

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST

AGENDA REQUESTED: October 8, 2025

DATE OF REQUEST: September 19, 2025

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Garrett T. Arthur 512-239-5757

CAPTION: Docket No. 2025-1421-MIS. Discussion of the Office of Public Interest Counsel's Annual Report to the Commission made pursuant to Texas Water Code, Section 5.2725, Annual Report; Performance Measures. The Commission will further consider OPIC's recommendation to amend 30 Texas Administrative Code Chapter 55, regarding Requests for Reconsideration and Contested Case Hearings; Public Comment.

A handwritten signature in black ink, appearing to read "Garrett T. Arthur", with a long horizontal flourish extending to the right.

**Garrett T. Arthur,
Public Interest Counsel**

**OFFICE OF PUBLIC INTEREST COUNSEL'S ANNUAL REPORT TO THE TEXAS
COMMISSION ON ENVIRONMENTAL QUALITY
FOR FISCAL YEAR 2025**

I. INTRODUCTION

Texas Water Code Chapter 5, Subchapter G, prescribes the role, responsibilities, and duties of the Office of Public Interest Counsel (OPIC or Office) at the Texas Commission on Environmental Quality (TCEQ or Commission). Included among these statutory duties is the requirement under Texas Water Code § 5.2725 for OPIC to make an Annual Report to the Commission containing:

1. An evaluation of the Office's performance in representing the public interest;
2. An assessment of the budget needs of the Office, including the need to contract for outside expertise; and
3. Any legislative or regulatory changes recommended pursuant to § 5.273.

Accordingly, OPIC respectfully submits this Annual Report to comply with the requirements of Texas Water Code § 5.2725.

OPIC was created in 1977 to ensure that the Commission promotes the public's interest. To fulfill the statutory directive of Texas Water Code § 5.271, OPIC participates in contested case hearings and other Commission proceedings to help develop a complete record for the Commission to consider in its decision-making process. In these proceedings, OPIC develops positions and recommendations supported by applicable law and the best available information and evidence. OPIC also advocates for meaningful public participation in the decision-making process of the Commission to the fullest extent authorized by the law. The Office works independently of other TCEQ divisions and other parties to present a public interest perspective on matters that come before the Commission. OPIC does this work through activities that include:

- Participating as a party in contested case hearings;
- Preparing briefs for Commission consideration regarding hearing requests, requests for reconsideration, motions to overturn, motions for rehearing, use determination appeals, and various other matters set for briefing by the Office of General Counsel;

- Participating in rulemaking processes, including hearings, and reviewing and commenting on rulemaking petitions, proposals, and adoptions;
- Reviewing and recommending action on other matters considered by the Commission, including proposed enforcement orders and proposed orders on district matters;
- Participating in public meetings on permit applications with significant public interest; and
- Responding to inquiries from the public related to agency public participation procedures and other legal questions related to statutes and regulations relevant to the agency.

As a party to Commission proceedings, OPIC is committed to providing independent analysis and recommendations that serve the integrity of the public participation and hearing process. OPIC is committed to ensuring that relevant information and evidence on issues affecting the public interest are developed and considered in Commission decisions. OPIC's intent is to facilitate informed Commission decisions that protect human health, the environment, the public interest, and the interests of affected members of the public to the maximum extent allowed by applicable law.

The Public Interest Counsel is appointed by the Commission. The Counsel supervises the overall operation of OPIC by managing the Office's budget, hiring and supervising staff, ensuring compliance with agency operating procedures, and establishing and ensuring compliance with Office policies and procedures. OPIC has eight full-time equivalent positions: Public Interest Counsel; Senior Attorney; five Assistant Public Interest Counsels; and the Office's Executive Assistant.

OPIC is committed to fulfilling its statutory duty to represent the public interest in Commission proceedings by hiring, developing, and retaining knowledgeable staff who are dedicated to OPIC's mission. To maintain high quality professional representation of the public interest, OPIC ensures that attorneys in the office receive continuing legal education and other relevant training. OPIC further ensures that its staff completes all required agency training and is fully apprised of TCEQ's operating policies and procedures.

