

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 25, 2023

TO: All interested persons.

RE: Cheniere Land Holdings, LLC
TPDES Permit No. WQ0004646000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Bell Whittington Public Library, 2400 Memorial Parkway, Portland, Texas 78374.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.

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- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **"affected person."** 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. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date

of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

Laurie Gharis
Chief Clerk

LG/cb

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Cheniere Land Holdings, LLC
TPDES Permit No. WQ0004646000

The Executive Director has made the Response to Public Comment (RTC) for the application by Cheniere Land Holdings, LLC for TPDES Permit No. WQ0004646000 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

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

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0004646000) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Bell Whittington Public Library, 2400 Memorial Parkway, Portland, Texas 78374.



COMISIÓN DE CALIDAD AMBIENTAL DE TEXAS

Protegiendo a Texas reduciendo y previniendo la contaminación

25 de septiembre de 2023

TO: Todas las personas interesadas.

RE: Cheniere Land Holdings, LLC
TPDES Permiso No. WQ0004646000

Decisión del Director Ejecutivo.

El director ejecutivo ha tomado la decisión de que la solicitud de permiso mencionada anteriormente cumple con los requisitos de la ley aplicable. **Esta decisión no autoriza la construcción u operación de ninguna instalación propuesta.** Esta decisión será considerada por los comisionados en una reunión pública programada regularmente antes de que se tome cualquier medida sobre esta solicitud, a menos que todas las solicitudes de audiencia o reconsideración de casos impugnados hayan sido retiradas antes de esa reunión.

Se adjuntan a esta carta las instrucciones para ver en Internet la Respuesta del Director Ejecutivo al Comentario Público (RTC). Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a chiefclk@tceq.texas.gov. Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios públicos, están disponibles para su revisión en la Oficina Central de TCEQ. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en Bell Whittington Public Library, 2400 Memorial Parkway, Portland, Texas 78734.

Si no está de acuerdo con la decisión del director ejecutivo y cree que es una "persona afectada" como se define a continuación, puede solicitar una audiencia de caso impugnado. Además, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Los procedimientos para la evaluación de la comisión de las solicitudes de audiencia/solicitudes de reconsideración se encuentran en 30 Código Administrativo de Texas, Capítulo 55, Subcapítulo F. A continuación, se presenta una breve descripción de los procedimientos para estas dos solicitudes.

Cómo solicitar una audiencia de caso impugnado.

Es importante que su solicitud incluya toda la información que respalde su derecho a una audiencia de caso impugnado. Su solicitud de audiencia debe demostrar que cumple con los requisitos legales aplicables para que se le conceda su solicitud de audiencia. La consideración de la comisión de su solicitud se basará en la información que usted proporcione.

La solicitud debe incluir lo siguiente:

- (1) Su nombre, dirección, número de teléfono durante el día y, si es posible, un número de fax.
- (2) El nombre del solicitante, el número de permiso y otros números enumerados anteriormente para que su solicitud pueda procesarse adecuadamente.
- (3) Una declaración que exprese claramente que está solicitando una audiencia de caso impugnado. Por ejemplo, la siguiente declaración sería suficiente: "Solicito una audiencia de caso impugnado".
- (4) Si la solicitud es realizada por un grupo o asociación, la solicitud debe identificar:
 - (A) una persona por nombre, dirección, número de teléfono durante el día y, si es posible, el número de fax, de la persona que será responsable de recibir todas las comunicaciones y documentos para el grupo.;
 - (B) los comentarios sobre la solicitud presentada por el grupo que constituyen la base de la solicitud de audiencia; y
 - (C) por nombre y dirección física, uno o más miembros del grupo que de otro modo tendrían derecho a solicitar una audiencia por derecho propio. Los intereses que el grupo busca proteger deben estar relacionados con el propósito de la organización. Ni la reclamación alegada ni la reparación solicitada deben requerir la participación de los miembros individuales en el caso.

Además, su solicitud debe demostrar que usted es una **"persona afectada"**. Una persona afectada es aquella que tiene un interés justiciable personal relacionado con un derecho, deber, privilegio, poder o interés económico legal afectado por la solicitud. Su solicitud debe describir cómo y por qué se vería afectado negativamente por la instalación o actividad propuesta de una manera que no sea común al público en general. Por ejemplo, en la medida en que su solicitud se base en estas preocupaciones, debe describir el impacto probable en su salud, seguridad o usos de su propiedad que puedan verse afectados negativamente por la instalación o las actividades propuestas. Para demostrar que tiene un interés personal justiciable, debe indicar, tan específicamente como pueda, su ubicación y la distancia entre su ubicación y la instalación o actividades propuestas.

