

BRACEWELL

February 8, 2024

VIA EFILING

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, TX 78711-3087

Re: TCEQ Docket No. 2023-1567-IWD
Cheniere Land Holdings LLC
Permit No. WQ0004646000

Dear Ms. Gharis:

Enclosed for filing is the Applicant Cheniere Land Holdings LLC's Response to Requests for Contested Case Hearing in the above-referenced matter.

Sincerely,



Whit Swift
Partner

Enclosure

cc: Mailing List

Whitney L Swift
Partner

T: +1.512.494.3658 F: +1.800.404.3970
111 Congress Avenue, Suite 2300, Austin, Texas 78701-4061
whit.swift@bracewell.com bracewell.com

TCEQ DOCKET NO. 2023-1567-IWD

APPLICATION BY § **BEFORE THE TEXAS COMMISSION**
CHENIERE LAND HOLDINGS LLC §
FOR RENEWAL OF TPDES § **ON**
PERMIT NO. WQ0004646000 § **ENVIRONMENTAL QUALITY**

**CHENIERE LAND HOLDINGS LLC’S RESPONSE
TO REQUESTS FOR CONTESTED CASE HEARING**

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

Applicant Cheniere Land Holdings LLC (“CLH” or “Applicant”) files this response to the requests for contested case hearing on its application (“Application”) for renewal of Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0004646000 (the “Permit”). The existing Permit authorizes certain discharges through several outfalls at the CLH Sherwin Site (the “Site”). CLH’s Application for renewal requests minor changes to the Permit to remove authority to discharge (1) treated domestic wastewater, (2) leachate from an on-site disposal area, and (3) equipment pad wash water, and to remove permitted Outfalls 101, 201, 301, 401, 501, 102, 002 and 003 from the reissued Permit. The draft permit prepared by the Executive Director (“Draft Permit”) removes the authorization to discharge certain wastewaters and outfalls as requested and does not increase the quantity of wastewater authorized to be discharged under the reissued Permit. If the renewal application is granted, the Permit will authorize only the discharge of stormwater associated with industrial activity at remaining internal Outfall 601 and final Outfall 001.

Two individuals (Jennifer Hilliard and Kathryn Masten-Cain) and one association (Ingleside on the Bay Coastal Watch Association (“IOBCWA”) filed comments and requested a contested case hearing on the Application.

This renewal application does not seek to authorize any increase in the amount of wastewater discharged under the Permit, does not seek to authorize any new type of wastewater not already authorized, and does not seek to authorize any new outfall that could change the pattern or place of the wastewater authorized to be discharged. It seeks only to reduce the types of wastewater authorized to be discharged and to eliminate certain currently permitted outfalls. As a result, it is an application for renewal of an existing Texas Water Code (TWC) Chapter 26 permit to which there is no right to a contested case hearing under TWC Section 26.028(d) and 30 TAC Section 55.201(i)(5).

I. Introduction

CLH owns and operates the CLH Sherwin Site, a former industrial site that previously processed bauxite ore to produce powdered alumina. Industrial process operations ceased in 2016 and demolition occurred from 2017 to 2020. There are no longer any active industrial processes that generate wastewater at the Site. The Site is located at 4633 State Highway 361 near the City of Gregory, San Patricio County, Texas 78359.

The Site discharges directly to Corpus Christi Bay in Segment No. 2481 of the Bays and Estuaries. Portions of Corpus Christi Bay are listed on the State's list of impaired and threatened waters for elevated bacteria levels.

The Permit was issued on April 25, 2018, and authorizes the discharge of treated domestic wastewater, leachate from an on-site disposal area (Bed 17), equipment pad wash water, and stormwater through Outfalls 101, 201, 301, 401, 501, 601, 102, 001, 002 and 003. The Draft Permit authorizes fewer outfalls and reduces the types of wastewater that can be discharged. The Draft Permit only authorizes stormwater associated with industrial activity at Outfalls 601 and 001

(existing Outfall 601 is maintained as an internal compliance monitoring point). None of the other existing discharges or outfalls are authorized in the Draft Permit.

Two new permit provisions (Other Requirements Nos. 5 and 6) are added to the Draft Permit to address an on-site surface impoundment referred to as the Decant Pond. The Decant Pond contains stormwater from the Site and wastewater from the Raw Water Lake at the adjacent CLH dredge material placement area (“DMPA”) site; any discharge from the Raw Water Lake is permitted under a separate permit: TPDES Permit No. WQ0004606000. Other Requirement No. 5 prohibits discharge from the Decant Pond under the Draft Permit while it contains wastewater routed from the Raw Water Lake. Other Requirement No. 6 addresses the potential future use of the Decant Pond as a stormwater-only retention pond from which a discharge of stormwater from the Site (a wastewater stream already authorized under the Permit) may occur via Outfall 601/001 after compliance with requirements outlined in Other Requirement No. 6.

