

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

September 15, 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 VALERO REFINING-
TEXAS, L.P. FOR AIR QUALITY PERMIT NO. 106965
TCEQ DOCKET NO. 2025-1293-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. 2025-1293-AIR

APPLICATION BY	§	BEFORE THE
VALERO REFINING-TEXAS, L.P.	§	
FOR AIR QUALITY PERMIT	§	TEXAS COMMISSION ON
NO. 106965	§	
	§	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 Valero Refining-Texas, L.P. (Applicant) for amendment and renewal of its New Source Review Authorization under Texas Clean Air Act (TCAA) § 382.0518 to authorize the continued operation of an existing facility that may emit air contaminants. The Commission received requests for a contested case hearing from Eli McKay. 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

Valero Refining-Texas, L.P. has applied to TCEQ for a New Source Review Authorization under TCAA § 382.0518. If approved, this will authorize the Applicant to continue operation of the Domestic Crude Unit. The Facility is located at 5900 Up River Road, in Corpus Christi. Contaminants authorized

under this permit include ammonia, carbon monoxide, dimethyl disulfide, hydrogen sulfide, nitrogen oxides, volatile organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, and sulfur dioxide.

C. Procedural Background

TCEQ received the application on August 18, 2023. On August 28, 2023, 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 September 15, 2023, in the *Corpus Christi Caller Times* and in Spanish on September 15, 2023, in *Tejano Y Gruperio News*. The Notice of Application and Preliminary Decision for an Air Quality Permit was not published because the total emission increases authorized by the amendment project did not exceed the public notice de minimis levels specified in 30 TAC § 39.402(a)(3)(B). The public comment period closed on October 16, 2023. The Chief Clerk mailed the ED's Preliminary Decision and Response to Comments on March 25, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was April 24, 2025.

The Commission received one timely request for a contested case hearing from Eli McKay.

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 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 timely comments and hearing requests from Eli McKay, who, according to the map created by ED staff, resides 5.22 miles from the Facility. In his submissions, Mr. McKay states that he has concerns about air quality and health impacts to the local community.

To be granted a contested case hearing, a requestor must show that they qualify as an "affected person." To qualify, the requestor must show that they have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application; and they must distinguish that interest from those common to the general public. *See* 30 TAC § 55.203(a).

OPIC notes that there are no specific distance limitations applicable to whom may be considered an affected person for purposes of this application—but at a distance of over five miles from the Facility, OPIC finds that Mr. McKay lacks the proximity necessary to differentiate his interests from those held by the general public as required by 30 TAC § 55.203(a). Further, the intervening

distance decreases any likelihood that the regulated activity will impact his health, safety, or use of property. *See* 30 TAC § 55.203(c)(4). Finally, at this distance, OPIC is unable to find that a reasonable relationship exists between his claimed interests and the regulated activity. *See* 30 TAC § 55.203(c)(3). Therefore, OPIC cannot find that Eli McKay qualifies 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 Eli McKay.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 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
VALERO REFINING-TEXAS, L.P.
TCEQ DOCKET NO. 2025-1293-AIR

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