

**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. CONCLUSION

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