

TCEQ DOCKET NO. 2025-1160-AIR

APPLICATION BY FORMOSA PLASTICS CORPORATION, TEXAS FOR AIR QUALITY PERMIT NOS. 140763, 19871, 91780, 19200, 19168, 107518, 20203, 40157, 19201, PSDTX1500M1, PSDTX1236M1, PSDTX1240M1, PSDTX1237M1 PSDTX1226M1, PSDTX1383M2 PSDTX1224M1, PSDTX1222M1 PSDTX1232M1, GHGPSDTX46M1 GHGPSDTX221, GHGPSDTX223 GHGPSDTX218, GHGPSDTX224 GHGPSDTX48M1, GHGPSDTX222 GHGPSDTX225, AND GHGPSDTX219, CALHOUN AND JACKSON COUNTIES, TEXAS	§ § § § § § § § § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**FORMOSA PLASTICS CORPORATION, TEXAS’S
BRIEF ON AFFECTED PERSON DETERMINATION**

FPC files this supplemental brief¹ to demonstrate:

Diane Wilson is Not an Affected Person.

- Ms. Wilson’s asserted interests are common to the general public.
- Her residential property is more than 20 miles from the Complex.
- Her recreation, enjoyment of aesthetic beauty, and voluntary outfall monitoring interests do not demonstrate any legal, justiciable interests.
- She does not have a personal justiciable interest under the 2019 CD.

The Application is Protective and Meets Conservative Health and Welfare Standards.

- Without exception, maximum modeled concentrations proposed in the Application are below applicable state and federal standards and ESLs.
- No person who owns property, resides, or who regularly visits areas near the Complex will be impacted any differently than the general public.
- Potential impacts of the air emissions from the Project are expected to be indiscernible for members of the general public, including Ms. Wilson.
- Maximum emissions are not likely to impact the health, safety, or property of Ms. Wilson or any member of the public who owns property, resides, or who regularly visits areas near the Complex.

Waterkeeper Lacks Organizational Standing.

- Waterkeeper’s member is not an affected person.
- Waterkeeper’s organization’s focus on *water* systems is irrelevant to *air* permits.

¹ This Affected Person Determination brief fully incorporates herein FPC’s Response to Hearing Requests, filed September 15, 2025, including but not limited to all defined terms, facts, arguments, attachments, and exhibits contained therein (“*FPC’s Response Brief*”).

I. THE TEXAS WATER CODE DEFINITIVE STANDARD ESTABLISHES A PERSONAL JUSTICIABLE INTEREST.

The Texas Water Code, TCEQ rules, and Texas case law establish the legal standard a hearing requestor must demonstrate,² which includes but is not limited to:

1. A “personal justiciable interest related to a legal right, duty, privilege, power, or economic interest;”³
2. That is “affected by the application;”⁴
3. That is not “common to members of the general public;”⁵
4. That has been evaluated under all relevant required and discretionary factors;⁶ and
5. That is not speculative or unsupported.⁷

The Texas Water Code and TCEQ’s rules provide that a person’s interest must be both personal and justiciable. A hearing requestor must (1) demonstrate a *legal interest* in a property right or other right, duty, privilege, power, or economic interest – that would be affected by the Application;⁸ and (2) show how the legal interest would be affected by a permit application in a way not common to members of the general public.⁹

To further determine whether an interest is legally protected, affected by the permit, and personal, the Commission must consider the factors in 30 Tex. Admin. Code § 55.203(c)(1)-(7). Of the seven mandatory factors,¹⁰ three factors are particularly relevant to the Commission’s consideration in this matter:

1. Distance restrictions or other limitations imposed by law on the affected interest;
2. Likely impact of the application on the individual’s health, safety, or property; and
3. Likely impact of the application on the individual’s use of the impacted natural resource.

² This summary does not restate the full set of requirements applicable to hearing requests and the affected person evaluation. For a comprehensive discussion of those requirements, please refer to FPC’s Response Brief at 11-15 (detailing applicable statutory and regulatory requirements and judicial precedent).

³ TEX. WATER CODE § 5.115(a) (emphasis added); *see also* 30 TEX. ADMIN CODE § 55.203(a).

⁴ *Id.*

⁵ *Id.*

⁶ 30 TEX. ADMIN CODE § 55.203(c).

⁷ 30 TEX. ADMIN CODE § 55.203(c); TEX. WATER CODE § 5.115(a-1); *TCEQ v. San Antonio Bay Estuarine Waterkeeper et al.*, 714 S.W.3d 270, 286 (Tex. App.—Austin 2025, pet. filed) (“*TCEQ v. Waterkeeper*”); *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008); *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995).

⁸ *See* TEX. WATER CODE § 5.115(a); 30 TEX. ADMIN CODE § 55.203(a), (c)(4).

⁹ *Id.*

¹⁰ 30 TEX. ADMIN CODE § 55.203(c)(1)-(7).

