

TCEQ DOCKET NO. 2024-1227-IWD

APPLICATION BY	§	BEFORE THE TEXAS
CORPUS CHRISTI POLYMERS	§	
LLC FOR RENEWAL OF TPDES	§	COMMISSION ON
PERMIT NO. WQ0005019000	§	
	§	ENVIRONMENTAL QUALITY

FOR THE GREATER GOOD AND TEXAS CAMPAIGN FOR THE ENVIRONMENT’S REPLY TO RESPONSES TO HEARING REQUESTS AND REQUESTS FOR RECONSIDERATION

TO THE HONORABLE COMMISSIONERS:

For the Greater Good (“FTGG”) and Texas Campaign for the Environment (“TCE”) (collectively, “Requestors”) hereby submit this Reply to the Responses to Hearing Requests and Requests for Reconsideration by Corpus Christi Polymers LLC (“CC Polymers” or “Applicant”), the Executive Director (“ED”), and the Office of Public Interest Counsel (“OPIC”) regarding the Application by CC Polymers for renewal of TPDES Permit No. WQ0005019000. For the reasons given below, the Commission should find that FTGG and TCE are “affected persons” and should grant their hearing requests. The Commission should refer the issues raised in the requests by those organizations to the State Office of Administrative Hearings (“SOAH”) for a hearing. In the alternative, public interest in this case warrants a hearing, and therefore the Commission should exercise its authority to grant a hearing in the public interest as recommended by OPIC.

I. Requestors' hearing request should be granted.

A. The Commission has the authority to grant a request for a hearing in the public interest.

Corpus Christi Polymers wrongly asserts that there is no opportunity to request a contested case hearing on the pending application. To the contrary, TCEQ Rules at 30 Tex. Admin. Code § 55.211(d) provides that the Commission may refer an application to SOAH for a contested case hearing if the Commission determines that a hearing would be in the public interest. It is well within Requestors' right to seek a contested case hearing on the Application because they have demonstrated they are affected persons, and because such a hearing would be in the public interest.

B. Requestors have demonstrated that they are affected persons.

Contrary to the position taken by CC Polymers and the ED, both For the Greater Good ("FTGG") and Texas Campaign for the Environment ("TCE") qualify as affected persons.

FTGG is an affected person by virtue of the impact that the proposed discharge will have upon Tommy Joe Rodgers and Daniel Peña both of whom fish in areas downstream of the discharge. Mr. Rodgers fishes at the canal adjacent to G&H Dock Corpus Christi approximately 5.5 miles downstream of the discharge, while Mr. Peña fishes at the seawall at the mouth of the Inner Harbor, slightly further downstream.

Both Mr. Pena and Mr. Rodgers have demonstrated that they have personal, justiciable recreational and economic interests that will be impacted by the proposed discharge. Their interests are specific to them; the general public does not regularly fish in

the area just downstream of the proposed discharge, and no party has challenged the existence of these facts or presented any facts to the contrary.¹

Instead, CC Polymers argues that there can be no personal justiciable here absent a property right. In support of this remarkable argument, CC Polymers cites to a case that fails to support its position: *Save Our Springs All. v. City of Dripping Springs*, 304 S.W.3d 871 (Tex. App.—Austin 2010, pet. denied). In fact, the cited case stands for the *opposite* of what CC Polymers claims.

The court of appeals in the *Save Our Springs* case held that the plaintiffs in that case could not rely on alleged environmental harms to demonstrate standing *because their legal claims were not based on environmental laws*. *Id.* at 882. In reaching its holding, the appellate court explicitly acknowledged that an environmental harm is adequate to demonstrate standing—even without a property interest—if the case involves environmental claims. *Id.* at 880-81. In fact, the court noted that several of the cases that acknowledge that an alleged environmental harm (including impacts to recreational interests) are adequate for purposes of standing were cases involving the Clean Water Act. *Id.* at 880, n.4 (collecting cases).

