

Brooke T. Paup, *Chairwoman*  
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Tonya R. Miller, *Commissioner*  
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 21, 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 FREEPORT LNG  
DEVELOPMENT LP FOR AIR QUALITY PERMIT NOS. 104840 AND  
N170M1  
TCEQ DOCKET NO. 2025-1682-AIR**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jessica M. Anderson".

Jessica M. Anderson, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2025-1682-AIR**

|                                |          |                              |
|--------------------------------|----------|------------------------------|
| <b>APPLICATION BY FREEPORT</b> | <b>§</b> | <b>BEFORE THE</b>            |
| <b>LNG DEVELOPMENT, L.P.</b>   | <b>§</b> |                              |
| <b>FREEPORT LNG</b>            | <b>§</b> | <b>TEXAS COMMISSION ON</b>   |
| <b>PRETREATMENT FACILITY</b>   | <b>§</b> |                              |
| <b>FREEPORT, BRAZORIA</b>      | <b>§</b> | <b>ENVIRONMENTAL QUALITY</b> |
| <b>COUNTY</b>                  |          |                              |

**THE 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) files this Response to Request for Hearing on the application in the above-captioned matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Summary of Position**

Before the Commission is an application by Freeport LNG Development, L.P. (Freeport LNG or Applicant) for a New Source Review Authorization under Texas Clean Air Act (TCAA) § 382.0518. The Commission received timely comments and a hearing request from Environmental Integrity Project on behalf of Citizens for Clean Air and Clean Water and the Sierra Club. For the reasons stated herein, OPIC respectfully recommends the Commission find that Citizens for Clean Air and Clean Water and the Sierra Club are not affected persons, and further recommends that the Commission deny their hearing request.

## **B. Description of Application and Facility**

Freeport LNG applied for a New Source Review Authorization pursuant to TCAA § 382.0518 to authorize the modification of an existing facility that may emit air contaminants. This permit would authorize the Applicant to modify the Freeport LNG Pretreatment Facility. The facility is located at 2363 County Road 690 Freeport, Brazoria County.

Contaminants authorized under this permit include carbon monoxide, hazardous air pollutants, 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, sulfur dioxide, and sulfuric acid mist.

## **C. Procedural Background**

Before work can begin on the modification of an existing facility that may emit air contaminants, the person planning the modification must obtain a permit amendment from the Commission. This permit application is for a permit amendment of Air Quality Permit Number 104840 and amendment of Nonattainment Permit Number N170M1.

Freeport LNG's application was received on August 9, 2022 and declared administratively complete on August 18, 2022. The Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) for this permit application was published in English on August 31, 2022 in *The Facts* and in Spanish on September 1, 2022 in *La Voz*. The Notice of Application and Preliminary Decision for an Air Quality Permit (NAPD) was published in English on May 13, 2025 in *The Facts* and in

Spanish on May 13, 2025 also in *The Facts*. The Applicant published the NORI in Spanish in *La Voz*, but because *La Voz* does not meet the criteria to be considered a Spanish language newspaper, and no other Spanish language newspaper circulating in the county could be found, the Applicant published the NAPD in both English and in Spanish in *The Facts*. The comment period for this application closed on June 12, 2025, and the Executive Director's (ED) Response to Comments (RTC) was mailed on October 1, 2025. The deadline for filing requests for contested case hearing and requests for reconsideration of the ED's decision was October 31, 2025.

## **II. APPLICABLE LAW**

The Application was filed 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 30 Texas Administrative Code (TAC) § 55.21(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 requestor'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.

30 TAC § 55.201(d).

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. Relevant factors to be considered in determining whether a person is affected 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 and safety of the person, and on the 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.

30 TAC § 55.203(c).

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 executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Under 30 TAC § 55.205(b), a hearing request by a group or association may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person 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**

##### *Citizens for Clean Air and Clean Water and the Sierra Club*

Environmental Integrity Project submitted timely comments and a hearing request on behalf of Citizens for Clean Air and Clean Water and the Sierra Club. Citizens for Clean Air and Clean Water is a nonprofit organization formed to educate Freeport residents about environmental issues and to advocate for solutions to protect and improve air and water quality. To accomplish this goal, the organization holds community meetings to raise awareness about potentially harmful air and water pollution events in the area. The goal of the group is to encourage protection of public health through compliance with environmental laws. According to the request, members of the group live in close proximity to the Pretreatment Facility. Sierra Club's state and local chapters include Texas members who are dedicated to exploring, enjoying, and protecting Texas' natural resources and wild places. Sierra Club promotes the responsible use of the Earth's ecosystem and resources, and works to restore the quality of the natural and human environment. According to the request, members of the Sierra Club

live in close proximity to the Pretreatment Facility. For these reasons, OPIC finds that the stated purposes of both Citizens for Clean Air and Clean Water and the Sierra Club are germane to the interests they seek to protect. *See* 30 TAC § 55.205(b)(3).

