

Brooke T. Paup, *Chairwoman*  
Bobby Janecka, *Commissioner*  
Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 14, 2025

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 DOW  
HYDROCARBONS & RESOURCES, LLC AND UNION CARBIDE  
CORP. FOR TPDES PERMIT NO. WQ0000447000  
TCEQ DOCKET NO. 2025-0080-IWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2025-0080-IWD**

**APPLICATION BY DOW  
HYDROCARBONS &  
RESOURCES, LLC AND UNION  
CARBIDE CORP. FOR TPDES  
PERMIT NO. WQ0000447000**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL  
QUALITY**

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

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

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Requests for Hearing and Requests for Reconsideration in the above-captioned matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Summary of Position**

Before the Commission is an application by Dow Hydrocarbons and Resources, LLC and Union Carbide Corporation, (UCC) (collectively, “Applicant”) for a Major Amendment without Renewal to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000447000. The Commission received comments, a request for a contested case hearing, and requests for reconsideration from San Antonio Bay Estuarine Waterkeeper and John Daniel. For the reasons stated herein, OPIC respectfully recommends the Commission find that San Antonio Bay Estuarine Waterkeeper and John Daniel are affected persons in this matter and grant their pending hearing requests. OPIC respectfully recommends denial of all requests for reconsideration.

## **B. Background of Facility**

UCC has applied to the TCEQ for a Major Amendment without Renewal to TPDES permit no. WQ0000447000. The existing chemical manufacturing facility (EPA I.D. No. TX0002844), producing glycol, oxide derivatives, and polyethylene and polypropylene plastics is located at 7501 State Highway 185 North, near the City of Seadrift in Calhoun County.

Via Outfall 001, the application seeks to authorize the discharge of process wastewater from the Seadrift facility, remediated groundwater, domestic wastewater, utility wastewater, hydrostatic test water, and stormwater at a daily average dry-weather flow limit not to exceed 5,800,000 Gallons Per Day (GPD). Via Outfall 002 and during Interim Phase I of the draft permit, cooling water blowdown, water treatment wastes, boiler blowdown, resin pad wash water, resin container rinse water, steam condensate, stormwater from the Seadrift facility, hydrostatic test water, firewater, and de minimis quantities of process wastewater at a daily average dry-weather flow limit not to exceed 12,000,000 GPD, are sought by Applicant. Additionally, via Outfall 002 and during the Final Phase, cooling water blowdown, water treatment waste, boiler blowdown, resin pad wash water, resin container rinse water, steam condensate, stormwater from the Seadrift facility, hydrostatic test water, firewater, and de minimis quantities of process wastewater at a daily average flow limit not to exceed 17,000,000 GPD, are proposed to be authorized by the draft permit.

Per the draft permit, the effluent is to be discharged via Outfalls 001, 002, 005, 006, 007, 008, 009, 010, and 012 directly to Victoria Barge Canal Tidal in

Segment No. 1701 of the Lavaca-Guadalupe Coastal Basin; via Outfall 003 to a ditch, to West Coloma Creek, then to Coloma Creek; via Outfalls 014 and 015 to West Coloma Creek, then to Coloma Creek; via Outfall 016 to West Coloma Creek Lateral No. 17, to West Coloma Creek, to Coloma Creek, then to Matagorda Bay/Powderhorn Lake in Segment No. 2451 of the Bays and Estuaries; via Outfall 004 to an unnamed ditch, then to the San Antonio Bay/Hynes Bay/Guadalupe Bay/Mission Lake in Segment No. 2462 of the Bays and Estuaries.

Segment Nos. 1701 and 2451 are not currently listed in the state's inventory of impaired and threatened waters, known as the 2022 Clean Water Act Section 303(d) list. Segment No. 2462 does appear on the 303(d) list for bacteria in oyster waters for San Antonio Bay/Hyne Bays/Guadalupe Bay/Mission Lake at the mean high tide line (Assessment Unit 2462\_01).

