

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 COMMISSION ON
TEXAS POINT COMFORT PLANT	§	ENVIRONMENTAL QUALITY
POINT COMFORT, CALHOUN	§	
COUNTY	§	

REPLY OF SAN ANTONIO BAY ESTUARINE WATERKEEPER

I. Ms. Wilson is an Affected Person Under 30 T.A.C. 5115(a)

A. Ms. Wilson Has Standing Under Article III.

The permit amendments (“Amendments”) at issue will authorize Formosa to emit an additional 2,262 tons per year of criteria pollutants. Waterkeeper Nov. 18, 2022 CCH Request (“2022 Request”) at 5. Waterkeeper’s requests have described the negative impacts Formosa’s emissions have, and will increasingly have if emissions increase, on its member, Ms. Wilson:

Ms. Wilson is concerned that the additional flaring and air pollution from the Amendments could damage her health when she is recreating and working around Formosa’s Plant. She understands that, following the Amendments, her visits to [Formosa’s] outfalls will likely expose her to even higher amounts of air pollution—including carbon monoxide, nitrogen oxides, and volatile organic compounds—than before. . . . Ms. Wilson is reasonably concerned that such exposure will harm her health. This gives her anxiety for her wellbeing as she feels compelled to visit those areas to prevent illegal pollution and does not believe she can

prevent exposure. She is most concerned about being exposed to even greater amounts of carcinogenic volatile organic compounds as a result of the Amendments.

The Amendments will also reduce Ms. Wilson's enjoyment of Lavaca Bay's and Cox Creek's natural aesthetic beauty by allowing increased flaring and emissions of carbon monoxide, volatile organic compounds, and nitrogen oxides. These pollutants contribute to smog and algal blooms, impairing the beauty and health of the Bays that San Antonio Bay Estuarine Waterkeeper and Ms. Wilson wish to protect. . . . She is disheartened knowing that the natural beauty and peace of Cox Creek will be further diminished by the noise and pollutants from additional flaring, especially where that additional flaring harms, and thereby reduces, wildlife she is able to view and her quiet enjoyment of the area.

Waterkeeper May 30, 2025 CCH Request ("2025 Request") at 4.

This is more than enough to satisfy the Article III criteria, which are not demanding: "An identifiable trifle is enough for standing." *United States v. SCRAP*, 412 U.S. 669, 690 n.14 (1973); *accord Sierra Club v. Cedar Point Oil Co., Inc.*, 73 F.3d 546, 557 (5th Cir.1996). The Fifth Circuit has emphasized that concern that pollution will damage a natural resource alleged to be used by the plaintiff suffices for standing:

Cedar Point makes much of the fact that the affiants expressed "concern" that the discharge of produced water will impair their ability to engage in recreational activities. . . . Whether the affiants were "concerned" or "believed" or "knew to a moral certainty" that produced water would adversely affect their activities on the bay is a semantic distinction that makes little difference in the standing analysis. The requirement that a party demonstrate an injury in fact is designed to limit access to the courts to those "who have a direct stake in the outcome," *Valley Forge Christian College*, 454 U.S. at 473, (quoting *Sierra Club v. Morton*, 405 U.S. 727, 740,), as opposed to those who "would convert the judicial process into 'no more than a vehicle for the vindication of the value interests of concerned bystanders.'" *Id.* (quoting *United States v. SCRAP*, 412 U.S. 669, 687 (1973)). Sierra Club's affiants are concerned, but they are not mere "bystanders."

Two of the affiants live near Galveston Bay and all of them use the bay for recreational activities. All of the affiants expressed fear that the discharge of produced water will impair their enjoyment of these activities because these activities are dependent upon good water quality. Clearly, Sierra Club's affiants have a “direct stake” in the outcome of this lawsuit.