In order for an association's hearing request to be granted, the request must identify one or more members, by name and physical address, that would otherwise have standing in their own right. The request identifies Melanie Oldham as a member of both Citizens for Clean Air and Clean Water and the Sierra Club. The request gives Ms. Oldham's address as 922 W. 5th Street, Freeport. According to the map created by ED staff, Ms. Oldham's residence is 3.68 miles from the Liquefaction Flare. The request states that Ms. Oldham lives in close proximity to the facility and passes even closer to said facility when she visits Freeport Beach and Quintana Beach.

Additionally, the request articulates Ms. Oldham's concerns related to air pollution and air quality, ozone, recreational uses, and human health. The request goes on to include the following issues of concern: permit aggregation, exceedances of the National Ambient Air Quality Standards (NAAQS), exceedances of allowable Prevention of Significant Deterioration Increments, adequate offset of nitrogen oxides and volatile organic compounds, nuisance conditions, application accuracy, cumulative impacts, use of Best Available Control Technology (BACT) or Lowest Achievable Emissions Rate (LAER), adequacy of air monitoring and reporting, and environmental equity.



While many of the concerns raised in the request are protected by the law under which this application will be considered, a reasonable relationship must exist between those interests and the regulation of emissions under the permit. *See* 30 TAC § 55.203(c)(3). As required for group standing under 30 TAC § 55.205, Citizens for Clean Air and Clean Water and the Sierra Club submitted timely comments; the interests the groups seek to protect are germane to their stated purposes; and neither the claim asserted nor the relief requested requires the participation of the individual members.

The hearing request seeks to identify a group member who would otherwise have standing in their own right to request a hearing. However, given Ms. Oldham's lack of proximity to the facility, OPIC cannot find that she is likely to be impacted by the facility's operations in a way that differs from the general public as required by 30 TAC § 55.203(a). The intervening distance diminishes any likelihood that the regulated activity will impact her health, safety, or use of property. *See* 30 TAC § 55.203(c)(4). Furthermore, though recreational use can confer standing, the request fails to provide any details of her use, such as frequency, duration, and proximity. As a result, OPIC cannot find that her recreational use would cause her to be impacted by the facility in a way different from the general public. Therefore, OPIC recommends that the Commission find that Citizens for Clean Air and Clean Water and the Sierra Club are not affected persons. If the Commission finds these organizations to be affected persons, OPIC offers the following analysis of relevant and material issues.

**B. Which issues raised in the hearing request are disputed**

The requestors raised the following disputed issues:

1. Whether the draft permit is adequately protective of air quality.
2. Whether the draft permit is adequately protective of recreational uses.
3. Whether the draft permit is adequately protective of human health.
4. Whether the draft permit is adequately protective against ozone.
5. Whether the draft permit is deficient given its failure to aggregate emissions from this project with the emissions from another, substantially related project.
6. Whether the draft permit is adequately protective against exceedances of the NAAQS.
7. Whether the draft permit is adequately protective against exceedances of allowable Prevention of Significant Deterioration Increments.
8. Whether the Applicant adequately offset nitrogen oxides and volatile organic compounds.
9. Whether the draft permit is adequately protective against nuisance conditions.
10. Whether the application was complete and accurate.
11. Whether the draft permit adequately considers cumulative impacts.
12. Whether the draft permit adequately incorporates BACT requirements or LAER requirements.
13. Whether the draft permit contains adequate air monitoring and reporting requirements.
14. Whether the draft permit adequately considers environmental equity.

**C. Whether the dispute involves questions of fact or of law**

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. The issues raised here are issues of fact.

**D. Whether the issues were raised during the public comment period**

Issues No. 1-14 in Section III.B. were specifically raised by the requestors during the public comment period.

**E. Whether the hearing requests are based on issues raised solely in a withdrawn public comment**

No public comments were withdrawn in this matter. Therefore, the hearing request is not based on issues raised in withdrawn public comments.

