TCEQ DOCKET NO. 2024-1821-IWD

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

SAVE RGV AND CARRIZO/COMECRUDO NATION OF TEXAS, INC.'S REPLY TO RESPONSES TO HEARING REQUESTS AND REQUESTS FOR RECONSIDERATION

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

Save RGV and the Carrizo/Comecrudo Nation of Texas, Inc. ("Requestors") hereby submit this Reply to the Responses to Hearing Requests and Requests for Reconsideration filed by Space Exploration Technologies Corp. ("SpaceX" or "Applicant"), the Executive Director ("ED"), and the Office of Public Interest Counsel ("OPIC"). For the reasons described below, Requestors urge the Commission to grant their requests for reconsideration. Alternatively, Requestors urge the Commission to grant their hearing requests and refer this matter to the State Office of Administrative Hearings for a contested-case hearing on the merits.

I. SUMMARY

In her response, the ED failed to address Requestors' reasons why the Draft Permit should be reconsidered. Importantly, the ED failed to address errors in the RTC and additional sampling data that indicates the ED failed to follow its own procedures when declining to set effluent limits for certain criteria in the Draft Permit. Upon reconsideration of these errors and additional information, the Commission should deny the Application.

In the alternative, the Commission should grant Requestors' hearing requests and reject SpaceX and the ED's arguments, because SpaceX and the ED misunderstand the proximity of the recreational, aesthetic, and spiritual interests described by members of the Requestors. Additionally, SpaceX and the ED misapply the law regarding Article III standing. As a result of these errors, SpaceX and the ED overlook the fact that the interests of Requestors' members in observing birds and wildlife that forage in the tidal flats area of the discharge is a personal justiciable interest. Furthermore, SpaceX and the ED fail to consider that Requestors have demonstrated that this interest may be harmed by the proposed discharge of deluge water. Said another way, the injury Requestors claim is fairly traceable to the proposed permitted activity. As such, Requestors have demonstrated Article III standing, pursuant to well-established caselaw.

The Commission should also reject attempts to supplant Article III standing with "overly mechanistic" requirements. Though Requestors' members did not provide the street addresses of where they live, they do not claim the proximity of their homes, but the proximity of their recreational and aesthetic activities in the area immediately adjacent to the SpaceX launch site that establish standing. Requestors and members adequately provided a physical description of their location, which has no known address, on par with the physical description provided by SpaceX and relied upon by the ED in identifying the location of the proposed discharge. Neither SpaceX nor the ED dispute these members' identity and, thus, can show no harm. Therefore, the Commission should grant Requestors' requests for a contested case hearing or, in the alternative, refer the matter of standing to the State Office of Administrative Hearings.

II. DISCUSSION

A. SpaceX and the ED Misstate or Overlook the Immediate Proximity of the Recreational, Aesthetic, and Spiritual Observation of Wildlife Interests of Requestors' Members.

Demonstrating its lack of familiarity with the local area in which it now launches rockets and discharges industrial deluge water, SpaceX asserts that "Boca Chica Beach . . . is located over six miles from the location of the discharge that is the subject of this proceeding."[1] This is altogether false. Boca Chica Beach is located at the eastern terminus of Boca Chica Highway, as explained in Requestors' description of how Mr. Mancias and Ms. Branch use the area. Boca Chica Highway is another name for State Highway 4 (SH 4). Boca Chica Highway is the only road that leads to the SpaceX launch site property. It runs east-west, directly north of the SpaceX launch site property, and, according to the ED's map included with her response to hearing requests, nearly one mile of Boca Chica Beach is within the 1/2-mile radius from the outfall.[2]

SpaceX also bases its response to hearing requests on the erroneous assumption that members' recreational interests are located "at or beyond the mouth of the Rio Grande."[3] Putting aside that the proximity of one's interest in relation to the discharge location may not automatically render it as one shared with the general public, the Requestors' members'

[1] Space Exploration Technology Corporation's Response to Requests for Contested Case Hearing and Requests for Reconsideration at 20 (January 17, 2025) (hereinafter "SpaceX's Response");
[2] Executive Director's Response to Hearing Requests, Attachment A (January 17, 2025) (hereinafter "ED's Response").
[3] SpaceX's Response at 1; *id*. at 14 (stating that there is a "considerable downstream distance between the closest recreational activity of any requestor and Starbase" even though Ms. Branch recreates directly adjacent to the Starbase property and within 1/2 mile, per the ED's map); *id*. at 20.

recreational interests are *directly adjacent* to the SpaceX property and are *directly adjacent* to the location of the deluge system discharge.

