

TCEQ DOCKET NO. 2024-1821-IWD

APPLICATION BY SPACE	§	BEFORE THE TEXAS
EXPLORATION	§	COMMISSION
TECHNOLOGIES	§	ON
CORPORATION FOR TPDES	§	
PERMIT NO. WQ0005462000	§	ENVIRONMENTAL QUALITY

**SOUTH TEXAS ENVIRONMENTAL JUSTICE NETWORK’S REPLY IN SUPPORT OF
REQUEST FOR CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY:

South Texas Environmental Justice Network (“STEJN” or “Requestor”) submits this reply in support of its request for a contested case hearing (“Request”) regarding Space Exploration Technologies Corporation’s (“SpaceX” or “Applicant”) Application for Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0005462000 (“Application”) for the SpaceX Starbase Launch Pad Site (the “Facility”). The permit would authorize the discharge of industrial discharge water from SpaceX’s deluge system (used for launch and return to launch site activities), facility washdown water, and stormwater to tidal wetlands south of the facility, thence to Rio Grande Tidal in Segment No. 2301 of the Rio Grande basin. The designated uses for Segment No. 2301 are primary contact recreation and exceptional aquatic life use.

An economic interest and a home address very close to the permitted activity are NOT the requirements to participate in a contested case hearing in Texas. Instead, any “affected persons” – that is, persons with personal justiciable interests related to a legal *right, duty, privilege, power, or economic interest* in the matter – should be allowed to participate in a contested case hearing. TCEQ’s own rules clearly say that the test for an affected person is “whether the interest claimed is one protected by the law under which the application will be considered.”¹

¹ 30 Tex. Admin. Code § 55.203(a)

In this case, the application being considered involves a novel water discharge that has been described as a massive “upside down shower head” that will douse the facility during launches. Thus, it is undisputed that the administrative hearing involves the protection of those very same land and water resources to which STEJN members assert an interest. Their interests are directly related to their rights to use the beach and surrounding public land for their legally-protectable rights to fish, access the beach, and practice religious services.

It has long been an embedded principle of federal law that, when it comes to environmental matters, a person’s recreational, aesthetic or spiritual interests can confer standing under the U.S. Constitution. The interests that STEJN members seek to protect include legal rights, duties, and privileges that are also enshrined in the Texas Constitution. For example, continued access to and use of Boca Chica Beach is an interest protected by the State Constitution, Article I, Section 33, and before that by the Texas Open Beaches Act. In addition, Texas Constitution, Article I, Section 34 gives Texans the right to hunt, fish, and harvest wildlife, including by the use of traditional methods. In addition, the Texas Constitution, Article I, Section 6-a prohibits TCEQ from taking any action to limit or impede religious services for a sincerely held religious belief.

These three Texas Constitutional guarantees add to the already well-established principle that recreational and spiritual interests, not only economic ones, are among the rights, duties, privileges, and powers that Texans may protect in a contested case hearing. Requestors seek to help protect these interests through their participation in the hearing. The test for what makes an interest a “personal” one, i.e., an interest not shared by the general public, is not, as the ED and SpaceX would have it, that any member of the public *could* exercise that right. Instead, the test is whether the requestor *does*, and whether their activities are or could reasonably be negatively impacted.

Pursuant to 30 TAC 55.201, South Texas EJ Network may be contacted via its counsel, Texas RioGrande Legal Aid, Paola Camacho or Ilan Levin:

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The following is a reply (“Reply”) to SpaceX’s Response to Requests for Contested Case Hearing and Requests for Reconsideration (“Response”) filed on January 17, 2025, as well as the Executive Director’s Response to Hearing Requests, filed January 17, 2025. SpaceX and the Executive Director (“ED”) argue that STEJN’s request for a contested case hearing should be rejected for the following reasons:

- (1) failure to comply with procedural requirements for a request for contested case hearing set out in 30 Tex. Admin. Code §55.201(d) due to lack of address, and
- (2) failure to meet standard of “affected person” required by 30 Tex. Admin. Code § 55.203.

We disagree because:

- (1) we included the addresses of the requestors’ attorneys which is sufficient to meet the procedural requirement; failure to include the affected individuals’ home addresses in the Request did not prevent the request from substantially complying with TCEQ’s procedural requirements; and
- (2) SpaceX and the Executive Director misapply the law regarding affected person status and misinterpret the nature of the Requestors’ personal justiciable interests.

The Office of Public Interest Counsel’s (OPIC) Response for Hearing and Requests for Consideration in this matter also recommend that the Commission find affected person status and grant STEJN’s request for a contested case hearing.

I. Background

Since July 28, 2023 – nearly a year before even attempting to obtain a permit – SpaceX has been unlawfully discharging wastewater from its deluge system into surrounding waters,² with the water discharged through the activation of the deluge system reaching up to 0.6 miles across the local landscape.³ To date, SpaceX has used the deluge system on at least 20 occasions, and SpaceX plans to double the frequency of its launches in Brownsville. With each launch, the

² In this separate but related case, STEJN, Carrizo/Comecrudo Nation of Texas, Inc., and Save RGV filed comments to TCEQ opposing the Agreed Order that dealt a mere slap on the hand to SpaceX for these violations, and filed a Petition for Review of the Final Order on December 16, 2024.

³ “Addendum to the October 2021 Biological Assessment for the SpaceX Starship-Super Heavy Launch Vehicle Program at the SpaceX Boca Chica Launch Site in Cameron County, Texas Addressing Operation of a Deluge System” at 8-9. Federal Aviation Administration. October 2023. Available at: <https://www.faa.gov/media/72826>.

Facility can impact several pristine natural habitats, including tidal wetlands, the Rio Grande, Boca Chica Beach, and the Boca Chica Wildlife Refuge and the South Bay.

SpaceX submitted the Application on July 1, 2024, and on July 8, 2024, it was declared administratively complete. Then, less than two months later, on September 5, 2024, the Application was declared technically complete. This unreasonably expeditious permit application review undermines the Clean Water Act's requirements, which demand a thorough and complete review by TCEQ staff, especially in light of the large environmental risks associated with each launch and SpaceX's repeated and flagrant disregard of the Clean Water Act.

STEJN members ("Requestors" or "Members") that reside in Brownsville have seen smoke, heard explosions, and felt their homes shake during SpaceX launches. Christopher Basaldú heard chunks of debris falling on his apartment roof, and Juan Mancias once hid under the bed, for fear that something might fall on him. These experiences have been anxiety-producing and, at times, frightening. Understandably, these personal experiences cause very reasonable concern among STEJN members about TCEQ's ability to properly regulate SpaceX's discharges. This, along with SpaceX's history of violations⁴, makes STEJN anxious for TCEQ to enforce strict compliance with clean water laws and ensure the health and safety of Members as they exercise their legal *rights, duties, and privileges* on public land including Boca Chica Beach directly adjacent to SpaceX.

For these and the additional reasons detailed in our December 26th filing, we request a contested case hearing on TPDES Permit No. WQ0005462000.

II. Absence of Requestors' Home Addresses Does Not Disqualify Their Request

The inclusion of the Requestors' attorney's addresses in our contested case hearing request satisfies the TCEQ's rule which only requires a physical address for the purpose of "receiving all official communications and documents for the group;" 30 Tex. Admin. Code § 55.201. SpaceX contends that STEJN's application must be rejected on procedural grounds for failing to comply with Tex. Admin. Code §55.201(d), which states that a requests for contested case hearing must "substantially comply" with the listed requirements, including listing the

⁴ As described above, SpaceX had been illegally discharging industrial wastewater for months before even applying for a permit.

requestors' address.⁵ For hearing requests by a group or an association, an address must be provided by at least one member.⁶ SpaceX claims that STEJN's failure to include an address in their original Request "prejudices the Applicant and the Executive Director in responding to STEJN's contested case hearing request and prejudices the Commission in evaluating the merits of the request."⁷ Here, the STEJN members' home addresses are not necessary to evaluate their requests, because their interests claimed are not property ownership, but rather they are aesthetic, recreational, environmental, and religious activities.

