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August 19, 2024

**Via: eFiling at <https://www14.tceq.texas.gov/epic/eFiling/>**

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

**Re: IN THE MATTER OF THE APPLICATION BY LEPRINO FOODS COMPANY FOR  
TPDES PERMIT NO. WQ0005417000  
TCEQ DOCKET NO. 2024-11881-IWD**

**REPLY OF STOP THE OPPRESSION OF OUR PEOPLE TO THE RESPONSE OF THE  
EXECUTIVE DIRECTOR AND PUBLIC INTEREST COUNCIL TO HEARING  
REQUESTS and MOTION FOR RECONSIDERATION**

Dear Ms. Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality ("TCEQ" or "Commission") is the Reply of Stop the Oppression of Our People ("STOP") to the Responses of the Executive Director ("ED") and the Office of the Public Interest Council ("OPIC") to STOP's Hearing Request and Motion for Reconsideration.

All contact to STOP on this matter should be directed to its counsel at Legal Aid of NorthWest Texas ("LANWT"), listed below.

Respectfully submitted,

A blue ink signature of Mark Oualline, consisting of stylized, overlapping letters.

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A blue ink signature of Wendi Hammond, featuring a cursive style with a large, flowing 'W'.

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Enclosure

cc: Mailing List

**DOCKET NO. 2024-1181-IWD**

**APPLICATION BY LEPRINO FOODS  
COMPANY FOR NEW TPDES PERMIT NO.  
WQ0005417000**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

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**REPLY OF STOP THE OPPRESSION OF OUR PEOPLE TO THE RESPONSE OF THE  
EXECUTIVE DIRECTOR AND PUBLIC INTEREST COUNCIL TO HEARING REQUESTS and  
MOTION FOR RECONSIDERATION**

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To the Members of the Texas Commission on Environmental Quality:

Through its counsel at Legal Aid of NorthWest Texas (“LANWT”), Stop the Oppression of Our People (“STOP”) files with the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) its Reply to the Responses of the Executive Director (“ED”) and the Office of the Public Interest Council (“OPIC”) to STOP’s Hearing Request and Motion for Reconsideration in the above referenced matter.

**I. Introduction**

We urge the Commission to follow the recommendation of OPIC in its Response to Requests for Hearing and Request for Reconsideration to grant the hearing request of STOP. We recommend further that the Commission refer the issues STOP specified in its request for a contested case hearing to the State Office of Administrative Hearings (“SOAH”) for a hearing with a maximum duration of 180 days. As we will show below, the recommendation of the ED to deny the hearing request of STOP on standing grounds was wrongly decided. Further, the ED also wrongly narrowed the issues that must be considered at a contested case hearing. This reply will also dispute the conclusions within the letter of Leprino Foods Company dated August 5, 2024 (“Applicant’s Response”), expressing opposition to STOP’s request for a contested case hearing. STOP has standing to request a hearing because one of its members, Ms. Sonya Fair, is an affected person under 30 TAC § 55.203. Second, STOP properly raised valid issues under Tex. Water Code § 56.556(d) that must be referred to SOAH.

Although STOP has properly articulated the reasons the commission should grant its request for a contested case hearing, STOP is more than willing to attempt to resolve this matter with the Applicant through the Alternative Dispute Resolution process provided by TCEQ. STOP is in support of the ED's recommendation that the case first be referred to Alternative Dispute Resolution so that STOP may work with the Applicant in good faith to find a mutually beneficial agreement that can help the East Lubbock community.

## **II. Factual and Procedural Background**

Leprino Foods Company ("Applicant") has applied for a wastewater permit for a new cheese manufacturing facility located at 4301 East 19th, Lubbock, Texas 79403, and wastewater processing facility located at 4502 East 4th, Lubbock, Texas 79403. The proposed permit would allow the Applicant to discharge up to 2.5 million gallons into Canyon Lake #6 daily. Through its legal counsel, STOP submitted timely public comments and requests for a Public Meeting and Contested Case Hearing on Applicant's application. Over 156 requests for a public meeting were submitted to TCEQ; and therefore, in the face of significant public interest, the public comment period remained open until the end of the public meeting held on October 24, 2023. During the public comment period, STOP timely filed several public comments and a request for a contested case hearing, including public comments submitted during the formal portion of the public meeting.

