

**TCEQ AIR QUALITY PERMIT NUMBERS 914 AND PSDT1642  
TCEQ DOCKET NUMBER 2025-0889-AIR**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>THE DOW CHEMICAL COMPANY</b>	<b>§</b>	<b>COMMISSION ON</b>
<b>ORANGE, TEXAS</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>ORANGE COUNTY</b>	<b>§</b>	

**EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS**

**I. EXECUTIVE SUMMARY**

The Executive Director recommends denying the hearing request of Terry D. Stelly on behalf of Southeast Texas Clean Air & Water, Inc. Although they submitted timely comments on the application, the group has no identified member who would otherwise have standing to request a hearing in their own right. The Executive Director recommends denying the hearing request.

**II. INTRODUCTION**

The Executive Director of the Texas Commission on Environmental Quality (commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein regarding the above-referenced matter. The Texas Clean Air Act (TCAA), Texas Health & Safety Code (THSC) § 382.056(n), requires the commission to consider hearing requests in accordance with the procedures provided in TEX. WATER CODE (TWC) § 5.556.<sup>1</sup> This statute is implemented through the rules in 30 TEX. ADMIN. CODE (TAC) Chapter 55, Subchapter F.

The final draft permit, including any special conditions or provisions, for permit nos. 914 & PSDTX1642, the Maximum Allowable Emission Rate Table (MAERT), summary of the technical review of the permit application, preliminary determination summary for the permit application, Air Quality Analysis modeling audit, and the compliance summary of the applicant prepared by the Executive Director’s staff are being filed concurrently with TCEQ’s Office of the Chief Clerk for the Commission’s consideration. The Executive Director’s Response to Public Comment (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the Office of the Chief Clerk for the commission’s consideration.

**III. FACILITY DESCRIPTION**

The Dow Chemical Company (Applicant) has applied to TCEQ for a New Source Review Authorization under Texas Clean Air Act (TCAA) § 382.0518. This will authorize the modification of an existing facility that may emit air contaminants.

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<sup>1</sup> Statutes cited in this response may be viewed online at [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us). Relevant statutes are found primarily in the THSC and the TWC. The rules in the TAC may be viewed online at [www.sos.state.tx.us/tac/index.shtml](http://www.sos.state.tx.us/tac/index.shtml) or follow the “Rules” link on the TCEQ website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

This permit will authorize the Applicant to modify an Ethylene Unit. The facility is located at 3055 Farmer-to-Market Road 1006, Orange, Texas, 77630, Orange County. Increased emissions of contaminants authorized under this permit include carbon monoxide (CO), hazardous air pollutants (HAPs), nitrogen oxides (NO<sub>x</sub>), organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less (PM<sub>10</sub> and PM<sub>2.5</sub>, respectively), and sulfur dioxide (SO<sub>2</sub>).

#### IV. PROCEDURAL BACKGROUND

This permit application is for an amendment of Air Quality Permit Number 914 and issuance of Permit Numbers 914 and PSDTX1642.

The permit application was received on June 7, 2024, and declared administratively complete on June 13, 2024. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI, first public notice) for this permit application was published in English on June 29, 2024, in the *Orange Leader* and in Spanish on June 27, 2024, in *El Perico*. The Notice of Application and Preliminary Decision for an Air Quality Permit (NAPD, second public notice) was published on October 19, 2024, in English in the *Orange Leader* and on October 17, 2024, in Spanish in *El Perico*. Because this application was received after September 1, 2015, it is subject to the procedural requirements of and rules implementing Senate Bill 709 (84th Legislature, 2015).

TCEQ received timely hearing requests that were not withdrawn from the following people: Terry D. Stelly on behalf of Southeast Texas Clean Air & Water, Inc.

On April 16, 2025, the Executive Director's Response to Comments was filed and mailed to all persons on the mailing list for this permit application. The cover letter attached to the RTC included information about making requests for a contested case hearing or for reconsideration of the Executive Director's decision.<sup>2</sup> The letter also explained that hearing requestors should specify any of the Executive Director's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law.

The time period for requests for reconsideration and hearing requests ended on May 23, 2025. During this 30-day period, TCEQ did not receive any additional contested case hearing requests or requests for reconsideration.