III. STEJN Members Each Have Personal Justiciable Interests Related to a Legal Right, Duty, Privilege, Power, or Economic Interest Affected by the Application

A. Texas Law Governs Here

30 Tex. Admin. Code § 55.203 and the Texas Water Code § 5.115 define "affected person" for the purpose of an administrative contested case hearing as, "a person who as a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest." For an association, at least one member must meet this requirement.⁸

Texas law calls on the Commission to adopt rules to help guide "affected person" decisions. TCEQ listed seven factors that must be considered in making such a determination;⁹ they are:

- (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;

⁵ 30 TAC §55.201(d)(1)

⁶ *Id.*

⁷ SpaceX Resp Br at 16.

⁸ 30 Tex. Admin. Code § 55.205.

⁹ Texas Water Code § 5.115(a-1). ("The commission may adopt rules specifying factors which must be considered in determining whether a person is an affected person in any contested case arising under the air, waste, or water programs within the commission's jurisdiction and whether an affected association is entitled to standing in contested case hearings.")

(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.¹⁰

Tex. Admin. Code §55.203 (and Texas Water Code § 5.115(a-1)(1)) list additional factors that *may* be considered, however, contrary to what SpaceX stated in Response, these considerations are not relevant in this case. This permit would be issued pursuant to federally delegated authority from EPA, and therefore, the applicable considerations relevant to STEJN's hearing request are different from those at issue in non-federal programs. In obtaining delegated authority to issue TPDES Permits for discharges associated with oil and gas activities, the Texas Attorney General stated that, "the TCEQ does not consider discretionary factors in 30 Tex. Admin. Code § 55.203(d) that may not be consistent with the determination of Article III standing, such as the merits of the underlying TPDES permit application, in evaluating whether a hearing requester is an affected person."¹¹ Thus, TCEQ may not deny STEJN's request based upon a finding on the merits that the conditions of the permit will be adequately protective of downstream waters so as to prevent the potential impacts of concern that STEJN raised because TCEQ's conclusions in the Final Permit about impacts to water quality and aquatic life and compliance with applicable laws are the exact merits issues STEJN disputes and seeks to resolve in a contested case hearing. Neither Senate Bill 709 or state caselaw¹² alter the distinct federal requirements for a TPDES permit.

B. Federal Law is Instructive and TCEQ Agreed to Apply Federal Standing Doctrine in Clean Water Hearing Request Determinations

Although ultimately governed by Texas state law, federal law is relevant here as well, because the permit is a federal Clean Water Act permit. When considering a TPDES permit

¹⁰ 30 TAC §55.203(c)

¹¹ Statement of Legal Authority to Regulate Oil and Gas Discharges under the Texas Pollutant Discharge Elimination System Program, Texas Attorney General Ken Paxton, at 22, September 18, 2020.

¹² See, e.g., *Texas Comm'n on Env't Quality v. Sierra Club*, 455 S.W.3d 228 (Tex. App.–Austin, 2014).

application, TCEQ exercises delegated authority to implement the federal Clean Water Act (“CWA”) and has committed to implementing the permitting program consistent with federal statute.¹³ The Memorandum of Agreement authorizing this delegation of federal authority to Texas states:

“The TNRCC shall operate the TPDES program in accordance with the Clean Water Act as amended, applicable federal regulations, applicable TNRCC legal authority, Title 30 Texas Administrative Code, and taking into consideration published EPA policy. The TNRCC has the primary responsibility to establish the TPDES program priorities, so long as they are consistent with Clean Water Act and NPDES goals and objectives.”¹⁴

The Texas Attorney General has also stated that TCEQ’s affected person standard is consistent with federal Article III standing.¹⁵ Thus, standing in analogous federal cases is highly instructive here.

C. STEJN is an Affected Person status Under the Relevant Law and Precedent

Members of STEJN are “affected persons” based on the adverse impacts to their aesthetic, recreational, and religious interests and reasonably-held concerns related to their health and safety. Their interests can be protected, even if not completely, through the issuance of a stricter TPDES permit. In essence, the Requestors’ involvement as a party in a contested case would be for the sole purpose of ensuring a permit is issued with strict and enforceable discharge limits and adequate monitoring to protect the very resources that STEJN members use. Members of STEJN regularly go, or attempt to go, to Boca Chica to engage in recreational and

¹³ 33 Tex. Reg. 1850 (Feb. 29, 2008). (“On September 14, 1998, TCEQ received delegation authority from the United States Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) program under the TPDES program. As part of that delegation, TCEQ and EPA signed a Memorandum of Agreement (MQA) that authorizes the administration of the NPDES program by TCEQ as it applies to the State of Texas.”)

¹⁴ 2008 Memorandum of Agreement Between the Texas Natural Resources Conservation Commission and the U.S. Environmental Protection Agency, Region 6, Concerning the National Pollutant Discharge Elimination System, Exhibit D, at 2.

¹⁵ Statement of Legal Authority to Regulate Oil and Gas Discharges under the Texas Pollutant Discharge Elimination System Program, Texas Attorney General Ken Paxton, at 12, September 18, 2020. (“The criteria regarding determination of affected persons in the TCEQ’s rules comport with the standing requirements in Article III of the United States Constitution for judicial review under the state statutes applicable to federal permit programs being implemented by the TCEQ, including the TPDES program. There is no material difference between the TCEQ’s standards and the standards the federal courts apply when deciding judicial standing, which are based on the United States Supreme court decision in *Lujan v. Defenders of Wildlife*, et al., 504 U.S. 555 (1992).”)

spiritual practices. They do so directly adjacent to SpaceX , and they will continue to be impacted by the activities and discharges. In particular, STEJN members’ interest in visiting the beach, wildlife viewing, swimming, and engaging in their work, education, lifeways, and prayers and purification rituals are distinguishable by the regularity and particularity of their recreational and religious use of natural areas that will continue to be impacted by this facility. The ED’s and SpaceX’s interpretation is that as long as a member of the general public *could* also claim the affected interest, such interest cannot be relied on to confer standing; in other words, since anyone can go to Boca Chica Beach, therefore the Requestors do not have any “personal” interest. But that erroneous interpretation would swallow the entire rule, writing out of the rule the words “any legal right, duty, privilege, or power” and leaving only an “economic interest” on which to establish standing. The correct test for the injuries and impacts that the Requestors seek to protect in this case is whether STEJN members such as Bekah Hinojosa, Juan Mancias, and Chris Basaldú *actually do* regularly use the impacted area; not whether others could.

Opposing arguments by the ED and SpaceX misapply the law and legal precedents to reach the conclusion that STEJN does not qualify as an affected person. This determination is based on two primary claims:

- (1) no member alleged property interests that stand to be affected by this permit, and
- (2) members’ non-property interests that stand to be harmed are not sufficient to qualify them as affected persons.

We respond to each of these claims below.

1. Property interest is NOT a requirement for affected person status.

The plain language of the Texas Water Code definition of “affected person” makes it clear that an economic interest, which includes a property interest, is just one, but not the only, interest that can be protected by participation in a contested case hearing. A property interest is not a necessary factor.

