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Catarina R. Gonzales, *Commissioner*  
Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 17, 2025

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

RE: **IN THE MATTER OF THE APPLICATION BY SPACE EXPLORATION  
TECHNOLOGIES CORP. FOR TPDES PERMIT NO. WQ0005462000  
TCEQ DOCKET NO. 2024-1821-IWD**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon P. Wayne".

Sheldon P. Wayne, Attorney  
Assistant Public Interest Counsel

A handwritten signature in black ink, appearing to read "Jessica M. Anderson".

Jessica M. Anderson, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**DOCKET NO. 2024-1821-IWD**

<b>APPLICATION BY SPACE</b>	<b>§</b>	<b>BEFORE THE</b>
<b>EXPLORATION</b>	<b>§</b>	
<b>TECHNOLOGIES CORP. FOR</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>TPDES PERMIT NO.</b>	<b>§</b>	
<b>WQ0005462000</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**THE OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE  
TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION**

**To the Members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Requests for Hearing and Requests for Reconsideration on the application in the above-captioned matter and respectfully submits the following.

**I. INTRODUCTION**

**A. Summary of Position**

Before the Commission is an application by Space Exploration Technologies Corp. (SpaceX or Applicant) for new Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ005462000. The Commission received timely hearing requests from the Carrizo/Comecrudo Nation of Texas, Inc. (the Tribe), Save RGV, South Texas Environmental Justice Network (STEJN), Robert Christopher Basaldu, Kalea Bridgemohan, Sara Calderon, Theresa De Salvo, Reka Gal, Amanda Jasso, Eric R. Roesch, Josue Salazar, Kim Sandoval, Claudia Michelle Serrano, Chanhee Sung, and Joaquin A. Villarreal. The Commission also received requests for reconsideration from Jose Manuel M. Cepeda, Shane M. Tomlinson, the Carrizo/Comecrudo Nation of Texas, Inc., and Save RGV. For the reasons

stated herein, OPIC respectfully recommends that the Commission find that the Carrizo/Comecrudo Nation of Texas, Inc., Save RGV, and South Texas Environmental Justice Network are affected persons, grant their hearing requests, and refer this application for a 180-day hearing at the State Office of Administrative Hearings (SOAH) on Issue nos. 1-8 contained in §III.B. Additionally, OPIC recommends denial of the remaining hearing requests and all requests for reconsideration.

**B. Description of Application and Facility**

SpaceX applied to the TCEQ for a new TPDES permit to authorize the discharge of deluge water (used for launch and return to launch site activities), facility washdown water, and stormwater on an intermittent and flow-variable basis via Outfalls 001 and 002. The Applicant operates the Starbase Launch Pad Site, a site for rocket launch activity of SpaceX Starship-Super Heavy launch vehicles. The facility is located on the south side of the eastern terminus of State Highway 4, near the City of Brownsville, Cameron County.

The facility uses water from potable water sources and reused water from facility sources for its on-site deluge system. The deluge system cools by spraying water at the rocket engine exhaust to absorb heat and vibration. The system releases water prior to rocket ignition, much of which is immediately vaporized upon rocket ignition. The purpose of the deluge system is to protect the launch site, surrounding area, and the rocket from damage.

The wastewater system consists of two above-ground containment basins that capture deluge water used during vehicle launch and return to launch site

activities, facility washdown water, and stormwater. The capture water is stored and reused for various purposes at the facility. Discharge consists of excess deluge water not captured due to overspray or evaporation during launch and return to launch events. Additional discharges of facility washdown water during maintenance events and stormwater may occur in order to maintain optimum operational levels within the above-ground containment basins.

This permit does not authorize the discharge of domestic wastewater. All domestic wastewater must be disposed of in an approved manner, such as routing to an approved on-site septic tank and drainfield system or to an authorized third party for treatment and disposal.

If the draft permit is issued, the treated effluent will be discharged to tidal wetlands, then to the Rio Grande Tidal in Segment No. 2301 of the Rio Grande Basin. The unclassified receiving water uses are high aquatic life use for the tidal wetlands. The designated uses for Segment No. 2301 are primary contact recreation and exceptional aquatic life use.