¹ CC Polymers argues that Requestors' interests are common to the general public and thus do not support a determination that Requestors are affected persons. But CC Polymers offers no evidence, factual assertions, or legal argument in support of this statement. In fact, Requestors have demonstrated—via argument, factual assertions, and even supporting affidavits—that they have personal justiciable interests and that their interests will incur injury in fact if the discharge permit is renewed. If CC Polymers claims that the general public shares Requestors' justiciable interests and injury, then, CC Polymers should offer support for those claims instead of relying on bare, unsupported assertions. *See Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 149-50 (Tex. 2012) (holding that courts construe pleadings liberally in favor of plaintiffs, accept allegations in pleadings as true to determine if pleader has alleged sufficient facts to demonstrate jurisdiction, and if defendant challenges the existence of jurisdictional facts in the plaintiffs' pleadings, then, the defendant must present undisputed, relevant evidence negating the existence of the court's jurisdiction, to prevail on plea to the jurisdiction).

CC Polymers is seeking a TPDES permit renewal that authorizes the discharge of industrial wastewater into a water body that the Requestors regularly rely on for recreational activities, such as fishing. Their recreational interests are personal justiciable interests that are intended to be protected by the agency's TPDES permitting program. And, consistent with the holding in the case cited by CC Polymers, the risks to water quality and aquatic life resulting from CC Polymers' industrial wastewater discharges directly impact Requestors' interests and satisfy the "injury in fact" test for standing. *Id.* at 881.

The ED likewise argues that Requestors are not affected persons, based on an erroneous legal theory. More specifically, the ED erroneously argues that the use of an area open to the public renders a person's recreational interest common with the general public. The Commission itself has rejected such a position in granting the hearing request of Environmental Stewardship with respect to the application by Corix Utilities (Texas) Inc. for TPDES Permit No. WQ0013977001, TCEQ Docket No. 2023-1591-MWD. In that case, Environmental Stewardship's hearing request relied upon a member who regularly fished in an area of the Colorado River open to the general public slightly more than one mile downstream of the proposed discharge. The Commission correctly found that this member demonstrated a personal justiciable interest and was an affected person.

Federal courts have likewise regularly recognized standing based on the recreational interests of a person who uses publicly accessible waters. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Environmental Services, (TOC) Inc.*, 528 U.S. 167, 182 (2000) (holding that person who liked to fish, camp, swim and picnic in and near North Tyger River in South Carolina within 3 to 15 miles downstream of the discharge had standing under Clean

Water Act). As noted in Requestors' hearing request, Mr. Rodgers regularly recreates at the canal adjacent to G&H Dock Corpus Christi, which is less than six river miles downstream of the proposed discharge. This distance is well-within the distance of the discharge within which federal courts have acknowledged that a person has a valid recreational interest in relation to an NPDES-permitted discharge and well within the distance within which the available evidence demonstrates a potential impact.

The ED also argues that the location where Requestors engage in their recreational activities (i.e., fishing) is a "considerable distance" from the proposed discharge facility. As explained above, however, the distance between Requestors' regular fishing location and CC Polymers' proposed discharge is well within the distance that federal courts have acknowledged is adequate to demonstrate standing.

The ED does not offer what distance would be adequate for purposes of demonstrating standing; it only argues, without any support, that in this case, Requestors' fishing location is too remote. The ED's argument, in this regard, is arbitrary. In fact, there is no threshold distance for purposes of demonstrating standing.

Requestors were required only to demonstrate that their alleged injury (impacts on their recreational interests) is fairly traceable to the challenged conduct here, and that it is likely to be redressed by the denial of the requested permit renewal. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quotation omitted). As explained in further detail below, Requestors offered the affidavits of three experts in support of their hearing request: Dr. Socolofsky, Dr. Hodges, and Dr. Nielsen. Together, these affidavits demonstrate that the location where Requestors fish is, in fact, not too remote to be impacted by the authorized

discharge at issue here. These affidavits demonstrate that Requestors' interests are, in fact, likely to be injured because the proposed discharge is likely to impact aquatic and aquatic-dependent life, as explained by Dr. Nielsen in her affidavit.

The reports of Dr. Socolofsky (A professor of environmental engineering at Texas A&M University) and Dr. Hodges (A professor of environmental engineering at the University of Texas at Austin) both specifically examining this discharge demonstrate the potential for the discharge to have an adverse impact upon the recreational interests of both Mr. Rodgers and Mr. Peña. As Dr. Socolofsky notes, the discharge will result in the formation of a higher salinity density current that will travel to Corpus Christi Bay – a point further downstream than the locations where each fishes. Further, Dr. Socolofsky observes that such a current is concerning for aquatic life because it can limit mixing with waters above, thereby resulting in lower dissolved oxygen levels in lower portions of the water column. Dr. Hodges further concluded that the best available science indicates that the proposed discharge would lead to persistent hypoxia in the Inner Harbor and Corpus Christi Ship Channel and possibly into Nueces Bay.