TCEQ Commissioners may also consider the merits of the application, documentation in the permitting record, analysis and opinions of the executive director, and expert affidavits and opinions.¹¹

Texas courts have clarified the standard for establishing affected person status. Two Texas Courts of Appeal affirmed that the Commission may reasonably conclude that a requestor is not an affected person when the proposed activity poses only minimal impact to their health, safety, property use, or use of natural resources.¹² Additionally, a request must be denied if the alleged harm is speculative or unsupported by evidence before the Commission.¹³ The requestor bears the burden of demonstrating a concrete, particularized, and imminent injury resulting from the decision; hypothetical or potential harm is insufficient to establish a personal justiciable interest.¹⁴

The analysis for determining “affected person” status under Texas law is not equivalent to Article III standing under federal law.¹⁵ “The Water Code clearly outlines the statutory procedure the Commission must follow in determining affected-person status, and the Commission has no authority to depart from this procedure...The statute confers discretion on the Commission to weigh and resolve disputed facts in determining the need for a contested case hearing.”¹⁶ The Commission’s issuance of FPC’s Application is governed by Texas law pursuant to a legislative grant of exclusive jurisdiction to issue air quality permits.¹⁷ In contrast, standing in a federal citizen suit as a plaintiff alleging violations of the Clean Water Act is inapposite to the Commission’s determination of the likelihood of potential impacts from emissions in a proposed air permit. Any reliance on past federal Article III standing is

¹¹ 30 TEX. ADMIN CODE § 55.203(d)(1)-(3).

¹² *TCEQ v. Waterkeeper*, 714 S.W.3d at 286; *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008); *Tex. Comm’n on Env’tl. Quality v. Sierra Club*, 455 S.W.3d 228, 240 (Tex. App. – Austin 2014).

¹³ *TCEQ v. Waterkeeper*, 714 S.W.3d at 285; *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008); *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995).

¹⁴ *TCEQ v. Waterkeeper*, 714 S.W.3d at 284; *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008).

¹⁵ *TCEQ v. Waterkeeper*, 714 S.W.3d at 287; TEX. WATER CODE §§ 5.115, 5.556; *City of Waco*, 413 S.W.3d at 424-25.

¹⁶ *Id.*

¹⁷ TEX. HEALTH & SAFETY CODE §§ 382.051, 382.056, TEX. WATER CODE §§ 5.115, and 5.556; TEX. GOV’T CODE § 2003.047; 30 TEX. ADMIN. CODE, Chapter 50, Subchapter F and Chapter 55, Subchapter F.

misapplied in a TCEQ affected person determination.¹⁸ An agency must follow ‘the clear, unambiguous language of its own regulations.’”¹⁹ For these reasons, simply raising environmental, scientific, or recreational interests, without a property or legal interest uniquely impacted, is insufficient to establish Ms. Wilson as an affected person.²⁰

II. WATERKEEPER’S MEMBER’S INTERESTS ARE NOT PERSONAL OR JUSTICIABLE.

All of Ms. Wilson’s claimed interest categories are activities available to and that occur in areas that are accessible by any member of the general public. Waterkeeper did not demonstrate a property interest and failed to demonstrate any of Ms. Wilson’s interest categories as legally protected: (1) recreational activity, (2) aesthetic enjoyment, and (3) volunteer monitoring. Ms. Wilson owns no property near the Complex; her activities occur in public areas accessible to anyone; her concerns about recreation and aesthetic beauty are interests common to the general public; the 2019 CD does not confer any enforceable legal rights of Ms. Wilson; and her involvement is entirely voluntary.

Waterkeeper nominates the federal CAA and TCAA statutes as “exact interests Waterkeeper alleges the Application will affect”²¹ rather than identifying any legally protected interests within the scope of 30 Tex. Admin. Code § 55.203(a)’s required personally justiciable legal interests: a right, duty, privilege, power, or economic interest affected by the Application. To the extent that Ms. Wilson has any legal rights under the federal CAA and TCAA as sweepingly described in Waterkeeper’s reply

¹⁸ See San Antonio Bay Estuarine Waterkeeper’s Reply to Responses to Hearing Request (“**Waterkeeper Reply**”) at 11.

¹⁹ *Davis v. Morath*, 624 S.W.3d 215, 227 (Tex. 2021) (citing *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 438 (Tex. 2011)).

²⁰ *TCEQ v. Waterkeeper*, 714 S.W.3d at 287 (concluding TCEQ did not abuse its discretion in reviewing competing evidence and resolving fact issues in its affected person determination); *Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 878-80 (Tex. App.—Austin 2010) (“There is no Texas authority for the proposition that the type of injury alleged by SOS Alliance in this case – injury to its members’ environmental, scientific, and recreational interests generally and without any interest in or connection to the real property involved – is the type of interference with a legally protected interest or injury that confers standing as a matter of state law”).

²¹ Waterkeeper Reply at 16.

brief,²² they are not justiciable in the TCEQ’s affected person construct particularly because any legal rights available to Ms. Wilson are available to any other American citizen.