Federal law is instructive and applicable in this case because TCEQ is acting on authority delegated from the federal government via the Clean Water Act. An important objective of the CWA is to ensure a high standard of public participation in the permitting process. Implementing a permitting program consistent with the federal statute requires providing opportunities for

public participation and judicial review that are equivalent to those available under federal law. According to CWA regulations:

A State will meet this standard if State law allows an opportunity for judicial review that is the same as that available to obtain judicial review in federal court of a federally-issued NPDES permit (see § 509 of the Clean Water Act). **A State will not meet this standard if it narrowly restricts the class of persons who may challenge the approval or denial of permits (for example, if only the permittee can obtain judicial review, if persons must demonstrate injury to a pecuniary interest in order to obtain judicial review, or if persons must have a property interest in close proximity to a discharge or surface waters in order to obtain judicial review.)**¹⁶ Emphasis added.

Thus, relevant federal law specifically prohibits TCEQ from withholding affected person status based simply on lack of property interest.

SpaceX relies on *Save our Springs Alliance v. City of Dripping Springs*¹⁷ (“SOS Alliance”) for the proposition that Texas Courts require affected persons to show property interest. But, in that case, the Third Court of Appeals denied affected person status where there was no showing of property interest ONLY because members of Save our Springs had “alleged neither an environmental interest provided for or protected by statute.”¹⁸ The most relevant part of that decision to the present case is not that which SpaceX cited, but the Court’s discussion of standing under federal law:

SOS Alliance is correct that federal courts have recognized that environmental harm can constitute a cognizable injury for purposes of constitutional standing. *See Sierra Club v. Morton*, 405 U.S. 727, 734, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972) (“We do not question that this type of harm [to scenery, natural and historic objects, and wildlife of a national park] may amount to an ‘injury in fact’ sufficient to lay the basis for standing....”). Moreover, federal courts have found standing for this type of harm in the absence of the plaintiff possessing a property right where harm occurs. Under federal case law, environmental plaintiffs adequately allege a particularized injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational

¹⁶ 40 C.F.R. § 123.30

¹⁷ *Save Our Springs Alliance v. City of Dripping Springs*, 304 S.W. 3d 871, 880 (Tex. App.—Austin 2010).

¹⁸ *Id.* at 882.

values of the area will be lessened by the challenged activity. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 183, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000).¹⁹

Thus, *SOS Alliance* does not alter the legal test in this matter, nor does it prohibit the TCEQ from considering the non-economic (property) interests that have been timely pled in this case.

2. STEJN members' health, aesthetic, recreational, environmental, and religious interests are sufficient to qualify them as affected persons based on law and precedent.

Above, we demonstrate that property interest is not a required element for an affected person determination. OPIC also makes this point in their recommendation. The question of whether non-property interests are sufficient to trigger affected person status comes down to the specific facts of the case. Here, we and OPIC both find that they are.

SpaceX only refers to Requestors' recreational and "other" interests. They do not take the time to respond to the full scope of the claimed interests. STEJN members report frequent visits to the area around the SpaceX Facility – Josette Hinojosa once a month, and Bekah Hinojosa and Christopher Basaldú at least six times per year. Juan Mancias reports visiting every week that he isn't traveling; for the past three years he has been there nearly every week. Emma Guevara, Josette Hinojosa, and Christopher Basaldú have been making these visits since they were children. Emma Guevara also reports visiting the nearby Boca Chica Wildlife Refuge and Boca Chica Bay near SpaceX, as well as Brazos Island Park. (See ATTACHMENT B)

STEJN members visit the beach to exercise, to relax, and to swim in the ocean and the water at the mouth of the Rio Grande. All Members are concerned about the impact of the SpaceX discharge on their health. Josette Hinojosa is now hesitant to go into the ocean. At TCEQ meetings she heard reports of heightened pH and mercury in the water. These concerns are well-founded, since SpaceX discharges are expected to contain dissolved solids, nitrate-nitrogen, phosphorus, sulfate, chloride, fluoride, aluminum, cadmium, chromium, copper, cyanide, zinc, arsenic, barium, lead, mercury, nickel, and selenium. Arsenic, cadmium, chromium, lead, and nickel are known carcinogens in humans, and are also, in addition to copper, mercury, selenium, and zinc, highly toxic and can result in carcinogenicity and mutagenicity in fish. Ms. Josette

¹⁹ *Id.* at 880.

Hinojosa is worried not only for her own health, but for that of her children. Bekah Hinojosa and Christopher Basaldú also have economic interests in this area. As part of their work, they give educational tours of the beach and wetlands to students, reporters, public officials and other interested parties.

Bekah Hinojosa, Christopher Basaldú, Emma Guevara, and Juan Mancias have a great interest in the wildlife and plants that live primarily in the wetlands inland of the beach, immediately surrounding the SpaceX facility. All Members pass through this area every time they drive to the beach. Emma Guevara, Christopher Basaldú and Bekah Hinojosa in particular, enjoy observing the plants and wildlife that flourish in the wetlands, especially the birds. Since the SpaceX Facility was built, Bekah Hinojosa has observed a noticeable decline in the number of Aplomado Falcons and Spoonbills in the area; Emma Guevara has noticed fewer Piping Plover. Other species of birds that STEJN members enjoy viewing in this area include Blue Herons, Pelicans, Sandhill Cranes, Kingfishers, Anhingas, Black Hawks, Kiskadees, Orioles, and Scissor Tails. STEJN members are concerned about the further negative impact on wildlife threatened by industrial wastewater discharge allowed by this permit.

Christopher Basaldú, Juan Mancias, and Josette Hinojosa also have religious/spiritual interests in the land and waters directly adjacent to SpaceX as members of the Carrizo Comecrudo (which is the European name given to indigenous people of the area, who refer to themselves as Esto'k Gna). Mr. Basaldú and Mr. Mancias frequently visit the mouth of the Rio Grande as part of their religious practice, to cleanse themselves in the water and communicate with their ancestors. Juan Mancias has expressed concern about the destruction of this ecosystem and the impact this destruction is having on the practices of the Esto'k Gna, who use certain plants grown in this area to make baskets, shoes, and other goods. He is concerned about chemicals from SpaceX discharge seeping into the ground, affecting the water table, and killing important bacteria. The Esto'k Gna consider themselves stewards of all the plants and animals in this sacred site, which makes the destruction of the ecosystem especially devastating. Christopher Basaldú described the SpaceX presence here as an assault on Mother Nature, his Spirit and the Esto'k Gna people. (See ATTACHMENT B).

3. STEJN members' interests are protected under Texas state law and the Texas Constitution

As discussed, the ultimate governing authority here is Texas state law’s definition of “affected persons”, which defines them as a person with a personal justiciable interest related to “a legal right, duty, privilege, power, or economic interest” in the matter. The very first factor TCEQ gives to consider in determining affected person status is “whether the interest claimed is one protected by the law under which the application will be considered.”²⁰ Many of the interests STEJN members allege are explicitly protected by Texas state law, the Texas Constitution, and the United States Constitution:

Texas Open Beaches Act

This Act is a Texas State Law, passed in 1959 and amended in 1991, which guarantees free public access to beaches on the Gulf of Mexico.²¹ This right was enshrined in the Texas Constitution in 2009.²² This permit threatens to limit the ability of the public to safely use and enjoy Boca Chica Beach (a public beach) by allowing discharge of insufficiently regulated industrial wastewater.

Right to Hunt, Fish, and Harvest Wildlife

This right is enshrined in the Texas Constitution, Article I, Section 34. It states that Texans have the right to hunt, fish, and harvest wildlife, including by the use of traditional methods, subject to laws or regulations to conserve and manage wildlife and preserve the future of hunting and fishing. The wastewater discharge governed by this permit may have a negative impact on the fish population, as well as whether it is healthy to consume fish caught in the area around the SpaceX facility.