Boca Chica Beach—the public beach that is located at the end of Boca Chica Highway or SH 4, which is a public road—is directly adjacent to the SpaceX launch site property. The SpaceX launch site property includes the mudflats or wind-tidal flats where the Draft Permit would authorize the discharges (outfalls), making the area of Boca Chica Beach that members of Save RGV and the Tribe use, directly adjacent to the discharge route of the deluge water.

As was clearly articulated in the Requestors' description of the area, members Mr. Mancias and Ms. Branch regularly travel east on Boca Chica Highway (SH 4) to its terminus, in order to access Boca Chica Beach—the area directly adjacent to the SpaceX launch site and south to the mouth of the Rio Grande River. While driving along Boca Chica Beach and when stopped on Boca Chica Beach, Mr. Mancias and Ms. Branch enjoy observing the birds that are common all along the Beach. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562–63, (1992) ("Of course, the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing."). Even the act of enjoying the observation of birds while making a trip from one's car is a justiciable interest. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167, 181 (2000) (relevant to standing was that the member occasionally drove over the river, and that it looked and smelled polluted). Furthermore, it is not relevant that neither Mr. Mancias nor Ms. Branch physically entered the affected area of the tidal flats for the Requestors to establish injury-in-fact. *Save Our Sonoran, Inc.*

v. Flowers, 408 F.3d 1113, 1120 (9th Cir. 2005) (finding that although the development in question was private, the plaintiff had standing to sue "to preserve wildlife-viewing opportunities, both for its residents and others from publicly accessible locations."); *see also, Am. Bottom Conservancy v. U.S. Army Corps of Engineers*, 650 F.3d 652, 657 (7th Cir. 2011) (finding associational standing where members observed wildlife, mainly birds and butterflies, in or near a park, though challenging the destruction of wetlands on adjacent property because of concern it will diminish the wildlife population visible to them and therefore their enjoyment of wildlife in the adjacent park). Requestors will more fully address "injury-in-fact" and "traceability" later in this Reply; however, because neither SpaceX nor the ED considered the immediate proximity of the Requestors' members' recreational and aesthetic interests in observing birds, we provide clarity here: Mr. Mancias and Ms. Branch enjoy observing birds from Boca Chica Beach—located directly at the terminus of Boca Chica Highway and south, directly adjacent to the discharge into the tidal flats where birds forage. They are concerned that the pollutants in the deluge water will contaminate the tidal flats and reduce the number of birds there, which, as a result, will reduce the number of birds available to observe in the immediate area. The immediate proximity of these activities to the discharge supports Article III standing.

B. SpaceX and the ED Failed to Apply Article III Standing Principles.

1. A hearing requestor need not possess a property interest to demonstrate a personal justiciable interest.

SpaceX argues that a recreational interest is inadequate for purposes of demonstrating a personal justiciable interest because "Texas law makes clear that standing is not conferred without an interest in property that is affected by the challenged action – to distinguish the claimed injury from that experienced by the general public." For support, SpaceX cites *Save Our Springs All., Inc. v. City of Dripping Springs*, 304 S.W.3d 871 (Tex. App.—Austin 2010, pet. denied).

Notably, SpaceX does not quote or cite any Texas statute or TCEQ rule in support of its position. Indeed, neither the applicable statute—Texas Water Code Section 5.115—nor the relevant TCEQ rules state that a property right is necessary to establish a personal justiciable interest. *See, e.g.*, 30 Tex. Admin. Code §§ 55.201, .203, .205. Had the Legislature intended that a personal justiciable interest be limited to property interests, it would have said so. *Colorado Cnty. v. Staff*, 510 S.W.3d 435, 447 n.45 (Tex. 2017) (courts "must presume the Legislature included words in them that it intended to include and omitted words it intended to omit"). The Commission should not read into the statutory and regulatory language a requirement that is not supported by the plain language in the rules and statute. *Id.* at 444 (Commission cannot "rewrite the statute under the guise of interpreting it").