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<sup>2</sup> See TCEQ rules at Chapter 55, Subchapter F of Title 30 of the Texas Administrative Code. Procedural rules for public input to the permit process are found primarily in Chapters 39, 50, 55, and 80 of Title 30 of the Code.

## **V. THE EVALUATION PROCESS FOR HEARING REQUESTS**

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the commission's consideration of hearing requests. Senate Bill 709 revised the requirements for submitting public comment and the commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

### **A. Response to Requests**

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written responses to hearing requests. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requestor is an affected person;
- 2) which issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of law;
- 4) whether the issues were raised during the public comment period;
- 5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- 6) whether the issues are relevant and material to the decision on the application; and
- 7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

### **B. Hearing Request Requirements**

In order for the commission to consider a hearing request, the commission must first determine whether the request meets certain requirements:

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requestor prior to the filing of the Executive Director's Response to Comment.

30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- 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 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 Executive Director's responses to comments that the requestor disputes and 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.

30 TAC § 55.201(d).

### **C. Requirement that Requestor be an Affected Person/ "Affected Person" Status**

In order to grant a contested case hearing, the commission must determine that a requestor is an "affected" person. Section 55.203 sets out who may be considered an affected person.

- a) For any application, 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.
- b) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
  - 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 which 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

In regard specifically to air quality permits, the activity the commission regulates is the emissions of air contaminants into the atmosphere. Any person who plans to construct or modify a facility that may emit air contaminants must receive authorization from the commission. Commission rules also include a general prohibition against causing a nuisance. Further, for air quality permits, distance from the proposed facility is particularly relevant to the issue of whether there is a likely impact of the regulated activity on a person's interests because of the dispersion and effects of individual air contaminants emitted from a facility.

For applications filed on or after September 1, 2015, 30 TAC § 55.201(d) allows the commission to consider, to the extent consistent with case law:

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.

### **D. Referral to the State Office of Administrative Hearings**

"When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- 1) involves a disputed question of fact or a mixed question of law and fact;
- 2) was raised during the public comment period by an affected person whose hearing request is granted; and
- 3) is relevant and material to the decision on the application.

### 30 TAC § 50.115(c).

## **VI. ANALYSIS OF THE HEARING REQUESTS**

The Executive Director has analyzed the hearing requests to determine whether they comply with commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

### **A. Groups and Associations**

In addition to the requirements in 30 TAC § 55.201 and 30 TAC § 55.203, requests for a contested case hearing by a group or association, on an application filed on or after September 1, 2015, must meet the requirements in 30 TAC § 55.205(b). Specifically: (1) the group or association must have submitted timely comments on the application; (2) the request must identify, 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 must be germane to the organization's purpose; and (4) the claim asserted or the relief requested may not require the participation of the individual members in the case.

#### **1. Terry D. Stelly on behalf of Southeast Texas Clean Air & Water, Inc.**

- (1) Whether the group or association submitted timely comments on the application.

Terry D. Stelly, the President of Southeast Texas Clean Air & Water, Inc., submitted a hearing request on behalf of Southeast Texas Clean Air & Water, Inc. during the comment period. The issues raised in this hearing request were raised in the group's timely comments. The Executive Director recommends that the commission find that Southeast Texas Clean Air & Water, Inc. has met this requirement for associational standing.

- (2) Whether one or more members of the group or association would otherwise have standing to request a hearing in their own right.

Southeast Texas Clean Air & Water, Inc.'s hearing request identified no members and there were no identified personal justiciable interests not common to the general public.

The hearing request raised concerns regarding health effects and the dangers of flare emissions. However, the hearing request did not describe how any individual member would be adversely affected by the facility or activity in a manner not common to members of the general public. Therefore, Southeast Texas Clean Air & Water, Inc. did not raise a personal justiciable interest of an individual who belongs to the group.

Accordingly, the Executive Director recommends that the commission find that Southeast Texas Clean Air & Water, Inc. has not met this requirement for associational standing.

- (3) Whether the interests the group or association seeks to protect are germane to the organization's purpose.

The hearing request submitted by Southeast Texas Clean Air & Water, Inc. does not state what their organization's purpose is. Therefore, the Executive Director recommends that the commission find that Southeast Texas Clean Air & Water, Inc has not met this requirement for associational standing.