Religious Service Protections

This protection was added to the Texas Constitution in 2021 as Article I, Section 6-a. It prohibits the state and its political subdivisions from prohibiting or limiting religious services, in the state by a religious organization established to support and serve the propagation of a sincerely held religious belief. Through the issuance of this permit, TCEQ, acting on behalf of the State,

²⁰ 30 Tex. Admin. Code § 55.203(a)

²¹ Texas Natural Resources Code: Title 2: Subtitle E; Chapter 61: SUBCHAPTER B. ACCESS TO PUBLIC BEACHES". Statutes, The State of Texas. Retrieved January 28, 2025.
<https://statutes.capitol.texas.gov/Docs/NR/htm/NR.61.htm>

²² Tex. Const. art. 1, § 33.

threatens to limit the religious practices of the Esto'k Gna. STEJN members also have a constitutional right to religious freedom under the United States Constitution.²³

4. The SpaceX “Distance from the Point of Discharge” argument is based on misleading application of law and misrepresentation of facts.

SpaceX attempts to undermine STEJN members’ legitimate interests by emphasizing the distance between their facility and STEJN members’ activities, however their argument is based on a misapplication of law and misleading representation of the facts.

SpaceX references a rule that requires applicants for a TPDES permit to mail notice to persons who own property that adjoins the facility or is within one mile downstream of the discharge point on on-tidal waters or 0.5 miles of the discharge point if the discharge is to a tidally influenced water body.²⁴ But this rule only establishes requirements for certain notice; it has no relevance for an affected person determination.

SpaceX also misrepresents the character of the would-be-permitted discharge as well as the distances between the discharge and Members’ interests:

Discharge route

SpaceX repeatedly mentions the “discharge route” (the path that they plan for the discharge to take from the SpaceX facility to the ocean) to make their case that the discharge will not affect Members’ recreational activities. This is not realistic. The novel aspect of the SpaceX deluge system is that discharge will not be released from a pipe, but via what SpaceX describes as “a gigantic upside-down shower head”²⁵ that will blast up to 358,000 gallons of water onto the jets of “the most powerful launch vehicle ever developed”²⁶ as it takes off. Some of this water will be caught in a retention basin, but it has been proven that much of the spray will land outside the

²³ US. Const. amend. 1

²⁴ TCEQ, Instructions for Completing the Industrial Wastewater Permit Application (Form 10411-10055inst), available at <https://www.tceq.texas.gov/downloads/permitting/wastewater/forms-tools/10411-10055inst.docx>

²⁵ Mike Wall, *SpaceX making ‘well over 1,000’ changes to Starship ahead of next launch*, space.com, June 26, 2023, <https://www.space.com/spacex-starship-design-changes-second-test-flight>. Accessed 2 Feb. 2025.

²⁶ SpaceX Resp Br at 3

basin; these basins are also likely to overflow during weather events.²⁷ It is estimated that the deluge system actually has the ability to disperse deluge water up to 0.6-miles across the local landscape due to the vapor cloud and subsequent condensation.²⁸ TCEQ improperly conflates the facility's ability to retain and reuse some of the deluge water before discharge as a treatment mechanism that reduces the impact of the Facility to the receiving waters. However, the potential delay of industrial discharges does not equate to pollution reduction. The quantity of pollutants present in the deluge water will only amalgamate over time as the water is reused, and once discharged, receiving waters face heightened concentrations of dangerous pollutants.

Wetlands

SpaceX states that STEJN's Request "fails to address how the proposed discharges would reach Boca Chica Beach in a manner that would affect wildlife."²⁹ They only mention the interests that take place on Boca Chica Beach and at the mouth of the Rio Grande, claiming, "No requestor or member of a requesting association claims to recreate in the mudflats along the discharge route"³⁰ nor in Rio Grande River Tidal Segment No. 2301 between the point at which the discharged water would enter the river and the mouth of the Rio Grande River..."³¹. This demonstrates a serious misunderstanding of STEJN's interests. SpaceX states that the distance between the point of discharge and the nearest alleged interest is 4.3 miles.³² Actually, the distance between the point of discharge and this particular interest (observing wildlife), is practically nil. (See ATTACHMENT A) All STEJN members expressed serious concerns about the detrimental effect unregulated pollutants in the discharged water may have on the wildlife and plant life of these wetlands. These waters are considered "critical habitat" for some species, including the Piping Plover, a threatened species of bird (according to the American Bird

²⁷ The possibility of more severe storm events from climate change only threatens further discharges from stormwater buildup in the retention basins. Single rain events in Brownsville can amount to over 3 inches of precipitation, and these severe rain events are expected to increase in rainfall amounts due to climate change over the years.

²⁸ "Addendum to the October 2021 Biological Assessment for the SpaceX Starship-Super Heavy Launch Vehicle Program at the SpaceX Boca Chica Launch Site in Cameron County, Texas Addressing Operation of a Deluge System" at 8-9. Federal Aviation Administration. October 2023. Available at: <https://www.faa.gov/media/72826>.

²⁹ SpaceX Resp Br at 16-17

³⁰ SpaceX Resp Br at 11

³¹ SpaceX Resp Br at 12

³² This is the distance from the SpaceX facility, through the mudflats, into the Rio Grande, and along the Rio Grande to the mouth of the river. (SpaceX Resp br at 12)

Conservancy)³³ that STEJN member Emma Guevara enjoys observing. Courts have established that the desire to observe an animal species or even a natural environment is a legitimate interest for the purpose of standing as long as those claiming standing are experiencing and acting on this desire personally.³⁴ STEJN members have been personally visiting this area for years (or even decades for some) and plan to continue doing so.

Waters of the Rio Grande

Requestors have recreational and religious interests in the waters of the Rio Grande. SpaceX claims that no discharge is expected to reach the Rio Grande,³⁵ however there is no guarantee of this due to lack of sufficient testing and the high risk of storm events causing overflow. SpaceX's "discharge route" plans for the possibility that wastewater flows from the wetlands to Rio Grande (Tidal Segment 2301) and on to the mouth of the river in the Gulf of Mexico. As members of the Carrizo Comecrudo tribe, STEJN members Christopher Basaldú, Juan Mancias, and Josette Hinojosa have an interest in the quality of the waters of the Rio Grande, even before they reach the ocean. According to Juan Mancias, Tribal Chairman of the Esto'k Gna, his People understand that water is life. In the water, they recognize themselves and their ancestors. Mr. Mancias often goes to the beach to communicate with his ancestors through the water – to send his voice through song, and to listen to them. He and other Esto'k Gna use this water to purify themselves.

Mouth of the Rio Grande and Boca Chica Beach

³³ ABC's Bird Library, *Piping Plover*, American Bird Conservancy, abcbirds.org/bird/piping-plover/#conservation. Accessed 2 Feb. 2025.

³⁴ See *Lujan*, at 562–63, 112 S.Ct. 2130., recognizing, "the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for the purpose of standing." In this case, standing was denied because the individuals in question did not have concrete plans to visit habitats where animal were at risk. In contrast, STEJN members already routinely visit these wetlands and plan to continue doing so. See also *Sierra v. Morton*, 405 U.S. 727, 734–35, 92 S. Ct. 1361, 1366, 31 L. Ed. 2d 636 (1972), recognizing that "Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process. But the 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." In this case challenging the development of a forested area into a resort, standing was denied because the requesting parties had never visited, and had no plans to visit the site. Also see *Save Our Springs All., Inc. v. City of Dripping Springs*, 304 S.W.3d 871, 895 (Tex. App. 2010), citing *Summers v. Earth Island Inst.*, 555 U.S. 488, —, 129 S.Ct. 1142, 1149, 173 L.Ed.2d 1 (2009), recognizing, "While generalized harm to the forest or the environment will not alone support standing, if that harm in fact affects the recreational or even the mere esthetic interests of the plaintiff, that will suffice."