Moreover, the case cited by SpaceX in support of its argument—the *City of Dripping Springs* case—stands for the *opposite* of what SpaceX claims. The court of

appeals in the *City of Dripping Springs* case held that the plaintiffs in that case could not rely on alleged environmental harms to demonstrate standing *because their legal claims were not based on environmental laws*. *Id.* at 882. In reaching its holding, the appellate court explicitly acknowledged that an environmental harm is adequate to demonstrate standing—even without a property interest—if the case involves environmental claims. *Id.* at 880-81. In fact, the court noted that several of the cases that acknowledge that an alleged environmental harm (including impacts to recreational interests) is adequate for purposes of standing were cases involving the Clean Water Act. *Id.* at 880, n.4 (collecting cases).

In addition, were a property interest required to demonstrate a personal justiciable interest, this would irreconcilably conflict with the conditions of TCEQ's delegated authority to administer the NPDES permitting program. *See* 40 C.F.R. § 123.30 ("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*.")). That's because a property interest cannot be a prerequisite for purposes of demonstrating standing to seek judicial review of a discharge permit, under the conditions of TCEQ's delegated authority. *Id.* And the definition of "affected person" in Chapter 5 of the Water Code is intended to reflect judicial constitutional standing principles. *City of Waco v. Tex. Comm'n on Envtl. Quality*, 346 S.W.3d 781, 803-04 (Tex. App.—Austin 2011), *rev'd on other grounds*, 413 S.W.3d 409 (Tex. 2013) (acknowledging that "personal justiciable interest" not common to members

of the "general public"—the cornerstone of section 5.115's "affected person" definition—denotes the constitutionally minimal requirements for litigants to have standing to challenge governmental actions in court). So, if a property interest is not necessary for demonstrating constitutional standing to access the judicial system to challenge a discharge permit, then, a property interest cannot be a necessary requirement for demonstrating that one is an affected person for purposes of participating in an administrative contested-case hearing.

In sum, neither the applicable statute, TCEQ rules, nor the case cited by SpaceX support the argument that a property interest is necessary to demonstrate a personal justiciable interest. And TCEQ, in fact, committed to EPA that a property interest would not be required to demonstrate standing, when it was delegated the authority to administer the NPDES permitting program.

2. A recreational interest is a personal justiciable interest for purposes of demonstrating standing and affected person status.

Next, SpaceX argues that a recreational interest cannot be a personal justiciable interest for purposes of demonstrating affected person status. More specifically, SpaceX argues that "recreational activities that take place on public waters miles downstream from a permitted discharge are not a valid basis for affected person status." For support, SpaceX relies on a 2011 Commission Order. *Application by Southwestern Electric Power Company for Renewal and Major Amendment of TPDES Permit No. WQ0002946000*, TCEQ Docket No. 2011-2199-IWD. But there is ample caselaw that demonstrates that SpaceX's position is simply wrong. A more recent TCEQ decision—granting a hearing request regarding a

proposed discharge permit based on a recreational interest—also belies SpaceX's argument.

Federal courts have regularly recognized standing based on the recreational interests of a person who uses publicly accessible waters. *See, e.g.*, *Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167, 182 (2000) (holding that person who liked to fish, camp, swim and picnic in and near North Tyger River in South Carolina within 3 to 15 miles downstream of the discharge had standing under Clean Water Act). Furthermore, the "injury in fact" requirement is satisfied in environmental cases where an individual adequately shows that she has an aesthetic or recreational interest in a particular place, or animal, or plant species and that that interest is impaired by a defendant's conduct. *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000).