On June 10, 2024, the ED issued its response to comments and decision that Applicant's permit application meets the requirements of applicable law, and that the draft permit should be issued without any changes. STOP timely submitted a Hearing Request and a Request for Consideration on July 10, 2024.

On August 5, 2024, the ED and OPIC issued separate responses to STOP's Hearing Request and Motion for Reconsideration. The ED recommended that the Commission deny STOP's Hearing Request. The ED also narrowed the issues to be considered at a contested case hearing if the Commission decided to refer the matter to SOAH. OPIC recommended that Commission refer STOP's Hearing Request to SOAH and specified 18 issues for consideration at the contested case hearing.

STOP is timely submitting this reply because it is property filed on August 19, 2024.

### **III. Applicable Law**

A person has standing to request a contested case hearing when the Commission determines them to be an “affected person.” An affected person meets the following criteria.

First, an affected person means a person 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. Tex. Water Code Ann. § 5.115(a), 30 TAC § 55.203.

Second, under 30 TAC § 55.203(c), relevant factors to be considered when determining when a person is an affected person include, but are not limited to:

- (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 and safety of the person, and on the 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.

Third, 30 TAC §55.203(d), the commission may also consider:

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

Fourth, under 30 TAC § 55.205(b), group or association may request a contested case hearing when the following conditions are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

#### **IV. Argument**

##### **A. STOP has standing to request a contested case hearing because Sonya Fair, a member of STOP, is an affected person**

STOP has standing to request a contested case hearing on behalf of its members because Sonya Fair, a member of STOP, is an affected person.

In her response, the ED disputed that Sonya Fair, a member of STOP, had standing in her own right to bring a contested case hearing. Therefore, the ED recommended that the Commission deny STOP's hearing request. The ED did not dispute any other facets of STOP's standing under 30 TAC § 55.205(b).

Despite the ED's conclusion, Sonya Fair is an affected person and has standing in her own right to request a contested case hearing. It is undisputed that Ms. Fair resides at 1821 Manhattan Drive, Lubbock Texas, 79404. It is also undisputed Ms. Fair's property overlooks the banks of Canyon Lake #6 and is less than ¼ of a mile from the Applicant's wastewater outfall. Below is a photo of Canyon Lake #6 photographed by Ms. Fair on August 10, 2024, at approximately 11:30 a.m. from her backyard. See the Affidavit of Sonya Fair in Attachment 1.



*Figure 1: Photo taken by Sonya Fair of her backyard and Canyon Lake #6, 8/10/24 at 11:30 a.m.*

STOP's public comments and requests for a contested case hearing identified Ms. Fair's concerns. Ms. Fair is concerned that the proposed discharge will interfere with her use and enjoyment of the property, harm wildlife in and around the lake, and adversely impact the lake's use and enjoyment of as a precious recreation area for the community. Ms. Fair also identified additional concerns including unpleasant odors and harm to her health caused by the proposed outfall. Because her home is so close to Lake #6, all the concerns listed above are more acute for her than they would be for a member of the general public who lives farther away from Lake #6.

In the table below, we analyze Ms. Fair's concerns and allegations through the framework of 30 TAC § 55.203 to show that she is an affected person.

<b>Factor in 30 TAC § 55.203</b>	<b>Application to the Current Case</b>
<b>(c)(1):</b> whether the interest claimed is one protected by the law under which the application will be considered	The interests Ms. Fair claims, including the potential harm to the use and enjoyment of her property, harm to wildlife, the negative impact to the use and enjoyment of the lake as a recreation area for the community, harm to health, and unpleasant odors, are all protected by the law under which the application will be considered.
<b>(c)(2)</b> distance restrictions or other limitations imposed by law on the affected interest	Although there is no distance restriction imposed by law in this matter, Ms. Fair's property is very close to Lake #6 as shown by Figure 1 above. This makes any harm caused by the proposed discharge much more acute for Ms. Fair than it would be for a member of the general public.
<b>(c)(3)</b> whether a reasonable relationship exists between the interest claimed and the activity regulated	All the interests or concerns Ms. Fair identifies are reasonably related to potential harm caused by the proposed discharge.
<b>(c)(4)</b> likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person	Damage to Canyon Lake #6 by the proposed discharge could impact Ms. Fair's ability to use her property as she does now. Increased pollution in the water could impact Ms. Fair's health and safety.
<b>(c)(5)</b> likely impact of the regulated activity on use of the impacted natural resource by the person	Ms. Fair's use of Canyon Lake #6 as a natural resource for recreation and for the use and enjoyment of her property will likely be impacted by the proposed discharge. Ms. Fair walks along the lake for exercise and will sit by the lake at a picnic table to enjoy the water.
<b>(c)(6)</b> 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	STOP's hearing request and comments were timely filed and not withdrawn.
<b>(c)(7)</b> for governmental entities, their statutory authority over or interest in the issues relevant to the application	This factor is not applicable in this matter because STOP is not a governmental entity.
<b>(d)(1)</b> the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance	One key supporting document in the commission's administrative record is OPIC's Response to Hearing Requests and Requests for Reconsideration. OPIC found that STOP has standing in part because Ms. Sonya Fair is an affected person. OPIC recommended that the commission grant the hearing request. STOP has also alleged and raised issues that the application does not meet the requirements for permit issuance. OPIC recommended that 18 out of the 19 issues identified by STOP be referred to SOAH for a contested case hearing.