Cedar Point Oil Co., Inc., 73 F.3d at 557. There is no doubt that Ms. Wilson has a “direct stake” in this matter. As the First Circuit recently put it,

[W]e hold that “breathing and smelling polluted air” are both injuries-in-fact, even when unaccompanied by additional associated harms. To reach this conclusion, we follow the Supreme Court's directive to look to “harm[s] traditionally recognized as providing” bases for lawsuits “in American courts” to gauge whether an asserted harm is cognizable . . . In short, breathing polluted air is “traditionally recognized as providing a basis for a lawsuit in American courts.” *TransUnion*, 594 U.S. at 417, 141 S.Ct. 2190. And given this longstanding historical practice, we join several of our sister circuits in holding that air-pollutant exposure is an injury-in-fact, regardless of whether additional harms attend that exposure. *See Sierra Club v. Franklin Cnty. Power of Ill., LLC*, 546 F.3d 918, 925 (7th Cir. 2008) (explaining that “likely exposure to pollutants” satisfies the injury-in-fact requirement (cleaned up)) . . . *Texans United for a Safe Econ. Educ. Fund v. Crown Cent. Petroleum Corp.*, 207 F.3d 789, 792 (5th Cir. 2000) (favorably citing precedent holding that “breathing and smelling polluted air is sufficient to demonstrate injury-in-fact and thus confer standing under the CAA”).

Cons. Law Found. v. Academy Express LLC, 129 F.4th 78, 87–88 (1st Cir. 2025).

B. 30 T.A.C. 55.203(a) is Compatible with Article III.

Waterkeeper’s opening brief (“Waterkeeper Br.”) showed that both TCEQ and the Texas Attorney General have affirmed that, “The criteria regarding determination of affected persons in the TCEQ’s rules comport with the standing requirements in Article III of the United States Constitution.”

Waterkeeper Br. at 5. As discussed therein and below, there is no doubt that Ms.

Wilson meets the standing criteria of Article III and is thus an “affected person” for purposes of 33 T.A.C. 55.203(a).

The Executive Director’s brief (Executive Director’s Brief Regarding Affected Party Determination; “E.D. Br.”) does not mention Article III. Formosa, on the other hand, ignores both what the Attorney General and the Commission have stated about affected person status conforming to Article III; in fact, Formosa defiantly states, “The analysis for determining “affected person” status under Texas law is not equivalent to Article III standing under federal law.” Formosa Plastics Corporation, Texas’s Brief on Affected Person Determination (“Formosa Br.”).¹ For this proposition, Formosa cites Texas Water Code § 5.115 and 5.556 and two cases: *TCEQ v. San Antonio Bay Estuarine Waterkeeper*, 714 S.W.3d 270, 287 (Texas App. - Austin 2025, pet. filed) (“*TCEQ v. Waterkeeper*”) and *TCEQ v. City of Waco*, 413 S.W.3d 409, 424-25 (Tex. S. Ct. 2013). None of these support Formosa’s attempted distinction between Article III standing and affected personhood in federal permitting programs.

Source one, Texas Water Code § 5.115(a), states the following:

For the purpose of an administrative hearing held by or for the commission involving a contested case, “affected person,” or “person affected,” or “person who may be affected” means 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.²

¹ Similarly, “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 misapplied in a TCEQ affected person determination.” *Id.* at 3-4.

² Source two, Texas Water Code § 5.556 (“Request for Reconsideration or Contested Case Hearing”), states in relevant part only that, “The commission may not grant a request for a

Given the Texas Attorney General's and Commission's statements that § 5.115(a) "comport[s] with standing requirements in Article III" for purposes of determining who is an affected person in federal permitting actions means that the Commission must read § 5.115(a) in light of Article III jurisprudence in this proceeding. Indeed, for "federal permit programs being implemented by the TCEQ . . . There is no material difference between the TCEQ's standards and the standards the federal courts apply when deciding judicial standing." *Id.*, quoting Op. Texas Att'y Gen., *Statement of Legal Authority to Regulate Oil and Gas Discharges under the Texas Pollutant Discharge Elimination System Program* at 12 (Sept. 18, 2020).

