

TCEQ Air Quality Permit 181009, Fermi America Matador project
TCEQ Docket No. 2025-1898-AIR

Reply to responses to my Reconsideration and Contested Case Hearing Request

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I am replying to the responses given by the Executive Director of the TCEQ, the Office of Public Interest Counsel (OPIC), and the applicant (Fermi America) to my request for reconsideration and request for contested case hearing concerning the Fermi America Matador project air quality permit application. My reply addresses the comments made concerning my status as an “affected person” and the comments made related to the basis of my request for reconsideration and contested case hearing.

Affected Person Status

The TCEQ ED/staff and Fermi both state that I am not an “affected person”.

The TCEQ response states that I did not show how I may be affected in a manner different than the general public. The TCEQ did not acknowledge that I claimed that my affected person status was based on my exposure to project emissions at work.

The OPIC response states that I **am** an “affected person” based on exposure to project emissions at my workplace.

The TCEQ and Fermi state that I did not indicate how close I work to the proposed facility. I work at Pantex and stated that my workplace is adjacent to the proposed project. The Pantex facility is shown on the emission point plot plans that Fermi provided in the application, so it is clear where I work and that it is adjacent to the Fermi project (the project actually encloses three sides of the Pantex facility). No one can work closer to the proposed project than Pantex workers, since the two properties share a common fence line. However, to clarify and add to the record, my normal daily work location will be 1.63 miles from the closest proposed project emission point (EPN ID 158).

I state that I will be exposed to and thereby affected by the emissions from the proposed facility on a daily basis. Being exposed to the facility emissions daily has a reasonable likelihood to adversely affect my respiratory health from both short-term and long-term exposure to NO_x, CO, particulates and all the other pollutants emitted from the proposed facility. Fermi’s response states that I did not show how my affects were different than the general public. I contend that since the general public does not work at Pantex (and the general public cannot even access it), that every Pantex worker is affected in a manner different than the general public. Protecting public health is in the purview of the TCEQ and the primary reason for the issuance of air quality permits, so my concerns are personally justiciable.

The Fermi response states that the Commission should use 30 TAC 55.203(d) to determine affected person status. This section of law states that the Commission may consider only the merits of the permit application and supporting documentation without regard to any individual or group concerns. It seems that if the Commission chooses to use this criterion, no person or group would ever be an “affected person”. No one but the applicant (and any supporters) would ever request a contested case hearing if a permit application was denied. If the TCEQ gives preliminary permit approval, by definition, a permit is deemed “legal” by the TCEQ and does not require any revision. Therefore, there are no

adversely “affected persons”, since a permit should adequately protect all persons. This, of course, presumes there is never a flaw in a draft permit (which is itself a flawed assumption). This 2015 update to the TAC rules seems to be aimed at minimizing frivolous claims, but it seems that the Commission already had sufficient authority to do so without this revision. This section seems to go against the intent and the certainly the spirit of the original rules where a claimant is first verified to have legal standing and then whether his claim has merit and is justiciable (as most any contested case brought before a court). If the Commission wants to maintain a transparent and open status, it would seem it would not want to use this illogical methodology to determine “affected person” status.

Given that different expert attorneys have come to different conclusions concerning my affected person status, as well as my stated evidence showing affectedness, the Commission should acknowledge my status as an “affected person”.

Disputed Matter of Law/Matter of Fact

Fermi’s response states that my request did not raise any relevant material disputed fact issues, but instead raises a question of law and that I had a mistaken understanding of the permit. Fermi’s response states that the Commissioners do not need an administrative law judge to help them decide whether or not the permit meets applicable law and certainly not to determine if my request has merit. Fermi’s response also states that my concerns are essentially moot, since the permit, **one part** of the Executive Director’s (ED) Response to Public Comments (RTC), and Fermi agree with my assertion that the Continuous Emissions Monitoring Systems (CEMS) used on all of the combustion turbine stacks have to meet 40 CFR Part 60, Appendix F.