³⁵ SpaceX Resp Br at 5

SpaceX wrongly claims that recreational interests located on Boca Chica Beach are too distant to trigger affected person status. SpaceX states that Boca Chica Beach is located over 6 miles from the point of discharge, however, to get this value SpaceX measures from the point of discharge, south through the wetlands to the Rio Grande (Tidal Segment 2301), along the river to the mouth of the Rio Grande, and then back up the beach to arrive at Boca Chica Beach. (See first photo in ATTACHMENT A.) But in reality, as the crow flies the public beach is actually less than one mile from the launch site. SpaceX itself assumed a radius of 0.6 miles estimated to be hit directly with spray and/or vapor.³⁶ The mouth of the Rio Grande where STEJN members of the Carrizo Comecrudo/Esto'k Gna perform religious ceremonies in the water is two miles from the point of discharge. (See maps in ATTACHMENT A)

5. SpaceX relies on cases that do not preclude granting standing to STEJN in this case.

SpaceX relies on two Texas cases where affected person status was denied because of the distance between the permitted facility and the requestors' interests, neither of which precludes STEJN from being designated an affected person in this case. First, in *Sierra Club v. Texas Comm'n on Env't Quality*, 455 S.W.3d 214 (Tex. App. 2014), the court found that while Sierra Club members expressed concerns about the potential for groundwater contamination, dispersion of waste material by the wind, and the possibility that a truck carrying waste to the facility might get into a traffic accident on a public road, none of the requestors "work[ed] or spen[t] any substantial time in or around the [proposed] facility."³⁷ In contrast, here multiple STEJN members each spend significant time in the area immediately adjacent to SpaceX. They walk, swim, bring their children and families, give tours, observe wildlife, and practice their religion there. Many of them have been visiting this area since they were children. This is a clear contrast to the interests alleged by the requestors in *Sierra Club*. In addition, the permit at issue in *Sierra Club* was under the Texas Radiation Control Act, not the federal Clean Water Act, so TCEQ does not have to comply with the heightened public participation requirements under the CWA.

³⁶ "Addendum to the October 2021 Biological Assessment for the SpaceX Starship-Super Heavy Launch Vehicle Program at the SpaceX Boca Chica Launch Site in Cameron County, Texas Addressing Operation of a Deluge System" at 8-9. Federal Aviation Administration. October 2023. Available at: <https://www.faa.gov/media/72826>.

³⁷ *Sierra Club v. Texas Comm'n on Env't Quality*, 455 S.W.3d 214, 224 (Tex. App. 2014) at 224.

Neither is *Collins v. Texas Nat. Res. Conservation Comm'n*, 94 S.W.3d 876 (Tex. App. 2002) instructive. In *Collins*, the permit in question was a standard air permit, which, as the court pointed out, is issued without the opportunity for a contested case hearing if its permanent odor sources are at least half a mile from occupied residences and business structures.³⁸ As Collins' residence was located 1.3 miles from the proposed permanent odor source, his concern about air quality was statutorily barred. As for his concern about groundwater, the court found, among other things, that groundwater was unlikely to be affected, even if the proposed new waste management system were to fail.³⁹ This is a very different set of circumstances than those surrounding TPDES permit No. WQ0005462000, where the pollution that Requestors are directly concerned about is the discharge that is being proposed by the permit.

Nor does the Commission decision in the *Application of Southwestern Electric Power Company for Renewal and Major Amendment of TPDES Permit No. WQ0002496000* establish binding precedent applicable here. In that case, the hearing examiner weighed the facts in favor of recommending denial of affected person status, but correctly stated the law:

“...the ALJ does not doubt that there may be situations where the facts are sufficiently particularized and concrete to sustain a finding of affectedness based solely on recreational interests.” (SOAH Proposed Decision on SWEPCO Application at 19.)

In addition, *SWEPCO* is not comparable to the present hearing request for the following reasons:

- The novelty of the SpaceX deluge system makes it impossible to find a comparable permitting decision. Rather than releasing wastewater directly into the receiving body of water as in SWEPCO, SpaceX's deluge system blasts up to 358,000 gallons of water onto the firing jets of rockets. The scalding and contaminated water then rains down on the facility and beyond, potentially reaching a radius of 0.6 miles around the facility.⁴⁰

³⁸ 30 Tex. Admin. Code § 321.46(1)(A)

³⁹ Looking to the merits is permissible here only because this permitting system does not implicate CWA, so the Texas Attorney General's instructions limiting consideration of the merits of the case to contested case hearing do not apply.

⁴⁰ “Addendum to the October 2021 Biological Assessment for the SpaceX Starship-Super Heavy Launch Vehicle Program at the SpaceX Boca Chica Launch Site in Cameron County, Texas Addressing Operation of a Deluge System” at 8-9. Federal Aviation Administration. October 2023. Available at: <https://www.faa.gov/media/72826>

- Requesters in SWEPCO claimed only recreational interests. In contrast, STEJN members have not only recreational interests, but religious and economic interests as well.
- In SWEPCO, the closest alleged recreational activity was approximately four miles downstream from the facility in question. STEJN members' interests are located directly adjacent to (observing wildlife) and less than 0.5 miles away (Boca Chica Beach). The furthest distance for Carrizo Comecrudo/Esto'k Gna members' interest in holding ceremonies at the mouth of the Rio Grande is about two miles away.
- The proposed amended permit in SWEPCO did not change any of the discharge limitations in the existing permit. In contrast, TPDES Permit No. WQ0005462000 is a new permit.

IV. Conclusion

For the foregoing reasons, South Texas Environmental Justice Network respectfully request the Commission grant our Request for a Contested Case Hearing on all issues that were raised and not withdrawn during the public comment period.



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Certificate of Service

I certify that on the 3rd day of February, 2025, a true and correct copy of this Reply in support of South Texas Environmental Justice Network's Request for a Contested Case Hearing was filed using the TCEQ's electronic filing system, and via E-Mail to the parties listed below.