A. Property Interest

Ms. Wilson resides more than 20 miles from the nearest Project Facility as shown on the Hearing Request Location Map, **Exhibit EQ-2**.²³ At this distance, she will not be affected any differently than any member of the public.²⁴ TCEQ may consider the distance from a requestor’s property location to the proposed permitting activity in determining whether a requestor is an affected person,²⁵ and must consider likelihood of impacts to a requestor’s property.²⁶ Waterkeeper did not identify any other property interest held by Ms. Wilson, including none near the Complex. OPIC agreed that the proposed emissions would not affect Ms. Wilson at her property in a way that is not common to members of the general public.²⁷

B. Recreational Activities and Aesthetic Enjoyment

Recreational, environmental, and scientific concerns *alone* do not establish a legal interest distinct from the general public.²⁸ Texas appellate courts recognize that to qualify as an affected person with a personal justiciable interest in a TCEQ affected person determination, the requestor must

²² Waterkeeper Reply at 4-5, 15-16.

²³ See FPC’s Response Brief at 22-23, including **Exhibit EQ-2** (Hearing Requestor Location Map).

²⁴ Fraiser Affidavit ¶ 21 (“no person who owns property, resides, or who regularly visits areas near the Complex will be impacted any differently than the general public. . . impacts at locations farther from the FPC Complex fenceline (e.g., at Ms. Wilson’s residence, more than 20 miles away), or that occur on a more intermittent basis (e.g., during Ms. Wilson’s recreational and volunteer activities), would be even less discernible.”).

²⁵ See, e.g., *Tex. Comm’n on Env’tl Quality v. Sierra Club*, 455 S.W.3d 228, 239 (Tex. App.—Austin 2014, pet. denied) (demonstrating that even in cases where no legal limitations imposed on affected person analysis, a hearing requestor’s distance is still a consideration to weigh); *TCEQ v. Waterkeeper*, 714 S.W.3d at 287-88 (despite no distance restriction provided by law, the factors required by the Administrative Code allow for consideration of distance when reviewing all factors together without creating an arbitrary distance rule).

²⁶ 30 TEX. ADMIN. CODE § 55.203(c)(3).

²⁷ OPIC Reply Brief at 8.

²⁸ *Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 882 (Tex. App.—Austin 2010) (“There is no Texas authority for the proposition that the type of injury alleged by SOS Alliance in this case—injury to its members’ environmental, scientific, and recreational interests generally and without any interest in or connection to the real property involved—is the type of interference with a legally protected interest or injury that confers standing as a matter of state law”).

demonstrate an injury comparable to that required for constitutional standing.²⁹ Accordingly, when reviewing TCEQ decisions on affected person status, courts often refer to constitutional standing cases to assess whether a real justiciable controversy may be affected by a proposed permit.³⁰ In one case, *Save Our Springs*, the Third Court of Appeals clarified what constitutes a legally protected personal interest sufficient to establish standing, and applied that interpretation again in *City of Waco* in its review of TCEQ affected person status.³¹ Waterkeeper’s suggestion that environmental laws alone should support a standing claim in a TCEQ permitting context is contrary to the court’s opinion, which did not adopt the threshold for standing in federal citizen suits. opinion.³² The Third Court of Appeals explicitly stated: “we do not find any Texas case in which an alleged injury to a plaintiff’s environmental, scientific, or recreational interests conferred standing *in the absence of allegations that the plaintiff has an interest in property affected by the defendants’ actions.*”³³

As discussed in *Save Our Springs*, in Texas, a vested property interest is typically required to establish standing.³⁴ However, in limited circumstances, a *sufficiently particularized* interest in the affected land—such as riparian rights or contractual interests—may also suffice.³⁵ Generalized concerns without a specific, legally protected interest do not meet the threshold for affected person

²⁹ *TCEQ v. Waterkeeper et al.*, 714 S.W.3d 284; *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008); *Texas Disposal Sys. Landfill, Inc. v. Texas Comm’n on Env’tl. Quality*, 259 S.W.3d 361, 363-64 (Tex. App.—Amarillo 2008, no pet.) (holding hearing requestor’s purported injury was “mere speculation, and as such, [fell] short of establishing a justiciable interest and standing”).

³⁰ *Id.*

³¹ *Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 882 (Tex. App.—Austin 2010) (evaluating standing of an environmental association’s challenge to a city authorization to develop land and distinguishing Texas constitutional standing with federal statutory expansions like the CWA); *City of Waco v. TCEQ*, 346 S.W.3d 781, 805-06 (citing *Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 883 (Tex. App.—Austin 2011)) (adopting the idea that environmental, scientific, and recreational interests alone are insufficient to establish injury distinct from the general public), *rev’d on other grounds*, 413 S.W.3d 409 (Tex. 2013).

³² Waterkeeper Reply at 12.

³³ *Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 881 (Tex. App.—Austin 2011).

³⁴ *Id.* at 880.

³⁵ *Id.*; *Texas Rivers Protection Ass’n v. Texas Natural Resource Conservation Commission*, 910 S.W.2d 147 (Tex. App.—Austin 1995, writ denied); *Bells v. Greater Texoma Utility Authority*, 790 S.W.2d 6, 11 (Tex. App.—Dallas 1990).

status.³⁶ Here, Waterkeeper has not shown that Ms. Wilson’s recreational or aesthetic enjoyment interests are either sufficiently particularized or tied to a vested legally protected interest near the Complex.