I agree with Fermi’s assertion that it should not require a lawsuit to remedy my concerns. I was not planning on submitting a reconsideration or contested case hearing request until the ED issued the TCEQ RTC response 15 to my original public comment stating the draft permit was confusing with respect to CEMS Relative Accuracy Test Assessment (RATA) requirements. The RTC response states in one sentence that the Fermi CEMS have to meet 40 CFR Part 60, Appendix F. The next sentence states that Fermi has to perform CEMS cylinder gas audits every quarter and that they **may** perform CEMS RATA tests annually (instead of **requiring** annual RATA tests as dictated by 40 CFR Part 60, Appendix F). The second RTC comment does not qualify whether or not it applies to CEMS that are subject to 40 CFR Part 60, Appendix F or not, therefore indicating that it applies to the CEMS on the Fermi project. Since this statement is in direct conflict with 40 CFR Part 60, Appendix F, the comment is confusing and needs clarification of which statement has precedent and will control. One would assume the actual permit language would take precedent over a comment in the ED’s RTC, but I could not find any written confirmation, so I submitted my requests. However, Fermi states in their response that they acknowledge that 40 CFR 60, Appendix F applies and will perform annual CEMS RATA testing.

I am aware of only two options the public has available to them at this point in the permitting process, requesting reconsideration and requesting a contested case hearing. It is still not clear to me which option I needed to pursue, so I sought guidance from the TCEQ OPIC by email on 01/12/26 and received a response by phone on 01/23/26. Of course, the OPIC response was after the 01/20/26 deadline to submit requests for reconsideration and contested case hearings, so I requested both in my submittal, not knowing which was more appropriate. I was also told by those familiar with the TCEQ Commission that requests for reconsideration are rarely, if ever granted. It did not matter if the discrepancy I was trying to correct was a disputed matter of fact or a matter of law – it was the only avenue available to me to get a mistake in the TCEQ RTC resolved before the air permit is issued.

The TCEQ response states that none of the reconsideration requesters presented any new information to consider, therefore none of the requests for reconsideration should be granted. The TCEQ response to my request failed to even mention, much less address my **new** concern that the RTC response created a conflict that required clarification. The TCEQ hearing request response simply restated the RTC response 15 in the exact same wording.

The OPIC response states that my concerns are a matter of disputed fact (different than Fermi's attorney's assertion that my concerns are a matter of law). They also state that I did not present an "evidentiary record" of the disputed facts in my request, therefore my reconsideration request should be denied. I am confused why all the information I presented in my reconsideration/contested case request were not considered "evidence". All of the information describing the situation and needed to understand my concerns and make a decision about my recommendation for correcting the mistake are included in my request. Did I fail to submit the information in the "proper" format and therefore am excluded on a technicality? I did not find any formatting guidelines on the TCEQ website or in TAC rules. Aren't all timely submitted public comments and requests part of the "official record" of the permit application? Since the OPIC considered me an "affected person" for purposes of submitting a contested case hearing, it stands to reason that I should be able to request a reconsideration, given the fact that the requirements are less stringent and that I did, in fact present evidence for my claim.

Conclusion

My concern regarding CEMS RATA testing can be resolved by simply eliminating the Special Condition No. 20.B.(2) second paragraph of the draft permit since it is not applicable to the Fermi units and/or simply revising (or eliminating) the comment about the Applicant conducting a RATA only if desired ("**may** be conducted once every four quarters...") to "**shall** be conducted once every four quarters..." in response 15 of the ED RTC and comment 15 in the ED Response to Hearing Requests. If this can be done without a formal reconsideration or contested case hearing, then please take the appropriate internal steps to make the revisions. If it needs one or both of the formal procedures to make the revisions, then I urge the Commission to honor either/both of my original requests.

Also, given the fact that two different groups of technical experts disagree on whether or not Texas' potentially largest natural gas-fueled electric generating facility will emit certain pollutants in amounts that may cause exceedances of National Ambient Air Quality Standards in several locations in the Texas Panhandle (see Panhandle Taxpayers for Transparency (PT4T) contested case hearing request), it seems prudent that the TCEQ Commission grant a contested case hearing to learn what the actual emissions facts are, since Fermi's and PT4T's claims cannot both be true.

My concerns also include water usage and as I stated in my original comments, Fermi should eliminate the evaporative cooling towers on the combined-cycle power block and switch to air-cooled condensers. This will eliminate cooling tower particulate matter emissions as well as eliminate 36 million gallons per day (MGD) of groundwater used for cooling tower make-up. Fermi originally stated they would use air-cooled condensers on the nuclear power block (in the NRC permit application), so they should use them on the combined-cycle power block as well.

Thank you for your consideration,

Mike McCullough

Certificate of Service

I hereby certify that on February 17th, 2026, my reply to responses to my Request for Hearing and Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to the Office of Public Interest, the Executive Director of the TCEQ, and the Applicant (Fermi) via electronic mail.

Mike McCullough

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