### **C. Procedural Background**

The application was received on July 1, 2024, and declared administratively complete on July 8, 2024. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in English in the *Brownsville Herald* on July 13, 2024, and in Spanish in *El Extra* on July 12, 2024. The Combined Notice of Public Meeting, NORI, and Notice of Application and Preliminary Decision was published in English in the *Brownsville Herald* on September 11, 2024, and in Spanish in *El Extra* on September 13, 2024. A public meeting was held on October

17, 2024, at the Brownsville Sports Park Gymnasium at 1000 Sports Park Boulevard in Brownsville. The public comment period ended at the close of the public meeting on October 17, 2024. The Executive Director's (ED) Response to Comments (RTC) was mailed on November 27, 2024. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was December 27, 2024.

## **II. APPLICABLE LAW**

### **A. Hearing Requests**

The Application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 Texas Administrative Code (TAC) § 55.201(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the requestor's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.20(d).

Under 30 TAC § 55.203(a), an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Relevant factors to be considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

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

30 TAC § 55.203(d).

For applications filed on or after September 1, 2015, § 55.205(b) states that a hearing request by a group or association 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.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by

filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

#### **B. Requests for Reconsideration**

Any person may file a request for reconsideration of the ED's decision under 30 TAC § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

### **III. ANALYSIS OF HEARING REQUESTS**

#### **A. Whether the requestor is an affected person**

##### **Groups/Associations**

The groups Carrizo/Comecrudo Nation of Texas, Inc., Save RGV, and South Texas Environmental Justice Network submitted multiple timely requests for contested case hearing. A joint request on behalf of all three groups was received on October 17, 2024, while the public comment period was open for this application. The Tribe and Save RGV submitted a separate request for contested case hearing on December 27, 2024. STEJN also submitted its own request for contested case hearing on December 26, 2024.



*Carrizo/Comecrudo Nation of Texas, Inc.*

In both timely request and comment, the Tribe raises concerns, including the Applicant's compliance history; ongoing violations; the characterization of the discharge route; violation of Texas Surface Water Quality Standards; enforceability of the draft permit; adequacy of required monitoring, reporting, and operational requirements; harm to endangered species; and consistency with the Texas Coastal Management Program. These timely comments satisfy 30 TAC § 55.205(b)(1), the first requirement for group standing. As explained by the Tribe, their purposes include protecting ancestral lands and being a steward for plants, animals, and their habitats, with the area known as Boca Chica having historical and cultural significance to the Tribe. As such, OPIC finds that the interests the Tribe seeks to protect are germane to the organization's purpose as required by 30 TAC § 55.205(b)(3). Additionally, OPIC finds that neither the claim asserted, nor the relief requested, requires the participation of individual group members as required by 30 TAC § 55.205(b)(4).

To be considered affected, a group or association must also identify a member who would otherwise have standing to request a hearing in their own right. *See* 30 TAC § 55.205(b)(2). The request identifies Juan Mancias as a group member with standing to request a hearing in their own right, but does not provide Mr. Mancias' address as required by 30 TAC § 55.205(b)(2). Because it was not provided, OPIC is unable to assess whether Mr. Mancias' location provides a basis for determining whether he qualifies as an affected person.

While Mr. Mancias' address is not provided, the request does contain a description of recreational activity that Mr. Mancias partakes in near the regulated activity. It states that he visits the Boca Chica area, including the mouth of the river, at least eight times per year to enjoy the habitat and engage in bird and wildlife watching. Since SpaceX started operating, he has noticed a decline in the birds he observes, and is worried the discharge will bring about additional decline.

