

**TCEQ AIR QUALITY PERMIT NUMBERS: 140763, PSDTX1500M1, and
GHGPSDTX46M1; 19871, PSDTX1236M1, and GHGPSDTX221; 91780, PSDTX1240M1,
and GHGPSDTX223; 19200, PSDTX1237M1, and GHGPSDTX218; 19168,
PSDTX1226M1, and GHGPSDTX224; 107518, PSDTX1383M2, and GHGPSDTX48M1;
20203, PSDTX1224M1, and GHGPSDTX222; 40157, PSDTX1222M1, and
GHGPSDTX225; 19201, PSDTX1232M1, and GHGPSDTX219
TCEQ DOCKET NUMBER 2025-1160-AIR**

APPLICATION BY	§	BEFORE THE
FORMOSA PLASTICS CORPORATION,	§	
TEXAS	§	
POINT COMFORT PLANT	§	TEXAS COMMISSION ON
POINT COMFORT, CALHOUN	§	
COUNTY	§	ENVIRONMENTAL QUALITY

**EXECUTIVE DIRECTOR’S REPLY BRIEF REGARDING AFFECTED PARTY
DETERMINATION**

The Executive Director of the Texas Commission on Environmental Quality (Executive Director) continues to recommend denying the hearing request of San Antonio Bay Estuarine Waterkeeper (Waterkeeper). Although they submitted timely comments on the application, the group has not identified a member who would otherwise have standing to request a hearing in their own right.

I. INTRODUCTION

The Executive Director files this Reply Brief to further elaborate on and support the *Executive Director’s Response to Hearing Requests, Agenda Backup, and Executive Director’s Brief Regarding Affected Party Determination* filed with the TCEQ Office of the Chief Clerk (OCC) on September 15, 2025, September 16, 2025, and October 17, 2025, respectively. The Executive Director incorporates those filings by reference.

II. ARGUMENT

Texas law is well established that in order to be considered an “affected person” in a contested case hearing a person must be “a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest.”¹ This standard has been in effect since 1999.² The Texas Natural Resources Conservation Commission (TNRCC) adopted rules reflecting the affected person standard established by the legislature in October of 1999.³ The rules in the Texas Administrative Code reflect the statute.⁴

¹ Texas Water Code (TWC) § 5.115(a) (Tex. Vernon’s Code Ann. 1999).

² See H.B. 801, 76th Leg., R.S. (1999). House Bill 801 was adopted prior to the name change from Texas Natural Resource Conservation Commission (TNRCC) to the Texas Commission on Environmental Quality in 2004.

³ 24 Tex. Reg. 9015 (Oct. 20, 1999).

⁴ 30 Texas Administrative Code (TAC) § 55.203(a). “[A]n 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.” *Id.*

a. Affected Person Standard

The Texas 15th Court of Appeals issued an opinion this year confirming the affected person standard in TCEQ contested case hearings.⁵ Waterkeeper and Ms. Wilson were parties to that suit.⁶ In *TCEQ v. Waterkeeper*, the Commission denied over 2,500 contested case hearing requests, including the requests of Ms. Wilson and Waterkeeper.⁷ Ms. Wilson cited her monitoring work for Formosa⁸ along with recreational interests as a basis for affected person status for her request.⁹ The Appellees¹⁰ argued, specifically related to standing to request a contested case hearing, “the Commission's denial of their contested case hearing requests was invalid, arbitrary, or unreasonable because they demonstrated they are affected persons and they satisfy federal Article III standing criteria based on their use of property, likely harms to health and safety, and/or recreational and aesthetic interests.”¹¹ The Court of Appeals found that substantial evidence was provided to deny affected person status.¹²

As explained above, and recognized in *TCEQ v. Waterkeeper*, “[t]he 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.”¹³ An individual seeking affected person status, and by extension a group or association seeking to claim affected person status with a named member, must “identify his or her personal justiciable interest affected by the application—including the location and distance relative to the proposed facility—and explain how that interest will be adversely affected in a manner not common to members of the general public.”¹⁴ A party seeking affected person determination has the “minimum burden” of establishing a justiciable interest.¹⁵ The standard of review to determine affected person status is substantial-evidence review, which is highly deferential.¹⁶

⁵ *Texas Comm'n on Env't Quality v. San Antonio Bay Estuarine Waterkeeper*, 714 S.W.3d 270 (Tex. App.-15th Dist., 2025, pet. filed Aug. 6, 2025) [hereinafter *TCEQ v. Waterkeeper*].