Ms. Wilson’s recreational activities are conducted in public areas accessible to anyone.³⁷ The locations referenced in the Requests—Lavaca Bay, Cox Creek, and nearby tributaries and shorelines—are publicly accessible and open to the public. Under the Texas Water Code, these waterways are state property available for public use, including recreation.³⁸ Privately owned shores and tributaries near the Complex are likewise publicly available.³⁹ Ms. Wilson’s recreational and aesthetic enjoyment activities do not “create” a legal interest potentially impacted by the Application and Waterkeeper did not identify any in the Requests. OPIC’s descriptions of Ms. Wilson’s recreational activities as “rooted in actual, repeated, and anticipated use of [the] bays” and voluntary monitoring visits near Complex outfalls as “exceeding typical public engagement”⁴⁰ do not make such activities uncommon to the general public. Repeated recreational activity on public water bodies without a legal interest that would be affected by the Application does not satisfy a requestor’s burden to demonstrate affectedness.⁴¹ Furthermore, the Requests are silent on any economic interest, and Waterkeeper provided no evidence to substantiate such a claim, so OPIC’s unquantified and unsubstantiated “economic significance” attributed to a “consistent and personal reliance on the bays’ resources” by Ms. Wilson is misplaced.⁴²

³⁶ See *City of Waco v. TCEQ*, 346 S.W.3d 781, 810 (Tex. App.—Austin 2011) (citing *Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 878-80 (Tex. App.—Austin 2010)), *rev’d on other grounds*, 413 S.W.3d 409 (Tex. 2013).

³⁷ See FPC’s Response Brief at 17-19.

³⁸ TEX. WATER CODE § 11.021 (defining State Water); See also *San Antonio Bay Estuarine Waterkeeper v. Formosa Plastics Corp.*, 2019 U.S. Dist. LEXIS 108082, at *5 (S.D. Tex. 2019).

³⁹ See e.g., *Op. Att’y Gen. of Tex. No. S-208* (1956); *Proposal for Decision, Application of Southwestern Electric Power Company*, TCEQ Docket No. 2011-2199-IWD, 2012 TX SOAH LEXIS 354, at *19 (Aug. 21, 2012).

⁴⁰ OPIC Reply Brief at 9-10.

⁴¹ 30 TEX. ADMIN. CODE § 55.203(a).

⁴² See FPC’s Response Brief at 15, n. 59; OPIC Reply Brief at 9-10.

Ms. Wilson’s interest in enjoying aesthetic beauty surrounding the Complex in public areas accessible to anyone is not a legally protected right unique to Ms. Wilson.⁴³ Waterkeeper’s contentions about health and welfare of the natural environment, wildlife, and vegetation are not unique to Ms. Wilson since the Requests provided no demonstration of how the Application would affect Ms. Wilson’s enjoyment of aesthetic beauty differently than other members of the public who have an equal opportunity to enjoy such beauty. That Ms. Wilson has “spent decades fighting”⁴⁴ and is passionate about public water bodies near the Complex and beyond is insufficient to demonstrate affectedness. Her passion lacks connection to a legal interest that would be affected by the Application as required by 30 Tex. Admin. Code 55.203(a) different than the general public.⁴⁵ Waterkeeper’s and Ms. Wilson’s assertions related to alleged algal blooms in water near the Project Facilities based on indirect effects of air emissions are misplaced,⁴⁶ as discussed below.

C. Voluntary Monitoring of Outfalls

Ms. Wilson’s monitoring pursuits are not based on a legal right or obligation. Ms. Wilson’s choice to voluntarily monitor FPC’s outfalls is entirely discretionary and self-directed. Waterkeeper’s claim that Ms. Wilson holds a “legal interest in the land and waters surrounding the Complex not shared by the general public”⁴⁷ is groundless. Waterkeeper’s suggestion that Ms. Wilson is affected differently than the public is a mischaracterization of the *voluntary* nature of Ms. Wilson’s monitoring hobby and the fact that the 2019 CD does not *require* Ms. Wilson to do anything related to monitoring.⁴⁸ Personal motivation, passion, or inspiration to engage in outfall monitoring does not constitute a legal interest—such as a right, duty, privilege, power, or economic interest—required to

⁴³ See FPC’s Response Brief at 17-19.

⁴⁴ Waterkeeper Reply at 11.

⁴⁵ See *Bacon v. Tex. Historical Comm’n*, 411 S.W.3d 161, 176 (Tex. App.—Austin 2013) (finding that the appellant, an army veteran and member of the West Point Society, could not demonstrate a particularized injury distinct from the general public, despite his “deep commitment and sense of duty” regarding a historical war marker).

⁴⁶ Waterkeeper Reply at 16, 20 (asserting that “air pollution affects water quality through atmospheric deposition”).

⁴⁷ Waterkeeper Reply at 10 (Sept. 29, 2025).