As stated above, a group or association must identify members with standing to request a hearing in their own right. Among other things, establishing standing requires that a reasonable relationship exists between the interest claimed and the regulated activity. *See* 30 TAC § 55.203(c)(3). To determine standing, the Commission may also consider the likely impact of the regulated activity on use of the impacted natural resource by the person. *See* 30 TAC § 55.203(c)(5). The request identifies Mr. Mancias' regular participation in recreational activities that take place in close proximity to, and may reasonably be affected by, the discharge that would be authorized under the draft permit. He regularly visits Boca Chica Beach, and a substantial component of his visits is enjoying the habitat and bird watching. Because Mr. Mancias' activities could be impacted by the discharge, a reasonable relationship exists between his identified recreational interests and the regulated activity at issue here. OPIC finds that these interests are sufficient to confer a finding of affectedness. Therefore, the Tribe has met all requirements for group standing and qualifies as an affected person.

Save RGV

In both timely request and comment, Save RGV raises concerns that are substantively identical to those raised by the Tribe, including concerns regarding the Applicant's compliance history; ongoing violations; the characterization of the discharge route; violation of Texas Surface Water Quality Standards; enforceability of the draft permit; adequacy of required monitoring, reporting, and operational requirements; harm to endangered species; and consistency with the Texas Coastal Management Program. These timely comments satisfy 30 TAC § 55.205(b)(1), the first requirement for group standing. Save RGV explains that it is a non-profit corporation which advocates for environmental equity, and the sustainability, health, and well-being of the Rio Grande Valley community. As such, OPIC finds that the interests Save RGV seeks to protect are germane to its purpose as required by 30 TAC § 55.205(b)(3). Additionally, OPIC finds that neither the claim asserted, nor the relief requested, requires the participation of individual group members as required by 30 TAC § 55.205(b)(4).

The request identifies Mary Angela Branch as a group member with standing to request a hearing in their own right, but does not provide Ms. Branch's address as required by 30 TAC § 55.205(b)(2). Because it was not provided, OPIC is unable to assess whether Ms. Branch's location provides a basis for determining whether she qualifies as an affected person.

While Ms. Branch's address is not provided, the request does contain a description of recreational activity that she partakes in near the regulated activity. It states that around three to four times a month Ms. Branch engages in

bird watching in the Laguna Madre, and approximately six times a year visits the Boca Chica Beach, traveling within a quarter mile of the SpaceX facility, to enjoy the scenery and wildlife. Since SpaceX began its launches, she has seen a decline in birds, pollinators, and vegetative cover, and is worried the discharge could cause further decline.

A group or association must identify member(s) with standing to request a hearing in their own right. *See* 30 TAC § 55.205(b)(2). Among other things, establishing standing requires that a reasonable relationship exists between the interest claimed and the regulated activity. *See* 30 TAC § 55.203(c)(3). To determine standing, the Commission may also consider the likely impact of the regulated activity on use of the impacted natural resource by the person. *See* 30 TAC § 55.203(c)(5). The request identifies Ms. Branch's regular participation in recreational activities that take place in close proximity to, and may reasonably be affected by, the discharge that would be authorized under the draft permit. Ms. Branch regularly visits the Laguna Madre and Boca Chica Beach, and a substantial component of her visits is bird watching and enjoying the scenery. Because Ms. Branch's activities could be impacted by the discharge, a reasonable relationship exists between the recreational interests she identifies and the regulated activity at issue here. OPIC finds that these interests are sufficient to confer a finding of affectedness. Therefore, Save RGV has met all requirements for group standing and qualifies as an affected person.

*South Texas Environmental Justice Network*

In both timely request and comment, STEJN also raises concerns that are substantively identical to those raised by the other two groups, including concerns regarding the Applicant's compliance history; ongoing violations; the characterization of the discharge route; violation of Texas Surface Water Quality Standards; enforceability of the draft permit; adequacy of required monitoring, reporting, and operational requirements; harm to endangered species; and consistency with the Texas Coastal Management Program. These timely comments satisfy 30 TAC § 55.205(b)(1), the first requirement for group standing. STEJN explains that it was organized to "end the environmental, social, and economic injustices borne on the Latinx and Indigenous communities of South Texas." It also notes that it has previously challenged governmental action to defend the environment. As such, OPIC finds that the interests Save RGV seeks to protect are germane to its purpose as required by 30 TAC § 55.205(b)(3). Additionally, OPIC finds that neither the claim asserted, nor the relief requested, requires the participation of individual group members as required by 30 TAC § 55.205(b)(4).

