Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
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Kelly Keel, *Executive Director*

Garrett T. Arthur, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 13, 2026

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 PULIDO CALF RANCH, LLC FOR A MAJOR AMENDMENT TO TPDES PERMIT NO. WQ0004208000**
TCEQ DOCKET NO. 2025-1843-AGR

Dear Ms. Gharis:

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

Sincerely,

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2025-1843-AGR

IN THE MATTER OF THE APPLICATION BY PULIDO CALF RANCH, LLC FOR A MAJOR AMENDMENT TO TPDES PERMIT WQ0004208000	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing and Requests for Reconsideration in the above-referenced matter.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Pulido Calf Ranch, LLC (Applicant) for a major amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004208000. OPIC respectfully recommends the Commission find that Monica Fenn, Ronald Wilson, Tracy Wilson, Kobie Wood, and Paula Wood qualify as affected persons and grant their hearing requests. OPIC further recommends the Commission refer the issues specified in Section III.B for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days. Further, OPIC recommends the Commission deny all pending requests for reconsideration.

B. Description of Application and Facility

The Applicant is seeking authorization under the Concentrated Animal Feeding Operation (CAFO) individual permit to add pens and a calf hutch area and reconfigure the drainage area of the two retention control structures (RCSs), which will increase the required combined capacity for RCSs #1 and #2 from 24.66 to 29.86 acre-feet. The facility is located on the east side of Farm-to-Market Road 219, approximately 2.5 miles south of the community of Lingleville in Erath County. The facility is located in the drainage area of the Upper North Bosque River in Segment No. 1255 of the Brazos River Basin.

C. Procedural Background

TCEQ received this application on September 24, 2024, and declared it administratively complete on November 6, 2024. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in English in the *Stephenville Empire Tribune* on November 16, 2024, and in Spanish in *La Prensa de La Comunidad* on December 3, 2024. The Executive Director (ED) completed technical review of the application and prepared a draft permit. The Notice of Application and Preliminary Decision for a Water Quality Permit was published in English in the *Dublin Citizen* on April 16, 2025, and in Spanish in *La Prensa de La Comunidad* on April 16, 2025. The public comment period ended on May 16, 2025. The Chief Clerk mailed the Executive Director's Decision and Response to Comments on August 21, 2025. The deadline to request a contested case hearing was September 22, 2025.

II. APPLICABLE LAW

A. Hearing Requests

This 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 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. 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.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact, or mixed questions of law or 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 Executive Director's Response to Comments, 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.

B. Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, Texas Administrative Code (TAC) § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. Analysis of Hearing Requests

A. Whether the requestors are affected persons

Monica Fenn

Monica Fenn timely submitted comments and a hearing request. She raised concerns regarding air quality, nuisance odors, health, and environmental impacts. These concerns are interests that are protected by the law under which the application is considered. *See* 30 TAC § 55.203(c)(1). Ms. Fenn stated that the facility property was originally part of the property she currently rents at 6945 CR 392. The ED's map confirms that her residence is approximately 0.26 miles from the facility. Because of her proximity to the facility, OPIC finds that a reasonable relationship exists between the interests she seeks to protect and the Applicant's regulated activity, a relevant factor under 30 TAC § 55.201(c)(3). Further, Ms. Fenn's proximity increases the likelihood that the regulated activity will impact her health, safety, use of property, and use of impacted natural resources. *See* 30 TAC § 55.203(c)(4)-(5). Given her relevant concerns and proximity, OPIC finds that Ms. Fenn would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Ms. Fenn is an affected person.

Ronald and Tracy Wilson

Ronald and Tracy Wilson timely submitted comments and hearing requests. They state that their property is contiguous to the proposed calf facility

and that runoff from the site would flow through their land, adversely affecting both groundwater and surface water. They also raised concerns about degraded air quality and increased fly populations resulting from the number of calves.

The Wilsons' concerns are interests that are protected by the law under which the application is considered. *See* 30 TAC § 55.203(c)(1). The ED's map confirms that their residence is approximately 0.84 miles from the facility. Because of their proximity to the facility OPIC finds that a reasonable relationship exists between the interests they seek to protect and the Applicant's regulated activity, a relevant factor under 30 TAC § 55.201(c)(3). Further, the Wilsons' proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of impacted natural resources. *See* 30 TAC § 55.203(c)(4)-(5). Given their relevant concerns and proximity, OPIC finds that the Wilsons would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Ronald and Tracy Wilson are affected persons.

Kobie and Paula Wood

Kobie and Paula Wood submitted timely comments and a hearing request. They raised concerns regarding potential environmental degradation, waste runoff, elevated fly populations, and air quality. They stated that the facility has previously exceeded its permitted number of calves and has failed to take corrective action, demonstrating ongoing noncompliance. They also stated that their property is directly adjacent to the facility.

The Woods' concerns are interests that are protected by the law under which the application is considered. *See* 30 TAC § 55.203(c)(1). The ED's map confirms that the Woods' residence is approximately 0.31 miles from the facility. Because of their proximity to the facility OPIC finds that a reasonable relationship exists between the interests they seek to protect and the Applicant's regulated activity, a relevant factor under 30 TAC § 55.201(c)(3). Further, the Woods proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of impacted natural resources. *See* 30 TAC § 55.203(c)(4)-(5). Given their relevant concerns and proximity, OPIC finds that the Woods would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Kobie and Paula Wood are affected persons.