II. EVALUATION OF OPIC'S PERFORMANCE

Texas Water Code § 5.2725(a)(1) requires OPIC to provide the Commission with an evaluation of OPIC's performance in representing the public interest. In determining the matters in which the Office will participate, OPIC applies the factors stated in 30 Texas Administrative Code (TAC) § 80.110 (Public Interest Factors), including:

1. The extent to which the action may impact human health;
2. The extent to which the action may impact environmental quality;
3. The extent to which the action may impact the use and enjoyment of property;
4. The extent to which the action may impact the general populace as a whole, rather than impact an individual private interest;
5. The extent and significance of interest expressed in public comment received by the Commission regarding the action;
6. The extent to which the action promotes economic growth and the interests of citizens in the vicinity most likely to be affected by the action;
7. The extent to which the action promotes the conservation or judicious use of the state's natural resources; and
8. The extent to which the action serves Commission policies regarding the need for facilities or services to be authorized by the action.

OPIC's performance measures classify proceedings in four categories as follows: environmental proceedings; district proceedings; rulemaking proceedings; and enforcement proceedings.

For reporting purposes, environmental proceedings include contested case hearing proceedings on permits at the State Office of Administrative Hearings (SOAH) and Commission proceedings related to consideration of hearing requests, requests for reconsideration, motions to overturn, proposals for decision, and other miscellaneous matters heard by the Commission. These proceedings relate to municipal and industrial solid waste and hazardous waste management and disposal activities, underground injection activities, waste disposal wells, water rights authorizations, priority groundwater management area designations, watermaster matters, industrial wastewater discharge permits, municipal wastewater discharge permits, land application of

wastewater permits, land application of septage and sludge, concentrated animal feeding operations, rock and concrete crushers, concrete batch plant standard permit registrations, facilities requiring state and federal air permits, pollution control equipment use determination appeals, single property designations, and various authorizations subject to the Commission's motion to overturn process. OPIC also includes permit revocation petitions, appeals of decisions on occupational licenses, authorizations to construct (ATC), post-closure orders, and emergency orders in numbers reported for this category.

District proceedings include proceedings at SOAH and at the Commission related to the creation and dissolution of districts, petitions for inquiry, and any other matters within the Commission's jurisdiction relating to the oversight of districts.

Rulemaking proceedings include Commission proceedings related to rulemaking actions, state implementation plans (SIP), general permits, standard permits, rulemaking petitions, Total Maximum Daily Load (TMDL) matters, and quadrennial rule reviews.

Enforcement proceedings include enforcement contested case hearings active at SOAH and Commission proceedings related to the consideration of proposed orders. For purposes of this report, enforcement proceedings do not include other agreed enforcement orders issued by the Executive Director (ED) without SOAH involvement.

A. OPIC's Performance Measures

As required by Texas Water Code § 5.2725(b), the Commission developed the following OPIC performance measures which were implemented on September 1, 2012.

Goal 1:

To provide effective representation of the public interest as a party in all environmental and district proceedings before the TCEQ

Objective

To provide effective representation of the public interest as a party in 75 percent of environmental proceedings and 75 percent of district proceedings heard by the TCEQ

Outcome Measure

Percentage of environmental proceedings and percentage of district proceedings in which OPIC participated

Goal 2:

To provide effective representation of the public interest as a party in all rulemaking proceedings before the TCEQ

Objective

To participate in 75 percent of rulemaking proceedings considered by the TCEQ

Outcome Measure

Percentage of rulemaking proceedings in which OPIC participated

Goal 3:

To provide effective representation of the public interest as a party in all enforcement proceedings before the TCEQ

Objective

To provide effective representation of the public interest as a party in 75 percent of enforcement proceedings heard by the TCEQ

Outcome Measure

Percentage of enforcement proceedings in which OPIC participated

B. FY 2025 Performance

OPIC's performance measures for environmental, district, rulemaking, and enforcement proceedings are expressed as percentages of the proceedings in which OPIC could have participated. OPIC uses a reporting process within the TCEQ Commissioners' Integrated Database (CID) that allows OPIC to track its work on assigned matters active at any point within a fiscal year. For the fiscal year, OPIC also tracks and records Agenda item totals by performance measure category. The proceedings totals are intended to reflect all Commission Agenda items which fall into one of these four categories, plus active OPIC cases that are not captured by Agenda totals.