The cases Formosa cites, *City of Waco* and *TCEQ v. Waterkeeper*, likewise offer no support. Formosa points to nothing in *City of Waco* saying that the language in 30 T.A.C. 55.203(a) is incompatible with Article III; in fact *City of Waco* does not cite or discuss Article III at all, and its discussion of "constitutional" standing refers to the Texas Constitution.³ Similarly, *TCEQ v. Waterkeeper* expressly limited its consideration to Texas law and merely found that the individuals seeking a contested case hearing lacked a personal justiciable interest in that matter. 714 S.W.3d at 288. *Waterkeeper* does not say that TCEQ's denial was inconsistent with Article III requirements. Indeed,

contested case hearing unless the commission determines that the request was filed by an affected person as defined by Section 5.115."

³ *City of Waco* cites to the lower court's constitutional standing discussion; in turn, that court (346 S.W.3d 781, 801-02 (Tex.App.-Austin 2011)) relied on its previous decision in *Stop the Ordinances Please v. City of New Braunfels*, 306 S.W.3d 919, 925-26 (Tex.App. - Austin 2010, no pet.): "The general test for constitutional standing in Texas courts is whether there is a "real" (i.e., justiciable) controversy between the parties that will actually be determined by the judicial declaration sought."

Waterkeeper acknowledges that all parties to that case, including TCEQ, “agree that the Commission’s affected person regulations embody federal Article III standing requirements.” *Id.* at 282.

Formosa disagrees with the Texas Attorney General that the Commission’s definition of “affected person” in 30 T.A.C. § 55.203(a) imposes requirements consistent with Article III requirements. Formosa Br. at 3. Instead, Formosa contends that TCEQ “must follow the unambiguous language of its own regulations” and suggests that the unambiguous language of these regulations dictates that “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.” *Id.* at 3-4. But by its own terms, the personal justiciable interest requirement of 30 T.A.C § 55.203(a) is consistent with Article III. All it requires is for requestors to establish a personal justiciable interest distinguishable from interests shared by the general public. That is the central requirement of Article III standing—for which environmental, scientific, and recreational interests suffice.

Nothing in the language of § 55.203(a) suggests that the personal health, environmental, recreational, and aesthetic interests Ms. Wilson asserts here—without a property interest—are legally insufficient to qualify her as an affected person. In fact, TCEQ’s regulations *require* the Commission to consider whether the permitting action impacts an alleged affected person’s “health, safety, and use of property” (not requiring that property be private) and “use of the impacted natural resource by the person” (natural resources typically being

public resources). 30 T.A.C. 55.256(c). Ms. Wilson’s repeated exposure to pollution from Formosa’s Point Comfort plant and her experience of the negative effects of such exposure establish a justiciable injury cognizable under the laws governing this permit. For example, “Ms. Wilson has been so close to . . . [Formosa’s] active flares [that] the smell from the active flares was sickening, giving [Ms. Wilson] . . . such nausea she felt close to vomiting.” 2025 Request at 4. Ms. Wilson’s direct exposure to pollution and negative reaction to it create a concrete, personalized injury to her justiciable interest in her own health and in her aesthetic and recreational enjoyment of public lands.

Formosa’s other citations likewise demonstrate the lack of support for its position. Its citation to *Save Our Springs Alliance Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 878-80 (Tex. App.—Austin 2010) is more than misplaced; *Save Our Springs* affirmatively stands for the proposition that Ms. Wilson is an affected person. In *Save Our Springs*, the court expressly distinguished the facts of that case (suit under the Uniform Declaratory Judgments Act challenging a city’s actions in the absence of statutory right or cause of action established to protect environmental interests) from cases involving causes of action under laws created to protect environmental interests. *Save Our Springs*, 304 S.W.3d at 882 (absent an “environmentally interest provided for or protected by statute....there is no particularized, legally protected stake in this context, as there is nothing to distinguish the environmental, scientific, or recreational concerns of SOS Alliance’s members from the same concerns experienced by the general public.”).

Unlike in *Save Our Springs*, the laws governing this hearing aim to protect the same environmental, recreational, and aesthetic interests Ms. Wilson has alleged will be impacted by the permit: “It is the public policy of the state to provide for the conservation and development of the state’s natural resources, including . . . The maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources.” Tex. Water Code § 1.003(6).