**F. Whether the issues are relevant and material to the decision on the application**

The hearing request raised some issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii), as well as one issue that is not relevant and material. To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

*Air Quality, Human Health, Recreation, and NAAQS*

The requestors articulated concerns about air quality as it relates to human health and recreation. Under the Texas Clean Air Act, the Commission may issue

this permit only if it finds no indication that the emissions from the facility will contravene the intent of the TCAA, including protection of the public's health and physical property. TCAA § 382.0518(b)(2). Further, the purpose of the TCAA 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. TCAA § 382.002(a). Additionally, Applicant's proposed emissions must meet the secondary NAAQS, which provide public welfare protection, including protection against damage to animals, crops, vegetation, and buildings. Therefore, Issues No. 1, 2, 3, and 6 are relevant and material to the Commission's decision regarding this application.

### Ozone

The requestors also specifically articulated concerns about ozone. Brazoria County has been designated nonattainment for ozone because ambient concentrations of ozone exceed the National Ambient Air Quality Standard for ozone. As explained in the ED's RTC, this amendment involves two separate projects, and each project was also reviewed retrospectively with the major source threshold of 25 tons per year (tpy) for the ozone precursors nitrogen oxide and volatile organic compounds for a severe nonattainment area under the previous 1997 8-hour ozone standard. Therefore, Issue No. 4 is relevant and material to the Commission's decision regarding this application.

### Aggregation

The requestors articulated concerns that Applicant did not aggregate all the emissions covered by the instant draft permit and also are concerned that the project should be aggregated with Freeport LNG's pending permit amendment application related to emission increases at its Liquefaction Plant. Relevant here, the EPA has established an aggregation policy that requires projects be aggregated when they are substantially related.<sup>1</sup> When making the determination of whether separate projects are substantially related, courts employ a multi-factor test based on site-specific analyses. The ED has taken the position that projects at separate sites are not required to be aggregated for federal applicability purposes, therefore, these sites have not been aggregated. As such, Issue No. 5 is relevant and material to the Commission's decision regarding this application.

### Prevention of Significant Deterioration Increments

The requestors articulated concerns about whether the proposed emissions will exceed allowable Prevention of Significant Deterioration Increments. In the RTC, the ED explained that a Prevention of Significant Deterioration (PSD) major site is defined as a site emitting over 250 tpy of any one pollutant if it is an unnamed source or 100 tpy of any one pollutant if it is one of 28 sources named in 40 CFR § 52.21(b)(1)(a). The ED concluded that because this site is not a named source and has proposed emission rates less

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<sup>1</sup> See PSD and Nonattainment New Source Review: Aggregation; Reconsideration, 83 Fed. Reg. 57324 (Nov. 15, 2018).

than 250 tpy of each pollutant, the project is not subject to PSD permitting. Therefore, Issue No. 7 is relevant and material to the Commission's decision regarding this application.

#### *Nitrogen Oxides and Volatile Organic Compounds*

The requestors articulated concerns about whether Applicant adequately offset nitrogen oxides and volatile organic compounds. This concern is substantially related to the requestor's concern about ozone, as nitrogen oxides and volatile organic compounds are ozone precursors. As explained above, Brazoria County has been designated as a serious nonattainment area for ozone. Because of this, Applicant is required to offset nitrogen oxides and volatile organic compounds at a 1.3 to 1 ratio. Further, the Applicant must obtain approval from the TCEQ Emission Banking and Trading Program for the credits being used and then submit a permit alteration or amendment request to TCEQ identifying approved credits by their TCEQ credit certificate number. Therefore, Issue No. 8 is relevant and material to the Commission's decision regarding this application.

#### *Nuisance Conditions*

The requestors raised concerns about whether the proposed emissions will cause nuisance conditions. The Applicant must comply with 30 TAC § 101.4, which prohibits discharge of air contaminants in such concentration or duration as may be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of

animal life, vegetation, or property. Therefore Issue No. 9 is relevant and material.