Performance measure percentages were derived from information available for the entire fiscal year (September 1, 2024 – August 31, 2025). In fiscal year 2025, OPIC participated in a total of 755 proceedings, consisting of: 169 environmental proceedings; 39 district proceedings; 94 rulemaking proceedings; and 453 enforcement proceedings.

OPIC's participation in 169 of 169 total environmental proceedings resulted in a participation percentage of 100%.

OPIC's participation in 39 of 39 district proceedings resulted in a participation percentage of 100%.

OPIC's participation in 94 of 94 rulemaking proceedings, including the review of all petitions, rule proposals and adoptions, SIP proposals and adoptions, standard permits, general permits, TMDL matters, and quadrennial rule reviews considered by the Commission during fiscal year 2025, resulted in a participation percentage of 100%.

OPIC's participation in 453 of 453 enforcement proceedings, including the review of all orders considered at Commission Agendas and participation in additional cases that were active at SOAH during fiscal year 2025, resulted in a participation percentage of 100%.

C. Representing the Public Interest

OPIC highlights the following example of its work in fiscal year 2025 to demonstrate its commitment to representing the public interest.

In fiscal year 2025, OPIC played a pivotal role in safeguarding Texas water resources and ensuring rigorous adherence to permitting standards in a contested case involving applicant HK Real Estate Development. Applicant proposed to locate the Richter Ranch wastewater treatment facility in Wilson County and sought authorization to discharge effluent into Sandpit Creek, purportedly flowing to the Upper San Antonio River. OPIC's active participation—from challenging summary judgement to advocating for evidentiary scrutiny—ultimately led to denial of the application, protecting surface water quality, groundwater, aquatic life, and adjacent property owners' rights while upholding the principles of transparent public involvement.

The contested case originated with a hearing request by protestant Freasier, which prompted referral to the State Office of Administrative Hearings on key issues, including water quality protections under the Texas Surface Water Quality Standards (Standards), accurate characterization of the discharge route, and impacts on the protestant's property use. Initially, the

Administrative Law Judges issued a Proposal for Decision favoring summary disposition for the applicant despite OPIC's insistence that unresolved factual disputes—particularly regarding the discharge route's connectivity and environmental impacts—necessitated a full evidentiary hearing. During the TCEQ Agenda on May 10, 2024, the Commissioners concurred with OPIC's position and remanded issues (water quality protectiveness, discharge route characterization, and property impacts) back to SOAH for further proceedings. This intervention prevented a premature resolution, allowing critical evidence to emerge and reinforcing OPIC's commitment to thorough due process.

Subsequent developments validated OPIC's advocacy. A June 2024 site visit by ED staff, OPIC, the applicant, and the protestant revealed that Sandpit Creek lacks a surface connection to the San Antonio River, terminating instead in a field on Freasier property. This contradicted the application's discharge route description. As a result, the ED's initial technical review was rendered incomplete and impossible to finalize without a verified path wholly within state surface waters. During the hearing on the merits and in post-hearing briefing, OPIC highlighted compelling evidence from ED experts who testified that the inaccurate route undermined compliance with the Standards, potentially endangering aquatic life, human health, and downstream uses. OPIC further highlighted hydrological modeling by the protestant's witness, demonstrating that the discharge could create unintended lakes and overflows on the protestant's land, disrupting cattle operations, business storage, and community events.

In light of this evidence, OPIC recommended that the application be denied, and the Commissioners agreed, affirming that the application could not proceed without corrections ensuring no violations of narrative or numerical standards, antidegradation policies, or property protections. Through this case, OPIC exemplified its mandate to promote the public interest by bridging technical complexities with equitable participation. Our participation helped ensure that TCEQ's rules for accurate, science-based permitting were upheld—averting risks to primary contact recreation and high aquatic life use, while amplifying voices like Freasier's. This outcome not only preserved environmental integrity in the San Antonio River basin but also modeled robust public engagement, fostering trust in TCEQ processes.

In conclusion, OPIC offers this example of our work to illustrate one of the many ways in which we fulfill our statutory duty to represent the public interest.