- (4) Whether the claim asserted or the relief requested requires the participation of the individual members in the case.

The relief requested by Southeast Texas Clean Air & Water, Inc. requires the participation of an individual member of Southeast Texas Clean Air & Water, Inc. No individual member has been identified in the hearing request. Thus, the Executive Director has determined that Southeast Texas Clean Air & Water, Inc. has not met this requirement for associational standing.

Because Southeast Texas Clean Air & Water, Inc. has not met all four requirements for associational standing, the Executive Director recommends the commission find that Southeast Texas Clean Air & Water, Inc. is not an affected person.

### **C. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing**

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requestor whose request is granted may be referred.<sup>3</sup> The issues raised for this application and the Executive Director's analysis and recommendations follow. If the Commission finds affected party status, the following issues involve a disputed question of fact, were not withdrawn, and are relevant and material to the approval of the permit:

**Issue 1:** Whether the flare emissions from the ethylene unit are underreported due to inadequate fence line monitoring.

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit.

**Issue 2:** Whether benzene emissions from the plant exceed permitted limits and pose a risk to public health.

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit.

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<sup>3</sup> Tx. Govt. Code § 2003.047(e-1); 30 TAC § 55.211 (c)(2)(A)(ii).

**Issue 3:** Whether fugitive emissions, in addition to permitted flare emissions, contribute significantly to overall benzene pollution.

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit.

**Issue 4:** Whether Dow Sabine River Operations should be required to implement additional maintenance, monitoring, training, or technology to reduce air emissions.

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit.

**Issue 5:** Whether the existing monitoring infrastructure, including for SO<sub>x</sub> emissions from nearby facilities, is insufficient to capture cumulative air quality impacts.

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit.

**Issue 6:** Whether cumulative impacts from regional industrial emissions, including from other facilities, should be considered in evaluating the permit.

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit.

**Issue 7:** Whether the proposed permit adequately protects low-income and high-risk populations in the surrounding community from increased health risk

This issue involves a disputed question of fact, and was not withdrawn, and is relevant and material to the issuance of the draft permit.

Because these issues are relevant and material to the issuance of the draft permit and involve disputed issues of fact, if the commission should find that any party is affected, the Executive Director recommends that these issues be referred to SOAH.

## VII. CONCLUSION

The Executive Director respectfully recommends the commission:

1. Find all hearing requests in this matter were timely filed; and
2. Find that Southeast Texas Clean Air & Water, Inc. is not an affected person as a matter of law and deny their hearing request.
3. If referred to SOAH, first refer the matter to Alternative Dispute Resolution for a reasonable period.
4. If referred to SOAH, the Executive Director recommends referring the following issues:
  - **Issue 1:** Whether the flare emissions from the ethylene unit are underreported due to inadequate fence line monitoring.



- **Issue 2:** Whether benzene emissions from the plant exceed permitted limits and pose a risk to public health.
  - **Issue 3:** Whether fugitive emissions, in addition to permitted flare emissions, contribute significantly to overall benzene pollution.
  - **Issue 4:** Whether Dow Sabine River Operations should be required to implement additional maintenance, monitoring, training, or technology to reduce air emissions.
  - **Issue 5:** Whether the existing monitoring infrastructure, including for SO<sub>x</sub> emissions from nearby facilities, is insufficient to capture cumulative air quality impacts.
  - **Issue 6:** Whether cumulative impacts from regional industrial emissions, including from other facilities, should be considered in evaluating the permit.
  - **Issue 7:** Whether the proposed permit adequately protects low-income and high-risk populations in the surrounding community from increased health risks.
5. If referred to SOAH, the Executive Director recommends 180 days be the duration of the hearing.

Respectfully submitted,

Kelly Keel, Executive Director

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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I certify that on this 30th day of June 2025, a true and correct copy of the "Executive Director's Response to Hearing Requests" for Air Quality Permit Nos. 914 and PSDTX1642 was served on all persons on the service list by the undersigned via electronic filing, electronic mail, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.

A handwritten signature in blue ink, reading "Katelyn MR Ding". The signature is written in a cursive, flowing style.

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Katelyn Ding, Staff Attorney  
Environmental Law Division

MAILING LIST  
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Air Permit No./Air Permiso N.º 914 and PSDTX1642

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