(d)(2) the analysis and opinions of the executive director; and	Although the ED recommends denying STOP’s hearing request, she failed to consider Ms. Fair’s close proximity to Lake #6 when she made the determination that Ms. Fair’s concerns were no different than those of the general public. With respect to the ED, most members of the general public do not own property overlooking Lake #6 less than ¼ of a mile from the outfall. OPIC also recommended that the commission grant the hearing request.
(d)(3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.	The commission should take listed items into account if they have been offered. STOP offers the affidavit of Sonya Fair swearing to the validity and truthfulness of the photographs she took of Canyon Lake #6 from her backyard.

The foregoing analysis shows that Ms. Fair has standing in her own right to request a hearing and that the ED’s contrary conclusion was incorrect because the ED adopts an overly burdensome and extremely narrow view of what qualifies as “an interest in common to members of the general public” while blatantly ignoring long-standing federal and state legal precedent addressing the potential actual or imminent injury due to frequency of occurrence.

The United States Supreme Court has long held that a purely esthetic “use and enjoyment” purpose is undeniably a cognizable interest. *See, Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992). The affected person needs to establish an injury in fact that is concrete and particularized as well as actual or imminent, not conjectural or hypothetical. *See, id.* at 560 (explaining that an actual or imminent injury requires more than a past connection or “some day” intentions to visit a particular area, but rather requires any specification of when the injury may occur)(emphasis added). Meanwhile, Texas courts have long upheld that establishing associational standing also does not require a party to fully brief all legal arguments and facts. Rather, “it requires them to show only that they will potentially suffer harm or have a ‘justiciable interests’ related to the proceedings.” *See, Heat Energy Advanced Technology, Inc.; et. al. v. West Dallas Coalition for Environmental Justice*, 962 S.W.288, 295 (Tex. App.—Austin 1998).

By applying long-standing legal precedent in conjunction with the presented facts in this matter, Ms. Fair’s extremely close proximity of her residence and use of the to the potential adversely impacted area demonstrates



that her esthetic injury could be an actual and immediate daily occurrence, which is undeniably a different situation from the general public at large. Also contrary to Texas' established legal precedent, the ED's argument would impose a much greater burden than what the Texas courts require by requiring STOP to conclusively brief and prove the merits of its case on how the proposed discharge would negatively impact the use and enjoyment or health of its members' properties and surrounding areas just to establish standing to have a hearing on how the proposed discharge would negatively impact these exact same concerns.<sup>1</sup>

Because this was the only element of STOP's standing which the ED wrongfully disputed, the commission should grant STOP's hearing request and refer the matter to SOAH.

**B. The Commission should refer all 19 issues identified by STOP to SOAH for a contested case hearing**

All 19 issues identified by STOP during the public comment period are issues of fact, rather than of law or policy, and are thus appropriate for referral to hearing as they meet other applicable requirements. 30 TAC § 55.211(c)(2)(A). The issues raised clearly and obviously dispute deficiencies in the application and draft permit as recognized by the Executive Director and OPIC, not merely questions as the Applicant asserts.

Further, STOP raised all 19 issues during the public comment period, and hearing requests are based on timely comments that have not been withdrawn. STOP's 19 issues are relevant and material to the Commission's decision and are within the Commission's jurisdiction in. For these reasons, the Commission should refer the following 19 issues to SOAH for a contested case hearing.