Herbert and Sherry Brown

Herbert and Sherry Brown submitted timely comments and a hearing request raising concerns regarding air quality, nuisance odors, health, and environmental impacts on neighboring landowners. They also stated that these impacts do not affect them personally because the property is rented to Monica Fenn, who experiences the stench, fly problems, and poor air quality. The ED's

map confirms that the Browns' property at 6945 CR 392 is located approximately 0.26 miles from the facility.[1]

To be granted a contested case hearing, Requestors must show that they are "affected persons" who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application and distinguish that interest from an interest common to the general public. *See* 30 TAC § 55.203(a). While the Browns' concerns are interests that are protected by the law under which the application is considered, they acknowledged that they do not personally experience the alleged impacts. Therefore, OPIC cannot find that Herbert and Sherry Brown would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a).

B. Which issues raised in the hearing requests are disputed

The affected persons raised the following issues:

1. Whether the draft permit would be adequately protective of human health, safety, and the environment.
2. Whether the draft permit contains provisions sufficient to prevent nuisance conditions, including odors, insect vectors, and air pollution.
3. Whether the draft permit sufficiently protects groundwater and surface water from contamination.
4. Whether Applicant's compliance history warrants denial or revision of the permit amendment.

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

[1] Given the proximity of this location and the similar concerns raised by Monica Fenn in her hearing request, OPIC has previously found that Ms. Fenn, who resides on the property, qualifies as an affected person.

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 in the requests are issues of fact.

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

Issues listed in Section III.B. were specifically raised during the public comment period.

E. Whether the hearing request is based on issues raised solely in a withdrawn public comment

No public comments were withdrawn in this matter. Therefore, the hearing requests are 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 requests raise 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). To refer an issue to 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).

Human Health, Environment, Nuisance Conditions, and Water Quality

A determination of whether the draft permit would be adequately protective of human health and the environment is relevant and material to the Commission's decision on this application. CAFO permit applications must be examined on a case-by-case basis to ensure that all issued permits contain the

terms and conditions necessary to protect human health and the environment. 30 TAC §321.36(b).

The Commission rules under 30 TAC Chapter 321, subchapter B address the potential for nuisance odors or air pollution conditions. 30 TAC § 321.43(j)(1)(A) requires that CAFO facilities be operated in such a manner to prevent the creation of a nuisance or air pollution condition as defined by 30 TAC § 321.32(36) and Texas Health and Safety Code (THSC) § 341.011, and as prohibited by 30 TAC § 101.4 (relating to nuisance). The rules also require facilities to operate in such a manner to prevent a condition of air pollution as defined by THSC § 382.003(3). Additionally, the rules require an operator to take the necessary action to identify any nuisance conditions that occur and to take action to abate such conditions as soon as practicable or as specified by the ED. 30 TAC § 321.32(36) defines "nuisance" as any discharge of air contaminant(s), including but not limited to odors of sufficient concentration and duration that are or may tend to be injurious to or that adversely affects human health or welfare, animal life, vegetation, or property, or that interferes with the normal use and enjoyment of animal life, vegetation, or property. The Commission rules at 30 TAC § 321.38 specify regulatory requirements for the design and operation of RCSs which are critical to protecting water quality. Therefore, Issue Nos. 1-3 are relevant and material to a decision on the application.

Compliance History

Whether Applicant's compliance history warrants denial or revision of the permit amendment is material and relevant to the Commission's decision on this application. During the technical review, a compliance history review of the Applicant and the site is conducted based on the criteria in TAC, Chapter 60. Pursuant to 30 TAC § 60.1(a)(l)(A), TCEQ is required to utilize an applicant's compliance history when making decisions regarding a permit. Therefore, Issue No. 4 is relevant and material.

G. Maximum Expected Duration of Hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the Administrative Law Judge (ALJ) is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the ALJ must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the ALJ is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. REQUESTS FOR RECONSIDERATION

The Commission received timely identical requests for reconsideration from Herbert and Sherry Brown; Monica Fenn; and Ronald and Tracy Wilson. They raised concerns regarding air quality, nuisance odors, fly infestation, human health concerns, noncompliance with permit limits, surface water and groundwater contamination, potential impacts on neighboring landowners, and cumulative environmental impacts.

While OPIC notes that most of these concerns are relevant and material to the Commission's decision on this application, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would be needed to recommend that the request for reconsideration be granted. OPIC is recommending a contested case hearing on the issues as discussed in Section III.B. However, prior to development of an evidentiary record, OPIC cannot recommend reversal of the ED's decision. Therefore, OPIC respectfully recommends denial of all pending requests for reconsideration.

V. Conclusion

For the reasons discussed above, OPIC respectfully recommends that Commission find that Monica Fenn, Ronald Wilson, Tracy Wilson, Kobie Wood, and Paula Wood are affected persons and grant their hearing requests. OPIC further recommends the Commission refer the issues listed in section III.B for a contested case hearing at SOAH with a maximum duration of 180 days. Further, OPIC recommends the Commission deny all pending requests for reconsideration.

Respectfully submitted,

Garrett T. Arthur
Public Interest Counsel

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2026, the original of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration 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.

_____
Pranjal M. Mehta

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REQUESTER(S):

See attached list.

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