#### *Application Accuracy*

The requestors articulated concerns about the accuracy of the application. TCEQ rules require that if an applicant becomes aware that it failed to submit relevant facts or submitted incorrect information in a permit application, the applicant is required to promptly submit such facts and information. Additionally, Applicant is required to submit all plans and specifications necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations, as well as the intent of the TCAA. TCAA § 382.0515(2). Therefore, Issue No. 10 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

#### *Cumulative Impacts*

The requestors articulated concerns about whether Freeport LNG and TCEQ adequately considered the cumulative impacts of air pollution. The NAAQS analysis performed by Applicant includes an evaluation of all on-property sources, applicable off-property sources, and representative monitored background concentrations to account for cumulative impacts. The results of this evaluation were then compared to the NAAQS to ensure that concentrations are below the required standards. Additionally, certain pollutants were evaluated using TCEQ's effects screening levels, which account for cumulative and

aggregate impacts. Therefore, Issue No. 11 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

*BACT and LAER*

The requestors expressed concerns regarding whether the emissions sources will utilize pollution control technology reflecting the use of Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER). As part of the evaluation of applications for new or amended permits, the permit reviewer audits all sources of air contaminants at the facility and assures that the facility will be using the BACT applicable for the sources and types of contaminants emitted. Applying BACT results in requiring technology that best controls air emissions with consideration given to the technical practicability and economic reasonableness of reducing or eliminating emissions. See TCAA § 382.0518. Nonattainment permits must include LAER, as opposed to BACT. LAER is usually more stringent than BACT. For new major sources and major modifications in nonattainment areas, LAER is the most stringent emission limitation derived from either of the following: the most stringent emission limitation contained in the implementation plan of any state for such class or category of source; or the most stringent emission limitation achieved in practice by such class or category of source. The LAER review takes technical feasibility into account, but not economic reasonableness. Therefore, Issue No. 12 is relevant and material to the Commission's decision on this application.



### *Air Monitoring and Reporting*

The requestors in this matter have articulated concerns about the monitoring requirements contained in the draft permit. The draft permit includes special conditions to ensure the Applicant can demonstrate compliance with the emission limitations set forth in the permit, and the Applicant is required to maintain records to demonstrate compliance, including with the monitoring requirements. Therefore, Issue No. 13 is relevant and material to the decision on this application.

### *Environmental Equity*

The requestors raised concerns about disproportionate impacts of the facility on nearby communities. Because the TCEQ receives federal funding, it must comply with a suite of federal guidance and laws ensuring its actions are not intentionally discriminatory and will not have discriminatory effects.<sup>2</sup> Executive Order 12898 addresses the environmental and human health conditions of minority communities and low-income communities and calls on agencies to identify and address any disproportionately high and adverse human health or environmental effects of their programs.<sup>3</sup> Executive Order 13166 requires federal agencies—and recipients of federal financial assistance—to examine the services they provide, identify any need for services to those with limited English proficiency, and develop and implement a system to provide

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<sup>2</sup> See 40 CFR §7.35(b). <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-7>

<sup>3</sup> <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>

those services so limited English proficiency persons can have meaningful access to them.<sup>4</sup>

TCEQ has made a commitment to preventing discriminatory actions or effects through its Title VI compliance efforts, which are intended to ensure reasonable access to its decision-making processes. Towards this end, efforts have been made to develop and implement a Disability Nondiscrimination Plan, Public Participation Plan, and Language Access Plan.<sup>5</sup> Together, these efforts are intended to provide equal access to Commission programs and activities.

However, the specific concerns raised here involving the location of the facility and any disparate effects on that community are not currently addressed by concrete guidance or permitting rules. Without specific requirements relating to these concerns, they cannot be addressed in proceedings on this application. Therefore, OPIC cannot recommend referral of Issue No. 14 to SOAH.

#### **IV. CONCLUSION**

Having found that Citizens for Clean Air and Clean Water and the Sierra Club do not qualify as affected persons in this matter, OPIC respectfully recommends the Commission deny their hearing request. If the Commission finds Citizens for Clean Air and Clean Water and the Sierra Club to be affected persons, OPIC respectfully recommends that Issues No. 1-13 specified in Section

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<sup>4</sup> <https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf>

<sup>5</sup> More information on TCEQ's Title VI Compliance efforts can be found at: <https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance>

III.B be referred for a contested case hearing at SOAH with a maximum duration of 180 days.

Respectfully Submitted,

Garrett T. Arthur  
Public Interest Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2025, the original of the Office of Public Interest Counsel's Response to Request for Hearing was filed with the Chief Clerk of the 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.

Jessica M. Anderson  
Jessica M. Anderson

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**TCEQ DOCKET NO. 2025-1682-AIR**

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**FOR ALTERNATIVE DISPUTE**

**RESOLUTION**

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