Notably, neither the Executive Director nor Corpus Christi Polymers offers any technical or scientific criticism of the opinions expressed by Dr. Nielsen, Dr. Socolofsky, and Dr. Hodges. Instead of addressing these well-reasoned and researched analyses by leading experts in the field of water quality modeling and toxicology, both the Executive Director and CC Polymers simply rely upon vague notions that the locations are “too far,” with no genuine analysis to support that contention. *But see Heckman.*, 369 S.W.3d at 149-50 (when challenging the existence of jurisdictional facts, a defendant must present

undisputed, relevant evidence negating the existence of the court’s jurisdiction to prevail on a plea to the jurisdiction). Their bare, unsupported arguments must be rejected.

II. A consideration of the Public Interest Warrants holding a contested case hearing on the Application.

Requestors agree with the arguments presented by OPIC: a contested case hearing is warranted here because of the significant public interest concerns raised. Further supporting this argument is TCE’s Petition to Cancel CC Polymers’ Water Right—filed in August 2024. *See* Attachment C. Corpus Christi Councilmember Jim Klein was among those who supported initiating the cancellation of CC Polymers’ water right based on public interest concerns described in the Petition. Those same concerns apply here, and they support the convening of a contested case hearing, based on significant public interest.

A. A hearing is necessary to address improper disparate treatment of communities in the permitting of desalination facilities.

Requestors disagree with the position expressed in the responses that TCEQ is not required to hold a contested case hearing with regard to the pending application. Those responses do not adequately account for TCEQ’s responsibilities under Title VI of the Federal 1965 Civil Rights Act, which overrides any allowance for disparate treatment of racial classes under Texas law. Even if an application meets all criteria set forth in Texas law and in TCEQ Rule 55.201, a hearing must still be convened if necessary to ensure compliance with the Civil Rights Act as is the case here. (In this regard, Requestors agree with OPIC’s argument.)

The impacted community, here, consists predominantly of persons of color; this is no mere accident. CC Polymers’ facility is located near an area of Corpus Christi wherein

the City historically implemented “redlining” practices. By no accident, this placed communities of color in close proximity to industrial facilities that were harmful to human health as a result of pollutant emissions and industrial contamination of the soil, water, and air. Due consideration to attempting to mitigate the impacts of this historic mistreatment warrants holding a hearing on the application.

The area in the vicinity of the CC Polymers discharge is characterized by a higher proportion of persons of color than other desalination discharges upon which TCEQ has held a contested case hearing. Based on data available through EPA’s EJ Screen tool, the area in the Hillcrest neighborhood near the CC Polymers discharge is characterized by a population that is greater than 80% persons of color, with significant areas downstream characterized by communities that are comprised of more than 95% persons of color.²

This contrasts with the racial profile near the Port of Corpus Christi’s Harbor Island discharge, upon which TCEQ held two contested case hearings. The Port Aransas population surrounding that discharge is less than 5% persons of color.³ This at least presents the appearance that disparate levels of scrutiny are given to applications depending on the surrounding communities and their racial makeup, in violation of TCEQ’s obligations under Title VI of the Civil Rights Act.

Further, it is worth highlighting the ED’s statement in response to its Issue No. 6—*whether a permit unfairly burdens disadvantaged minority communities is neither “relevant” nor “material” to the issuance of the permit here.* This suggests that the

² See Attachment A to this Brief, presenting data available through <https://ejscreen.epa.gov/mapper/>.

³ See Attachment B to this brief, presenting data available at <https://data.census.gov/table/DECENNIALPL2020.P1?q=Port%20Aransas%20city,%20Texas>

Commission (or at least the ED) does not consider how its decisions comply with (or fail to comply with) Title VI. To avoid such disparate treatment, and provide an equal level of scrutiny to applications regardless of the racial character of nearby communities, TCEQ must hold a contested case hearing on Corpus Christi Polymers' pending renewal application. The convening of a contested case hearing on a desalination discharge permit in the Corpus Christi area is hardly "extraordinary relief."