The request identifies Rebekah Hinojosa, Christopher Basaldu, Juan Mancias, Josette Hinojosa, and Emma Guevara as group members with standing to request a hearing in their own right. The request does not provide any of the group members' addresses as required by 30 TAC § 55.205(b)(2). Because their addresses have not been provided, OPIC is unable to assess whether the locations of these group members would provide a basis for determining whether they

would qualify as affected persons. However, the request does contain descriptions of their recreational activities that take place near the regulated activity and how they might be affected by the discharge. For instance, Rebekah Hinojosa has visited Boca Chica beach since she was a child, and gives tours of the area up to six times per year. Christopher Basaldu visits Boca Chica beach about eight times a year to swim, view wildlife, educate the public, and, as a practicing member of the Carrizo/Comecrudo nation, to pray and perform spiritual cleansings. Juan Mancias visits the mouth of the Rio Grande River at least eight times a year to observe birds, plants, and wildlife. Josette Hinojosa visits Boca Chica beach almost every month to swim and enjoy the natural areas. She also leads educational tours near SpaceX. Emma Guevara visits Boca Chica beach at least six times a year to spend time with her family and collect seashells. All the identified members share concerns that if allowed, the discharge will exacerbate the reduction in wildlife that they have recently observed, harm their health, or otherwise negatively impact their recreational use of Boca Chica. Additionally, the members of the Carrizo/Comecrudo nation are concerned that their religious practices will be negatively affected.

As discussed previously, a group or association must identify member(s) with standing to request a hearing in their own right. *See* 30 TAC § 55.205(b)(2). Among other things, establishing standing requires that a reasonable relationship exists between the interest claimed and the regulated activity. *See* 30 TAC § 55.203(c)(3). To determine standing, the Commission may also consider the likely impact of the regulated activity on use of the impacted natural resource

by the person. *See* 30 TAC § 55.203(c)(5). The request identifies multiple members of STEJN that regularly recreate in close proximity to the regulated activity that would be authorized under the draft permit. It contains specific descriptions of its members' activities, including their frequency, duration, and proximity to the regulated activity. Based on these descriptions, OPIC is able to conclude that these members have sufficiently distinguished their interests from those of the general public as required by 30 TAC § 55.203(a). These interests are sufficient to confer a finding of affectedness. Therefore, STEJN has met all requirements for group standing and qualifies as an affected person.

#### **Individual Requestors**

##### **Robert Christopher Basaldu**

Robert Christopher Basaldu submitted timely comments followed by a timely hearing request. Mr. Basaldu gave his address as 651 Old Port Isabel Road, Brownsville, which according to the map created by ED staff is 20.53 miles from Outfall 1 and 20.35 miles from Outfall 2. Mr. Basaldu articulated concerns about Applicant's past noncompliance, noise pollution, effects on plant and animal life, errors in the application, and environmental equity. However, given Mr. Basaldu's lack of proximity to the facility, OPIC cannot find that Mr. Basaldu is affected in a manner not common to the general public.

##### **Kalea Bridgemohan**

Kalea Bridgemohan submitted a timely combined comment and hearing request. Ms. Bridgemohan gave her address as 1980 Horal Street, San Antonio, which according to the map created by ED staff, is more than 250 miles from

each Outfall. Ms. Bridgemohan articulated concerns about human health as well as plant and animal life. However, given Ms. Bridgemohan's lack of proximity to the facility, OPIC cannot find that Ms. Bridgemohan is affected in a manner not common to the general public.

*Sara Calderon*

Sara Calderon submitted a timely combined comment and hearing request. Ms. Calderon gave her address as P.O. Box 152548, Austin, which according to the map created by ED staff is more than 292 miles from each Outfall. Ms. Calderon articulated concerns about recreational use, human health, and plant and animal life. Ms. Calderon explained that she is a former resident of the area in which the facility is located, and that she feels she can no longer continue to visit the Boca Chica Beach area safely due to the levels of pollutants associated with the facility. While a recreational use may give rise to standing, Ms. Calderon failed to include in her hearing request any discussion about the frequency, duration, or proximity to the facility of her recreational use. Given this lack of specificity, in combination with Ms. Calderon's lack of proximity to the facility, OPIC cannot find that Ms. Calderon is affected in a manner not common to the general public.

