

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 12, 2024

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

RE: Application by Cheniere Land Holdings, LLC for TPDES Permit No. WQ0004646000;
TCEQ Docket No. 2023-1567-IWD

Dear Ms. Gharis:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the Executive Director's Response to Hearing Requests.

Please do not hesitate to contact me at Kathy.humphreys@tceq.texas.gov if you have any questions. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, reading "Kathy J. Humphreys".

Kathy Humphreys, Staff Attorney – Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2023-1567-IWD

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

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests on the application by the Cheniere Land Holdings, LLC (Cheniere) for renewal with minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004646000.

The Office of the Chief Clerk received timely contested case hearing requests from Patrick Nye and Jennifer Hilliard on behalf of Ingleside on the Bay Coastal Watch Association (IOBCWA), Jennifer R. Hillard (on her own behalf), and Kathryn Masten-Cain.

The Executive Director recommends that the Commission find that there is no right a hearing on an application for a minor amendment and deny all hearing requests.

Attached for Commission consideration is a satellite map of the area showing the locations of the facility and requestors.

II. FACILITY DESCRIPTION

Cheniere operates the Cheniere Land Holdings, LLC Sherwin Site, a former industrial site (which previously processed bauxite ore to produce powdered alumina). The draft permit authorizes the discharge of stormwater associated with industrial activities only (previously monitored at Outfall 601) on an intermittent and flow-variable basis via Outfall 001; all other waste streams and Outfalls have been removed from the draft permit, per Cheniere’s request.

The facility is located at 4633 State Highway 361, near the City of Gregory, San Patricio County, Texas 78359. The effluent limitations are established in the draft permit as follows:

<i>Outfall</i>	<i>Pollutant</i>	<i>Daily Average</i>	<i>Daily Maximum mg/L</i>
001	Flow in million gallons per day (MGD)	Report	Report
601	Flow in MGD	Report	Report
	Chemical Oxygen Demand	N/A	200
	Oil and Grease	N/A	15
	Enterococci in CFU or MPN per 100 mL	N/A	Report
	pH range in SU	6.5 to 9.0	

The effluent is discharged directly to Corpus Christi Bay in Segment No. 2481 of the Bays and Estuaries. The designated uses for Segment No. 2481 are primary contact recreation, exceptional aquatic life use, and oyster waters.

III. PROCEDURAL BACKGROUND

The TCEQ received the application for renewal of TPDES Permit No. WQ0004646000 on October 24, 2022, and declared it administratively complete on November 22, 2022. 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 technical review 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. This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature (1999), and Senate Bill 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55.

IV. EVALUATION OF HEARING REQUESTS

HB 801 established statutory procedures for public participation in certain environmental permitting proceedings, specifically regarding public notice and public comment and the Commission's consideration of hearing requests. SB 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request.¹

Responses to hearing requests must specifically address:

¹ 30 Texas Administrative Code (TAC) Section (§) 55.209(d).

- (1) whether the requestor is an affected person;
- (2) whether issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter by filing a written withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application;
- (7) and a maximum expected duration for the contested case hearing.²

B. Hearing Request Requirements

For the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements:

A request for a contested case hearing by an affected person must be in writing, filed with the chief clerk within the time provided . . . , based only on the requester's timely comments, and not based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's Response to Comment.³

A hearing request must substantially comply with the following:

- (1) give the name, address, telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who is responsible for receiving all official communications and documents for the group;
- (2) identify the person's 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 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 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

² 30 TAC § 55.209(e).

³ 30 TAC § 55.201(c).

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 comments that the requestor disputes and 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.⁴

C. Requirement that Requestor be an Affected Person

To grant a contested case hearing, the Commission must determine that a requestor is an "affected person" by conducting the following analysis:

- (a) For any application, 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 public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application, may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (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; and
 - (6) whether the requester timely submitted comments on the application which were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

⁴ 30 TAC § 55.201(d).

(d) In making this determination, the commission may also consider, to the extent consistent with case law:

- (1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the ED; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.⁵

Under 30 TAC § 55.205(a), a group or association may request a contested case hearing only if the group or association meets the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.⁶

Additionally, for applications filed on or after September 1, 2015, a hearing request by a group or association for a contested case may not be granted unless all of the following requirements are met:

- (1) comments on the application are timely submitted by the group or association;
- (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right;
- (3) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.⁷

D. Referral to the State Office of Administrative Hearings

When the Commission grants a request for a contested case hearing, the Commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearing (SOAH) for a hearing.⁸ The

⁵ 30 TAC § 55.203(a)-(d).