B. A hearing would allow the Commission to address cumulative impacts of the proposed discharge.

At the time of the Commission's initial issuance of the wastewater permit to CC Polymers, the Commission had not previously permitted a seawater desalination discharge into Corpus Christi Bay. The Commission has now issued such a permit for the discharge of desalination wastewater at Harbor Island, and is considering the permitting of another desalination discharge within the Inner Harbor by the City of Corpus Christi. A hearing on CC Polymers' application would enable review of the cumulative impacts of these discharges.

C. Consideration of current science and Commission Practice warrant a hearing in the public interest.

CC Polymers' permit was last reviewed at the time of its amendment in 2017. Subsequent to that amendment, significant information related to desalination facilities has been developed.

For example, the Texas Parks and Wildlife Department and the Texas General Land Office completed the Joint Marine Seawater Desalination Study as had been required by House Bill 2031 of the 84th Texas Legislature. That report provided a comprehensive

review of issues related to desalination in Texas, and recommendations for the permitting of such facilities, including recommendations for requirements in permits authorizing a discharge from such facilities. While CC Polymers' discharge is not within the area directly addressed by the report, a hearing would allow the Commission to openly address the issues raised in that report within the context of CC Polymers' application.

In addition, TCEQ has considered issues related to desalination discharges within the context of conducting hearings upon the Port of Corpus Christi Authority of Nueces County's application for a seawater desalination facility on Harbor Island. Relatedly, EPA has expressed concern with salinity impacts caused by CC Polymers' proposed discharge. The ED claims to have adequately addressed those concerns in its revisions to the draft permit, but without an opportunity to fully vet the salinity concerns—via expert testimony and evidence in a contested case hearing—these assurances ring hollow.

A hearing would allow more complete consideration of the information developed through such studies and the scientific information developed in more recent permit hearings.

III. Conclusion

For the reasons stated above, FTGG and TCE respectfully request that the Commission grant their hearing requests and refer the issues raised in the requests by those organizations to SOAH for a contested case hearing.

Respectfully submitted,

/s/ Marisa Perales
Marisa Perales
State Bar No. 24002750

marisa@txenvirolaw.com

Eric Allmon

State Bar No. 24031819

eallmon@txenvirolaw.com

Lauren Alexander

State Bar No. 24138403

lalexander@txenvirolaw.com

PERALES, ALLMON & ICE, P.C.

1206 San Antonio Street

Austin, Texas 78701

512-469-6000 (t) | 512-482-9346 (f)

*Counsel for For the Greater Good and
Texas Campaign for the Environment*

CERTIFICATE OF SERVICE

I hereby certify that, on October 11, 2024, a true and correct copy of the foregoing Reply to Responses to Hearing Requests and Requests for Reconsideration was electronically filed with the Chief Clerk of TCEQ, and that copies were served upon the following parties by regular U.S. mail.

/s/ Marisa Perales
Marisa Perales

FOR THE EXECUTIVE DIRECTOR

Kathy Humphreys, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Cole Gray, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711-3087

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division Public
Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL

Sheldon P. Wayne, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE APPLICANT

Shannon Parham
Wayne Prall, HSSE Manager
Corpus Christi Polymers, LLC
7001 Joe Fulton International Trade
Corridor
Corpus Christi, Texas 78409