⁴⁸ Waterkeeper Reply (referring to Ms. Wilson’s “job”).

establish affected person status.⁴⁹ Even if Ms. Wilson enjoys participating in recreational activities and she personally “feels compelled” to visit outfalls, such activities are not justiciable interests.⁵⁰

Neither the Requests nor Waterkeeper’s reply cites any provision in the 2019 CD that grants Ms. Wilson any right, duty, or privilege affected by the Application—and none exists—despite vague assertions of Ms. Wilson’s ability (but not obligation) to consult with the remediation specialist for outfall monitoring.⁵¹ Ms. Wilson’s role in the Clean Water Act suit which resulted in the 2019 CD entirely unrelated to air emissions does not confer affected person status for FPC’s Application. The actual monitoring responsibilities under the 2019 CD apply to the designated Monitor, not to Ms. Wilson.⁵² Contrary to Waterkeeper’s association of meeting inside a Formosa building with a legal interest,⁵³ indoor meetings are not evidence of a personally justiciable interest. The Application relates exclusively to ambient air.⁵⁴ Since air inside buildings is not ambient air,⁵⁵ the occurrence of participation in an indoor meeting will not be affected by the Application.

Moreover, any “legal interest” that Ms. Wilson may have under the 2019 CD will not be affected by the Application. Ms. Wilson’s only legal viable cause of action under the 2019 CD is to seek judicial review of a dispute arising under the consent decree itself.⁵⁶ Any such dispute would *not* be affected by FPC’s Application. Waterkeeper has not established any impairment of rights under the 2019 CD that would establish standing for Ms. Wilson.

⁴⁹ See *Bacon v. Tex. Historical Comm’n*, 411 S.W.3d 161, 176 (Tex. App.—Austin 2013, no pet.) (finding that the appellant, an army veteran and member of the West Point Society, could not demonstrate a particularized injury distinct from the general public, despite his “deep commitment and sense of duty” regarding a historical war marker).

⁵⁰ 2025 Request at 4; 30 TEX. ADMIN. CODE § 55.203(a).

⁵¹ *Id.* at 9.

⁵² 2019 CD ¶ 30.

⁵³ Waterkeeper Reply at 10.

⁵⁴ See, e.g., 42 U.S.C. § 7408(a)(1)(A), (a)(2); § 7409(a)(1) (describing *ambient air* quality standards).

⁵⁵ See 40 C.F.R. § 50.1(e) (defining “ambient air” as “that portion of the atmosphere, external to buildings, to which the general public has access”).

⁵⁶ 2019 CD Section VI.

Access to unrestricted property is not a personal justiciable interest. Outside FPC’s fenceline, no physical barriers preclude general public access to ambient air.⁵⁷ “The essence of the EPA’s regulatory definition [of ambient air] links ambient air to public access.”⁵⁸ an effective measure to preclude public access. Ms. Wilson’s access to the shorelines and FPC’s outfalls is therefore no different from that of the general public since access to all stormwater and wastewater outfall locations is unrestricted as established in the Lasater Affidavit.⁵⁹ Additionally, TCEQ rules permit members of the public to voluntarily report and investigate potential environmental violations, meaning any member of the public can choose to boat or walk the shorelines to monitor for environmental compliance the same as Ms. Wilson.⁶⁰ As a Texas appellate court has noted, “*subjective interests or concerns, however admirable, are not in themselves considered to rise to the level of a justiciable interest that can support standing.*”⁶¹

Moreover, TCEQ has already addressed and resolved whether Ms. Wilson’s voluntary monitoring of FPC’s outfalls creates a personal justiciable interest different from the general public.⁶² In 2022, TCEQ denied hearing requests from Ms. Wilson and Waterkeeper regarding Max Midstream’s air permit amendment to expand its terminal near the Complex.⁶³ In February 2025, the Fifteenth Court of Appeals upheld TCEQ’s decision, finding that denial of the hearing request was supported by substantial evidence.⁶⁴ The court considered Ms. Wilson’s volunteer monitoring, recreational, and aesthetic interests (strikingly similar to those asserted here), noted the “unrelated consent decree,” and concluded Ms. Wilson failed to meet her burden to show she would be affected differently than the general public when accessing areas that “are also open to the public and generally

⁵⁷ *Train v. NRDC, Inc.*, 421 U.S. 60, 65 (1975) (“A]mbient air’ . . . is the [CAA’s] term for the outdoor air used by the general public”).

⁵⁸ *Resisting Envtl. Destruction on Indigenous Lands, v. U.S. E.P.A.*, 716 F.3d 1155, 1165 (9th Cir. 2013).

⁵⁹ Lasater Affidavit ¶ 8(e).

⁶⁰ *See generally*, 30 TEX. ADMIN. CODE § 70.4.

⁶¹ *Bacon v. Tex. Historical Comm’n*, 411 S.W.3d 161, 176 (Tex. App.—Austin 2013, no pet.).

⁶² *See* FPC’s Response Brief at 21-22; *see generally*, *TCEQ v. Waterkeeper*, 714 S.W.3d 270.