Su solicitud debe plantear cuestiones de hecho controvertidas que sean relevantes y materiales para la decisión de la comisión sobre esta solicitud que fueron planteadas **por usted** durante el período de comentarios públicos. La solicitud no puede basarse únicamente en cuestiones planteadas en los comentarios que haya retirado.

Para facilitar la determinación por parte de la comisión del número y alcance de los asuntos que se remitirán a la audiencia, usted debe: 1) especificar cualquiera de las respuestas del director ejecutivo a **sus** comentarios que usted disputa; 2) la base fáctica de la disputa; y 3) enumerar cualquier cuestión de derecho en disputa.

Cómo solicitar la reconsideración de la decisión del Director Ejecutivo.

A diferencia de una solicitud de audiencia de caso impugnado, cualquier persona puede solicitar la reconsideración de la decisión del director ejecutivo. Una solicitud de reconsideración debe contener su nombre, dirección, número de teléfono durante el día y, si

es posible, su número de fax. La solicitud debe indicar que está solicitando la reconsideración de la decisión del director ejecutivo, y debe explicar por qué cree que la decisión debe ser reconsiderada.

Fecha límite para la presentación de solicitudes.

La oficina del Secretario Oficial debe **recibir** una solicitud de audiencia de caso impugnado o reconsideración de la decisión del director ejecutivo a más tardar **30 días calendario** después de la fecha de esta carta. Puede enviar su solicitud electrónicamente a www.tceq.texas.gov/agency/decisions/cc/comments.html o por correo a la siguiente dirección:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Procesamiento de solicitudes.

Las solicitudes oportunas para una audiencia de caso impugnado o para la reconsideración de la decisión del director ejecutivo se remitirán al Programa de Resolución Alternativa de Disputas de TCEQ y se incluirán en la agenda de una de las reuniones programadas regularmente de la comisión. Las instrucciones adicionales que explican estos procedimientos se enviarán a la lista de correo adjunta cuando se haya programado esta reunión.

Cómo obtener información adicional.

Si tiene alguna pregunta o necesita información adicional sobre los procedimientos descritos en esta carta, llame al Programa de Educación Pública, al número gratuito, 1-800-687-4040.

Atentamente,



Laurie Gharis
Secretaria Oficial

LG/cb

Recinto

RESPUESTA DEL DIRECTOR EJECUTIVO AL COMENTARIO DEL PÚBLICO
para
Cheniere Land Holdings, LLC
TPDES Permiso No. WQ0004646000

El Director Ejecutivo ha puesto a disposición de Internet la respuesta al comentario público (RTC) para la solicitud de Cheniere Land Holdings, LLC del permiso de TPDES No. WQ0004646000. Puede ver e imprimir el documento visitando la Base de Datos Integrada de los Comisionados de TCEQ en el siguiente enlace:

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

Para ver el RTC en el enlace anterior, ingrese el número de identificación TCEQ para esta solicitud (WQ0004646000) y haga clic en el botón "Buscar". Los resultados de la búsqueda mostrarán un enlace al RTC.

Las personas que prefieran una copia por correo del RTC o que tengan problemas para acceder al RTC en el sitio web, deben comunicarse con la Oficina del Secretario Oficial, por teléfono al (512) 239-3300 o por correo electrónico a chiefclk@tceq.texas.gov.

Información adicional

Para obtener más información sobre el proceso de participación pública, puede comunicarse con la Oficina del Asesor de Interés Público al (512) 239-6363 o llamar al Programa de Educación Pública, al número gratuito, (800) 687-4040.

Una copia completa del RTC (incluida la lista de correo), la solicitud completa, el borrador del permiso y los documentos relacionados, incluidos los comentarios, están disponibles para su revisión en la Oficina Central de TCEQ en Austin, Texas. Además, una copia de la solicitud completa, el borrador del permiso y la decisión preliminar del director ejecutivo están disponibles para ver y copiar en Bell Whittington Public Library, 2400 Memorial Parkway, Portland, Texas 78734.