III. ASSESSMENT OF BUDGET NEEDS

Texas Water Code § 5.2725(a)(2) directs OPIC to provide the Commission with an assessment of its budget needs, including the need to contract for outside technical expertise. The operating budget for OPIC in fiscal year 2025 was \$789,827 as shown below.

OPIC Budget for FY 2025

Budget Category	Amount
Salaries	774,827
Travel	6,000
Training	5,000
Consumable Supplies	400
Other Operating Expenses	1,600
Facilities, Furniture, and Equipment	2,000
Total	\$ 789,827

A. Outside Technical Support

Texas Water Code § 5.274(b) provides that OPIC may obtain and use outside technical support to carry out its functions. Texas Water Code §5.2725(a)(2) requires this report to include information about OPIC's budget needs to contract for outside technical expertise. The need to retain technical consulting services in contested case hearings rarely becomes apparent in time for OPIC to identify, obtain, and use technical expertise by way of individually negotiated contracts. Also, the complex permit applications OPIC tracks during the comment period often settle prior to hearing. These factors create a disinclination to commit state resources for work on such matters until SOAH proceedings are imminent. As a result, OPIC's initial budget typically does not include funds for temporary and professional services. However, when such needs have been identified, funds are made available through additional funding requests.

OPIC would like to stress that the Senate Bill 709 (S.B. 709) contested case hearing process requires compact timelines which exist regardless of the contract process potentially used to procure outside technical support. It is fair to say that the primary obstacle preventing OPIC from more often obtaining outside technical expertise is the contested case hearing timeline established by S.B. 709, not budget considerations.

To ensure that the state contracting process is not an impediment to hiring outside technical support, and as recommended by the Texas Sunset Advisory Commission, OPIC now has an expert contract template to use for this purpose. The template was developed with the assistance of the General Law Division and the Procurements and Contracts Section, and OPIC deeply appreciates the help provided by staff in those areas. This template is pre-approved and can be used in an expedited process to streamline the retention of experts.

To conclude, OPIC's need to obtain and use outside technical support in a given year is unpredictable. However, even within the time constraints of S.B. 709, OPIC remains committed to early detection of good candidate cases where outside technical support could help OPIC fulfill its mission.

IV. LEGISLATIVE & REGULATORY CHANGE RECOMMENDATIONS

Texas Water Code § 5.273(b) authorizes OPIC to recommend needed legislative and regulatory changes. Texas Water Code § 5.2725(a)(3) provides that any such recommendations are to be included in OPIC's Annual Report. OPIC's recommended regulatory and legislative changes are included in Attachment 1 to this report.

V. CONCLUSION

OPIC appreciates this opportunity to review our work, and we remain committed to our statutory directive to protect the public interest.

Attachment 1

REGULATORY CHANGE RECOMMENDATION

Mandatory Direct Referral

OPIC recommends the regulatory changes discussed below to conserve TCEQ resources when processing an application which has triggered many hearing requests, and when it is obvious that hearing requests have been filed by affected persons.

Texas Water Code § 5.557(a) provides that an application may be referred to SOAH for a contested case hearing immediately following issuance of the ED's preliminary decision. Under this statutory authority, and under 30 TAC § 55.210(a), the ED or the applicant may request that an application be directly referred to SOAH for a contested case hearing. The ED has statutory and regulatory authority to request a direct referral but rarely exercises this authority. Section 5.557(a) shows that the Texas Legislature apparently envisioned cases where the ED should request a direct referral. Otherwise, it was pointless for the Legislature to grant the ED this independent statutory authority.

Often when the agency receives a large volume of hearing requests from residents in close proximity to a facility or proposed facility, there is little doubt that at least some of those requestors are affected persons who will eventually be granted a contested case hearing. In these situations, a hearing is a reasonable certainty, even before the agency begins the laborious task of setting consideration of the hearing requests for a Commission Agenda and mailing notice and a request for briefing to a multitude of hearing requestors and interested persons. OPIC's proposed rule change would require a mandatory direct referral under these circumstances. Such a rule change would conserve agency resources in several ways, including reducing the number of multiple mass mailings from multiple agency offices. This change would also conserve the agency's human resources otherwise required to process, review, analyze, brief, and consider the many requests in circumstances where a hearing is already a reasonable certainty.