The policy of this state and the purpose of this chapter are to safeguard the state’s air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.

Tex. Health & Safety Code § 382.002(a).

The purposes of this part are as follows: (1) to protect public health and welfare from any actual or potential adverse effect which . . . may reasonably be anticipate[d] to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air...notwithstanding attainment and maintenance of all national ambient air quality standards; . . . (5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

42 U.S.C. § 7470(1), (5) (Clean Air Act).

In fact, the *Save Our Springs* court indicates that plaintiffs’ environmental and recreational interests *would* qualify as personal justiciable interests under Texas law had the action been brought under the federal Clean Water Act:

[T]he federal cases cited by SOS Alliance, in which environmental harm is held to constitute an injury in fact for purposes of standing, involve the application of federal environmental-protection statutes that prohibited the types of conduct alleged by the plaintiffs in those cases to have occurred . . . *In these cases, then, the plaintiffs possessed a legally protected interest for purposes of standing by virtue of a federal statute.* See [*Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149] at 156–57 (“injury required by Article III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing” (quoting *Warth v. Seldin*, 422 U.S. 490, 500)). . . In short, each of the federal cases cited by SOS Alliance that found the existence of standing where the alleged harm was to environmental, scientific, or recreational interests *involved a federal statute protecting those same interests.*

Id. at 880–81 (footnotes and parallel citations omitted).

Like the Clean Water Act analyzed in *Save Our Springs*, *id.* at 881, the federal Clean Air Act creates a cause of action under which members of the public have standing to sue polluters and the state for violating that statute. 42 U.S.C. § 7604(a). Likewise, the Clean Air Act requires state-implemented Prevention of Significant Deterioration programs, like TCEQ’s, to provide members of the public who satisfy Article III standing requirements an opportunity to appeal permitting decisions to state court. 61 Fed. Reg. 1880, 1882 (Jan. 24, 1996).

To demonstrate compliance with this requirement (and equivalent requirements related to TCEQ’s federally-delegated authority to implement federal permitting requirements, the Texas Attorney General has stated the affected person determination process “comport[s] with the standing requirements in Article III of the United States Constitution for judicial review under the state statutes applicable to federal programs being implemented by

the TCEQ[.]” Op. Texas Att’y Gen., *Statement of Legal Authority to Regulate Oil and Gas Discharges under the Texas Pollutant Discharge Elimination System Program* at 12 (Sept. 18, 2020). Thus, even if Texas courts applying other Texas laws determined that environmental, recreational, and aesthetic harms are not justiciable in fundamentally different cases, the federal Clean Air Act and Texas’s statutes and regulations implementing it protect and make justiciable particularized injuries to these interests. Nothing in any case cited by Formosa or the Executive Director suggests otherwise.

C. The Executive Director’s Position That Ms. Wilson Is Not an Affected Person Contradicts Her Determinations in Other Cases.

According to the Executive Director,

In evaluating standing for an air permit application, the duration and location of the individual is key to the potential exposure of the individual to air contaminants. Intermittent time spent near the facility does not impact the presumption that the majority of Ms. Wilson’s exposure would be associated with her personal residence. . . None of [Ms. Wilson’s] involve a frequency or duration to warrant granting affected party status. . . .

In the absence of sustained and consistent time spent by Ms. Wilson near the plant that may be analogized to a regular job or living in the area, Waterkeeper has failed to establish that Ms. Wilson would be affected differently than the general public. Although Ms. Wilson may choose to put herself in close proximity to the Formosa property on average once every few weeks, that still does not rise to the level of sustained regular contact that would give her a personable justiciable interest different than that of the general public.

E.D. Brief at 5–6.

