

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

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

**PIPKIN RANCH HOLDINGS, LP's**  
**REPLY**  
**TO RESPONSES TO HEARING REQUESTS**

Pipkin Ranch Holdings, LP, Grayson Eden Pipkin, and Bruce Fletcher Pipkin (collectively “Pipkins”) respectfully submit this Reply to the Responses to Hearing Requests in this matter.

**I. THE PIPKINS ARE AFFECTED PERSONS**

Pipkins agree with OPIC and the ED that Pipkins are affected persons and adopt and incorporate by references the arguments made by OPIC and the ED as to why they should be deemed affected persons. *See* map attached as Attachment A to the ED’s Responses.

It is significant that Pipkins own property immediately adjacent to the facility, and arguably own the property upon which the facility is being authorized (against Pipkins’ will). The Pipkins have explained 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 and will continue to migrate below the Pipkins’ property, and issuance of this renewal and major amendment will further reduce the amount of subsurface pore 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. There are hardly better examples of persons who are likely to be affected by the regulated activity proposed by the Applicant in a manner not common to members of the general public.

They provided timely requests that were in writing, provided the required contact information, and during the hearing request period raised mixed issues of fact and law that are relevant and material to the Commission's consideration of the Application.

The Applicant attempts to say that *FPL Farming, Ltd. v. Texas Natural Resource Conservation Com'n*, No. 03-02-00477-CV, 2003 Tex. App. LEXIS 1074, 2003 WL247183 (Tex. App. — Austin Feb 6, 2003, pet. denied) controls all the issues in this case. In that case, however, the Protestants “did not own the oil and gas mineral interests associated with its property.” *FPL Farming*, 2003 Tex. App. LEXIS 1074, at \*4. The *FPL Farming* question was all about surface rights, not mineral rights. This current matter before TCEQ involves Protestants who own not only the surface rights but also the mineral rights – which is a quite different question than that which was litigated in *FPL Farming*. The facts between this case and *FPL Farming* are readily distinguishable and present different questions. Applicant cannot presume that *FPL Farming* has eviscerated Tex. Water Code § 27.051(a)(2), which states “that no existing rights, including, but not limited to, mineral rights, will be impaired.”

## **II. THE ISSUES TO BE REFERRED**

The Pipkins agree with OPIC's analysis of the issues and incorporates OPIC's arguments concerning those issues by reference.

There can be no doubt that issue Nos. 1 and 10 (Whether any existing rights will be impaired by use or installation of the injection wells in accordance with Tex. Water Code § 27.051(a)(2) as a result of the issuance of these permits) were directly addressed in what Applicant refers to as the “Sparks Letter.” For example, Mr. Sparks states “there can be little doubt that the Applicant's waste is migrating through the subsurface and trespassing on the Pipkin's property.” This directly addresses the issue implicated by Tex. Water Code § 27.051(a)(2).

With respect to Applicant's argument about pore space, we agree that the Application does not seek to increase the pore space – but that is the crux of the matter. For all practical purposes, the volume of the pore space is finite. It cannot be occupied by two different substances at the same time. By allowing the Applicant to put their waste in the pore space on the Pipkin property, that space is not available for use by the rightful owner, the Pipkins.

As OPIC points out, issues 1, 3, 8, 9, 10, 11, and 12 are all issues addressing facility description, impairment of rights and notice. The Sparks letter essentially complains that the draft permit does not adequately define the facility because the permit would allow waste to migrate beyond its borders and beneath the Pipkin property; however, the facility as described in the draft permit does not include the portions of the Pipkin property where wastes are and will ultimately be located if the permit is issued by TCEQ. As a result of that, existing rights are obviously implicated, as well as proper notice. If the facility is not adequately described, then notice is an issue. Issues 1, 3, 8, 9, 10, 11, and 12 clearly stem from these questions and are relevant pursuant to Texas Water Code §§ 27.051(a)(2) (property rights), Texas Water Code § 27.051(a)(7) (property rights), 30 TAC 305.43(b), (c) and 305.45(a)(1) (location of the facility – whether it can include the Pipkin property); 30 TAC §§ 305.2(14) and 335.1(69) (definition of facility – which is relevant to the Pipkins' concerns about whether what is actually being permitted includes the Pipkin property), and 30 TAC § 39.651(c)(4), (d)(4) (notice requirements – relevant to whether mineral rights holders were provided notice, whether the actual facility was properly described in the notice, and whether the notice should have shown that the Applicant was using the Pipkin property).