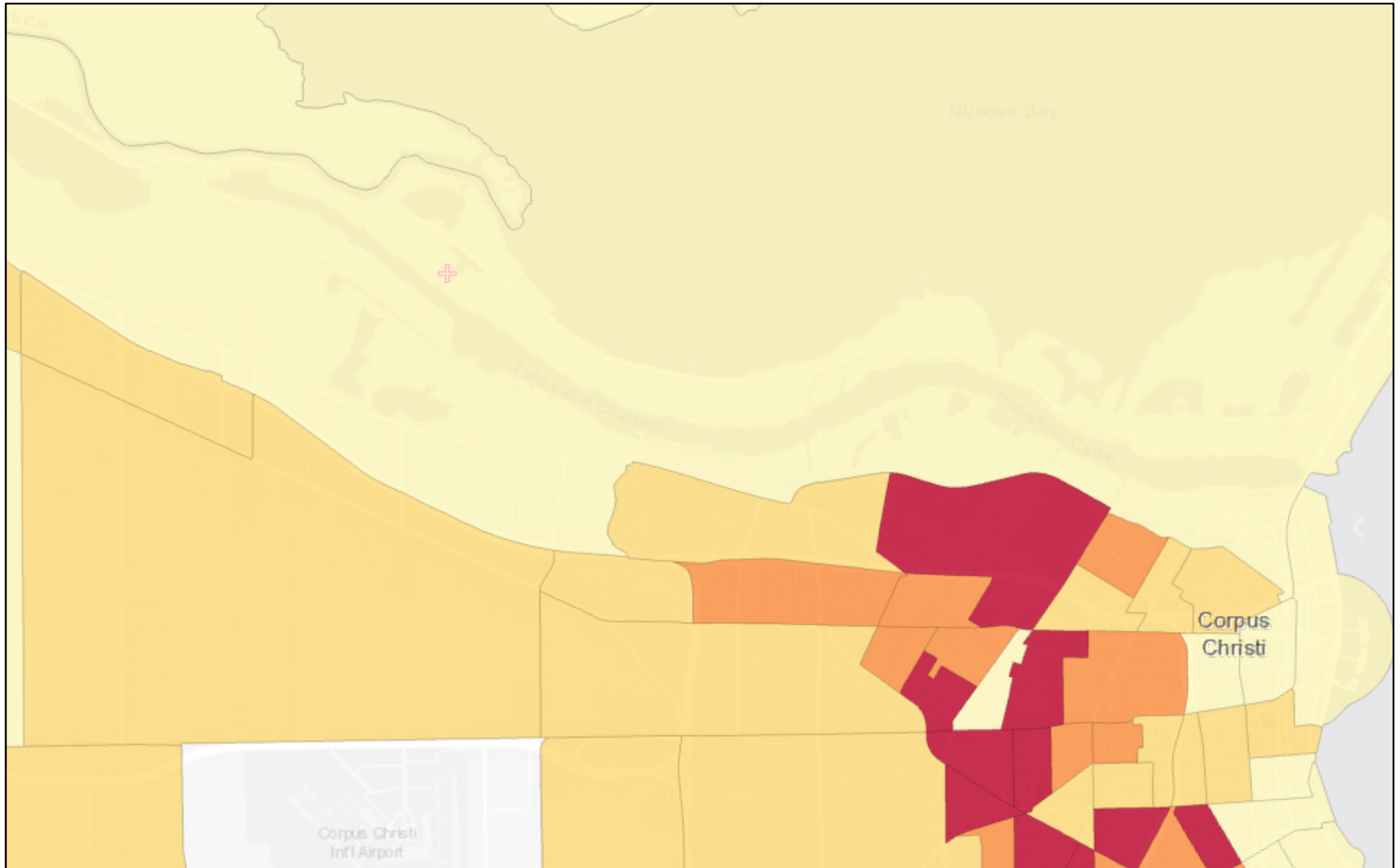
**FOR ALTERNATIVE DISPUTE
RESOLUTION**

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087

ATTACHMENT A

REPLY TO RESPONSES TO HEARING REQUESTS AND
REQUESTS FOR RECONSIDERATION

CC Polymers Nearby Persons of Color (National Percentiles)



10/10/2024

People of Color
(National Percentiles)

Less than 50 percentile

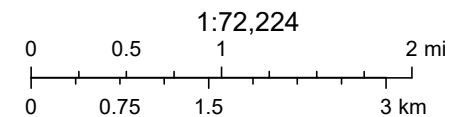
50 - 80 percentile

80 - 90 percentile

90 - 95 percentile

95 - 100 percentile

Search Result (point)



Texas Parks & Wildlife, Esri, HERE, Garmin, GeoTechnologies, Inc., USGS, EPA, Esri, HERE

ATTACHMENT B

REPLY TO RESPONSES TO HEARING REQUESTS AND
REQUESTS FOR RECONSIDERATION

RACE

Note: This is a modified view of the original table produced by the U.S. Census Bureau. This download or printed version may have missing information from the original table.