MAILING LIST / LISTA DE CORREO
for / para
Cheniere Land Holdings, LLC
TPDES Permit No. WQ0004646000/ TPDES Permiso No. WQ0004646000

FOR THE APPLICANT /
PARA EL SOLICITANTE:

George Robinson, P.E.,
Environmental Principal Engineer
Cheniere Land Holdings, LLC
700 Milam Street, Suite 1900
Houston, Texas 77002

Nikki Scheinost, Project Scientist
Tetra Tech
8911 North Capital of Texas Highway,
Building 2, Suite 2310
Austin, Texas 78759

INTERESTED PERSONS /
PERSONAS INTERESADAS:

See Attached List

FOR THE EXECUTIVE DIRECTOR / PARA
EL DIRECTOR EJECUTIVO
via electronic mail /
por correo electrónico:

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Kathy Humphreys, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Sarah A. Johnson, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL /
PARA ABOGADOS DE INTERÉS PÚBLICO
via electronic mail /
por correo electrónico:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK /
PARA EL SECRETARIO OFICIAL
via electronic mail
por correo electrónico:

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

HILLIARD , JENNIFER R
JENNIFER HILLIARD AIA
904 N SANDPIPER
CORPUS CHRISTI TX 78362

HILLIARD , JENNIFER R
JENNIFER HILLIARD AIA
904 SANDPIPER
INGLESIDE TX 78362-4840

HILLIARD , JENNIFER
INGLESIDE ON THE BAY COASTAL WATCH
ASSOCIATION
1018 BAYSHORE DR
INGLESIDE TX 78362-4647

MASTEN , DR. KATHRYN A
MASTEN-CAIN CONSULTING INC
1006 SANDPIPER
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MASTEN , DR. KATHRYN A
MASTEN-CAIN CONSULTING INC
PO BOX 25
VIENNA MD 21869-0025

NYE , PATRICK ARNOLD
INGLESIDE ON THE BAY COASTAL WATCH
ASSOCIATION
1018 BAYSHORE DR
INGLESIDE TX 78362-4647

TPDES PERMIT NO. WQ0004646000

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

EXECUTIVE DIRECTOR’S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (RTC or Response) on the Executive Director’s preliminary decision to issue to Cheniere Land Holdings, LLC (CLH or Applicant) a renewed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004646000. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely comment letters from Kathryn A. Masten, Jennifer R. Hilliard (on behalf of Ingleside on the Bay Coastal Watch Association), and Patrick Arnold Nye. This Response addresses all such timely public comments received, whether or not withdrawn. While CLH has multiple TPDES permits, this RTC only addresses comments on the renewal application for TPDES permit No. **WQ0004646000**. Please see the attached map for the location of the various CLH properties. Comments on any other CLH application or permit must be made on the specific application or permit. Additionally, this Response to Comments is the only Response to Comments for the renewal application for TPDES Permit No. WQ000464600. If you need more information about this permit action or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

I. BACKGROUND

A. Description of Facility

CLH operates the CLH 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 wastestreams and Outfalls have been removed from the draft permit, per the CHL'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.

B. 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.

C. Access to Rules, Laws, and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- to access the Secretary of State website: <https://www.sos.state.tx.us/>;
- for TCEQ rules in 30 TAC: <https://www.sos.texas.gov/tac/index.shtml> (select “TAC Viewer” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: <https://statutes.capitol.texas.gov/>;
- to access the TCEQ website: <https://www.tceq.texas.gov/rules/index.html> (for downloadable rules in Adobe PDF format, select “Rules in PDF” under “Related Content”)
- for Federal rules in Title 40 of the Code of Federal Regulations: <https://www.ecfr.gov> (select “Title 40-Protection of Environment”); and
- for Federal environmental laws: <https://www.epa.gov/laws-regulations>.

Commission records for this facility are available for viewing and copying at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk), for the current application until final action is taken. The permit application, Executive Director’s preliminary decision, and draft permit are also available for viewing and copying at the Bell Whittington Public Library, 2400 Memorial Parkway, Portland, Texas.