⁶³ *Id.*

⁶⁴ *TCEQ v. Waterkeeper*, 714 S.W.3d at 289.

accessible to anyone.”⁶⁵ The court’s holding also validated Dr. Fraiser’s toxicological analysis: health risks from air emissions depend on exposure levels, and brief, infrequent proximity to the terminal posed “indiscernible” effects.⁶⁶ Dr. Fraiser’s analysis here similarly concluded that potential impacts to Ms. Wilson and other members of the public will be indiscernible.⁶⁷ As discussed below and previously, for FPC’s Application, Dr. Fraiser stated that Ms. Wilson’s intermittent and brief periods of exposure are unlikely to harm her health or others because air quality standards assume constant, worst-case exposure, and Ms. Wilson’s contact is infrequent and unlikely to coincide with maximum emissions levels.⁶⁸ Ms. Wilson’s interest in monitoring outfalls near the Complex does not confer any legal entitlement different than the general public and therefore does not establish “affected person” status under Texas law.

III. POTENTIAL IMPACTS OF THE DRAFT PERMITS ARE LIKELY TO BE INDISCERNIBLE TO WATERKEEPER’S MEMBER AND THE GENERAL PUBLIC.

In the Commission’s consideration of the likely impact of the Application on Ms. Wilson’s health, safety, property, and use of ambient air,⁶⁹ a hearing request cannot presume a permit violation or activity unrelated to the Application to demonstrate likelihood of impact to the requestor.⁷⁰ Likewise, speculatively alleged injuries not supported by evidence before the Commission and layperson fact opinions do not provide sufficient evidence in affected person determinations.⁷¹ Texas appellate courts have determined that it is reasonable for the Commission to conclude that hearing

⁶⁵ *Id.* at 279, 286.

⁶⁶ *Id.* at 288.

⁶⁷ See FPC’s Response Brief at 23-31; Fraiser Affidavit ¶¶ 20-22.

⁶⁸ Fraiser Affidavit ¶¶ 20(c), (d). Discussed further *infra*.

⁶⁹ 30 TEX. ADMIN. CODE § 55.203(c)(5).

⁷⁰ *Collins v. TNRCC*, 94 S.W.3d 876, 883 (Tex.App.—Austin 2022); 30 TEX. ADMIN. CODE § 55.203(c)(4)-(5).

⁷¹ *City of Waco v. TCEQ*, 346 S.W.3d at 805-06, 826 ; *TCEQ v. Waterkeeper*, 714 S.W.3d at 286; *see also Helena Chem. Co. v. Cox*, 664 S.W.3d at 75 (explaining that where evidence of potential harm requires “knowledge and analysis of scientific matters beyond the competence of laymen” unsworn assertions by a nonexpert layperson “cannot support a reasonable inference that those facts exist.”).

requestors are not affected persons if the proposed activity will have a minimal effect on their health, safety, use of property, and use of natural resources.⁷²

Ms. Wilson would not experience a discernible impact from her sporadic visits to locations described in the Waterkeeper's Request any differently than anyone else.⁷³ Based on Waterkeeper's May 2025 Request, Ms. Wilson's visits near the Complex are infrequent, about once every few weeks.⁷⁴ As Ms. Lasater attested, the frequency of Ms. Wilson's visits to the outfalls has declined since the 2019 CD.⁷⁵ But Waterkeeper does not appear to know when she will be visiting next based on Waterkeeper's inconsistent and confused accounts of Ms. Wilson's visitation frequency.⁷⁶ Such assertions underscore the sporadic and speculative nature of Ms. Wilson's presence near the Complex.

FPC's substantial scientific and factual evidence stands in marked contrast to the assumptions and unfounded assertions offered by Waterkeeper and OPIC. Waterkeeper's claims of past impacts, causation, or exposure attributable to Ms. Wilson are wholly unsubstantiated.⁷⁷ First, allegations of probable risk are not actionable.⁷⁸ Where evidence of potential harm requires "knowledge and analysis of scientific matters beyond the competence of laymen," unsworn assertions by a nonexpert layperson "cannot support a reasonable inference that those facts exist."⁷⁹ Second, the record for the Application contains uncontroverted expert air dispersion modeling and toxicology testimony that squarely demonstrates that potential impacts from proposed emissions will be indiscernible to Ms. Wilson and

⁷² *TCEQ v. Waterkeeper*, 714 S.W.3d at 285; *Tex. Comm'n on Env'tl. Quality v. Sierra Club*, 455 S.W.3d 228, 240 (Tex. App. – Austin 2014).

⁷³ See FPC's Response Brief at 23-31; Fraiser Affidavit ¶ 20.

⁷⁴ 2025 Request at 2.

⁷⁵ Lasater Affidavit ¶ 8(g).

⁷⁶ See Waterkeeper Reply at 10, n. 44, 13, 17; 2025 Request at 2-3; 2022 Request at 2.

⁷⁷ See Waterkeeper Reply at 17 (claiming without any evidentiary support that Ms. Wilson was within 0.15 miles of the Complex "approximately 450 times" since 2016), 18 (alleging without any evidentiary support long-term repeated exposure to [unspecified] pollutants).

⁷⁸ *Helena Chem. Co. v. Cox*, 664 S.W.3d 66, 75 (Tex. 2023) (explaining that complex scientific questions of causation require expert testimony).