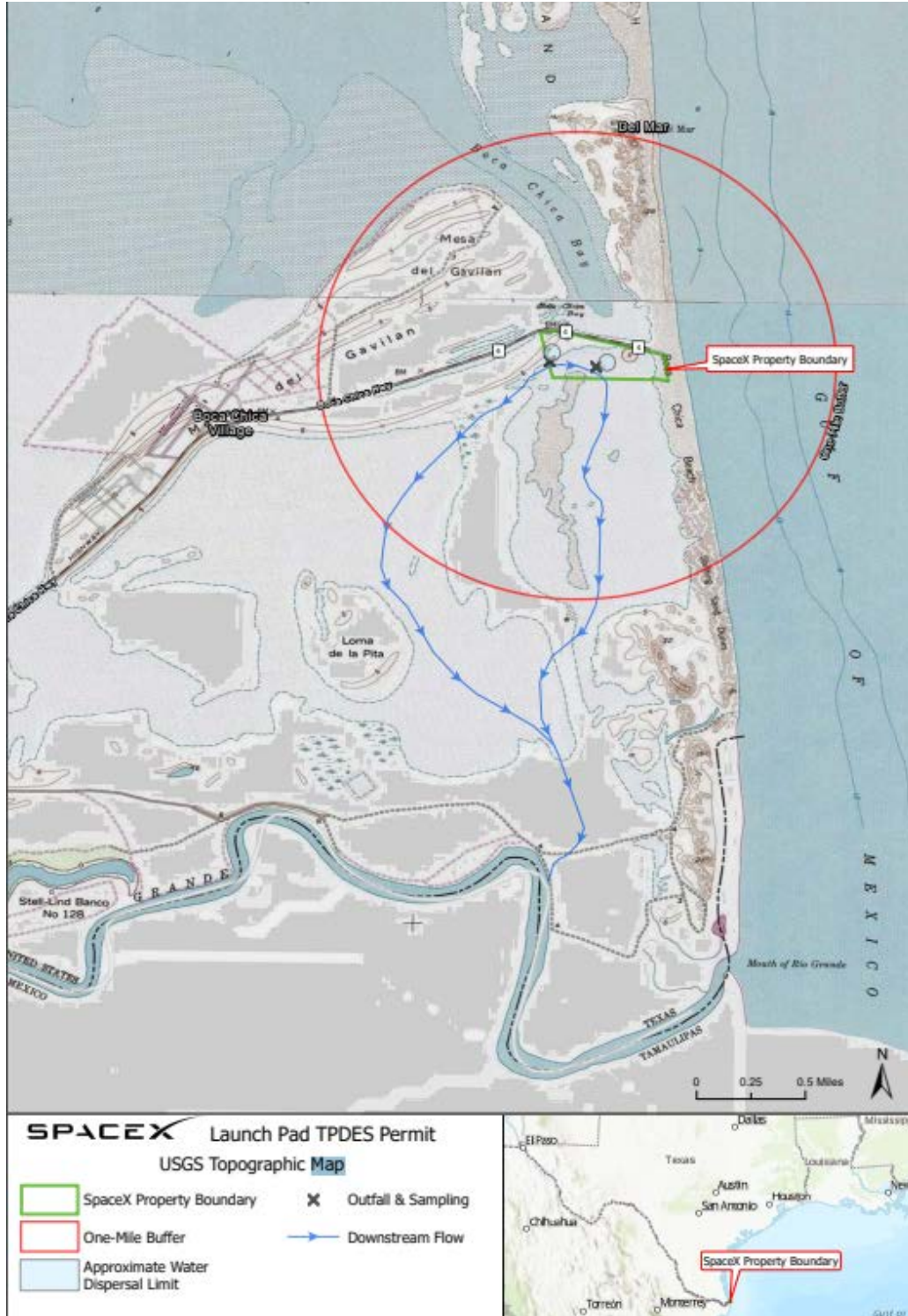
/s/ Ilan M Levin
Ilan M Levin

For the Executive Director: hmalley@tceq.state.tx.us

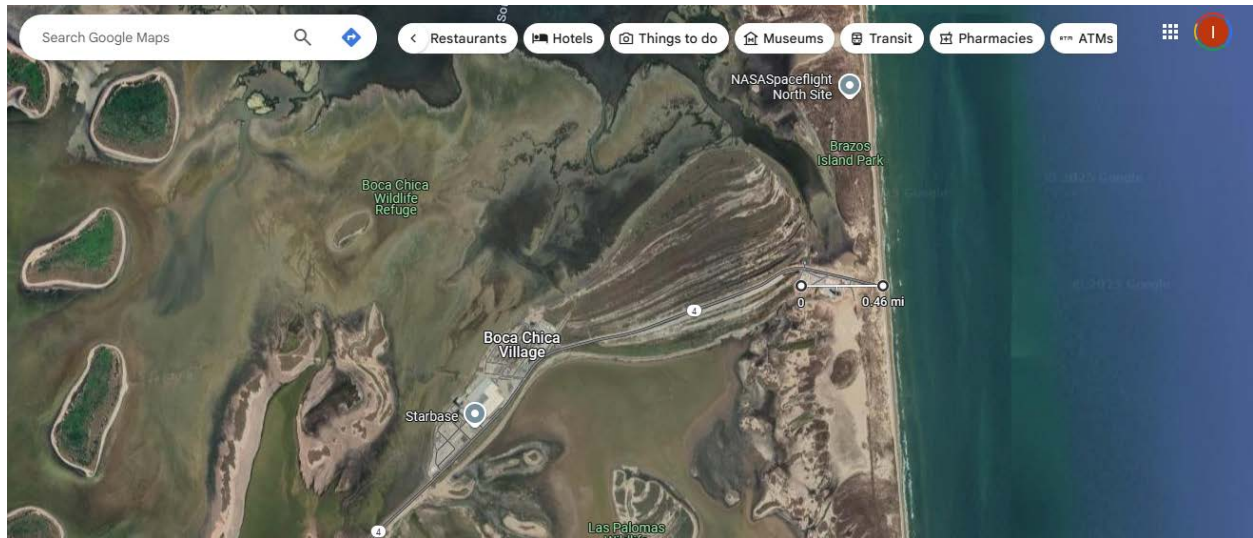
For OPIC: swayne@tceq.state.tx.us

For the Applicant: whit.swift@bracewell.com; sara.burgin@bracewell.com

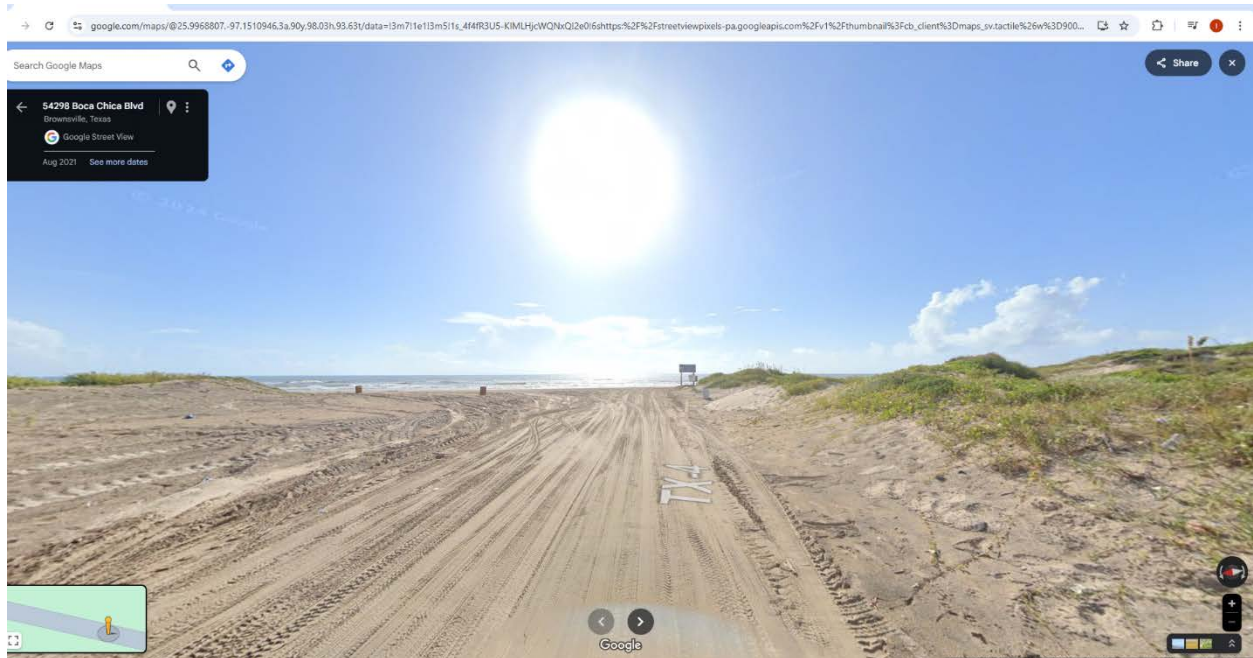
ATTACHMENT A



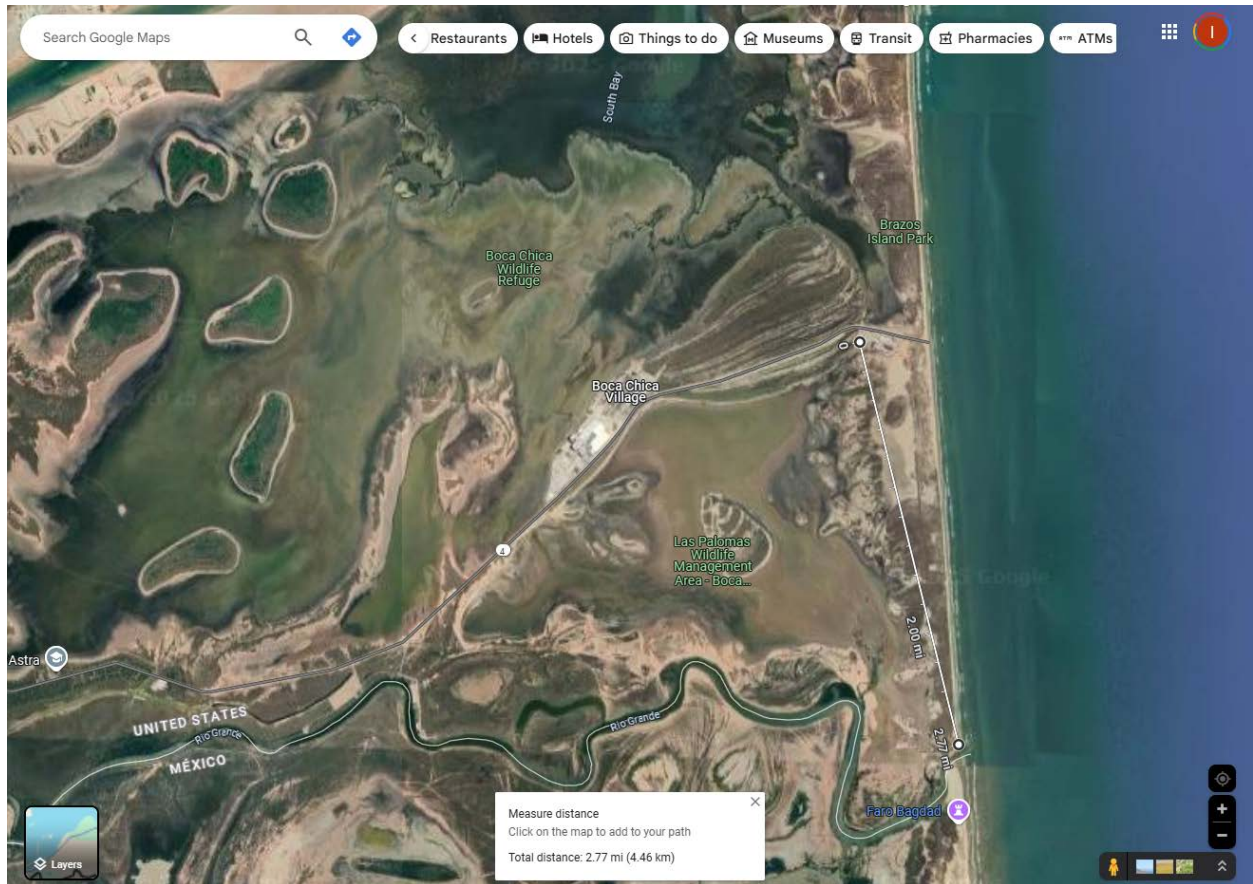
SpaceX representation of distance between facility & Requestors' activities (SpaceX Application "Tech Package" (09/11/24), available at <https://www.tceq.texas.gov/permitting/wastewater/pending-permits/tpdes-applications>)



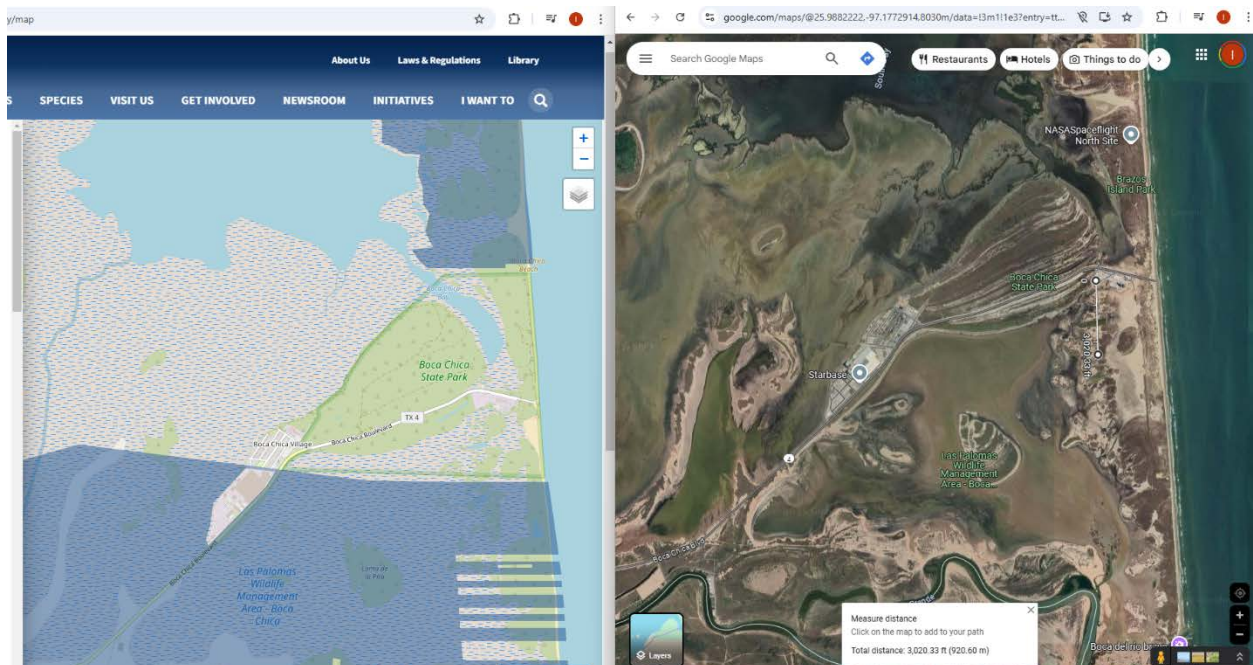
Distance from SpaceX facility to public beach: 0.46 miles (google maps)



Streetview of beach entrance 0.46 miles from SpaceX facility (google maps)



Distance from SpaceX facility to the mouth of the Rio Grande: 2 miles (google maps)



Distance from SpaceX facility to the nearest wildlife refuge: 0.67 miles (left - U.S. Fish & Wildlife Service website; right - google maps)

DECLARATION OF REBEKAH LYNN HINOJOSA BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL EQUALITY

1. My name is Rebekah Hinojosa. My date of birth is April 4, 1991. I live in the City of Brownsville, TX.
2. I am a founding member of the South Texas Environmental Justice Network, an organization dedicated to environmental conservation and environmental justice work in South Texas' Rio Grande Valley (STEJN, established 2020). I previously worked as an organizer for the Sierra Club and have been speaking out about wildlife conservation in the Brownsville area since 2014.