- 1. Whether the public notice fails to comply with applicable federal and state laws, rules and regulations.** The issue of whether public notice fails to comply with applicable rules and regulations is relevant and material to a decision on the application and should be referred to the SOAH as the ED and OPIC recommend. Applicant claims there is no specific allegation of a failure to comply with laws of public notice, despite the deficiencies of the preliminary decision and Draft Permit not being available for

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<sup>1</sup> The ED and OPIC also incorrectly presumes STOP's odor concerns are not relevant or material by focusing only on whether an initial agency's application review is required for an industrial effluent. However, STOP's comments establish that the concern goes well beyond the limited scope of just Applicant's effluent. Rather, the relevant and material concern encompasses the potential impact of the Applicant's effluent on causing or contributing to the degradation and potential (or existing) nuisance odors of the wastewater receiving bodies of water. STOP's relevant and material identified concern would fall within the scope of even the ED's overly limited suggested issues to be referred to SOAH (See, e.g., issue 5: whether the draft permit will protect human health and the environment).

viewing by the public at TCEQ-Region 2's office, nor the publishing of any Alternative Language publication clearly being raised in our June 16, 2023, Public Comment and Request for Public Meeting and for a Contested Case Hearing.

2. **Whether the application or proposed permit would violate the provisions of any state or federal law, rule or regulation.** Because the Commission is responsible for protection water quality and enforcing state and federal law, this issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC. Again, Applicant overlooks our June 16, 2023, Public Comment specifically disputing the failure of the application being reviewed as a major facility and other concerns with state and federal standards.
3. **Whether the application or draft permit fails to require the use of all reasonable methods to implement and prevent interference with the purpose of Chapter 5 and 26 of the Texas Water Code.** Because the Commission must enforce Chapters 5 and 25 of the Texas Water Code, this issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.
4. **Whether the application or draft permit fails to maintain the quality of water in the state consistent with public health and enjoyment.** Pursuant to 30 TAC § 307.1 which ensures compliance with the Texas Surface Water Quality Standards to protect public health and enjoyment, this issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.
5. **Whether the draft permit complies with applicable antidegradation requirements.** This issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC and ED.
6. **Whether the application or draft permit fails to maintain the propagation and protection of terrestrial and aquatic life.** This issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.
7. **Whether the application or draft permit fails to maintain the quality of water in the state consistent with the operation of existing industries, including but not limited to, protecting the public from**

**cumulative risks in an area of concentrated operations.** This issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.

8. **Whether the application fails to include the requisite information necessary to determine compliance with applicable federal and state laws, rules, regulations, and policies.** Pursuant to Chapters 281 and 305 of the Texas Administrative Code, this issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.
9. **Whether Applicant has commenced construction of a treatment facility prior to the issuance of a permit authorizing discharge of waste from Applicant's facility.** Pursuant to Chapters 281 and 305 of the Texas Administrative Code, this issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.
10. **Whether the application or draft permit fails to properly consider the Applicant's and its operator's compliance history.** This issue is relevant and material to a decision on the application per TWC § 26.0281 and 30 TAC §60.1(c) and should be referred to the SOAH as recommended by the OPIC.
11. **Whether the application or draft permit fails to properly consider the need for this proposed permit.**  
This issue is relevant and material to a decision on the application as TWC § 26.0282 authorizes the commission to consider the need of such a facility and should be referred to the SOAH as recommended by the OPIC.
12. **Whether any former TCEQ employees participated personally and substantially as a TCEQ employee in the commission's review, evaluation, or processing of the application before leaving TCEQ employment, and after leaving TCEQ employment, the former TCEQ employee then provided assistance with the application for its issuance.** Pursuant to Chapters 281 and 305 of the Texas Administrative Code, this issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.
13. **Whether the application or draft permit fails to properly specify the maximum quantity of waste that may be discharged under the permit to determine compliance with all applicable federal and state laws, rules, regulations and policies.** This issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.

