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Kelly Keel, *Executive Director*



David Timberger, *Interim Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 23, 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 UNITED STATES  
DEPARTMENT OF ENERGY AND CONSOLIDATED NUCLEAR  
SECURITY, LLC FOR HAZARDOUS WASTE PERMIT NO. 50284  
TCEQ DOCKET NO. 2026-0237-IHW**

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

DOCKET NO. 2026-0237-IHW

APPLICATION BY	§	BEFORE THE
UNITED STATES	§	
DEPARTMENT OF ENERGY	§	
AND CONSOLIDATED	§	TEXAS COMMISSION ON
NUCLEAR SECURITY, LLC	§	
FOR HAZARDOUS WASTE	§	
PERMIT NO. 50284	§	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 received in the above-captioned matter.

**I. Introduction**

**A. Summary of Position**

Before the Commission is the application of United States Department of Energy and Consolidated Nuclear Security, LLC (Applicant) for renewal and major amendment of Hazardous Waste Permit No. 50284. The TCEQ Chief Clerk's office received one timely hearing request. As discussed herein, OPIC respectfully recommends that the Commission deny the hearing request of Michelle DeShong.

**B. Description of Application and Facility**

The United States Department of Energy and Consolidated Nuclear Security, LLC currently operates an existing nuclear weapons assembly and disassembly facility (the Facility) located in the City of Panhandle at 955 Farm-

to-Market Road 2373. The Facility stores and processes hazardous and nonhazardous industrial solid waste.

On November 27, 2023, the Applicant applied to TCEQ for renewal and major amendment of Hazardous Waste Permit No. 50284 (the Application) to authorize the continued storage and processing of industrial solid waste in five existing permitted container storage areas and twelve existing permitted miscellaneous units, continued corrective action in accordance with the Facility Compliance Plan and its revisions, and operational changes at the Facility. The Application does not propose new waste management units or new construction activities.

### **C. Procedural Background**

TCEQ received this Application for renewal and major amendment of Hazardous Waste Permit No. 50284 on November 27, 2023, and declared it administratively complete on January 18, 2024. The Notice of Receipt of Application and Intent to Obtain a Hazardous Waste Permit Renewal (NORI) was published in English in Carson County in the *Panhandle Herald* on February 8, 2024. The NORI was also published in English in Brown County in the *Amarillo Globe News* on February 8, 2024. The ED then determined the Application was technically complete and the Notice of Application and Preliminary Decision (NAPD) was published in English in Carson County in the *Panhandle Herald* on October 9, 2025. The NAPD was also published in English in Brown County in the *Amarillo Globe News* on October 9, 2025, and in Spanish in Potter County in *El Manzanero* on October 8, 2025. Additionally, a radio broadcast of the NAPD was

announced by KGNC AM 710 radio station. The comment period ended on November 24, 2025. The Chief Clerk mailed the ED's Preliminary Decision and Response to Comments (RTC) on January 8, 2026. The deadline for filing requests for a contested case hearing or a request for reconsideration was February 9, 2026.

## **II. Applicable Law**

This Application was filed on or after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709.<sup>1</sup> 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;

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<sup>1</sup> Tex. S.B. 709, 84th Leg., R.S. (2015).

- (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.<sup>2</sup>

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.<sup>3</sup> 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

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<sup>2</sup> 30 TAC § 55.201(d).

<sup>3</sup> 30 TAC § 55.203(a).

(7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.<sup>4</sup>

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.<sup>5</sup>

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.

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<sup>4</sup> 30 TAC § 55.203(c).

<sup>5</sup> 30 TAC § 55.203(d).

### **III. Analysis of the Contested Case Hearing Request**

#### **A. Whether the Requestor is an Affected Person**

On November 22, 2025, Michelle DeShong submitted a timely hearing request during the public comment period. Ms. DeShong states concern regarding dust created by construction activities and vehicular traffic. She also states that she and her animals have to breathe polluted air, and that once construction is complete, will be impacted by the noise and smell of the gas plants. According to the map provided by the ED's staff, Ms. DeShong's property is located approximately 5.96 miles from the Facility.

After review of her request, OPIC finds that Michelle DeShong has not demonstrated that she qualifies as an affected person. To be granted a contested case hearing, Ms. DeShong must show that she possesses a personal justiciable interest in this matter related to a legal right, duty, privilege, power, or economic interest affected by the application.<sup>6</sup> However, the concerns raised by Ms. DeShong lie outside of the scope of the permitting process. This Application for a hazardous waste permit does not authorize the emittance of any air contaminant; moreover, it appears that Ms. DeShong's concerns relate principally to construction activities, which this permit neither contemplates nor authorizes. Ms. DeShong also raises concerns about odor and noise attributable to gas plants. While applicable TCEQ rules do prohibit the Facility from creating nuisance conditions, this Application does not authorize the construction or operation of

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<sup>6</sup> See 30 TAC § 55.203(a).

a gas plant.<sup>7</sup> As such, OPIC cannot find that Ms. DeShong possesses a personal justiciable interest in this matter, nor can OPIC find that her interests are protected by the law under which this application will be considered.<sup>8</sup>