⁶ *Id.* at 276.

⁷ *Id.* at 279.

⁸ *TCEQ v. Waterkeeper* concerned the Max Midstream expansion of the Seahawk Crude Condensate Terminal in Calhoun County.

⁹ *TCEQ v. Waterkeeper*, at 279. “Wilson visited the bodies of water three times in the previous four months. She identified one location as being “roughly 1300 feet” from the Seahawk Terminal. Wilson identified other areas she visited approximately as 1.85 miles and two miles from the terminal. She visited those areas once every two months. Wilson visits several other areas within five miles of the terminal once per week. Wilson lives within 15 miles of the Seahawk Terminal, and alleged she would be exposed to increased air pollution if the application for permit was approved.” *Id.*

¹⁰ Ms. Diane Wilson, San Antonio Bay Estuarine Waterkeeper, and Texas Campaign for the Environment

¹¹ *TCEQ v. Waterkeeper*, at 281.

¹² *Id.* at 283-285.

¹³ *TCEQ v. Waterkeeper*, at 282 (referring to TWC 5.115(a)).

¹⁴ *TCEQ v. Waterkeeper*, at 282; 30 TAC 55.201(d)(2).

¹⁵ *TCEQ v. Waterkeeper*, at 284; *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008) [hereinafter *Inman*]. “To have a justiciable interest, the complainant must show that a concrete, particularized, actual or imminent injury faces him or her due to the decision; a hypothetical or speculative injury is not enough.” *TCEQ v. Waterkeeper*, at 284; *Inman*, at 304-05.

¹⁶ *TCEQ v. Waterkeeper*, at 282; *N. E. Indep. Sch. Dist. v. Riou*, 598 S.W.3d 243, 251 (Tex. 2020) [hereinafter *Riou*]. “Review under the substantial-evidence rule is highly deferential—the issue is not whether the agency's decision is correct, but whether the record demonstrates a reasonable basis for it.” *TCEQ v. Waterkeeper*, at 282; *Riou*, at 251.

b. Substantial Evidence Standard

In *TCEQ v. Waterkeeper*, the court found that the Commission satisfied the substantial-evidence standard in denying Ms. Wilson's hearing request.¹⁷ The Court held that even with evidence presented by the parties regarding health and safety concerns, the Commission nonetheless had a reasonable basis for denying affected person status.¹⁸ The Appellees in *TCEQ v. Waterkeeper* presented an affidavit from an expert witness explaining the harm to health and safety that Appellees would experience.¹⁹

Here, Waterkeeper has not provided expert testimony or affidavits providing evidence that Ms. Wilson's health or safety will be impacted as a result of her activities regarding the Consent Decree, or her other interests in and around Formosa's property.²⁰ It is the Executive Director's position that Ms. Wilson's residing over 20 miles from the facility and her intermittent time spent around the facility do not establish a personal justiciable interest that is affected by this air permit.

Waterkeeper's arguments that Ms. Wilson will suffer harm because she spends intermittent time near the plant are speculative, in contrast to a property owner residing near a facility. The Executive Director has filed backup materials in this case, including the technical review and air quality analysis, showing the permit, if issued, would be protective of human health and safety.²¹ Likewise, Formosa has filed four affidavits in support of their permit application and its protection of human health and safety.²²

The Court in *TCEQ v. Waterkeeper* found, despite being presented with conflicting expert testimony regarding health and safety, there was substantial evidence presented to the Commission's that the permit would be protective of health and safety, and therefore denied affected person status of Appellees.²³ Likewise, despite Ms. Wilson's work involving the Consent Decree, there is substantial evidence in the record for the Commission to deny Waterkeeper's contested case hearing request based on Ms. Wilson's lack of sustained time spent around Formosa's property.

