

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

June 30, 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 THE DOW CHEMICAL
COMPANY FOR TCEQ AIR QUALITY PERMIT NOS. 914 AND
PSDTX1642
TCEQ DOCKET NO. 2025-0889-AIR**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2025-0889-AIR

APPLICATION BY	§	BEFORE THE
THE DOW CHEMICAL	§	
COMPANY FOR TCEQ AIR	§	TEXAS COMMISSION ON
QUALITY PERMIT NOS.	§	
914 AND PSDTX1642	§	ENVIRONMENTAL QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUEST FOR HEARING**

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 or Commission) files this Response to Request for Hearing in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Dow Chemical Company (Applicant) for a New Source Review Authorization under Texas Clean Air Act (TCAA) § 382.0518. The Commission received a request for a contested case hearing from Southeast Texas Clean Air & Water, Inc. After evaluation, OPIC respectfully recommends the Commission find that the requestor does not qualify as an affected person in this matter.

B. Background of Facility

The Dow Chemical Company has applied to TCEQ for a New Source Review Authorization under TCAA § 382.0518. If approved, this will authorize the modification of an existing facility located in the City of Orange at 3055 Farm-to-Market Road 1006 that may emit air contaminants. This permit would authorize

the Applicant to modify an Ethylene Unit. Increased emissions of contaminants authorized under this permit include carbon monoxide, hazardous air pollutants, nitrogen oxides, organic compounds and sulfur dioxide.

C. Procedural Background

TCEQ received the application on June 7, 2024. On June 13, 2024, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain an Air Quality Permit 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 was published in English on October 19, 2024, in the *Orange Leader* and in Spanish on October 17, 2024, in *El Perico*. The public comment period closed on November 18, 2024. The Chief Clerk mailed the ED's Preliminary Decision and Response to Comments on April 23, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was May 23, 2025.

The Commission received one timely request for a contested case hearing from Southeast Texas Clean Air & Water, Inc.

II. APPLICABLE LAW

A. Hearing Request

This application was filed on or 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 Title 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.

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. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors 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, safety, and 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.

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 ED; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.

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.

For an application filed on or after September 1, 2015, § 55.211(c)(2)(A)(ii) provides that a hearing request made by an affected person shall be granted 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 REQUEST

A. Whether the requestor is an affected person

The Commission received a timely hearing request during the public comment period from Southeast Texas Clean Air & Water, Inc. The request states concern for benzene releases attributable to the Facility and asks for consideration of additional monitoring options. It also highlights the cumulative effects of area emissions and finally, asks that benzene emissions from the ethylene unit be reduced.

While the request does not specifically identify one or more members of the group that would otherwise have standing to request a hearing in their own right as required by 30 TAC § 55.205(b)(2), it is authored by Terry Stelly, president of the group. To further analyze the group's standing, OPIC will use Terry Stelly as the group's representative member. The request includes an address located in Nederland, Texas—over 18 miles from the Facility. OPIC recognizes that there is no distance restriction imposed by law on this application, however, given the significant intervening distance between the address provided with the request and the Facility, OPIC cannot find that Terry Stelly would be affected in a manner not common to the general public. Additionally, the request contains no statement explaining how the interests the group seeks to protect are germane to its purpose as required by 30 TAC § 55.205(b)(3).

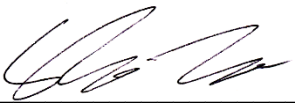
After review, OPIC finds that the request does not comply with multiple provisions of 30 TAC § 55.205(b). Southeast Texas Clean Air & Water, Inc. has failed to identify a member who would otherwise have standing in their own right. Even if that representative member is assumed to be Terry Stelly, they would not qualify as an affected person. The group also has not shown how the interests it seeks to protect are germane to its purpose. Therefore, the group does not qualify as an affected person.

IV. CONCLUSION

OPIC respectfully recommends the Commission find that the sole requestor in this matter has not shown that they qualify as an affected person, and consequently, deny the request for a contested case hearing of Southeast Texas Clean Air & Water, Inc.

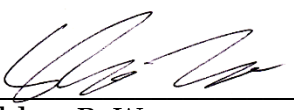
Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2025, the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Sheldon P. Wayne

MAILING LIST
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TCEQ DOCKET NO. 2025-0889-AIR

FOR THE APPLICANT

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REQUESTER(S):

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