The Executive Director cites no criteria for determining either what location, or what duration of time at that location, would suffice to make someone an affected person; it appears instead that she is attempting to limit

“affected person” status to people living or working within an unspecified distance from the Plant. In the Executive Director’s opinion, only those people have an interest not “common to the general public.” Or, as Formosa puts it, “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.” Formosa Br. at 7. Ms. Wilson has a personal interest in her own health that is justiciable under the federal Clean Air Act and the Texas laws implementing it that govern TCEQ’s authority to issue this permit. Ms. Wilson’s repeated exposure to air pollution from Formosa’s flares and her plans to continue her nearly decade-spanning visits to the site to recreate and monitor compliance with the consent decree distinguish her interests and injuries from the general public, which is all that the affected person standard requires. 30 T.A.C. § 55.203(a).

The Executive Director and Formosa seem to argue for a blanket rule that recreational and environmental interests, as a matter of law, cannot satisfy the affected person test. This approach is not only contradicted by the caselaw Formosa relies on, *Save Our Springs*, 304 S.W.3d at 880-81 and n.7, but is flatly inconsistent with the Executive Director’s earlier decisions in *Application by Port of Corpus Christi Nueces Authority for TPDES Permit No. WQ0005253000*; TCEQ Docket No. 2019-1156-IWD and *Application by Corix Utilities Texas, Inc. For Major Amendment to TPDES Permit No. WQ0013977001*, Dkt. No. 2023-1591-MWD. In *Port of Corpus Christi*, the Executive Director recommended granting affected person status to people who “spen[t] time on the water” or

swam in Corpus Christi Bay or “visited the beaches” there, without any discussion of how frequently they performed these activities in which they were ostensibly joined by thousands or tens of thousands of other people.

Waterkeeper Br. at 8–9. If these individuals had an interest “not common to members of the general public” and thus satisfied the “affected person” test, then there is no basis for saying Ms. Wilson does not. And in *Corix Utilities*, the Executive Director determined that someone was an affected person because he was “impacted in a manner not common to the general public by his frequent use of the receiving waters.” *Id.* at 9. If “frequent use” qualified one person for affected person status, there is no basis for saying that Ms. Wilson’s hundreds of visits do not also qualify her.

D. The Commission Cannot Rely on Formosa’s Claims That Its Emissions Will Not Injure Ms. Wilson.

Formosa makes much of its claims that “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 any other member of the public.” Formosa Br. at 12–13. Formosa’s expert “conclude[ed] 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.” Formosa Br. at 13, n.82.

Formosa's argument is flawed because it does not indicate its modeling accounts for Formosa's chronic, massive violations of its emissions limits. Ms. Wilson's injuries go beyond her concern that the additional 2,262 tons/year of additional pollution will injure her health and her enjoyment of the surrounding waters—they also concern Formosa's record of exceeding its emission limits. Emissions during malfunctions and unplanned maintenance, startup, and shutdown ("MSS") events violate the Texas Clean Air Act, Tex. Health & Safety Code § 382.085, and significant releases during such events must be reported to TCEQ. 30 T.A.C. § 101.1(28); 101.201. Formosa has reported many such illegal releases to TCEQ, including 74 significant releases in just the time since Formosa filed its application in this matter.⁴ These illegal releases are not only frequent, but they are also significant. Since January 1, 2021, Formosa has reported the illegal release of nearly 342 tons of volatile organic compounds (including at least 20 tons of hazardous air pollutants) and 31.5 tons of nitrogen oxides during emission events at the Plant.

Illegal releases during emissions events do not capture the full extent of Formosa's illegal emissions. TCEQ has also penalized Formosa for repeated and serious violations of its permit limits during routine operations. For example, TCEQ issued an enforcement order in 2021 penalizing Formosa failing to comply with particulate matter, carbon monoxide, and volatile organic

⁴ Information about emission events at Formosa's Point Comfort operations is available electronically at: https://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=iwr.eeincdetail&addn_id=846603272009251&re_id=401398362001134.

compound emission limits in Permit Nos. 76305/PSDTX1058 and 20203/PSDTX1224. Agreed Order, In the Matter of An Enforcement Action Concerning Formosa Plastics Corp., Dkt. No. 2019-0688-AIR-E (Feb. 1, 2021). Violations addressed by this enforcement order resulted in the illegal release of 16,929 pounds of particulate matter, 7.72 tons of volatile organic compounds, and more than a ton of carbon monoxide. *Id.* This order closely followed another order penalizing Formosa's failure to comply with the particulate matter emission limit established by Permit No. 76305/PSDTX1058 through the illegal release of 2.53 tons of particulate matter pollution. Agreed Order, In the Matter of An Enforcement Action Concerning Formosa Plastics Corp., Dkt. No. 2018-1384-AIR-E (March 5, 2020).