II. COMMENTS AND RESPONSES

COMMENT 1:

Kathryn Masten expressed concern about the discharges from the facility. Jennifer Hilliard, on behalf of Ingleside on the Bay Coastal Watch Association (IOBCWA), expressed concern about maintaining the designated uses of Corpus Christi Bay, protecting aquatic life, and protecting human health. Patrick Nye expressed concern about the quality of the discharge and impacts on the ecosystem.

RESPONSE 1:

The TCEQ has a legislative responsibility to protect water quality in the state’s rivers, lakes, and coastal waters and to authorize wastewater discharge permits under the Texas Water Code (TWC) and the Texas Administrative Code (TAC). The TCEQ ensures that all wastewater discharge permits are consistent with the Texas Surface

Water Quality Standards (TSWQS found at 30 TAC Chapter 307) and are therefore protective of surface water quality to ensure the protection of aquatic life dependent on those surface waters. The TSWQS designate uses, such as recreation and aquatic life, for specific state water bodies and specify numeric criteria to protect those uses. In addition to water body-specific uses and criteria, the TSWQS contain general criteria that apply broadly to surface waters in the state and further protect against the impairment of state waters and their uses from pollutants attributed to wastewater discharges.

TSWQS are developed based on the latest scientific information and stakeholder input to ensure protection of designated uses. TSWQS are also reviewed and approved by the United States Environmental Protection Agency. In addition, the draft permit includes requirements that were developed in accordance with TCEQ rules and procedures.

The TSWQS in 30 TAC Chapter 307 require that discharges may not degrade the receiving waters and may not result in situations that impair existing, attainable or designated uses, and that surface waters not be toxic to aquatic life, terrestrial wildlife, livestock, or domestic animals.¹ In this case, the designated uses for Segment No. 2481 are primary contact recreation, exceptional aquatic life use, and oyster waters.² The draft permit authorizes the discharge of stormwater only. As stated in 30 TAC § 307.8(e) of the TSWQS, pollution in stormwater must not impair existing or designated uses. The Executive Director determined that these uses should be protected if the facility is operated and maintained as required by the proposed permit and regulations.

In general, TPDES stormwater permits do not contain numerical effluent limits based on water quality criteria because mixing zones are not specified for stormwater-only discharges.³ Individual permits that authorize the discharge of only stormwater are not evaluated for critical conditions and mixing zones⁴ because stormwater discharges are normally intermittent and occur during wet weather conditions.⁵ Currently, the TCEQ has not developed routine procedures for setting chemical-

¹ 30 TEX. ADMIN. CODE § 307.6(b)(4).

² 30 TEX. ADMIN. CODE § 307.10.

³ 30 TEX. ADMIN. CODE § 307.8(b)(9).

⁴ IPs. June 2010. Page 70.

⁵ IPs. June 2010. Page 187.

specific effluent limits based on the TSWQS on stormwater discharges. Instead, technology-based effluent limits for stormwater discharges are applied in individual permits.

Because Cheniere Land Holdings, LLC requested an amendment to remove certain authorized discharges, the draft permit is more stringent than the existing permit issued on April 25, 2018. Specifically, Cheniere Land Holdings, LLC requested:

- the draft permit only authorize stormwater associated with industrial activity at Outfalls 601 and 001 (existing Outfall 601 is maintained as a compliance monitoring point).
- Discharges from the other existing Outfalls (Outfalls 101, 201, 301, 501, 102, 002, and 003) are not authorized in this draft permit.
- Treated domestic wastewater, leachate from an on-site disposal area (Bed 17), and equipment pad wash water are no longer authorized in the draft permit.
- Decant Pond. Water from the Decant Pond is no longer available for reclaimed water use. New Other Requirement No. 5 in the draft permit states that discharge from the Decant Pond is prohibited while it contains wastewater from the Raw Water Lake at the CLH DMPA site. Additionally, new Other Requirement No. 6 in the draft permit addresses potential use of the Decant Pond in the future as a stormwater only pond with discharge via Outfall 601/001. New Other Requirement No. 6 states that before the Decant Pond can be considered as a stormwater only pond, any portion of the Decant Pond from which a discharge of stormwater occurs via Outfall 601/001 of the permit must first be emptied, settled solids removed, and the pond liner re-certified. This requirement also states that the permittee is not prevented from closing any portion(s) or all of the Decant Pond in accordance with applicable provisions of 30 TAC Chapter 335 during the term of the permit.

