migrate to. *See* 30 TAC § 335.1(69). They also contend that the application violates Texas Water Code § 27.051(a)(2), which requires "that no existing rights, including, but not limited to, mineral rights, will be impaired." Finally, they dispute that the injection interval of the waste has been properly identified in accordance with 30 TAC §§ 331.62, 331.63, and 331.121. As a result of this, the Pipkins raise numerous issues regarding the application.

After consideration, OPIC finds that the Pipkins have demonstrated that they are likely to be affected by the regulated activity proposed by the Applicant in a manner not common to members of the general public. Their interests are protected by the law under which this application will be considered. 30 TAC § 55.203(c)(1). Also, a reasonable relationship exists between their claimed interests and the Applicant's regulated activity. 30 TAC § 55.203(c)(3). Their proximity to the proposed operation, in combination with their stated economic interest in preserving their mineral rights, gives them a personal justiciable interest that is not common to members of the general public. *See* 30 TAC § 55.203(a). Therefore, OPIC finds that the Pipkins qualify as affected persons in this matter.



**B. Which issues raised in the hearing requests of affected persons are disputed**

1. Whether Applicant's regulated activity will impair any existing rights, including mineral rights in violation of Texas Water Code § 27.051(a)(2)?
2. Whether the application correctly identifies the proposed injection interval in accordance with 30 TAC §§ 331.62 and 331.121?
3. Whether the application correctly identifies the facility as defined by 30 TAC §§ 305.2(14) and 335.1(69)?
4. Whether the Applicant has a legal right to inject liquids into sub-surface land that they do not own?
5. Whether the Applicant has a legal right to use the facility?
6. Whether the application contains an adequate review of current and potential future artificial penetrations within the area of review that could provide a conduit for upward fluid migration?
7. Whether the Applicant demonstrated that the siting of the injection well is geologically suitable, including whether the confining zone is separated from the base of the underground source of drinking water by strata in accordance with 30 TAC § 331.121?
8. Whether Applicant properly identified the owner(s) of the real property where the facility is located or proposed to be located in accordance with 30 TAC § 305.45?
9. Whether Applicant adequately depicted the boundary(s) of the tract(s) of land upon which the facility is located?
10. Whether the Applicant owns, or has the consent of the owner to utilize, the property or portions of the property where the waste injection well will be constructed in accordance with TWC § 27.051(a)(7)?
11. Whether Applicant provided an adequate legal description of the tract(s) of land where the facility is or will be located?
12. Whether Applicant included a complete and accurate mailing list of the facility owner(s), facility mineral interest owner(s), adjacent landowners, and adjacent mineral interest owners?

**C. Whether the dispute involves questions of fact or of law**

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. Issue nos. 4 and 5 are questions of law or policy and therefore are not appropriate for referral to hearing. With the exception of Issue nos. 4 and 5, the issues raised by the Pipkins are issues of fact.

**D. Whether the issues were raised during the public comment period**

All issues were raised by requestors who qualify as affected persons during the public comment period.

**E. Whether the hearing requests are based on issues raised solely in a withdrawn public comment**

No public comments were withdrawn in this matter. Therefore, the hearing requests are not based on issues raised in withdrawn comments.

**F. Whether the issues are relevant and material to the decision on the application**

The affected persons' hearing requests raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. Relevant and material issues are those governed by the substantive law under which this permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

### Facility Description, Impairment of Existing Rights, and Notice

The Pipkins argue that Applicant's underground waste plume has already migrated or will migrate onto their property in violation of Texas Water Code § 27.051(a)(2), which states "that no existing rights, including but not limited to, mineral rights, will be impaired." They explain that the application does not correctly identify the whole area that will be occupied by the injected wastes, which according to the Pipkins, includes their property.

An applicant must identify the owner(s) of property where the underground injection control facility is located or proposed to be located. 30 TAC 305.43(b), (c) and 305.45(a)(1). Facility as defined by Commission rule includes all contiguous land used for waste disposal or injection activities. 30 TAC §§ 305.2(14) and 335.1(69). An applicant is also required by statute to own or have the right to use the property where a hazardous waste injection well will be constructed. TWC § 27.051(a)(7). Related to the issues regarding characterization of, and identification of the facility, Protestants are concerned that the Applicant did not provide adequate notice. By rule, notice of the application must be provided to those possessing mineral rights that underly the facility, adjacent property owners, adjacent mineral rights owners, and facility owners. 30 TAC § 39.651(c)(4), (d)(4).

Therefore, the notice issues and characterization of the facility, including its size, footprint, ownership, and impact on existing mineral rights are relevant and material to the Commission's decision regarding this application. Thus, Issue nos. 1, 3, 8, 9, 10, 11, and 12 are appropriate for referral to SOAH.