Label	Port Aransas city, Texas
<ul style="list-style-type: none"> ▼ Total: 	2,904
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ▼ Population of one race: 	2,689
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> White alone 	2,570
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Black or African American alone 	4
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> American Indian and Alaska Native alone 	15
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Asian alone 	38
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Native Hawaiian and Other Pacific Islander alone 	2
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Some Other Race alone 	60
<ul style="list-style-type: none"> ▼ Population of two or more races: 	215
<ul style="list-style-type: none"> <ul style="list-style-type: none"> ▼ Population of two races: 	202
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> White; Black or African American 	3
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> White; American Indian and Alaska Native 	68
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> White; Asian 	6
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> White; Native Hawaiian and Other Pacific Islander 	3
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> White; Some Other Race 	117
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Black or African American; American Indian and Alaska Native 	1
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Black or African American; Asian 	0
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Black or African American; Native Hawaiian and Other Pacific Islander 	0
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Black or African American; Some Other Race 	3
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> American Indian and Alaska Native; Asian 	0
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander 	0
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> American Indian and Alaska Native; Some Other Race 	0
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Asian; Native Hawaiian and Other Pacific Islander 	0
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Asian; Some Other Race 	1
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> Native Hawaiian and Other Pacific Islander; Some Other Race 	0
<ul style="list-style-type: none"> ▼ Population of three races: 	13
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> White; Black or African American; American Indian and Alaska Native 	3
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> White; Black or African American; Asian 	0
<ul style="list-style-type: none"> <ul style="list-style-type: none"> <ul style="list-style-type: none"> White; Black or African American; Native Hawaiian and Other Pacific Islander 	0

Table Notes

RACE

Survey/Program: Decennial Census

Universe: Total population

Year: 2020

Table ID: P1

Note: For information on data collection, confidentiality protection, nonsampling error, and definitions, see 2020 Census Redistricting Data (Public Law 94-171) Summary File Technical Documentation.

For information on the statistical methods used to protect confidentiality in these tables, see Disclosure Avoidance and the 2020 Census.

Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171)

ATTACHMENT C

REPLY TO RESPONSES TO HEARING REQUESTS AND
REQUESTS FOR RECONSIDERATION

DOCKET NO. 2024-1415-WR

IN THE MATTER OF CORPUS	§	BEFORE THE TEXAS
	§	
CHRISTI POLYMERS, LLC	§	COMMISSION ON
	§	
WATER USE PERMIT NO. 12986A	§	ENVIRONMENTAL QUALITY

**TEXAS CAMPAIGN FOR THE ENVIRONMENT’S PETITION TO CANCEL
CORPUS CHRISTI POLYMERS, LLC’S WATER USE PERMIT NO. 12986A**

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS OF THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY:

Texas Campaign for the Environment (“TCE” or “Petitioner”) files this Petition to Cancel Water Use Permit No. 12986A, issued to Corpus Christi Polymers, LLC (“CC Polymers”), under Texas Water Code Sections 11.173, 11.174, TCEQ Rule 297.71, and related laws and regulations. For the reasons provided below, TCE respectfully requests that the Commissioners grant this Petition, send and publish the requisite notices, convene a hearing, and ultimately issue an Order cancelling CC Polymers’ Water Use Permit No. 12986A. For support, TCE offers the following:

I. Introduction & Summary

More than 10 years ago on August 28, 2014, TCEQ issued Water Use Permit No. 12986 to M&G Resins USA, LLC (“M&G Resins”); this permit has since been transferred to CC Polymers. *See* Attachment A (Water Use Permit No. 12986A). CC Polymers’ water use permit has not been put to beneficial use at any time since its issuance. Because CC Polymers has failed to use its water right for more than 10 years, Permit No. 12986A is

subject to cancellation under Texas Water Code Chapter 11. Tex. Water Code §§ 11.172, 11.173; *see also* 30 Tex. Admin. Code § 297.71.

Interested persons may initiate proceedings for cancellation of a water right. *See Lower Colo. River Auth. v. Tex. Dep't of Water Res.*, 689 S.W.2d 873, 882 (Tex. 1984) (holding that the agency or “*another interested party* must seek total or partial cancellation of” a water right not put to beneficial use) (emphasis added); *see also* Tex. Water Code § 11.176(a) (“interested persons” shall be given “an opportunity to be heard and to present evidence” regarding petition to cancel water right); 30 Tex. Admin. Code § 305.66(d) (addressing revocation of permits). On this basis and for the reasons described below, TCE, acting on behalf of its members, including Corpus Christi Councilmember At-Large Jim Klein, seeks cancellation of CC Polymers’ Water Use Permit No. 12986A for nonuse.