3. I grew up in Weslaco, TX and moved to Brownsville in 2017 in order to be closer to the coast, especially to Boca Chica Beach and South Padre Island. Since 2014, I have visited Boca Chica Beach frequently to recreate and as part of my work as an environmental conservationist. On average, I visit this area about six times a year. I often bring guests, such as reporters, college students, and public officials, to give tours of the beach and surrounding wetlands. My most recent visit to the area was on February 3, 2025.
4. SpaceX activity in Boca Chica has made it challenging to access the beach due to construction, highway closures, and SpaceX fans who crowd the area, camping out near the facility and taking up parking for the beach and park. Multiple times a week I receive a notification that the beach is closed due to SpaceX activity. This both prohibits my personal enjoyment of the beach and greatly inconveniences my organization, as access to this area is crucial to our work.
5. I have observed many signs of harm caused by SpaceX to the flora and fauna at and around Boca Chica Beach, including burnt flora, grassfires, and a noticeable decline in the number of Aplomado Falcons and Spoonbills in the area. The wetlands even appear to be drying out and receding from the road. The sight and smell of burned flora make this once-tranquil area unattractive and uninviting to me.
6. Since SpaceX began operating its facility in Boca Chica, my enjoyment of Boca Chica Beach and my work there have been negatively impacted. I would certainly visit the beach more often if not for SpaceX's activity there.
7. My apartment in Brownsville is about 20 miles away from the SpaceX launch site at Boca Chica. From my patio, I can see rocket explosions and smoke from the SpaceX facility. On two occasions, I have felt my apartment shaking from the force of rocket launches.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 3, 2025.