Formosa's repeated violations of Texas and federal air pollution control requirements pose a serious threat to Ms. Wilson during her repeated visits to the area surrounding the Plant. Accordingly, Ms. Wilson has a clear stake in ensuring that the pollution control equipment primarily responsible for reducing emissions during malfunctions and unauthorized activities—its elevated flares and ground flares—is designed and operated in a way that complies with all applicable requirements.

If the Commission accepts Formosa's argument that its modeling proves Ms. Wilson is not an affected person because it demonstrates insignificant health impacts, such a precedent would bar *any affected person* from challenging the Executive Director's decision to issue an air permit, regardless of how close to the Plant the alleged affected person is and for how long.

Unsurprisingly, courts have repeatedly held that compliance with the NAAQS is irrelevant to Article III standing:

Petitioner Cohen has Article III standing even if the ambient level of SO₂ remains within the NAAQS. Indeed, Congress has recognized that there are potentially adverse affects from air pollution at levels below the NAAQS. The CAA states specifically that one of the purposes of the PSD program is “to protect public health and welfare from any actual or potential adverse effect which . . . may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media ... notwithstanding attainment and maintenance of all national ambient air quality standards.” 42 U.S.C. § 7470(1) (emphasis added) . . . *Actual exposure to increased levels of SO₂ at one's workplace is certainly something more than an “identifiable trifle,” even if the ambient level of air pollution does not exceed the NAAQS.*

LaFleur v. Whitman, 300 F.3d 256, 270–71 (2nd Cir. 2002) (emphasis added; footnote omitted); *accord In Re Methyl Tertiary Butyl Ether (“MTBE”) Products Liability Litigation*, 725 F.3d 65, 106 (2nd Cir. 2013) (“We decline to hold that the MCL constitutes a bar beneath which a water provider can never suffer injury-in-fact.”); *Mulgrew v. U.S. Dept. of Transport.*, 750 F.Supp.3d 171, 212 (S.D.N.Y. 2024) (citing *LaFleur*) (“While that increase in traffic is not expected to have a significant impact on air quality, see DOT 36861, even a small increase in pollutants abutting Chan and Hoffman's neighborhood would provide the “identifiable trifle” standing doctrine requires”); *Nat. Res. Def. Council v. Vilsack*, 2011 WL 3471011, at *4 (D. Colo. 2011):

One of OXY USA's primary arguments regarding standing is that Plaintiffs have not established visibility- or ozone-related injury in fact because the effects of the Project on visibility and ozone creation are minimal and do not violate applicable environmental standards. (Citation omitted.) However, the level of harm necessary to establish standing is less than that needed to show a violation of governing environmental standards.

IV. Conclusion

Ms. Wilson's rights under the consent decree and repeated exposure to air pollution from the Plant distinguish her interests in the outcome of this application from those of the general public. The Executive Director's and Formosa's baseless, radical stances that Ms. Wilson's environmental and health interests are not cognizable under the governing laws that protect public health, support recreational activities, and promote the natural beauty of Texas bode ill for the future of Texans exposed to industrial pollution. The presumption that air pollution only harms individuals while on their own private property does not reflect reality and only serves to restrict public participation that these laws aim to encourage. Ms. Wilson is undeniably an affected person under 30 T.A.C. § 55.203. We urge the Commissioners to determine she is an affected person and refer this matter to the State Office of Administrative Hearings for a contested case hearing on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 24, 2025, I served a true and correct copy of the foregoing “Reply of San Antonio Bay Estuarine Waterkeeper” via electronic mail or eFilings to all persons on the attached service list.

/s/ Mariah Harrod

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