### Injection Zone and Interval and Fluid Migration

The Pipkins express concerns about horizontal and vertical migration of the waste. They state that the Applicant has not properly identified the injection interval. TCEQ rules define an injection interval as “[t]hat part of the injection zone in which the well is authorized to be screened, perforated, or in which the waste is otherwise authorized to be directly emplaced.” 30 TAC § 331.2(59). The rules provide numerous instances where injection intervals are considered by TCEQ and approval must be obtained prior to any changes to injection intervals. *See* 30 TAC 331.62(a)(1)(A), (a)(3)(B), (a)(3)(C). Also, before issuing a permit, the Commission is required to consider all information in the application, including information regarding injection intervals. 30 TAC § 331.121(a)(1). Regarding migration, wells must be operated to prevent the movement of fluids that could result in pollution to a source of drinking water and to prevent leaks into unauthorized zones. 30 TAC 331.62(b).

The Pipkins are additionally concerned that the injection zone and injection interval may not be adequately isolated from the base of the underground source of drinking water. An injection zone is defined as “[a] formation, a group of formations, or part of a formation that receives fluid through a well.” 30 TAC § 331.2(60). Wells must be sited in areas that are geologically suitable and so that injections are below any underground sources of drinking water. 30 TAC 331.161(c)(1)-(2). A well must be designed, constructed, and completed to prevent the movement of fluids that could result in the pollution of an underground source of drinking water. 30 TAC § 331.62(a).

One way an applicant may do this is by demonstrating that “the confining zone is separated from the base of the lowermost [underground source of drinking water] or freshwater aquifer by at least one sequence of permeable and less permeable strata.” 30 TAC § 331.121(c)(4)(A). A confining zone is defined as “[a] part of a formation, a formation, or group of formations between the injection zone and the lowermost underground source of drinking water or freshwater aquifer that acts as a barrier to the movement of fluids out of the injection zone.” 30 TAC § 331.2(33).

Therefore, Issue nos. 2, 6, and 7 are relevant and material to the Commission’s decision regarding this application and are appropriate for referral to SOAH.

**G. Maximum expected duration for the contested case hearing**

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing

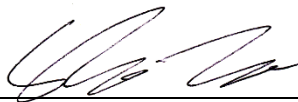
on this Application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

#### **IV. Conclusion**

For the reasons stated above, OPIC respectfully recommends that the Commission grant the hearing requests of the Pipkins and refer this application for a contested case hearing at SOAH on Issue nos. 1-3 and 6-12 contained in §III.B with a maximum duration of 180 days.


Respectfully submitted,

Garrett T. Arthur  
Public Interest Counsel

By:   
Sheldon P. Wayne  
Assistant Public Interest Counsel  
State Bar No. 24098581  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087  
(512) 239-3144

#### **CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2024, the Office of Public Interest Counsel's Response to Requests for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.

  
Sheldon P. Wayne

**MAILING LIST**  
**US ECOLOGY WINNIE, LLC**  
**TCEQ DOCKET NO. 2023-1590-WDW**

**FOR THE APPLICANT**

via electronic mail:

Duncan Norton, Attorney  
Lloyd Gosselink Rochelle & Townsend PC  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
[dnorton@lglawfirm.com](mailto:dnorton@lglawfirm.com)

Yvonne Hudspeth, General Manager  
US Ecology Winnie, LLC  
26400 Wilber Road  
Winnie, Texas 77665  
[Yvonne.hudspeth@usecology.com](mailto:Yvonne.hudspeth@usecology.com)

Graciela E. Moore  
WSP USA Inc.  
16200 Park Row, Suite 200  
Houston, Texas 77084

**FOR THE EXECUTIVE DIRECTOR**

via electronic mail:

Diane Goss, Staff Attorney  
Don Redmond, Staff Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-0600 Fax: 512/239-0606  
[diane.goss@tceq.texas.gov](mailto:diane.goss@tceq.texas.gov)  
[don.redmond@tceq.texas.gov](mailto:don.redmond@tceq.texas.gov)

Pavan Bairu, Technical Staff  
Texas Commission on Environmental  
Quality  
Radioactive Materials Division MC-233  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-6648 Fax: 512/239-6464  
[pavan.bairu@tceq.texas.gov](mailto:pavan.bairu@tceq.texas.gov)

Ryan Vise, Director  
Texas Commission on Environmental  
Quality  
External Relations Division  
Public Education Program MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-4000 Fax: 512/239-5678  
[pep@tceq.texas.gov](mailto:pep@tceq.texas.gov)

**FOR ALTERNATIVE DISPUTE  
RESOLUTION**

via electronic mail:

Kyle Lucas, Attorney  
Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-0687 Fax: 512/239-4015  
[kyle.lucas@tceq.texas.gov](mailto:kyle.lucas@tceq.texas.gov)

**FOR THE CHIEF CLERK**

via eFiling:

Docket Clerk  
Texas Commission on Environmental  
Quality  
Office of Chief Clerk MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512/239-3300 Fax: 512/239-3311  
<https://www14.tceq.texas.gov/epic/eFiling/>

**REQUESTER(S):**

Mark C. Sparks  
The Ferguson Law Firm  
3155 Executive Boulevard  
Beaumont, Texas 77705

David J. Tuckfield  
The AL Law Group PLLC  
12400 West Highway 71, Suite 350-150  
Bee Cave, Texas 78738