A handwritten signature in black ink, appearing to read 'Rebekah Hinojosa', written in a cursive, flowing style.

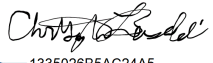
Bekah Hinojosa

DECLARATION OF CHRISTOPHER BASALDÚ BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL EQUALITY

1. My name is Christopher Basaldú. My date of birth is June 18, 1972. I live in the City of Brownsville, TX.
2. I grew up in Brownsville. I moved away in late 1987, and returned in 2017. I am a founding member of the South Texas Environmental Justice Network, an organization dedicated to environmental conservation and environmental justice work in South Texas' Rio Grande Valley (STEJN, established 2020). I am also a member of the Esto'k Gna (i.e. Carrizo/Comecrudo Tribe of Texas); to our People, Boca Chica Beach is a sacred site.
3. As a child, I went to the beach on occasion with my family. Nowadays, I visit Boca Chica Beach between six and eight times a year. I like to visit the beach to see the ocean, to be near the water, to swim, and more importantly to make prayers and offerings and participate in memory as my ancestors have done for many millennia. As part of my environmental justice advocacy work, I also lead educational trips to the beach for journalists, tribe members, and other interested parties. As a member of the Esto'k Gna, I go to the beach to purify myself in the water, which is an important part of our tradition. According to the Esto'k Gna Creation Story, human life began on this very beach, at the mouth of the Rio Grande. No matter the reason for my visit, I always make an offering to honor the sacredness of this space.
4. SpaceX activity has greatly diminished my enjoyment of Boca Chica Beach and the surrounding area. As a kid, I remember there being very little infrastructure around the beach. The road leading there was like a paradise to me, with vast green spaces, shallow bays, and an abundance of birds. At night, you could sit on the beach and see all the stars in the sky. SpaceX has destroyed all of this. They built their facility right next to the road, with no buffer, with their rocket launch pad practically on the beach. That otherworldly feeling of being one with nature and the clear night sky is gone. SpaceX's presence in this sacred space feels like an assault on Mother Nature, my Spirit, and my People.
5. I am concerned about the affect SpaceX's air and water pollution will have on me and others who frequent this area. Because of SpaceX, we now have to deal with pollution and health concerns like we never did before. I am also concerned about the impact this pollution will have on the plants and animals at Boca Chica Beach and the surrounding wetlands. As a member of the Esto'k Gna, I consider it my sacred responsibility to protect all life that flourishes here, including plants and animals.
6. I can feel the impact of SpaceX rocket launches from my home in Brownsville. More than once now, I woke up to the sound of a massive rumbling and trembling, and my home shaking due to launches. The first disastrous launch of Starship Superheavy caused so much debris over so wide of an area that I could hear the pattering of debris falling on my roof, like pebbles.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 31 January, 2025.

Signed,

Signed by:

1335026B5AC2446
Christopher Basaldú

DECLARATION OF JOSETTE HINOJOSA BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL EQUALITY

1. My name is Josette Hinojosa. My date of birth is June 15, 1985. I live in the City of Brownsville, TX.
2. I am a founding member of the South Texas Environmental Justice Network, an organization dedicated to environmental conservation and environmental justice work in South Texas' Rio Grande Valley (STEJN, established 2020).
3. I have lived nearly all of my life in Brownsville, TX. I have been visiting Boca Chica Beach with my family since I was very young. Both my grandmother and grandfather grew up along the Rio Grande, so this beach holds a lot of significance for our family. Nowadays I visit the beach about once a month. My most recent visit was in August 2024 to attend an event where locals gathered to share their memories of the beach. Although it breaks heart to see all the damage and destruction caused by SpaceX activity at Boca Chica, I continue to go because I feel it's important to make my presence known. If not for SpaceX, I would visit the beach more often.
4. My enjoyment of this special place has been greatly diminished by SpaceX activity. I used to be able to go out to the beach to enjoy a full moon, but now there is too much light pollution. There is also a lot of noise coming from the SpaceX facility. Increased security and traffic make it harder than ever to access the beach.
5. As a result of SpaceX activity, residents of Brownsville are now forced to deal with health concerns that never existed before. From my home, I can see a visible cloud of air pollution following SpaceX launches. This gives me concerns about the quality of air we are breathing. Following a launch, I try not to go outside for the rest of the day. At the beach I am hesitant to go into the water due to SpaceX's unregulated discharges of wastewater. At TCEQ meetings, I have heard reports of heightened pH and mercury in the water. I am also concerned about stepping on debris that has dropped onto the beach or into the ocean during a launch. I worry about all these things not only for myself, but for my children.
6. I am a member of the Esto'k Gna (i.e. the Carrizo/Comecrudo Tribe of Texas), which regards Boca Chica Beach as a sacred site. Our Creation Story takes place on this very beach, at the mouth of the Rio Grande. Members of our Tribe have been prevented from holding ceremonies on the beach due to SpaceX activity.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 31, 2025

SIGNATURE


Josette Hinojosa

A handwritten signature in black ink, appearing to be 'Josette Hinojosa', written over a horizontal line.

**DECLARATION OF EMMA GUEVARA BEFORE THE TEXAS COMMISSION ON
ENVIRONMENTAL EQUALITY**

1. My name is Emma Guevara. My date of birth is 05/24/1998. I live in the City of Austin, TX.
2. I am from Brownsville, TX. Growing up, I went to Boca Chica Beach often with my family. From July 2021-May 2024, I was a staff member of the Sierra Club, which took me to the beach about once a month to show reporters and other interested parties. In September 2023 I moved to Austin. I return to Brownsville often to visit family, and I try to go to the beach each time I visit.
3. SpaceX has severely limited my access to Boca Chica Beach. When I was working with the Sierra Club, I was denied entry to the beach about half the times I tried to visit (at least 5 times total). This had a negative impact on my work. Sometimes I received a text message to let me know that the beach was closed, but other times my car was simply turned back on my way to the beach. SpaceX claims that they post online when the beach will be closed, but I have not found this to be accurate. Although I try to go to the beach every time I visit Brownsville, I have found that it's often closed. In the past year, I have been to the beach about twice. On one instance when I was denied entry, I was there with family to scatter my uncle's ashes on the beach. We had to scatter his ashes on the other side of the jetty instead. Access to the beach has also been inhibited by SpaceX tourists who crowd the area around the beach and camp outside the SpaceX facility. I would definitely visit Boca Chica Beach more often if not for SpaceX.
5. Boca Chica Beach and the surrounding wetlands used to be the last untouched piece of coastline in Texas. In 2018 I first noticed the serious effects of SpaceX on this environment. By 2020, the area was unrecognizable. The land has been decimated to make way for SpaceX. I fear that the light pollution, noise, and industrial waste from the facility must have a negative impact on wildlife. The lights at the facility are on nearly 24/7. I have noticed fewer birds on the drive out to the beach, specifically Piping Plover. I am also concerned about the wastewater being discharged from the facility into the wetlands. Sometimes when the beach is closed, I go visit the nature refuge or another spot on the coast instead, however my enjoyment of these natural spaces is diminished because you can see the SpaceX facility from everywhere. Because of SpaceX, every time I go to the beach, I enjoy it less.
7. Before moving to Austin last year, I could see and hear SpaceX rocket launches from my apartment in Brownsville.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 01/30/2025.



Emma Guevara