For all these reasons, the draft permit is more stringent than the existing permit issued on April 25, 2018. Further, the Executive Director has made a preliminary determination that the draft permit, if issued, meets all applicable statutory and regulatory requirements.

COMMENT 2:

Kathryn Masten referred to a “court order” in 2021 regarding a violation in September 2018 at the former Corpus Christi Alumina Site and expressed concern regarding the permittee’s compliance history.

RESPONSE 2:

During the technical review of the application, the Executive Director reviewed Cheniere Land Holdings, LLC’s compliance history according to the rules in 30 TAC Chapter 60. The compliance history is reviewed for the company (i.e., customer) and site (i.e., regulated entity) for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance-related components about the site under review. These components include the following: enforcement orders, consent decrees, court judgments, criminal convictions, chronic excessive emissions events, investigations, notices of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs, and early compliance.

This permit application was received after September 1, 2002, and the company and site have been rated and classified pursuant to 30 TAC Chapter 60. A company and site may have one of the following classifications and ratings:

1. a ***high performer classification***, has a rating of fewer than 0.10 points and is considered to have an above-satisfactory compliance record;
2. a ***satisfactory performer classification***, has a rating between 0.10 points to 55 points and is considered to generally comply with environmental regulations; or
3. an ***unsatisfactory performer classification***, has a rating above 55 points and is considered to perform below minimal acceptable performance standards established by the commission.⁶

This 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.

⁶ 30 TEX. ADMIN. CODE § 60.2.

Since CLH had an administrative order issued in the past five years from the date the application was received, staff reviewed the Administrative Order during the review of the application. Agreed Order 2019-0215-IWD-E was issued on June 9, 2021. The order is for a violation noted during an investigation conducted September 12, 2018 through October 8, 2018. According to the Agreed Order, CLH did not maintain the minimum two feet of freeboard of the Decant Pond, resulting in an unauthorized discharge to adjacent property. The Agreed Order states CLH ceased the flow to the Decant Pond, ceased discharge, and pumped the unauthorized discharge from the adjacent property back into the Decant Pond (completed by October 8, 2018), as well as paid the administrative penalty fees.

If the facility is found to be out of compliance with the terms or conditions of the permit, CLH may be subject to new enforcement actions. If anyone experiences any suspected incidents of noncompliance with the permit or TCEQ rules or wishes to submit an odor complaint, they may report these to the TCEQ by calling the toll-free number, 1-888-777-3186, or the TCEQ Region 14 Office in Corpus Christi at 361-881-6900. Citizen complaints may also be filed on-line at

<https://www.tceq.texas.gov/compliance/complaints>.

COMMENT 3:

Patrick Nye expressed concern about the public comment period and timely public notification.

RESPONSE 3:

There are two public notices regarding this permit action, the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD). The TCEQ's notice rules require applicants to provide public notices for TPDES permits by publishing the NORI in a "newspaper of largest circulation in the county in which the facility is located or proposed to be located."⁷ The 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. After the Office of the Chief Clerk has mailed the preliminary decision and the NAPD to the applicant, they are required to publish the NAPD "at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and

⁷ 30 TEX. ADMIN. CODE § 39.405(f)(1). See generally §§ 39.405, 39.418, 39.419, and 39.551.

in each county affected by the discharge.”⁸ 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.

The NAPD issued for this permit action included a public comment deadline of 30 days from the date of notice publication (June 12, 2023), in accordance with applicable state rules.^{9, 10}

Mailed notice to adjacent landowners is not required for applications to renew an existing permit.¹¹ However, any person who submit a comment or contested case hearing request prior to the end of the public comment period is added to the mailing list for that permit action.

COMMENT 4:

Kathryn Masten expressed concern that her previous comment (dated December 2022) which included “DRAFT Resource Report 2” from the FERC docket for Corpus Christi Liquefaction (CCL), as well as a copy of the associated RTC were not included in the public record or on the CID. Ms. Masten then states that her December 2022 comment is relevant to the current permit application under consideration.