*Theresa De Salvo*

Theresa De Salvo submitted timely comments and hearing requests. Ms. De Salvo gave her address as 200 W Sunny Isle Street, South Padre Island, which according to the map created by ED staff is 6.91 miles from Outfall 1 and 6.88 miles from Outfall 2. Ms. De Salvo articulated concerns about human health, as



well as plant and animal life. However, given Ms. De Salvo's lack of proximity to the facility, OPIC cannot find that Ms. De Salvo is affected in a manner not common to the general public.

*Reka Gal*

Reka Gal submitted a timely combined comment and hearing request. Ms. Gal gave her address as Bahnhofstrasse 49, Munich, Germany. Ms. Gal articulated concerns about human health, as well as plant and animal life. However, given Ms. Gal's lack of proximity to the facility, OPIC cannot find that Ms. Gal is affected in a manner not common to the general public.

*Amanda Jasso*

Amanda Jasso submitted a timely combined comment and hearing request. Ms. Jasso gave her address as 606 Arthur Street, Elgin, which according to the map created by ED staff is more than 300 miles from each Outfall. Ms. Jasso articulated concerns about human health, as well as plant and animal life. However, given Ms. Jasso's lack of proximity to the facility, OPIC cannot find that Ms. Jasso is affected in a manner not common to the general public.

*Eric R. Roesch*

Eric R. Roesch submitted a timely combined comment and hearing request. Mr. Roesch gave his address as 3714 Trail Bend, Missouri City, which according to the map created by ED staff is more than 261 miles from each Outfall. Mr. Roesch articulated concerns about water quality, Applicant's past noncompliance, and the accuracy of the permit. However, given Mr. Roesch's lack

of proximity to the facility, OPIC cannot find that Mr. Roesch is affected in a manner not common to the general public.

Josue Salazar

Josue Salazar submitted a timely combined comment and hearing request. Mr. Salazar gave his address as 2538 Shofner Lane, Harlingen, which according to the map created by ED staff is 37.42 miles from Outfall 1 and 37.24 miles from Outfall 2. Mr. Salazar articulated concerns about human health, water quality, plant life, and animal life, including specific concerns about consuming fish contaminated by the facility. However, given Mr. Salazar's lack of proximity to the facility, OPIC cannot find that Mr. Salazar is affected in a manner not common to the general public.

Kim Sandoval

Kim Sandoval submitted a timely combined comment and hearing request. Ms. Sandoval gave her address as 16726 Scarlett Circle, Harlingen, which according to the map created by ED staff is 40.13 miles from Outfall 1 and 39.95 miles from Outfall 2. Ms. Sandoval articulated concerns about human health and plant life, as well as endangered species, and the area's understudied biodiversity. However, given Ms. Sandoval's lack of proximity to the facility, OPIC cannot find that Ms. Sandoval is affected in a manner not common to the general public.

Claudia Michelle Serrano

Claudia Michelle Serrano submitted timely comments and a hearing request. Ms. Serrano gave her address as 4424 White Oak Lane, Brownsville,

which according to the map created by ED staff is 19 miles from Outfall 1 and 18.80 miles from Outfall 2. Ms. Serrano articulated concerns about human health, as well as plant and animal life. However, given Ms. Serrano's lack of proximity to the facility, OPIC cannot find that Ms. Serrano is affected in a manner not common to the general public.

*Chanhee Sung*

Chanhee Sung submitted a timely combined comment and hearing request. Chanhee Sung gave their address as 2709 W. Fern Avenue, McAllen, which according to the map created by ED staff is 69.82 miles from Outfall 1 and 69.64 miles from Outfall 2. Chanhee Sung articulated concerns about plant and animal life, as well as water quality. However, given Chanhee Sung's lack of proximity to the facility, OPIC cannot find that Chanhee Sung is affected in a manner not common to the general public.