14. **Whether the application or draft permit fails to properly specify the character and quality of waste that may be discharged under the permit to determine compliance with all applicable federal and state laws, rules, regulations and policies.** This issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.
15. **Whether the application, draft permit or Executive Director fails to consider any unpleasant odor quality of the effluent and possible adverse effects that it might have on the receiving body of water and related recreational value, including the recreational value of the surrounding area.** Nuisance odors could destroy the value of Canyon Lake #6 as a precious recreational resource for the Dunbar neighborhood and damage Ms. Fair's enjoyment of her property. This is relevant and material issue because TCEQ has not performed enough analysis to determine if the effluent discharged by Leprino will contribute or exacerbate conditions causing nuisance odors in Lake #6.<sup>2</sup>
16. **Whether the application or draft permit fails to establish all monitoring, sampling, record-keeping and reporting requirements necessary to determine compliance with all applicable federal and state laws, rules, regulations and policies.** 30 TAC Chapter 319 sets out rules for monitoring and reporting, record-keeping, quality assurance, location and frequency of sampling, and testing methods. Therefore, this issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.
17. **Whether TCEQ failed to properly use an approved water quality management plan (or a plan in progress but not completed or approved) when reviewing Applicant's application and issuing the draft permit.** This issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.
18. **Whether the application or draft permit fails to prevent a discharge of waste that is injurious to public health.** This issue is relevant and material to a decision on the application and should be referred

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<sup>2</sup> Again, the ED and OPIC also incorrectly presumes STOP's odor concerns are not relevant or material by focusing only on whether an initial agency's application review is required for an industrial effluent. However, STOP's comments establish that the concern goes well beyond the limited scope of just Applicant's effluent. Rather, the relevant and material concern encompasses the potential impact of the Applicant's effluent on causing or contributing to the degradation and potential (or existing) nuisance odors of the wastewater receiving bodies of water. STOP's relevant and material identified concern would fall within the scope of even the ED's overly limited suggested issues to be referred to SOAH (See, e.g., issue 5: whether the draft permit will protect human health and the environment).

to the SOAH as recommended by the OPIC. As raised in the June 2023 Public Comment, there are concerns that the water will not be tested until it is within 50 miles of a City of Lubbock drinking source.

**19. Whether the application is inadequate, incomplete, inaccurate and/or fails to include all necessary and required information.** Pursuant to Chapters 281 and 305 of the Texas Administrative Code, this issue is relevant and material to a decision on the application and should be referred to the SOAH as recommended by the OPIC.

### C. Conclusion

We reiterate our position that STOP has standing to request a contested case hearing and has presented relevant and material issues that must be referred to SOAH. Again, STOP is more than willing to make a good faith effort to resolve this matter with the Applicant through Alternative Dispute Resolution provided by TCEQ. Thank you for your time, attention, and careful consideration of this case.

Respectfully submitted,



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**Attachment 1: Affidavit of Sonya Fair and  
Photographs of Sonya Fair**

## AFFIDAVIT OF SONYA FAIR

STATE OF TEXAS                   §  
   §  
COUNTY OF LUBBOCK         §

Before me, the undersigned authority, on this day personally appeared SONYA FAIR, who swore or affirmed to tell the truth, and stated as follows:

1. My name is SONYA FAIR. I am of sound mind and capable of making this sworn statement. I have personal knowledge of the facts written in this statement. I am over the age of twenty-one years old and am competent to testify to the matters set forth in this Affidavit. I swear that the testimony and evidence as follows is true and correct to the best of my knowledge.

2. I am a member of the organization called Stop the Oppression of Our People ("STOP").

3. I reside at 1821 Manhattan Drive, Lubbock, Texas, 79404.

4. I hereby certify I photographed the attached photos of Canyon Lake #6 from the backyard of my residence at 1821 Manhattan Drive on Saturday, August 10, 2024, at approximately 11:30 a.m.

5. The affidavit and evidence submitted with it may be used for a hearing or any court proceeding.

Signed,



SONYA FAIR  
1821 Manhattan Drive  
Lubbock, Texas 79404

State of Texas  
County of Lubbock

SWORN to and SUBSCRIBED before me, the undersigned authority, on the 13<sup>th</sup> day of August, 2024, by SONYA FAIR.



Notary Public,  
State of Texas







*Figure 1 (Same as above): Photo taken by Sonya Fair of her backyard and Canyon Lake #6, 8/10/24 at 11:30 a.m.*





*Figure 2: Photo taken by Sonya Fair of her backyard and Canyon Lake #6, 8/10/24 at 11:30 a.m.*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2024, the foregoing document and attachment was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



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Mark Oualline

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TCEQ DOCKET NO. 2024-11881-IWD**

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