The *Laidlaw* Supreme Court case involved a Clean Water Act citizen suit, alleging that Laidlaw was operating its wastewater treatment facility in a manner that violated its NPDES permit. To demonstrate associational standing, Friends of the Earth (one of the organizational plaintiffs in the case) relied on a member who lived a half-mile from Laidlaw's facility and who averred that he occasionally drove over the receiving river, that it looked and smelled polluted, and that he would like to fish, camp, swim, and picnic in the area of the receiving river between 3 to 15 miles downstream from the facility as he had as a teenager, but would not do so out of concern that the water was polluted by Laidlaw's discharges. *Id.* at 181-82.

In concluding that Friends of the Earth had established standing, the Court explained that "plaintiffs adequately allege injury in fact when they aver that they use the affected

area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." *Id*. at 183 (quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972), and citing *Lujan v. Defenders of Wildlife, et al.*, 504 U.S. 555, 562-63 (1992)). The *Lujan* Court, itself, had noted: "Of course, the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing." *Lujan*, 504 U.S. at 562-563 (quoting *Defenders of Wildlife*, 504 U.S. at 562–563, 112 S.Ct. 2130).

As explained above, the affected person definition in Chapter 5 of the Water Code is intended to emulate Article III constitutional standing principles. A recreational interest is sufficient to demonstrate standing to access the courts regarding a lawsuit based on a violation of the Clean Water Act; it is, accordingly, sufficient to access the administrative hearing process to contest a proposed permit under the Clean Water Act as well.

SpaceX (and, to a lesser extent, the ED) maintain that because the interests claimed by the Requestors are common to the general public, they failed to establish a personal justiciable interest. For support, SpaceX relies on a TCEQ decision from 2011.[4] Since then, the Commission has granted hearing requests based on recreational interests—even when shared by many. More specifically, the Commission rejected the position advocated here by SpaceX, when it granted the hearing request of Environmental Stewardship with respect to the application by Corix Utilities (Texas) Inc. for TPDES Permit No. WQ0013977001,

[4] Notably, the hearing requests were referred to SOAH, for resolution of fact issues raised in the hearing requests. To the extent there are similar disputed fact issues in the pending matter, TCEQ should refer the hearing requests to SOAH for resolution, as was done in the Pirkey power plant case. To the extent the cited TCEQ decision offers any persuasive legal authority, it demonstrates that SOAH is the proper venue for purposes of resolving factual disputes related to a hearing request.

TCEQ Docket No. 2023-1591-MWD. In that case, Environmental Stewardship's hearing request relied on a member who regularly fished in an area of the Colorado River open to the general public, slightly more than one mile downstream of the proposed discharge. The Commission correctly found that this member demonstrated a personal justiciable interest and was an affected person.

Similarly, the Texas Supreme Court has made clear that an interest shared by many does not render it one that is common to the general public for purposes of a constitutional standing analysis. *See Abbott v. Mexican Am. Legislative Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 699 (Tex. 2022) (holding that harm that is shared among many does not make it a "generalized grievance" that cannot confer standing; generalized grievance is one that is "abstract and indefinite nature") (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 575 (1992)). Ms. Branch and Mr. Mancias have demonstrated that their recreational interests, though they may be shared by others, are nevertheless personal justiciable interests—based on the frequency, regularity, and significance of their use of the natural resources in the area of the proposed discharge.

3. Mr. Mancias's and Ms. Branch's injuries are fairly traceable to the SpaceX deluge water.

Having concluded that recreational and aesthetic interests are categorically too general, SpaceX failed to consider another prong of Article III standing: that Mr. Mancias's and Ms. Branch's injuries are fairly traceable to the SpaceX discharge of deluge water. The ED mistakenly assumes that because the discharge is not directly to Boca Chica Beach, Mr. Mancias's and Ms. Branch's injuries are not traceable to the proposed discharge.

To be clear, plaintiffs in environmental cases are not required to demonstrate that they are literally certain that the harms they identify will come about. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 153 (2010) (holding plaintiff established a "substantial risk" of the injury occurring); *Nat. Res. Def. Council v. Envtl. Prot. Agency*, 464 F.3d 1, 6 (D.C. Cir. 2006) (holding a 1 in 200,000 chance of developing skin cancer was sufficient for standing).