⁶ 30 TAC § 55.205(a)(1)-(3).

⁷ 30 TAC § 55.205(b)(1)-(4).

⁸ 30 TAC § 50.115(b).

Commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact or a mixed question of law and fact;
- (2) was raised during the public comment period by an affected person whose hearing request is granted; and
- (3) is relevant and material to the decision on the application.⁹

V. WHETHER THERE IS A RIGHT TO A CONTESTED CASE HEARING

For this permit application, the relevant public comment period ended on June 12, 2023, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on October 25, 2023. The Executive Director asserts that there is no right to a Contested Case Hearing because Cheniere applied for a renewal with a minor amendment. 30 TAC § 305.62(c)(2) defines a minor amendment as “an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state.”

1. There is no right for a Contested Case Hearing on this Application.

Cheniere applied for a renewal with minor amendment to:

1. remove the following waste streams: treated domestic wastewater, leachate from an on-site disposal area (Bed 17) and equipment pad wash water, and their associated limits from Outfalls 601 and 001;
2. remove Enterococci requirements from Outfall 601 because domestic wastewater is no longer authorized;
3. remove internal Outfalls 101-501 and 102 and external Outfalls 002 and 003 from the permit and to continue authorization of only stormwater associated with industrial activity at internal outfall 601 and external outfall 001.

30 TAC § 55.201(i) provides that there is no right to a contested case hearing for a minor amendment of a permit under Chapter 305, Subchapter D. This amendment qualifies as a minor amendment under 30 TAC § 305.62(c)(2) because it will not significantly increase the quantity of waste authorized to be discharged or change materially the pattern or place of discharge, and the renewed permit will maintain or improve the quality of waste authorized to be discharged. The draft permit authorizes the discharge of stormwater associated with industrial activities only (previously monitored at internal Outfall 601) on an intermittent and flow-variable

⁹ 30 TAC § 50.115.

basis via Outfall 001; all other waste streams and external Outfalls have been removed from the draft permit, based on Cheniere's request. Additionally, the draft permit removes the authorization to discharge domestic wastewater, a known source of bacteria. Typically, bacteria limits associated with domestic wastewater are removed with removal of the authorization to discharge domestic wastewater. However, due to the permit exceedances and the bacteria impairment of the receiving segment, requirements for bacteria monitoring and reporting have been included in the draft permit to verify if bacteria limits are necessary due to unknown sources of Enterococci.

The Executive Director respectfully recommends the Commission find there is no right to a contested case hearing under 30 TAC § 55.201(i) and deny all hearing requests.

2. If the Commission finds that 30 TAC § 55.201(i) does not apply, the Executive Director Recommends the Commission deny all hearing requests because none of the persons who requested a contested case hearing demonstrated that they are an affected person.

Ingleside on the Bay Coastal Watch Association

Ingleside on the Bay Coastal Watch Association (IOBCWA) submitted a timely hearing request in writing; provided the required contact information; and raised the issues that are the basis of its hearing request in its timely comments. IOBCWA identified the following members as individuals who would have standing in their own right to request a hearing: Encarnacion Serna, Patick Nye, Anne Wright, Sheila Walton, Kellen Chiddix, Mary (Judy) Orr, Jennifer Hilliard, Ronald and Becky Faul, and Kelley Burnett; however, IOBCWA did not identify how the individuals would have standing in their own right.¹⁰ IOBCWA stated that these individuals recreate and fish in Ingleside Cove. IOBCWA also noted that Anne Wright's Bait House on the Bay is located on the cove. From the addresses provided, it appears that none of the persons IOBCWA identified as members would have standing to request a hearing in their own right because none of these individuals reside in close proximity to the facility. The closest individual, Mr. Serna, is located approximately 3.58 miles from the facility. As a result, IOBCWA's request has not demonstrated how the identified members would have standing to request a hearing in their own right given their distance from the facility and the nature of the discharge authorized by the draft permit. Since IOBCWA did not satisfy this prong of the associational standing test the Executive Director recommends that the Commission deny its hearing request.