⁷⁹ See *id.* ¶ 20(c), (d).

any other member of the public. The TCEQ ED's Air Dispersion Modeling Team audited FPC's AQA and approved the modeling demonstration as acceptable for all review types and pollutants.⁸⁰

The AQA included Lavaca Bay, Cox Bay, and Cox Creek near FPC's stormwater and wastewater outfalls,⁸¹ and demonstrates that a person recreating or monitoring outfalls near the Complex is unlikely to be affected differently than a member of the public.⁸² Adverse public health and welfare impacts depend on exposure concentrations.⁸³ Dr. Fraiser determined that "Ms. Wilson's potential exposures are expected to be far lower than exposures assumed during the permit application review" and that "potential impacts of the air emissions from the Project are expected to be indiscernible for members of the general public, including Ms. Wilson."⁸⁴ As Dr. Fraiser concluded, "no person who owns property, resides, or who regularly visits areas near the Complex will be impacted any differently than the general public."⁸⁵

The requirements for an air permit application do not include a demonstration of water quality or watershed protection.⁸⁶ The federal CAA prohibits EPA from requiring states to regulate "indirect sources" of air emissions as part of a State Implementation Plan⁸⁷ and the TCAA limits TCEQ's authority to regulation of direct effects to ambient air.⁸⁸ For these reasons, during the air permitting process, TCEQ guidance does not require: (1) air emission limits or analysis of impacts via deposition

⁸⁰ Srackangast Affidavit, **Exhibit AS-3**.

⁸¹ *Id.* ¶ 20(c); Srackangast Affidavit ¶ 9; **Exhibit AS-2**, Figure 11-5.

⁸² Fraiser Affidavit ¶ 21; Srackangast Affidavit ¶ 18 (concluding that maximum allowable emissions of all proposed contaminants from Project Facilities in the Application will not cause or contribute to a violation of any applicable NAAQS, SPLS, PSD Increment, and will not have adverse effects on soils, vegetation, or Class I areas at FPC's fenceline or beyond); see **Exhibit AS-2** at 13-1.

⁸³ Fraiser Affidavit ¶ 20(c), (d).

⁸⁴ Fraiser Affidavit ¶¶ 20(d), 21.

⁸⁵ *Id.*

⁸⁶ See 30 TEX. ADMIN. CODE § 116.111.

⁸⁷ 42 U.S.C. § 7410(a)(5).

⁸⁸ See TEX. HEALTH & SAFETY CODE §§ 382.003(3) (defining "air pollution" as the presence in the atmosphere of one or more air contaminants or combination of air contaminants); 382.003(2) (defining "air contaminant"); 382.0518(a) (permit requirement for a new facility or modification of an existing facility that may emit air contaminants).

of contaminants on soil and water, ingestion, or other non-ambient-air pathways in the air permitting process;⁸⁹ or (2) evaluation of impact on vegetation having recreational value.⁹⁰

Secondary welfare-based NAAQS are set at levels that reduce risk sufficient to protect the public welfare from known or anticipated adverse welfare effects, which include protection against decreased visibility, damage to animals, crops, ecosystems, vegetation, and buildings.⁹¹ Since the maximum ground level concentrations for all air contaminants in the Application were below the respective secondary NAAQS and secondary welfare-based ESLs, decreased visibility or damage to animals (including livestock and wildlife), vegetation, and the ecosystem are not anticipated from any pollutant.⁹²

Even so, the AQA demonstrates that soils and vegetation will not be impaired because project emissions are far below the secondary NAAQS.⁹³ The TCEQ ED reviewed soils and vegetation impacts in the PSD Additional Impacts Analysis and determined no sensitive soil types within the state would be harmed by criteria pollutant concentrations less than the NAAQS, satisfying PSD requirements.⁹⁴ In addition to potential impacts of the air emissions from the Project expected to be indiscernible for Ms. Wilson, the conservative nature of NAAQS and ESLs ensures that any potential health or welfare impacts are exceedingly unlikely.⁹⁵

IV. JUSTICIABLE INTEREST ANALYSIS SUMMARY

As summarized in the table below, Ms. Wilson's asserted interests are not justiciable under the scope of TCEQ's interests set out in 30 Tex. Admin. Code § 55.203. Nor are Ms. Wilson's interests distinguishable from those of the general public since each lacks a legal interest that would be affected

⁸⁹ TCEQ *Guidelines to Develop Toxicity Factors*, RG-442 (2015) at 1.

⁹⁰ TCEQ *Air Quality Modeling Guidelines*, APD-ID255v1 (2024) at 26.

⁹¹ Fraiser Affidavit ¶¶ 18(e), 20(e).

⁹² Fraiser Affidavit ¶ 20(e).

⁹³ Srackangast Affidavit ¶ 18.

⁹⁴ Preliminary Determination Summary; **Exhibit AS-3** (TCEQ AQA Audit Memorandum); **Exhibit AS-2** (FPC Air Quality Analysis Report) at 13-2.

⁹⁵ Fraiser Affidavit ¶¶ 17-19, 21.

by the Application, and each is common to the general public. Thus, Waterkeeper has not met its burden and Ms. Wilson is not an affected person.