Furthermore, federal courts in Clean Water Act cases have regularly found that pollution in the vicinity that interferes with the enjoyment of bird watching is the type of injury that establishes standing. *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 556 (5th Cir. 1996) (standing members used Galveston Bay for bird watching and expressed fear that the discharge of produced water will impair their enjoyment of these activities because these activities are dependent upon good water quality); *Nat. Res. Def. Council, Inc. v. Texaco Ref. & Mktg., Inc.*, 2 F.3d 493, 505 (3d Cir. 1993) (granting associational standing based on members who claim pollution in the vicinity of the refinery interfered with their enjoyment of bird watching).

Even more direct still, federal courts have granted standing where a plaintiff alleged the discharge of metals could impact the standing members' ability to bird watch due to impacts from metals on bird populations in the vicinity. *PennEnvironment v. RRI Energy Ne. Mgmt. Co.*, 744 F. Supp. 2d 466, 480 (W.D. Pa. 2010) (granting associational standing where plaintiff alleged that various toxic metals present in the discharge, even in low concentrations, could bioaccumulate in plants and invertebrates consumed by waterfowl and injure ability to birdwatch); *Ohio Valley Envtl. Coal., Inc. v. Hernshaw Partners, LLC*,

984 F. Supp. 2d 589, 593 (S.D.W. Va. 2013) (granting associational standing where standing member's knowledge that defendant's selenium discharges can harm aquatic life, birds, and other wildlife caused her to enjoy the affected waterways less than she would otherwise).

Importantly, a plaintiff (or, in this case, a hearing requestor) need not "pinpoint[ ] the origins of particular molecules," but must "merely show that a *defendant discharges a pollutant that causes or contributes to the kinds of injuries alleged* in the specific geographical area of concern." *PennEnvironment*, 744 F. Supp. 2d at 480. Thus, where plaintiffs (or hearing requestors) have demonstrated that there is a substantial risk that the discharge could cause the alleged injuries, the traceability requirement has been met.

Here, SpaceX and the ED fail to seriously address the connection between the Requestors' members' interest in observing birds and wildlife and the discharge of effluent containing heavy metals to the tidal flat where the birds forage. Neither SpaceX nor the ED dispute statements by Kenneth Teague, a coastal ecologist, that the tidal wetlands south of the SpaceX launch pad are used by a large number of shorebirds who forage on the invertebrates that live in the flats. Neither SpaceX nor the ED dispute that deluge water with high concentrations of heavy metals, such as those found in SpaceX sampling results, could cause significant acute toxicity to the invertebrate communities and, as a result, shorebirds who forage there would be forced to forage elsewhere. Neither did SpaceX nor the ED dispute Mr. Barry Sulkin's statement that tidal wetlands are a unique aquatic habitat and known foraging habitat for shorebirds, and pollutants such as those allowed under the Draft Permit could impact aquatic-dependent species, such as these shorebirds.

Rather, SpaceX and the ED ignore these connections. As a result of this error, SpaceX and the ED fail entirely to consider that the injuries to Mr. Mancias's and Ms. Branch's recreational and aesthetic interests in bird watching are traceable to the discharge of deluge water into the tidal flats. Therefore, the hearing requests of the Tribe and Save RGV must be granted.

4. The Tribe and Save RGV provided an address for official communications and documents and provided locations and distances from the proposed regulated facility and activity, sufficient for purposes of determining affected person status.

The ED argues that the hearing requests should be denied because the Requestors "do not provide an address for the identified members." Consequently, the ED argues that "the requests do not demonstrate how these individuals would have standing in their own right," suggesting that each identified member cannot demonstrate standing unless they include a physical address. But this is not supported by TCEQ's rules.

Under TCEQ Rule 55.211(c), the Commission "shall" grant a timely-filed hearing request if it is made by an affected person, raises disputed issues of fact or mixed issues of fact and law that were also raised in the hearing requestors' comments, and complies with the requirements in Rule 55.201. 30 Tex. Admin. Code § 55.211(c). Under TCEQ Rule 55.201(d), a hearing request "must substantially comply" with the factors listed under subsection (d) of the rule. *Id.* § 55.201(d). According to subsection (d)(1), "If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, *who shall be responsible for receiving all official communications and documents for the group*." *Id.* Requestors have

done that, here. By including the name, address, phone number, and fax number of the Requestors' legal representative, the Requestors have substantially complied with this requirement.