IOBCWA raised the following issues: maintaining the designated uses of Corpus Christi Bay; protecting aquatic life; and protecting human health.

¹⁰ According to the IOBCWA's hearing request Kelly Burnett owns the Dolphin Connection but did not provide any additional information regarding where the Dolphin Connection is located or the nature of the business.

Jennifer Hilliard (on her own behalf)

According to the address Ms. Hilliard provided she resides over five miles from the facility. Ms. Hillard raised concerns over the remediation of the “toxic site,” and the proximity of water intakes. Based on her location and the concerns raised in her request, Ms. Hilliard has not demonstrated how she qualifies as an affected person for this application.

Kathryn Masten-Cain

Ms. Masten-Cain expressed a general concern regarding the discharges from the facility; the facility’s compliance history; the information available on CID; information regarding information from FERC docket; whether Texas Parks and Wildlife provided any input; and whether the site is being appropriately remediated. According to the address Ms. Masten-Cain provided she resides over five miles from the facility. Based on her location and the concerns raised in her request, Ms. Masten-Cain has not demonstrated how she qualifies as an affected person for this application.

VI. CONCLUSION

The Executive Director recommends denial of all hearing requests because there is no right to a hearing on an application for a renewal with minor amendment. In the alternative, if the Commission finds that there is a right to a hearing, the Executive Director recommends the Commission deny all hearing requests because none of the hearing requestors demonstrated that they qualify as affected persons.

Respectfully submitted,

Texas Commission on Environmental
Quality

Kelly Keel, Executive Director

Erin Chancellor, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division

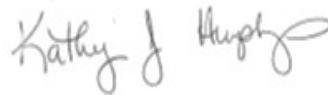


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REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

VII. CERTIFICATE OF SERVICE

I certify that on February 12, 2024, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0004646000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, inter-agency mail, or by deposit in the U.S. Mail.



Kathy Humphreys, Staff Attorney
Environmental Law Division

MAILING LIST/LISTA DE CORREO
Cheniere Land Holdings, LLC
TCEQ Docket No. 2023-1567-IWD; TPDES Permit No. WQ0004646000

FOR THE APPLICANT/PARA EL
SOLICITANTE:

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Environmental Principal Engineer
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FOR PUBLIC INTEREST COUNSEL/PARA
ABOGADOS DE INTERÉS PÚBLICO

via electronic mail:

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Public Interest Counsel, MC-103
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ALTERNATIVA DE DISPUTAS

via electronic mail:

Kyle Lucas
Texas Commission on Environmental
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Alternative Dispute Resolution, MC-222
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via eFilings:

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<https://www.tceq.texas.gov/goto/efilings>

REQUESTER(S)/SOLICITANTE(S) /
INTERESTED PERSON(S)/PERSONA(S)
INTERESADA(S):

See attached list/Ver lista adjunta.

REQUESTER(S)/SOLICITANTE(S)

Hilliard, Jennifer R
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Corpus Christi Tx 78362

Hilliard, Jennifer R
904 Sandpiper
Ingleside Tx 78362-4840

Hilliard, Jennifer
Ingleside On The Bay Coastal Watch
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Ingleside Tx 78362-4647

Masten-Cain, Dr. Kathryn A
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Nye, Patrick Arnold
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Ingleside Tx 78362-4647

Attachment A

Cheniere Land Holdings, LLC

TPDES Permit No. WQ0004646000

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 2/9/2024
CRF 0097718
Cartographer: MAttoh

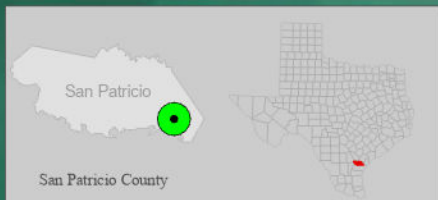


Distance in Miles to Requestors:

Name	Distance
Encarnacion Serna	3.58
Kellen Chiddix	5.42
Sheila Walton	5.48
Mary (Judy) Orr	5.49
Kelley Burnett	5.67
Ronald and Becky Faul	5.75
Anne Wright	5.93
Jennifer Hilliard	5.96
Kathryn A. Mastin	5.97
Patrick Nye	6.04

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in San Patricio County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of San Patricio County (red) in the state of Texas.