### **C. Procedural Background**

TCEQ received UCC's application on December 27, 2022, and declared it administratively complete on March 21, 2023. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit in English in the *Port Lavaca Wave* on March 29, 2023, and in Spanish in *Revista de Victoria* on April 5, 2023. The ED completed the technical review of the application and prepared the proposed draft permit, which if approved, establishes the conditions under which the facility must operate. The Applicant published the Notice of Application and Preliminary Decision in the *Port Lavaca Wave* on June 26, 2024, and in Spanish in *Revista de Victoria* on the same date. The public comment period for this application ended on July 29, 2024. The Executive

Director's (ED) Response to Comments was mailed on November 19, 2024, and the deadline for submittal of a contested case hearing request or request for reconsideration was December 19, 2024.

## **II. APPLICABLE LAW**

### **A. Requests for Hearing**

The Application was filed 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). Under 30 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 requestor'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.

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. Relevant factors to be considered in determining whether a person is affected 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 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.

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 executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, 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.

Under 30 TAC § 55.205(b), a hearing request by a group or association may not be granted unless all of the following requirements 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.

## **B. Requests for Reconsideration**

Any person may file a request for reconsideration of the ED's decision under 30, (TAC) § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

## **III. ANALYSIS OF HEARING REQUESTS**

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

#### *San Antonio Bay Estuarine Waterkeeper*

San Antonio Bay Estuarine Waterkeeper (SABEW) submitted a timely hearing request and comments through their attorney, Jennifer Powis, with Earthjustice. SABEW states that it is a nonprofit organization located in Calhoun County, founded in 2012 as a project of the Calhoun County Research Watch. The request states that SABEW's work involves a commitment to engaging volunteers, marine biologists, environmental advocates from both Calhoun County Resource Watch and Texas Injured Workers, commercial fishermen, and other members of the community to identify violations of the Clean Water Act (CWA) and promote cleanup and recovery efforts for the regional waterways and



bays. SABEW also promotes the preservation of local wetlands and waterways for commercial and sport fishing and other recreational uses, such as swimming and other watersports to further the appreciation of natural resources. Further, SABEW states that it often works with shrimpers and oystermen who fish in the waterbodies impacted by UCC. OPIC finds that the interests SABEW seeks to protect are germane to the organization's purpose, as required by 30 TAC § 55.205(b)(3).

SABEW's request identifies Diane Wilson, Mauricio Blanco, Curtis Miller, and John Daniel as members of its association who would otherwise have standing in their own right as required by 30 TAC § 55.205(b)(2). The request outlines detailed descriptions of each member's affectedness, and ultimately, OPIC agrees that SABEW has made a sufficient showing to demonstrate that each of the above-named members would be personally affected in their own right. The request states that Ms. Wilson makes frequent kayaking trips in San Antonio Bay and surrounding waters where she enjoys exploring the marshes and mudflats of the bay, observing fish, birds, and other wildlife, including the endangered whooping crane. Further, the request states that Ms. Wilson looks at and around the UCC outfalls, and on multiple occasions she has seen discharges of plastic pellets and plastic debris along the canal, including approximately seven miles upstream from UCC Outfalls 001 and 002, which she believes have been carried there through tidal influences in the canal. Given the narrow width of the canal (approximately 350 - 400 feet near the outfalls), Ms. Wilson states that she cannot avoid these discharges when kayaking or motoring her skiff

along the canal and must come within several hundred feet (if not closer) to travel further upstream. Like Ms. Wilson, the request describes a strong recreational interest held by SABEW member, John Daniel. Mr. Daniel states that he lives close to the UCC facility and takes frequent recreational hunting and fishing trips in the area. He is greatly concerned about the potential impacts to wildlife, water quality, and human health posed by UCC's discharge.