The Draft Permit:

- 1) Reduces the number of authorized outfalls in the Permit;
- 2) Does not add any new authorized outfalls to the Permit;
- 3) Reduces the types of wastewater authorized to be discharged under the Permit;
- 4) Does not authorize the discharge of any new type of wastewater under the Permit;
and
- 5) Does not increase the amount of wastewater authorized to be discharged under the Permit.

The Draft Permit is more stringent than the existing Permit and upon renewal will maintain or improve the quality of the water discharged.

II. Procedural Background

CLH applied for renewal of the Permit on October 24, 2022. The Executive Director declared the Application administratively complete on November 22, 2022, and the Notice of Receipt and Intent to Obtain a Water Quality Permit (“NORI”) was published in *News of San*

Patricio in English on December 15, 2022, and in *La Prensa Comunidad* in Spanish on December 6, 2022. The Executive Director’s technical review of the Application was complete on February 14, 2023, and the Notice of Application and Preliminary Decision (“NAPD”) for a Water Quality Permit was issued on April 13, 2023. The NAPD was published in *News of San Patricio* in English on April 27, 2023, and in *La Prensa Comunidad* in Spanish on May 11, 2023. The comment period for this Application closed on June 12, 2023.

The Executive Director filed its Response to Public Comment (“RTC”) with the TCEQ’s Chief Clerk on September 19, 2023, and the Chief Clerk issued a letter dated September 25, 2023, transmitting the RTC and alerting the commenters to the Executive Director’s decision that the Application meets the requirements of applicable law for permit issuance. The RTC addressed all relevant and material concerns on the Application that were raised by the commenters.

On January 31, 2024, the Chief Clerk issued a letter stating that the contested case hearing requests on the Application will be considered by the Commissioners on March 6, 2024. CLH hereby provides its response to those hearing requests in accordance with Commission rules.

III. Wastewater Permit Renewal and Amendment Applications for which there is No Right to a Contested Case Hearing

Texas law and Commission rules set forth the conditions in which there is no right to a contested case hearing on an application to renew or amend a wastewater discharge permit. In pertinent part, the rules provide that:

(i) Applications for which there is no right to a contested case hearing include:

* * *

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of the waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.¹

When a TPDES permit amendment or renewal (1) will not increase the wastewater authorized to be discharged, (2) will not make a material change to the pattern or place of the discharge, and (3) will maintain or improve the quality of the wastewater authorized to be discharged, there is no right to a contested case hearing under law, provided the application process has satisfied all public participation requirements and the applicant's compliance history raises no issues regarding ability-to-comply.

IV. Application of the Conditions in Section 55.201(i)(5) to the Application

There is no right to a contested case hearing on a Texas Water Code ("TWC") Chapter 26 permit renewal or amendment application that satisfies the above-quoted conditions specified in 30 TAC Section 55.201(i)(5). The Application was filed under TWC Chapter 26 for renewal and minor amendment. As explained below, the Application satisfies all of the conditions of Section

¹ 30 TEX. ADMIN. CODE § 55.201(i).

55.201(i)(5). For that reason, the Commission should reissue the Permit without a contested case hearing.

- Paragraph 55.201(i)(5)(A)(i): CLH is not seeking any increase in the quantity of wastewater authorized to be discharged under the Permit.² CLH is applying for a renewal *to remove* numerous discharges and outfalls and to retain only an already-authorized stormwater discharge.
- Paragraph 55.201(i)(5)(A)(ii): CLH is seeking to remove a number of internal and external outfalls as part of the renewal and minor amendment, retaining only Outfalls 001 and 601 – which are already authorized under the existing Permit – at the same locations. There are no new outfalls that would be permitted through this renewal action. The renewed Permit will not change the pattern or place of discharge under the Permit.³
- Paragraph 55.201(i)(5)(B): The Application does not seek authorization for the discharge of any new wastewater stream. As noted above, it seeks to remove the authorization for certain already-permitted discharges and certain permitted outfalls, while not adding any new authorized outfalls. Upon renewal, the Permit will retain only the authorization to discharge stormwater associated with industrial activity. As explicitly recognized by the Executive Director in the RTC, the Application seeks to make the Permit “more stringent,”⁴ and the authorized activity will maintain and improve the quality of the wastewater authorized to be discharged.⁵

² See 30 TEX. ADMIN. CODE § 55.201(i)(5)(A)(i).

³ See 30 TEX. ADMIN. CODE § 55.201(i)(5)(A)(ii).

⁴ Executive Director’s RTC at 5 (emphasis added).

⁵ See 30 TEX. ADMIN. CODE § 55.201(i)(5)(B).