*Joaquin A. Villarreal*

Joaquin A. Villarreal submitted timely comments and a hearing request. Mr. Villarreal gave his address as 4 Texcoco, Brownsville, which according to the map created by ED staff is 21.04 miles from Outfall 1 and 20.85 miles from Outfall 2. Mr. Villarreal raised concerns about recreation, water quality, human health, and plant and animal life. Mr. Villarreal explained that residents and visitors alike use nearby South Bay, Boca Chica Beach, and the Laguna Madre for recreational activities such as swimming and fishing. While a recreational use may give rise to standing, Mr. Villarreal failed to include in his hearing request any discussion about the frequency, duration, or proximity to the facility of his

recreational use. Given this lack of specificity, in combination with Mr. Villarreal's lack of proximity to the facility, OPIC cannot find that Mr. Villarreal is affected in a manner not common to the general public.<sup>1</sup>

**B. Which issues raised in the hearing requests are disputed**

The affected requestors raised the following disputed issues:

1. Whether the draft permit should be denied or altered based on Applicant's compliance history;

Raised by: The Tribe, STEJN, Save RGV

2. Whether the discharge has been properly characterized;

Raised by: The Tribe, STEJN, Save RGV

3. Whether the draft permit is adequately protective of water quality, including compliance with the Texas Surface Water Quality Standards, TCEQ's Antidegradation policy, and protection of designated uses;

Raised by: The Tribe, STEJN, Save RGV

4. Whether the draft permit contains terms that are enforceable;

Raised by: The Tribe, STEJN, Save RGV

5. Whether the draft permit contains adequate monitoring and reporting requirements, including necessary operational requirements;

Raised by: The Tribe, STEJN, Save RGV

6. Whether the draft permit is adequately protective of the environment, human health, and animal life, including endangered species;

Raised by: The Tribe, STEJN, Save RGV

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<sup>1</sup> OPIC notes that pursuant to 30 TAC § 55.211(e), if any requests for contested case hearing are granted in this matter, and a preliminary hearing is convened at SOAH, any person whose request is denied may attend and seek to be admitted as a party.

7. Whether the draft permit is consistent with the goals and policies of the Texas Coastal Management Program; and

Raised by: The Tribe, STEJN, Save RGV

8. Whether the facility will adversely affect recreational uses of the receiving waters.

Raised by: The Tribe, STEJN, Save RGV

**C. Whether the dispute involves questions of fact or of law**

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. The issues raised here are issues of fact.

**D. Whether the issues were raised during the public comment period**

Issues No. 1-8 in Section III.B. were specifically raised by affected requestors during the public comment period.

**E. Whether the hearing requests are based on issues raised solely in a withdrawn public comment**

No public comments were withdrawn in this matter. Therefore, the hearing requests are not based on issues raised in withdrawn public comments.

**F. Whether the issues are relevant and material to the decision on the application**

The hearing requests raised issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings (SOAH), the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues

are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

#### Compliance History

The affected requestors in this matter are concerned that the Applicant's compliance history has not been properly evaluated by the ED due to recent and potentially ongoing violations at the site.

Pursuant to 30 TAC § 60.1(a)(1)(A), TCEQ is required to utilize an applicant's compliance history when making decisions regarding a permit. Further, the Commission is required to utilize compliance history for five years prior to the date the permit application is received by the ED, and specific components must be included in this history. Additional rules regarding use of compliance history in making permitting decisions are found at 30 TAC § 60.3. Therefore, Issue no. 1 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

#### Suitability of the Discharge Route

The affected requestors in this matter have concerns that the proposed discharge route has been improperly characterized in the application. As evidence, they highlight that the deluge system causes overspray and a vapor cloud, resulting in discharges that do not flow through the outfalls contained in the draft permit. This concern appears to be based on the suitability of the discharge route, including the outfalls, and its inability to contain the complete discharge. Proper functioning of a discharge route as an operational feature of the facility may be addressed under 30 TAC § 309.12, which contains

requirements related to site selection in order to minimize possible contamination of water in the state. Therefore, Issue no. 2 is relevant and material to the Commission's decision regarding this application and is appropriate for referral to SOAH.