Additionally, the Court in *TCEQ v. Waterkeeper* was not convinced that recreational interests were sufficient to claim affected person status.²⁴ The Court found, regarding Ms. Wilson recreating in the bays around the facility subject to that appeal, "[t]hose Bays are also open to the public and generally accessible to anyone. [Ms.] Wilson, therefore did not meet her burden to show that her enjoyment of recreational activities and aesthetic beauty was not common to members of the general public."²⁵ Another named member of Waterkeeper in *TCEQ v. Waterkeeper* stated they fished within two miles of the facility, and the Court determined that member "did not meet his burden to establish that potential impacts on his recreational activities would be different from potential impacts to the general public."²⁶ Therefore, Waterkeeper has not

¹⁷ *TCEQ v. Waterkeeper*, at 285-86.

¹⁸ *Id.* at 284.

¹⁹ *Id.* at 285.

²⁰ See generally filings by Waterkeeper which do not provide this information.

²¹ See *Agenda Backup*, filed Sep. 16, 2025.

²² See *Applicant Formosa Plastics Corporation, Texas's Response to Hearing Request*, p. 3, filed Sep. 15, 2025.

²³ *TCEQ v. Waterkeeper*, at 284.

²⁴ *TCEQ v. Waterkeeper*, at 285-86.

²⁵ *Id.* at 285-86.

²⁶ *Id.* at 286.

established that Ms. Wilson recreating in the area meets the burden of affected person status.

c. Number of Requestors

Waterkeeper's arguments that the Executive Director's analysis would not allow large numbers of people to be designated as affected persons are also immaterial. The Executive Director has recently recommended granting affected person status to multiple parties in two sperate contested case hearing request proceedings on air quality permit applications in the last six months.²⁷ The difference is that each of those parties demonstrated, individually, how they each would be affected differently than the general public by the proposed plants.²⁸ In this case Ms. Wilson's exposure would not be different than the general public and Waterkeeper has still failed to support a particularized potential harm to Ms. Wilson from intermittent and inconsistent exposure to emissions from Formosa's plant.

d. Standing

Finally, as discussed by Waterkeeper, the Texas Attorney General has clearly explained that the rules upon which the Executive Director has relied to evaluate this hearing request do not require less than what is required by Article III.²⁹ TCEQ's rules require that a person must demonstrate that they are an affected person to be granted a contested case hearing.³⁰ As discussed, that requires a demonstration of an interest not common to the general public.³¹ Waterkeeper and Ms. Wilson have not made that demonstration here, as Ms. Wilson's interests are simply too attenuated to demonstrate a particularized harm due to the potential emissions that could result from this permit application.

e. TPDES Contested Case Hearing Request

Waterkeeper argues that the Commission should consider recent commission decisions regarding the affected person determination for a Texas Pollution Discharge Elimination System (TPDES) permit application.³² This argument is irrelevant because TPDES permits involve a different media than air and are not evaluated using the same environmental standards as air quality permit applications.

²⁷ See *Executive Director's Response to Hearing Requests and Requests for Reconsideration*, Application by Nueces Green Ammonia, LLC, Permit No. 174951 (filed on July 29, 2025); *Executive Director's Response to Hearing Requests and Requests for Reconsideration*, Application by J7 Ready Mix, LLC (filed on Aug. 29, 2025).

²⁸ See generally *Executive Director's Response to Hearing Requests and Requests for Reconsideration*, Application by Nueces Green Ammonia, LLC, Permit No. 174951 (filed on July 29, 2025); *Executive Director's Response to Hearing Requests and Requests for Reconsideration*, Application by J7 Ready Mix, LLC (filed on Aug. 29, 2025).

²⁹ Brief of San Antonio Bay Estuarine Waterkeeper, p. 3-4, filed Oct. 17, 2025 [hereinafter "Waterkeeper Brief"] *quoting Statement of Legal Authority to Regulate Oil and Gas Discharges Under the Texas Pollutant Discharge Elimination System*, Texas Attorney General Ken Paxton (September 18, 2020).

³⁰ 30 TAC § 55.201.

³¹ 30 TAC § 55.203.

³² Waterkeeper Brief, at 12.

III. CONCLUSION

The Executive Director respectfully recommends the commission find that San Antonio Bay Estuarine Waterkeeper is not an affected person as a matter of law and deny their hearing request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 24th day of October, 2025, a true and correct copy of the “Executive Director’s Reply Brief Regarding Affected Party Determination” was served on all persons on the mailing 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 black ink, appearing to read "Amanda E. Kraynok". The signature is fluid and cursive, with the first name being more prominent.

Amanda Kraynok, Staff Attorney
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