

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

July 28, 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 BEAUMONT NEW
AMMONIA LLC TO AMEND AIR PERMIT NO. 169687
TCEQ DOCKET NO. 2025-0887-AIR**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink, reading "Garrett T. Arthur". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Garrett T. Arthur
Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-0887-AIR

APPLICATION BY BEAUMONT	§	BEFORE THE
NEW AMMONIA LLC TO AMEND	§	TEXAS COMMISSION ON
AIR PERMIT NO. 169687	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS**

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 the hearing requests in the above-captioned matter.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Beaumont New Ammonia LLC (Applicant or BNA) to amend Air Permit No. 169687. OPIC notes that the TCEQ received a total of four timely hearing requests, including one organization and three individuals. For the reasons stated herein, OPIC respectfully recommends the Commission deny all of the hearing requests.

B. Description of Application and Facility

If approved, BNA's amendment application would authorize the modification of the existing OCI Clean Ammonia Production Facility (Facility) located approximately 6 miles south of the Interstate Highway 10 and Highway

90 intersection in Jefferson County. This amendment would authorize the operation of one additional elevated unassisted flare at the Facility.

Air pollutants authorized under this permit include anhydrous ammonia, carbon monoxide, nitrogen oxides, volatile organic compounds, sulfur dioxide, and particulate matter, including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

C. Procedural Background

TCEQ received the application on June 17, 2024. The Notice of Receipt and Intent to Obtain an Air Quality Permit was published in English on July 11, 2024, in the *Beaumont Enterprise*, and in Spanish on July 11, 2024, in *El Perico*. The Notice of Application and Preliminary Decision for an Air Quality Permit was published on August 29, 2024, in English in the *Beaumont Enterprise*, and in Spanish on August 29, 2024, in *El Perico*. The original permit application and the notices were under the Applicant's former name, OCI Clean Ammonia LLC, which has since been changed to Beaumont New Ammonia LLC. The TCEQ Chief Clerk mailed the ED's Preliminary Decision and Response to Comments on April 4, 2025. The deadline for filing requests for a contested case hearing or reconsideration of the ED's decision was May 5, 2025.

II. APPLICABLE LAW

This application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709.¹ Under Title

¹ Tex. S.B. 709, 84th Leg., R.S. (2015).

30, Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

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

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

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

² 30 TAC § 55.201(d).

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.³

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.

³ 30 TAC § 55.203(c).

For applications filed on or after September 1, 2015, § 55.205(b) states that 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.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and, that are relevant and material to the Commission's decision on the application.

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

III. ANALYSIS OF HEARING REQUESTS

A. Whether the Requestors are Affected Persons

Golden Triangle Group of Sierra Club

The Golden Triangle Group of Sierra Club (Golden Triangle) timely submitted combined comments and a hearing request through their chair, Ellen Buchanan. Golden Triangle's comments identify Sierra Club generally as seeking to "Explore, Enjoy, and Protect the Planet" and Golden Triangle as specifically serving Jefferson County. As such, the interests the group seeks to protect appear to be germane to the organization's purpose, as required by 30 TAC § 55.205(b)(3).

However, Golden Triangle's request does not identify any individual members of their group. The same request is signed by and on behalf of two individuals (discussed below), but nowhere does the request identify these individuals as members of Golden Triangle. In fact, it repeatedly refers to "[t]he residents of Nederland (signatories here) and the Sierra Club"—suggesting that the individuals are separate from the group. OPIC therefore finds that Golden Triangle has not demonstrated that it qualifies as an affected person because it failed to identify any member who would have standing to request a hearing in their own right, as required by 30 TAC § 55.205(b)(2).⁴

⁴ While OPIC is unable to find that Golden Triangle qualifies as an affected person based on the information provided in their request, we do note that pursuant to 30 TAC § 55.211(e), if any hearing requests are granted in this matter, and a preliminary hearing is convened at SOAH, any party whose request is denied may attend and seek to be admitted as a party.

Terry Stelly and Ariana Akbari

The timely request and comments submitted by Ellie Buchanan was also signed by and on behalf of Terry Stelly and Ariana Akbari. According to the map provided by ED staff, Terry Stelly resides 4.24 miles from the Facility and Ariana Akbari resides 1.97 miles from the Facility.

The hearing request submitted on behalf of these requestors includes general concerns about air quality for residents and schools close to the Facility. They also raise concerns about the Facility's previous history of leaks. Although these are relevant concerns, the request does not include any specific explanation as to how these requestors would be affected by the Facility in a manner not common to members of the general public. For example, the request lacks any description of the requestors' properties or proximity other than their addresses; it does not claim that the requestors have family that attend the proximate school; and it fails to tie any of the general concerns to any of the individual requestors. Finally, although there is no distance restriction on standing in this matter, the intervening distances reduce the likelihood that the regulated activity will impact the requestors' health and safety, or use of property.⁵

Therefore, OPIC finds that Terry Stelly and Ariana Akbari have failed to identify any personal justiciable interest, as required by 30 TAC § 55.201(d)(2), and do not qualify as affected persons.

⁵ See 30 TAC § 55.203(c)(2) and (4).

Anonymous Requestor

The Commission timely received combined comments and a hearing request submitted by Chase Porter, a Staff Attorney at Lone Star Legal Aid, on behalf of an anonymous requestor. The request raises extensive concerns about the draft permit, but it does not identify any individual requestor by name, address, or phone number.⁶ Although the request provides a vague description of the anonymous requestor being “within three miles of the proposed facility,” it provides no more specific information as to the requestor's location relative to the Facility.⁷ The request does discuss relevant and material concerns about air quality, but it does not describe how and why the anonymous requestor believes they would be adversely affected by the Facility in a manner not common to members of the general public. OPIC finds this anonymous requestor has not met the requirements of 30 TAC § 55.201(d)(1) and (2) and therefore does not qualify as an affected person.

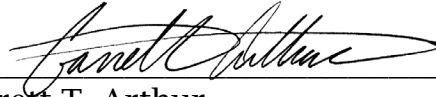
IV. CONCLUSION

For the reasons discussed above, OPIC finds that no requestors have demonstrated that they meet the legal standards to be granted affected person status. Therefore, we respectfully recommend that the Commission deny all of the hearing requests.

⁶ See 30 TAC § 55.201(d)(1).

⁷ See 30 TAC § 55.201(d)(2).

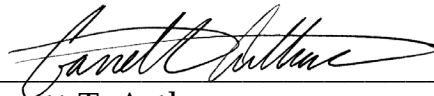
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2025, this document was filed with the TCEQ Chief Clerk and a copy was served to all persons on the attached mailing list via electronic mail or by deposit in the U.S. Mail.



Garrett T. Arthur

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TCEQ DOCKET NO. 2025-0887-AIR

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See attached list.

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