*Water Quality and the Antidegradation Review, Human Health, Plant and Animal Life, and Recreational Activities,*

The affected requestors in this matter raise concerns about adverse effects to water quality and the consequential impacts on human health, animal life, the environment, and their recreational activities. The Commission is responsible for the protection of water quality under Texas Water Code (TWC) Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards (Standards) in Chapter 307 require that the proposed permit “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and ... economic development of the state....” 30 TAC § 307.1. According to § 307.6(b)(4) of the Standards, “Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.” Additionally, “[s]urface waters must not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.” 30 TAC § 307.4(d). Also, 30 TAC § 307.4(j)(1) requires that existing, designated, presumed, and attainable uses of aquatic recreation must be maintained. Finally,

antidegradation reviews are governed by 30 TAC § 307.5, which establishes the Commission's antidegradation policy and contains provisions for implementation of the policy. As Chapter 307 designates criteria for the regulation of water quality and governs antidegradation reviews, the protection of human health and safety and animal life, and the maintenance of recreational uses, Issue nos. 3, 6, and 8 are relevant and material to the Commission's decision regarding this application.

#### *Monitoring and Enforceability*

The affected requestors in this matter have concerns about the monitoring requirements contained in the draft permit, and question its enforceability. Chapter 319 of TCEQ's rules addresses requirements for monitoring and reporting, sampling frequency, quality assurance for sampling analyses, and laboratory testing methods that are required to verify permit compliance. Also, the draft permit contains specific criteria for sampling, monitoring, and reporting the effluent. *See* Response 20 of the ED's RTC. Additionally, the adequacy of the terms and conditions of the draft permit, including the monitoring requirements, implicates the permit's enforceability and ultimately the permit's compliance with applicable rules and requirements. Therefore, Issue nos. 4 and 5 are relevant and material to the decision on this application.

#### *Texas Coastal Management Program*

The affected requestors in this matter have concerns that the proposed Facility is not consistent with the Texas Coastal Management Program. Chapter 281, Subchapter B of TCEQ's rules requires a determination of whether the



proposed Facility is consistent with the Texas Coastal Management Program, including its goals and policies. Therefore, Issue no. 7 is relevant and material to the Commission's decision to issue or deny this permit and is appropriate for referral to SOAH.

**G. Maximum expected duration for the contested case hearing**

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this Application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

**IV. REQUESTS FOR RECONSIDERATION**

The Commission received requests for reconsideration of the ED's decision from two individuals and the groups Save RGV and the Tribe. Jose Manuel M. Cepeda submitted a request for reconsideration that articulated concerns about water quality. Shane M. Tomlinson submitted a request for reconsideration that articulated concerns about past noncompliance, human health, and plant and

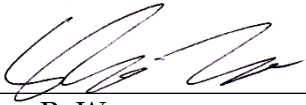
animal life. Save RGV and the Tribe's requests for reconsideration raise the same issues that were raised in their hearing requests, such as concerns about water quality, the Applicant's compliance history, wildlife, and consistency with the goals and policies of the Texas Coastal Management Program. The groups also complain that TCEQ has not disclosed information relevant to the application in response to a Texas Public Information Act request. While OPIC is recommending a hearing and referral of the issues encompassing these requestors' concerns as expressed in their requests for reconsideration, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would need to exist in order to recommend that any of the requests for reconsideration be granted. As no such record currently exists, OPIC cannot recommend the requests be granted at this time. Finally, regarding the Public Information Act request, we note that while TCEQ has withheld materials, the agency has also submitted a timely request to the Office of Attorney General for a decision on the withheld material, and that decision is still pending.

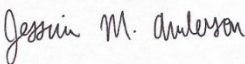
## **V. CONCLUSION**

Having found that the Carrizo/Comecrudo Nation of Texas, Inc., Save RGV, and South Texas Environmental Justice Network qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issue nos. 1-8 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC further recommends the Commission deny the pending requests for reconsideration.

Respectfully submitted,


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**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2025, the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
\_\_\_\_\_  
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