RESPONSE 4:

As noted above, this is the only RTC for TPDES permit WQ0004646000 and only addresses comments provided to the Office of Chief Clerk for permit WQ000464600. It appears that Ms. Masten is referring to her public comment for the draft TPDES Permit No. WQ0004606000, also held by Cheniere Land Holdings LLC, for the CLH Dredge Material Placement Area facility (formerly known as Reynolds Metal; RN102080470). The Executive Director considered the comments for TPDES Permit No. WQ0004606000 and prepared an RTC. The RTC was posted on the TCEQ Commissioners’ Integrated Database (CID) and mailed to the mailing list on April 17, 2023. The “DRAFT Resource Report 2” is hyperlinked to Ms. Masten’s comment and can be accessed by clicking “Comment-Written English” for the comment received on December 16, 2022. Hard copies of all comments received by the Office of the Chief Clerk are included in the official file for that permit action.

⁸ 30 TEX. ADMIN. CODE § 39.551(c)(1)

⁹ 30 TEX. ADMIN. CODE § 39.551(c)(3)

¹⁰ 30 TEX. ADMIN. CODE § 55.152(a)

¹¹ 30 TEX. ADMIN. CODE § 39.551(c)(5)(A)

It appears the referenced attachment pertains to Corpus Christi Liquefaction LLC (CCL; CN604136374), which is authorized under pending TPDES Permit No. WQ0005367000. While both the Corpus Christi Liquefaction site and CLH Dredge Material Placement Area site are adjacent to the CLH Sherwin site, they are not authorized under the application under consideration, Permit No. WQ0004646000, for the authorization to discharge stormwater. This document is the RTC for TPDES Permit No. WQ0004646000 for the CLH Sherwin site (formerly Corpus Christi Alumina; RN102318847).

The CLH Sherwin Site, which is the subject of this RTC, has no active industrial manufacturing processes that generate wastewater. The CLH Sherwin Site includes Bed 17 Landfill and the Decant Pond. Bed 17 Landfill is an inactive, closed waste management unit, and the Decant Pond is permitted for discharge at CLH DMPA (TPDES Permit No. WQ0004606000) via Outfall 008. The Decant Pond ceased to be used as a process water unit in October 2016. Currently, water from the Raw Water Lake (at the CLH DMPA facility site) is routed to the Decant Pond for treatment prior to discharge via Outfall 008 (TPDES Permit No. WQ0004606000). Only stormwater is authorized for discharge at the CLH Sherwin Site (WQ0004646000).

COMMENT 5:

Kathryn Masten expressed concern regarding specific environmental issues discussed in the “DRAFT Resource Report 2” from the FERC docket for Corpus Christi Liquefaction, including groundwater contamination. The document provided by Ms. Masten states that 1) bauxite residue is a non-hazardous waste, 2) there is historical arsenic contamination in groundwater, and 3) CCL maintains 21 groundwater monitoring wells to monitor arsenic levels in the groundwater.

RESPONSE 5:

The document provided by Ms. Masten also states that 1) there are no water supply wells identified within 150 feet of the site, 2) the nearest public groundwater well is approximately three miles away, 3) the nearest private groundwater well is approximately two miles away, and 4) the project site does not overlie a sole-source aquifer, and there are no locally zoned aquifer protection areas within the site.

Further, the draft permit only authorizes the discharge of stormwater associated with industrial activities, no other discharges are permitted. The discharge

is directly to Corpus Christi Bay in Segment No. 2481 of the Bays and Estuaries. The discharge is not anticipated to contribute to arsenic levels in groundwater, and the draft permit includes appropriate pond liner requirements.

Any remediation activities regarding bauxite residuals or arsenic in groundwater are outside the scope of the draft TPDES permit and would be under the purview of the TCEQ Remediation Division at 512-239-2201. Proper disposal of residuals or waste is under the purview of the TCEQ Waste Permits Division at 512-239-2335.

COMMENT 6:

Kathryn Masten expressed concern regarding specific environmental issues discussed in the “DRAFT Resource Report 2” from the FERC docket for Corpus Christi Liquefaction, including whether the Raw Water Lake is a wetland.

RESPONSE 6:

The document provided by Ms. Masten also states that CCL has requested an updated jurisdictional determination from the U.S. Army Corps of Engineers (USACE), and it is anticipated that no jurisdictional wetlands occur within that area or the site. In addition, the Raw Water Lake is on the adjacent CLH DMPA site (WQ000460600) and is not authorized under draft permit (WQ0004646000). A wetland determination by the USACE is outside the scope of the draft permit.