- Paragraph 55.201(i)(5)(C): The Executive Director’s processing of the Application has ensured that “any required opportunity for public meeting has been given.”⁶ As stated above, the NORI for this Application was published in *News of San Patricio* in English on December 15, 2022, and in *La Prensa Comunidad* in Spanish on December 6, 2022. The NAPD for a Water Quality Permit was issued on April 13, 2023. The NAPD was published in *News of San Patricio* in English on April 27, 2023, and in *La Prensa Comunidad* in Spanish on May 11, 2023. Both public notices advised the public of the opportunity to request a public meeting. Only two public meeting requests were filed on the Application, and none were filed in response to publication of the NORI – both were made at the end of the second public comment period. The Executive Director or Chief Clerk will hold a public hearing when there is significant interest in an application, if a legislator from the area of the project requests a public meeting, or if a meeting is otherwise required by law. The two requests for meeting on the Application did not meet the regulatory criteria to hold a public meeting.
- Paragraph 55.201(i)(5)(D): The Application process has ensured that “consultation and response to all timely received and significant public comment has been given.”⁷ The Executive Director responded to the Commenters’ concerns and requests in its RTC filed on September 19, 2023.
- Paragraph 55.201(i)(5)(E): The Application meets the criteria in Section 55.201(i)(5)(E) because “the applicant’s compliance history for the previous five years raises no issues regarding the applicant’s ability to comply with a material term of the

⁶ See 30 TEX. ADMIN. CODE § 55.201(i)(5)(C).

⁷ See 30 TEX. ADMIN. CODE § 55.201(i)(5)(D).

permit.”⁸ CLH’s compliance history raises no issues about CLH’s ability to comply with a material term of the permit. As noted by the Executive Director in the RTC, “[t]his site has a rating of 9.60 and a classification of satisfactory. The company rating and classification, which is the average of the ratings for all sites the company owns, is 6.58 and also satisfactory.”⁹

The pending Application for renewal and minor amendment meets all the conditions of 30 TAC Section 55.201(i)(5) and thus qualifies as an application under TWC Chapter 26 for which there is no right to a contested case hearing.

V. Conclusion and Prayer

There is no right to a contested case hearing on the Application under the Commission’s rules or the applicable law. The Application is not a straight renewal of the Permit; it amends the permit by removing authorized wastewater streams and authorized outfalls. The Application does not seek to increase the amount of wastewater authorized to be discharged, or to authorize the discharge of a new wastewater stream, or to add a new outfall. It is for that reason that the Executive Director described the renewed and amended permit as “more stringent” in its RTC. TCEQ rules appropriately provide no right to hearing for such applications, because no member of the public could be adversely affected by the issuance of the more-stringent Permit.

CLH respectfully requests that the Commission find that there is no right to a hearing on the Application, deny the contested case hearing requests, adopt the Executive Director’s RTC, and issue the renewal of TPDES Permit WQ0004646000.

⁸ See 30 TEX. ADMIN. CODE § 55.201(i)(5)(E).

⁹ Executive Director’s RTC at p. 6-7. The comment from requester Kathryn Masten-Cain refers to a past enforcement action and it is important to note that the respondent in that past enforcement action (Docket No. 2019-0215-IWD-E) was Corpus Christi Alumina LLC (“CCA”) and not CLH, the applicant in this permit renewal action. The Executive Director’s RTC erroneously identifies the respondent in that enforcement matter as CLH. The Permit was transferred to CLH after the conclusion of that enforcement action.

Respectfully submitted,



Whitney L. Swift
State Bar No. 00797531
Sara M. Burgin
State Bar No. 13012470
Bracewell LLP
111 Congress Avenue
Suite 2300
Austin, Texas 78701
512.494.3654
whit.swift@bracewell.com
sara.burgin@bracewell.com

Attorneys for Cheniere Land Holdings LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Cheniere Land Holdings LLC's Response to Requests for Contested Case hearing was electronically filed with the Texas Commission on Environmental Quality on February 8, 2024. I further certify that a copy of the foregoing was sent to all persons on the attached mailing list via U.S. mail on February 8, 2024.



Whitney L. Swift

MAILING LIST
CHENIERE LAND HOLDINGS LLC
DOCKET NO. 2023-1567-IWD; PERMIT NO. WQ0004646000

FOR THE EXECUTIVE DIRECTOR

Kathy Humphreys, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711

Sarah Johnson, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division, MC-148
P.O. Box 13087
Austin, Texas 78711

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711

FOR PUBLIC INTEREST COUNSEL

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711

FOR THE CHIEF CLERK

via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711

FOR ALTERNATIVE DISPUTE
RESOLUTION

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711

REQUESTERS:

JENNIFER HILLIARD
904 N. SANDPIPER
INGLESIDE TX 78362-4840

JENNIFER HILLIARD
904 SANDPIPER
INGLESIDE, TX 78362-4840

JENNIFER HILLIARD
PATRICK NYE
INGLESIDE ON THE BAY COASTAL
WATCH ASSOCIATION
1018 BAYSHORE DR
INGLESIDE, TX 78362

KATHRYN MASTEN-CAIN
1006 SANDPIPER
INGLESIDE TX 78362-4689

KATHRYN MASTEN-CAIN
PO BOX 25
VIENNA MD 21869-0025