Similarly, Mauricio Blanco and Curtis Miller are commercial fishermen who are concerned about harmful changes to the shrimp and oyster populations in San Antonio Bay as a result of UCC's permitted discharge. Mr. Blanco lives in the area and spends much of his time on the waters of the San Antonio Bay. Mr. Blanco stated that he considers his boat like a second home given the amount of time he spends on the water, and he is concerned about his economic interests in shrimping and oystering being impacted by UCC's discharge. Mr. Blanco owns a small fleet of boats that are staffed by paid crew to fish the waters of San Antonio Bay whenever the season is open. The request states that during oyster season, his fleet of approximately 11 boats are crewed by approximately 20 paid crew. During shrimp season, he employs six to seven people with a smaller fleet. Much of the shrimp caught in San Antonio Bay is used for live bait for recreational fishing—i.e., guided fishing and pole fishing, which is popular in the Bay, and requires live bait. Mr. Blanco is concerned that the discharges from UCC will hurt the shrimp in the Bay. Similarly, Mr. Miller, who owns nearby Miller's Seafood, is concerned as filter feeders, oysters could be impacted by the ingestion of the microplastics and other pollutants found in UCC's wastewater.

According to the map prepared by ED staff—Ms. Wilson, Mr. Blanco, Mr. Daniel, and Mr. Miller all reside between 2.1 miles and 10.7 miles of either an outfall or discharge route associated with UCC’s property. OPIC notes that there are no distance restrictions imposed by law on affected interests here, and the distances of member’s properties should not be solely determinative in the substantive consideration of SABEW’s hearing request, as the interests claimed by its members are primarily recreational or economic in nature. *See* 30 TAC § 55.203(c)(2). The above-named SABEW members all frequent the areas directly impacted by UCCs permitted activity, and all state concerns directly related to said impacts. These members raise relevant and material concerns including effects on wildlife and endangered species, effects on water quality, economic impacts, effects on recreational activities, and impacts to human health. A reasonable relationship exists between the interests they seek to protect and the Applicant’s regulated activity. *See* 30 TAC § 55.203(c)(3). The regulated activity also will likely impact these members’ use of the impacted natural resource, as contemplated by 30 TAC § 55.203(c)(5). These members would therefore have standing to request a hearing in their own right as required by 30 TAC § 55.205(b)(2). Further, in compliance with 30 TAC § 55.205(b)(4), neither the claim asserted, nor the relief requested requires the participation of the individual members in the case.

Finally, as required by 30 TAC § 55.205(b)(1), in both timely comment and request, SABEW states concerns related to the Application’s accuracy and completeness, notice, protection of water quality, compliance history, human

health, and protection of wildlife. Because SABEW has met all requirements for group standing, OPIC finds that it qualifies as an affected person.

*John Daniel*

In addition to being named as a member for SABEW, John Daniel submitted his own timely comment and hearing request for consideration by the Commission. When analyzing a request for contested case hearing, OPIC is confined by the rule language in 30 TAC § 55.201(d) and TAC § 55.203(a), which details the requirements for a properly submitted hearing request and the requirement that hearing requests articulate a personal justiciable interest. Mr. Daniel's request states that he lives within a one-mile radius of the area impacted by UCC, and the ED's map reflects that his property is located approximately 3.07 miles from Outfall 016. Mr. Daniel states that he farms and ranches his land and he is concerned about the effects of UCC's facility on his property and the food it produces. Further, Mr. Daniel details his recreational interest in duck hunting and the fact that he has duck ponds on his property, which he states provides habitat within a one-mile radius of the impacted area. Mr. Daniel states that other potentially impacted wildlife in the area include quail, alligator, fish, and white-tailed deer, and that he enjoys the wildlife and is worried about the impacts from the facility on them. Finally, Mr. Daniel states that he has well water on his property and is concerned about impacts to the water quality.

Mr. Daniel is concerned about recreational use, human health, animal life, water quality, and effects on the environment. Each of Mr. Daniel's concerns described above is protected by the law under which this application is being

considered. *See* 30 TAC § 55.203(c)(1). Further, given the proximity of Mr. Daniel's property to the facility and frequency of his recreational activities in the area, a reasonable relationship exists between his claimed interests and the regulated activity, and the regulated activity is likely to impact his health, safety, use of property, and use of the impacted natural resources. *See* 30 TAC § 55.203(c)(3)-(5). Therefore, OPIC finds that John Daniel has a personal justiciable interest in this application that is not common to members of the general public. Accordingly, OPIC recommends that the Commission find John Daniel is an affected person in this matter pursuant to 30 TAC § 55.203(a).