COMMENT 7:

Kathryn Masten asked the following questions: “Has TPWD weighed in on this? Has any objective testing been done on possible downstream impacts from this discharge? I do not see the TexTox results, Statement of Basis/Technical Summary, or Preliminary Decision posted on the CID.”

RESPONSE 7:

The Texas Parks and Wildlife Department (TPWD) is the state agency that oversees and protects wildlife and their habitat. It can be contacted by calling 1-800-792-1112 or by mail at 4200 Smith School Road, Austin, Texas 78744. Public notice was mailed to the TPWD, in accordance with 30 TAC 39.413.¹² No response nor comments were received by TPWD regarding the draft permit.

¹² 30 TEX. ADMIN. CODE Chapter 39 Public Notice

It is not standard practice to include monitoring of the receiving water's chemical characteristics as a discharge permit requirement. The Water Quality Planning Division is responsible for collecting, evaluating, and managing surface water quality data. Specifically, the Surface Water Quality Monitoring (SWQM) Program monitors and assesses surface waters of the State. This provides information on the condition of inland and coastal surface waters and their ability to support healthy biological communities as well as attainment of designated uses. Information on SWQM monitoring and the resulting data is publicly available online.¹³

The draft permit only authorizes the discharge of stormwater. Individual permits that only authorize the discharge of stormwater are not evaluated for critical conditions and mixing zones¹⁴ because stormwater discharges are normally intermittent and occur during wet weather conditions.¹⁵ As a result, TexasToxicity or TexTox screening for pollutants with criteria is not conducted for stormwater-only permits since stormwater-only discharges do not occur during 'critical conditions' (i.e., dry-weather conditions).

The "Statement of Basis/Technical Summary and Executive Director's Preliminary Decision" (which includes the TexTox screening, when applicable) for a permit action is not posted on the CID. A copy of the Statement of Basis/Technical Summary is required to be made available at the public viewing location upon publication of the second public notice, the NAPD. For this application, the permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Bell Whittington Public Library, 2400 Memorial Parkway, Portland, Texas 78374. A copy is also available at the Office of the Chief Clerk until final action is taken, as described in Section I.C of this document.

COMMENT 8:

Jennifer Hilliard inquired about how Cheniere "remediated this toxic site over time, what harm was done, and what harms could still be lurking." Kathryn Masten asked, "Since this is such a longstanding remediation issue that was clearly not easily addressed, how was the community engaged in making sure it was done properly?"

¹³ <https://www.tceq.texas.gov/waterquality/monitoring>

¹⁴ IPs. June 2010. Page 70.

¹⁵ IPs. June 2010. Page 187.

RESPONSE 8:

Remediation activities are not under the purview of TPDES Permit No. WQ0004646000, which authorizes the discharge of stormwater only. Questions pertaining to remediation should be directed to the TCEQ Remediation Division at 512-239-2201.

COMMENT 9:

Patrick Nye expressed concern about dredging activities.

RESPONSE 9:

As discussed above, the CLH Sherwin Site has no active industrial manufacturing processes that generate wastewater. Only stormwater is authorized for discharge at the CLH Sherwin Site (WQ0004646000).

COMMENT 10:

Jennifer Hilliard expressed concern regarding the proximity of water intakes near the discharge point.

RESPONSE 10:

Outfall 001 authorized in draft TPDES Permit No. WQ0004646000 is located at approximately 27.878927, -97.257377 decimal degrees. Jenna Lueg, Standards Implementation Team reviewer for this application, verified that there are no public water supply intake structures within 1,000 meters of Outfall 001's location.

III. CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes were made to the draft permit in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Interim Executive Director

Erin Chancellor
Director
Office of Legal Services

Charmaine Backens
Deputy Director
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on September 19, 2023, the “Executive Director’s Response to Public Comment” for Cheniere Land Holdings, LLC’s Permit No. WQ0004646000 was filed with the Texas Commission on Environmental Quality’s Office of Chief Clerk.



Kathy Humphreys, Staff Attorney
Environmental Law Division
State Bar No. 24006911



Legend

- Outfall Location
- Existing Facility Boundary



N



0 1,000 2,000 Feet

CHENIERE LAND HOLDINGS, LLC
GREGORY, TEXAS

FIGURE 1

SITE MAP

PROJECT: XXX	DATE: 10/7/2022
REV: 0	BY: AAM CHECKED: NPS



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