Below, please see our recommended language shown as underlined text. The provisions would be added to 30 TAC § 55.210 relating to Direct Referrals.

The executive director shall request that an application be directly referred to the State Office of Administrative Hearings for a contested case hearing if:

- (1) at least 50 timely hearing requests on the application have been filed with the chief clerk; and
- (2) for a concrete batch plant authorization subject to the opportunity for a contested case hearing, the executive director confirms that at least one of the timely hearing requests was filed by a requestor who resides in a permanent residence within 440 yards of the plant site; or
- (3) for wastewater discharge authorizations subject to the opportunity for a contested case hearing, the executive director confirms that at least 5 hearing requestors reside or own property either adjacent to or within one-half mile of the proposed or existing facility, or along the proposed or existing discharge route within one mile downstream; or
- (4) for all other applications subject to a contested case hearing, the executive director confirms that at least 5 of the hearing requestors own property or reside within one mile of the existing or proposed facility.

LEGISLATIVE CHANGE RECOMMENDATION

Affected Persons in Hearings on Concrete Batch Plant Registrations

Currently, Texas Clean Air Act (TCAA) § 382.058(c) states, “For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected.” Section 382.003(10) defines “Person” to mean “an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.”

This recommended legislative change would expand the public’s right to request a contested case hearing on an application for a concrete batch plant standard permit. Section 382.058(c) restricts standing to only those persons actually residing in a permanent residence within 440 yards of the proposed plant. By narrowing the universe of potentially affected persons to only those actually residing in a permanent residence, the law does not consider potential impacts at locations such as schools, places of worship, childcare facilities, hospitals, and other medical facilities.¹ The current version of the law also does not protect a person residing in a trailer or mobile home if their home is not considered a “permanent residence.”

Beyond 440 yards (1/4 of a mile), a standard permit concrete batch plant’s potential impacts might be relatively minimal, and therefore, §382.058(c) may be intended to limit affected persons for the sake of efficient authorization and hearing processes. However, the public interest is best served when efficiency does not impair the purpose of the Texas Clean Air Act, which is “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.”² OPIC’s proposal is intended to balance the efficiency served by limited standing under § 382.058(c) with the mandate to protect public health, general welfare, and physical property under § 382.002.

¹ OPIC notes that elsewhere in the Texas Clean Air Act, receptors are not limited to “persons.” In § 382.05198, the Concrete Batch Plant with Enhanced Controls statute, subsection (a)(19) states that “the central baghouse must be located at least 440 yards from *any building used as a single or multifamily residence, school, or place of worship*” (emphasis added) Section 382.065(a) states, “The commission by rule shall prohibit the operation of a concrete crushing facility within 440 yards of a *building in use as a single or multifamily residence, school, or place of worship*” (emphasis added)

² See TCAA § 382.002.

Under the current law, vulnerable populations and sensitive receptors within 440 yards of a proposed plant may not be afforded the procedural protections available to other persons residing within 440 yards of a plant. For example, a hospital located within 440 yards of a proposed plant might be concerned that particulate matter would harm patients, especially those with respiratory and pulmonary conditions. If the hospital requested a hearing, the Commission would presumably be compelled to deny it because a hospital would not qualify as an affected person under § 382.058(c). But for the statutory limitation on standing, the hospital's concern regarding health effects would be relevant and material to the Commission's decision and appropriate for referral to hearing. A school, place of worship, or childcare facility could be similarly barred. Without a change to § 382.058(c), the Commission will continue to face a statutory obstacle to granting a hearing to certain vulnerable populations and other important receptors within 440 yards of a proposed concrete batch plant.

For these reasons, OPIC proposes the following amendment to Texas Health & Safety Code § 382.058(c).³ Our recommended language is shown as underlined text.

- (c) For purposes of this section, only schools, places of worship, childcare facilities, hospitals, and other medical facilities located within 440 yards of the proposed plant or those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected.

³ Chapter 382 of the Texas Health & Safety Code may be cited as the Texas Clean Air Act.