OPIC also notes that issues 2, 6, and 7 all deal with the injection zone, and interval and fluid migration. These issues are also implicated by the Sparks Letter. The Sparks letter makes

clear that the Pipkins have concerns with where the fluid is injected and to where it migrates. These issues, therefore, have been appropriately raised.

Applicant would have this Commission take a hyper technical view of its rules and require pre- and post- Response to Comment letters use identical language. In the interest of protecting the public and the environment, the Commission should reject that invitation.

The Pipkins, therefore, request that the following issues be referred to SOAH for a contested case hearing:

- 1) Whether any existing rights will be impaired by use or installation of the injection wells in accordance with Tex. Water Code § 27.051(a)(2) as a result of the issuance of these permits. Specifically, whether the Applicant can use pore space beneath property that they do not own or control resulting in that pore space not being available for use by the rightful owner of the property.
- 2) Whether the Applicant correctly identified the proposed injection interval in accordance with 30 TAC §§ 331.62, 331.63, and 331.121?
- 3) Whether the Applicant correctly identified the facility as defined by 30 TAC § 335.1(69).
- 4) --
- 5) --
- 6) Whether the application contains an adequate review of all current and potential future artificial penetrations within the area of review that could provide a conduit for upward fluid migration. (30 TAC §§ 331.62, 331.63 and 331.121(c)(4)).
- 7) Whether the applicant demonstrated that the injection zone and interval are isolated from the base of the USDW by impermeable strata in accordance with 30 TAC § 331.121(a)(4)(A)-(C).
- 8) Whether Applicant properly identified the owner(s) of the real property where the UIC facility is located or is 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 (30 TAC §§ 305.45 and 331.121). This would include the area that is currently occupied and will ultimately be occupied by wastes injected by the Applicant.
- 10) Whether the Applicant owns or has made a good faith claim to, or has the consent of the owner to utilize, or has an option to acquire, or has the authority to acquire through eminent domain, the property or portions of the property where the waste injection well will be constructed in accordance with Tex. Water Code § 27.051(a)(7).
- 11) Whether Applicant adequately provided a legal description of the tract or tracts of land upon which the facility is or will be located. (30 TAC § 305.45 and Tex. Health & Safety Code § 361.087).
- 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 cross-referenced to map depicts the parcels of land that constitute the facility and that are adjacent to the facility. (30 TAC §§ 39.413(1), 39.651(c) and (d), 281.5(6), and 305.45(a)(6)).

Respectfully submitted,

**THE AL LAW GROUP PLLC**

*/s/ David Tuckfield*

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David J. Tuckfield  
State Bar Number: 00795996  
12400 West Hwy 71, Suite 350-150  
Austin, TX 78738  
Telephone: (512) 576-2481  
Facsimile: (512) 366-9949  
david@allawgp.com

**ATTORNEYS FOR PIPKIN RANCH HOLDINGS, LP,  
GRAYSON EDEN PIPKIN, AND  
BRUCE FLETCHER PIPKIN**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the following parties as shown below on this 9<sup>th</sup> day of February 2024 as follows:

**By Texas electronic filing e service delivery:**

**TCEQ Executive Director**

Don Redmond  
Diane Goss  
Environmental Law Division  
P.O. Box 13087, MC-173  
Austin, Texas 78711-3087  
Phone (512) 239-0612  
don.redmond@tceq.texas.gov  
diane.goss@tceq.texas.gov

**TCEQ Office of Public Interest Counsel**

Sheldon Wayne  
Assistant Public Interest Counsel  
P.O. Box 13087, MC 103  
Austin, Texas 78711-3087  
(512) 239-3144 Phone  
sheldon.wayne@tceq.texas.gov

**U.S. Ecology**

Duncan C. Norton  
Mattie C. Neira  
LLOYD GOSSELINK  
ROCHELLE & TOWNSEND, P.C.  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Ph.: (512) 322-5800  
dnorton@lglawfirm.com  
mneira@lglawfirm.com

*/s/ David Tuckfield*

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David J. Tuckfield