II. CC Polymers has failed to put its water right to beneficial use.

CC Polymers owns and proposes to operate the Corpus Christi Polymers Plant, a plastic resins manufacturing facility. The Plant was initiated by the now-bankrupt Italian company Mossi & Ghisolfi Group, but was sold to CC Polymers in 2019.

The Water Use Permit that is the subject of this Petition was intended to support a desalination facility,¹ which would supply water to the CC Polymers Plant. The Plant, however, is not in operation; nor is the desalination facility. *See, e.g.*, Attachment B, p.1 (Executive Director’s Response to Public Comments regarding CC Polymers’ application

¹ CC Polymers also possesses TPDES Permit No. WQ0005019000, authorizing the discharge of wastewater associated with the operation of the desalination facility. CC Polymers applied for renewal of the permit on December 21, 2021; the renewal remains pending.

for renewal of TPDES Permit No. WQ0005019000) (acknowledging that the “facility is not in operation”).

TCEQ issued Water Use Permit No. 12986 to M&G Resins on August 28, 2014—more than 10 years ago. The Permit authorized M&G Resins to divert and use a maximum of 25,806 acre-feet of water per year from a diversion segment on the Corpus Christi Inner Harbor, Nueces-Rio Grande Coastal Basin, for industrial purposes in Nueces County. On April 22, 2019, TCEQ approved a Change of Ownership request for Water Use Permit No. 12986, authorizing the transfer of Water Use Permit No. 12986 from M&G Resins to CC Polymers. The permit was amended in 2024, to correct a typographical error in the description of the upper limit of the diversion reach.

That CC Polymers has failed to use its water right is beyond dispute. The CC Polymers Plant is not yet in operation, nor is its desalination facility. *See* Attachment B, p.1. According to a representative for CC Polymers, the water right is not sufficient for purposes of its intended use.² In short, the Commission records show that CC Polymers has failed to apply its water right to its intended beneficial use, since the water use permit was first issued over 10 years ago.

III. CC Polymers’ water right must be cancelled.

In Texas, the State holds surface water in trust for the public, and the State’s water cannot be appropriated absent a showing of strict compliance with every provision required

² TCEQ Public Meeting regarding CC Polymers’ application for renewal of TPDES Permit No. WQ0005019000 (Feb. 23, 2023), starting at 20:55 (CC Polymers’ representative and Executive Director’s staff both acknowledging that the amount of water authorized by the current Water Use permit is insufficient for its intended use).

by the Legislature, including a demonstration that the appropriation will not detrimentally impact the public welfare. *See* Tex. Water Code § 11.0235 (“The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.”); *accord* Tex. Const. art. XVI, § 59 (Conservation Amendment).

Consistent with this policy, the Texas Legislature has made clear that the Commission may not grant a water right application unless the proposed appropriation is intended for a beneficial use. Tex. Water Code § 11.134(b)(3)(A). Further, the right to use state water under a water use permit is limited to the amount that is being beneficially used for the purposes specified in the water right application. Tex. Water Code § 11.025. Any water that is not so used is considered *not* appropriated. *Id.*; *see also id.* § 11.026 (“No right to appropriate water is perfected unless the water has been beneficially used for a purpose stated...in a permit issued by the commission...”).

A corollary to the beneficial use requirement is that if all or part of the water authorized for appropriation has not been beneficially used “at any time during the 10-year period” preceding a petition to cancel the permit, then, the water right is subject to cancellation in whole or in part, to the extent of the 10 years of nonuse. Tex. Water Code §§ 11.172, 11.173; *see also* 30 Tex. Admin. Code § 297.71 (“if all or part of a water right has not been put to beneficial use during a consecutive ten-year period, such water right is subject to cancellation in whole or in part”); *accord Lower Colo. River Auth.*, 689 S.W.2d at 882 (holding, “No person is granted the right to waste water by not using it.”) (internal citations omitted). Such is the case here. The Commission issued Water Use Permit No.