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

Affected persons raised the following issues:

1. Whether the draft permit is adequately protective of water quality and recreational use and enjoyment of Requestors' properties;
2. Whether the proposed discharge will adversely impact animal life, including aquatic life;
3. Whether the draft permit sufficiently complies with antidegradation requirements;
4. Whether the Applicant provided proper notice;
5. Whether the draft permit should be modified or denied in consideration of the Applicant's compliance history; and
6. Whether the representations contained in the Application are accurate and complete.

**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. All issues raised by Requestors are issues of fact.

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

Issues 1-6 in Section III. B were specifically raised by affected persons during the public comment period.

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

With the exception of the request submitted on behalf of Judy Raylene West Family Living Trust, all hearing requests are based on timely comments that have not been withdrawn.

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

The 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 the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

### **Water Quality, Animal Life, and Recreation**

Requestors raised concerns about adverse effects to water quality and the consequential impacts on aquatic life, animal life, and whether the draft permit will adequately maintain the recreational uses of the waterbodies in the route of the proposed discharge. The Commission is responsible for the protection of water quality under Texas Water Code Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards (TSWQS) in Chapter 307 require that the Proposed Permit “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and ... economic development of the state....” 30 TAC § 307.1. According to § 307.6(b)(4) of the Standards, “Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.” Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d). Finally, 30 TAC § 307.4(e) requires that nutrients from permitted discharges or other controllable sources shall not cause excessive growth of aquatic vegetation which impairs an existing, designated, presumed, or attainable use. As Chapter 307 designates criteria for the regulation of water quality and the protection of animal life, and recreational uses of relevant water bodies, Issues No. 1-2 are relevant and material to the

Commission's decision regarding this application and are appropriate for referral to SOAH.

### **Antidegradation**

The State's antidegradation policy is part of the Texas Surface Water Quality Standards (TSWQS) and is addressed in 30 TAC § 307.5. Antidegradation review is designed to ensure that although a proposed discharge will result in increased pollutant loading, the numerical and narrative criteria of the receiving water will be maintained, and existing uses will be protected. Accordingly, Requestors' concerns regarding antidegradation are relevant and material to the Commission's decision on this application.

### **Notice**

SABEW raised concern about improper notice. Under 30 TAC Chapter 39, such concerns regarding lack of proper notice are relevant and material to the Commission's decision on this application and are appropriate for referral to SOAH.

### **Compliance History & Accuracy and Completeness**

TCEQ rules require found in 30 TAC Chapter 60 (Compliance History or CH) require the Commission to consider the CH for the five-year period prior to the date the application was received for the company or entity, and the proposed site. Accordingly, requestor's concerns about compliance history are relevant and material to the Commission's decision on this application. Further, 30 TAC Chapter 281 (Applications Processing (281 rules)) and Chapter 305, Subchapter C (Application for Permit (305 rules)) outline the requirements relevant to



requestors' concerns regarding completeness and accuracy of the application. These issues are relevant and material to the Commission's decision on this application and is therefore appropriate for referral to SOAH.

**G. Maximum Expected Duration of 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. Requests for Reconsideration**

Both San Antonio Bay Estuarine Waterkeeper and Mr. Daniel submitted timely requests for reconsideration that articulated concerns about improper public notice, accuracy and completeness of the application, and concerns pertaining to environmental equity, animal life, and effects on human health.

While OPIC notes that the concerns expressed are relevant and material to the Commission's decision on this application, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would be needed to recommend that the requests for reconsideration be granted. As no such record exists yet, OPIC cannot recommend the requests be granted at this time.

## **V. CONCLUSION**

Having found that San Antonio Bay Estuarine Waterkeeper and John Daniel qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issue Nos. 1-6 specified in Section III. B. for a contested case hearing at SOAH with a maximum duration of 180 days. Finally, OPIC recommends denial of all requests for reconsideration.

Respectfully submitted,

Garrett T. Arthur  
Public Interest Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 14, 2025 the original of the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
\_\_\_\_\_  
Jennifer Jamison

**MAILING LIST**  
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**UNION CARBIDE CORPORATION**  
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