Justiciable Interest 30 TAC § 55.203 (a), (c)(4), (c)(5)	Volunteer Outfall Monitoring	Recreational Activity and Aesthetic Enjoyment
Property	Wilson’s property interest is more than 20 miles away – a distance where she would not be affected differently than members of the general public. ⁹⁶	Wilson’s property interest is more than 20 miles away – a distance where she would not be affected differently than members of the general public. ⁹⁷
Right	Wilson does not possess a right to conduct monitoring. She has the same opportunity under the 2019 CD as any public citizen. ⁹⁸	Wilson possesses the same ability and access as any member of the public to recreate or enjoy aesthetic beauty, public water bodies, wildlife, flora, and fauna. ⁹⁹
Duty	Wilson does not have any obligation to conduct monitoring. She has the same opportunity under the 2019 CD as any public citizen. ¹⁰⁰	Wilson does not have any obligation to recreate or enjoy aesthetic beauty, public water bodies, wildlife, flora, and fauna. ¹⁰¹
Privilege	Wilson does not have a unique privilege to conduct monitoring. She has the same opportunity under the 2019 CD as any public citizen. ¹⁰²	Wilson does not have any privilege to recreate or enjoy aesthetic beauty, public water bodies, wildlife, flora, and fauna. ¹⁰³
Power	Wilson does not hold power to conduct monitoring. She has the same opportunity under the 2019 CD as any public citizen. ¹⁰⁴	Wilson does not have any power to recreate or enjoy aesthetic beauty, public water bodies, wildlife, flora, fauna. ¹⁰⁵
Economic Interest	Wilson is retired and does not have a “job” or income from monitoring activity under 2019 CD. She has the same opportunity under the 2019 CD as any public citizen. ¹⁰⁶	Wilson does not have any economic interest in recreating or enjoying aesthetic beauty, public water bodies, wildlife, flora, fauna. ¹⁰⁷

⁹⁶ See FPC’s Response Brief at 22; Fraiser Affidavit ¶ 21 (concluding that potential impacts at locations farther away from the Complex like Ms. Wilson’s residence would be even less discernable than potential impacts nearer to the Complex that are indiscernible to members of the general public).

⁹⁷ *Id.*

⁹⁸ See FPC’s Response Brief at 21-22; 2019 CD ¶ 37 (explicitly providing that “Plaintiffs or other concerned citizens” may report documentation of plastics found in or along the relevant waterways).

⁹⁹ See FPC’s Response Brief at 18-19.

¹⁰⁰ See FPC’s Response Brief at 21-22; 2019 CD ¶¶ 29-35 (obligation to perform monitoring is ascribed to the professional, hired monitor).

¹⁰¹ See FPC’s Response Brief at 18-19.

¹⁰² See FPC’s Response Brief at 21-22.

¹⁰³ See FPC’s Response Brief at 18-19.

¹⁰⁴ See FPC’s Response Brief at 21-22.

¹⁰⁵ See FPC’s Response Brief at 18-19.

¹⁰⁶ See 2022 Request at 2 (Waterkeeper “is a volunteer-run . . . non-profit organization”); 2025 Request at 2 (same); *TCEQ v. Waterkeeper*, 714 S.W.3d at 279 (acknowledging that Ms. Wilson is retired from her career as a commercial fisherwoman).

¹⁰⁷ *Id.*

V. WATERKEEPER DOES NOT HAVE ORGANIZATIONAL STANDING.

First, Waterkeeper has no organizational standing without an identified member who would have standing to request a contested case hearing in their own right.¹⁰⁸ For all of the reasons discussed above and in FPC's Response Brief, Waterkeeper's group member, Ms. Wilson, does not have a personal justiciable interest affected by the Application and is not an affected person with standing to request a contested case hearing.

Second, an organization's asserted interest in requesting a contested case hearing must be germane to that organization's purpose.¹⁰⁹ Waterkeeper's stated mission centers exclusively on water systems.¹¹⁰ As discussed above, TCEQ's air permitting process does not set emission limits or assess impacts from contaminant deposition into water or other non-ambient pathways. The organization's alleged interests of germaneness to air quality in FPC's air permit Application are factually and legally unsupportable.

VI. CONCLUSION

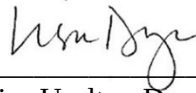
For the reasons outlined above, Waterkeeper failed to demonstrate Ms. Wilson's affectedness under applicable law. Her interests do not rise to the level of legal, justiciable interests and are indistinguishable from those held by the general public. The Application and Draft Permits meet and exceed conservative health and welfare standards, and expert technical evaluations confirm no discernible potential impact to Ms. Wilson or others. Furthermore, Waterkeeper organizational focus on water systems is irrelevant to the air quality Application at issue. Accordingly, FPC respectfully requests the Commission determine Ms. Wilson is not an affected person, deny Waterkeeper's hearing requests, and issue the Draft Permits.

¹⁰⁸ 30 TEX. ADMIN CODE § 55.205(b)(2).

¹⁰⁹ *Id.* at (b)(3).

¹¹⁰ *See* FPC's Response Brief at 33.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I filed a true and correct copy of the foregoing Formosa Plastics Corporation, Texas's Affected Person Brief through TCEQ's efile system and served a copy on the following persons via electronic mail on October 17, 2025:

/s/ Lisa Uselton Dyar

Lisa Uselton Dyar

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