Additionally, an interest common to members of the general public does not qualify as a personal justiciable interest. Even assuming *arguendo* that Ms. DeShong's concerns may be addressed by this Application, she still has not demonstrated that she possesses any interests that are not common to members of the general public. A relevant factor in evaluating if a person is affected is whether a reasonable relationship exists between the interest claimed and the activity regulated.<sup>9</sup> There are no specific distance limitations applicable to who may be considered an affected person for purposes of this application, however, at a distance of over five miles from the Facility, OPIC is unable to find that Ms. DeShong is likely to be affected in a way that differs from the general public. Furthermore, the intervening distance between Ms. DeShong and the Facility greatly diminishes the likelihood that the Facility's regulated activity will have an impact on her health and safety, or her use of her property.<sup>10</sup>

Therefore, OPIC concludes that Michelle DeShong has not demonstrated that she qualifies as an affected person. However, should the Commission disagree and find that Ms. DeShong has demonstrated affectedness, OPIC offers the following additional analysis below:

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<sup>7</sup> See 30 TAC § 335.4.

<sup>8</sup> See 30 TAC § 55.203(c)(1).

<sup>9</sup> See 30 TAC § 55.203(c)(3).

<sup>10</sup> See 30 TAC § 55.203(c)(4).

**B. Which Issues Raised in the Hearing Request Are Disputed**

The hearing request raises the following disputed issues:

1. Whether the application and draft permit authorize construction activities or vehicular traffic that negatively impacts air quality, human health, and animal life.
2. Whether the application and draft permit authorize the operation of gas plants, which may cause smell and noise.

**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.<sup>11</sup> The issues listed above are issues of fact.

**D. Whether the Issues Were Raised During the Public Comment Period**

Issue nos. 1-2 raised in the hearing request were raised in the comment period by the requestor.<sup>12</sup>

**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 request is not based on issues raised in withdrawn comments.

**F. Whether the Issues are Relevant and Material to the Decision on the Application**

The hearing request has not raised any issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is

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<sup>11</sup> 30 TAC § 55.211(c)(2)(A).

<sup>12</sup> See 30 TAC §§ 55.201(c) & (d)(4)(B), 55.211(c)(2)(A).

relevant and material to the Commission's decision to issue or deny this permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law of the permit at issue.<sup>13</sup> Here, the hearing request has failed to raise issues that are relevant and material to the Commission's decision to issue or deny this permit.

#### *Air Quality, Human Health, and Animal Life*

The requestor in this matter is concerned that construction activities and vehicular traffic have affected air quality—negatively impacting human health and animal life. As discussed above, this application does not contemplate, nor does the draft permit authorize construction activities or the release of any air contaminants. Also, TCEQ does not have jurisdiction to consider impacts from traffic when reviewing a hazardous waste permit application. As such, any concerns associated with air emissions are outside the scope of this permitting process. Therefore, Issue no. 1 is not relevant and material to the Commission's decision on this application and is not appropriate for referral to SOAH.

#### *Noise and Smell Created by Gas Plants*

The requestor in this matter is concerned that gas plants will cause noise and smell issues. As discussed above, while TCEQ rules generally prohibit the Facility from creating a nuisance, this Application does not authorize the construction or operation of a gas plant.<sup>14</sup> As such, any impacts associated with gas plants are outside the scope of this permitting process. Therefore, Issue no.

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<sup>13</sup> *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

<sup>14</sup> See 30 TAC § 335.4.

2 is not relevant and material to the Commission's decision on this application and is not appropriate for referral to SOAH.

**G. Maximum Expected Duration for the Contested Case 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 judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge 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.<sup>15</sup> While OPIC is recommending denial of the pending hearing request, should the Commission disagree and order that a contested case hearing be convened, 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.<sup>16</sup>

**IV. Conclusion**

For the reasons discussed above, OPIC finds that Michelle DeShong has not demonstrated that she qualifies as an affected person. Should the Commission disagree and determine it is proper to refer this application for a hearing at SOAH, OPIC would respectfully recommend that the hearing duration be set at 180 days. Finally, OPIC was unable to identify any issues raised by the hearing

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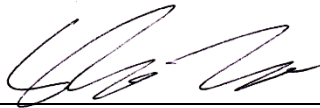
<sup>15</sup> 30 TAC § 50.115(d)(2).

<sup>16</sup> 30 TAC § 55.209(e)(7).

requestor that are relevant and material to the Commission's decision on this application.

Respectfully submitted,

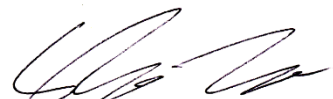
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 23, 2026, 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 on all persons listed on the attached mailing list via electronic mail, and/or by deposit in the U.S. Mail.



Sheldon P. Wayne

**MAILING LIST**  
**UNITED STATE DEPARTMENT OF ENERGY AND CONSOLIDATED NUCLEAR**  
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**TCEQ DOCKET NO. 2026-0237-IHW**

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