12986 on August 28, 2014. To date, none of the water authorized for appropriation has been put to beneficial use, in accordance with the proposed beneficial use identified in the water right permit. CC Polymers' water right must therefore be cancelled. *See Lower Colo. River Auth.*, 689 S.W.2d at 882 (“unbeneficial use can be corrected by cancellation”).

IV. TCE, acting on behalf of its affected members, seeks the cancellation of CC Polymers' water right, following proper notice and a hearing.

TCE is a Texas non-profit membership organization dedicated to informing and mobilizing Texans to protect their health, communities, and the environment. TCE works to promote strict enforcement of anti-pollution laws designed to stop or clean up air, water, and waste pollution, including in the Corpus Christi Bay area. Among TCE's members is Corpus Christi Councilmember At-Large Jim Klein.

Councilmember Klein has a direct interest in ensuring the health, safety, and public welfare of his constituents—including those who reside near the Inner Harbor and near the CC Polymers Plant. Mr. Klein considers one of his professional responsibilities, as an elected council member, to be ensuring that the residents of Corpus Christi have access to a safe and healthy surrounding environment. Councilmember Klein is particularly concerned for his constituents residing in the nearby Dona Park Neighborhood and Hillcrest Neighborhood, located near the Inner Harbor Ship Channel and just downstream of CC Polymers' facility. Dense industrial activities surround these neighborhoods.

Consistent with his interests and responsibilities, Mr. Klein seeks cancellation of the CC Polymers water use permit, because CC Polymers' water right is intended for an industrial use, but CC Polymers has failed to beneficially use the permit in the 10 years

preceding the filing of this petition. Cancellation of an industrial water use permit—particularly one that has never been perfected or beneficially used—is consistent with Mr. Klein’s interest in reducing the overall industrial operations and encouraging the improvement of water quality in the Inner Harbor, so that the nearby residents may safely recreate, fish, and otherwise enjoy the water in the Inner Harbor.

Furthermore, CC Polymers has enjoyed about \$60 million in subsidy support from local taxpayers. Yet, none of the economic benefits promised by CC Polymers to the local community have materialized. CC Polymers’ perilous financial condition³ renders its ability to provide any benefits to the local community doubtful. Councilmember Klein has an interest in the local community’s public welfare, and CC Polymers, thus far, has proven to be a detriment to the public’s welfare.

Accordingly, TCE, acting on behalf of its members, including Councilmember Klein, seeks the cancellation of CC Polymers’ Water Use Permit No. 12986A. *See Lower Colo. River Auth.*, 689 S.W.2d at 882 (holding that if there exist water right permits that are not beneficially used, the agency or *another interested party* must seek total or partial cancellation of those rights and citing to Chapter 11 of the Water Code); *see also* 30 Tex. Admin Code § 305.66(d) (authorizing an affected person to initiate proceedings for revocation of a permit).

³ According to its 2023 Annual Report, Alpek, one of CC Polymers’ main financial investors, wrote off its total investment value in CC Polymers, indicating that Alpek values its investment in CC Polymers as a total loss.

Conclusion

For the reasons described above, TCE urges the Commission to grant this Petition and initiate cancellation proceedings, by mailing and publishing proper notice, convening a hearing during which all interested persons can be heard and present evidence, and then, following that hearing, TCE urges cancellation of CC Polymers' Water Use Permit No. 12986A for nonuse.

Respectfully submitted,

/s/ Marisa Perales

Marisa Perales

State Bar No. 24002750

marisa@txenvirolaw.com

Eric Allmon

State Bar No. 24031819

eallmon@txenvirolaw.com

Lauren Alexander

State Bar No. 24138403

lalexander@txenvirolaw.com

PERALES, ALLMON & ICE, P.C.

1206 San Antonio St.

Austin, Texas 78701

512-469-6000 (t)

512-482-9346 (f)

*Counsel for Petitioner Texas Campaign
for the Environment*

SERVICE LIST

FOR THE APPLICANT:

Shannon Parham
Wayne Prall, HSSE Manager
Corpus Christi Polymers, LLC
7001 Joe Fulton International Trade Corridor
Corpus Christi, Texas 78409

FOR THE CHIEF CLERK:

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

FOR PUBLIC INTEREST COUNSEL:

Garrett T. Arthur, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087