Under subsection (d)(2) of Rule 55.201, the hearing request should "identify the person'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." *Id.* The Requestors have substantially complied with this requirement, by describing, with particularity, where they recreate in relation to the proposed facility and discharge.

SpaceX's arguments are unavailing here. SpaceX claims that because the Tribe did not provide an address for Mr. Mancias and Save RGV did not provide an address for Ms. Branch, it has been prejudiced in responding to the hearing requests and the Commission's evaluation of the claims of associational standing. Setting aside that the Requestors did provide the physical street address of their legal counsel, SpaceX forgets that it has indicated no "physical address" of the discharge location or launch site exists. When asked in the Application materials about Site Information, "Does the site have a physical address?" SpaceX answered "No," and instead described how to locate this site as: "Located on S site of eastern terminus of SH 4."[5] And yet, the ED and Requestors have been able to find the location of the proposed discharge on a map, and Requestors have

[5] On the Core Data Form when asked for the "Street Address of the Regulated Entity," SpaceX provided "1 Rocket Road, Brownsville, TX 78521," which is NOT the location of the launch site and discharge, but the location of the Starbase production site in Boca Chica Village. Technically Complete Application, PDF p. 49.

described the physical location of Boca Chica Highway and Boca Chica Beach where they travel and visit in terms virtually identical to those used by SpaceX.

As previously explained, Mr. Mancias regularly "drives east to the terminus of Boca Chica Highway, and then drives approximately two miles south to the [Rio Grande] River." Mr. Mancias used to enjoy observing plants, birds, and other wildlife that are culturally important to him while making this trip, which culminated at the mouth of the Rio Grande River, but certainly did not begin there. Boca Chica Highway is directly adjacent to the SpaceX launch site. It is clear from the description, once he reaches the terminus and drives south, again, he is driving directly adjacent to the SpaceX launch site. He has observed numerous species of birds adjacent to the SpaceX launch site that are culturally significant—the sight of which brings him spiritual fulfillment.

Similarly, Ms. Branch regularly drives "to the terminus of Boca Chica Highway and then travels south, stopping approximately one-quarter to one-half mile south of the Facility." Like Mr. Mancias, her bird watching trip often culminates in the area south of the SpaceX launch site and discharge location, but it does not begin there. Nevertheless, Ms. Branch specifically goes to the area of Boca Chica Beach approximately one-quarter mile to one-half mile south of the SpaceX launch site to observe birds and is concerned that with pollutants from the deluge water contaminating the tidal flats, the food source for these will disappear, leading to a decline in the birds she enjoys seeing.

To be sure, OPIC was able to determine that the groups' identified members recreate at locations that are sufficiently close to the proposed facility and discharge that their interests would be impacted by the proposed permit if granted. OPIC was able to glean that

they make use of the area with sufficient regularity and particularity to support a determination that their recreational interests are personal justiciable interests.

Neither SpaceX nor the ED's ability to identify the location of the area Requestors' members use are prejudiced or impaired. Thus, there has been no error and no harm in Requestors relying on a combination of the physical street address of legal counsel and physical descriptions of the area members use. To the extent there is a dispute about whether the groups' members' recreational interests should be considered personal justiciable interests, the Commission should refer the hearing requests to SOAH for resolution of the dispute, as was done in the Pirkey power plant case, cited by SpaceX.

C. The ED Failed to Consider Relevant Information in Response to Requests for Reconsideration.

The ED summarily asserts that the requests provide no new relevant information that was not previously considered; however, this is plainly erroneous on its face. For example, Requestors noted specifically that the RTC relied on an outdated compliance history rating, which the ED has failed to address in her Response to Hearing Requests. SpaceX also relies on statements in the RTC and does not address information generated since that date to consider compliance history.

Requestors also noted that the ED did not consider dozens of sampling results SpaceX employees testified were provided to TCEQ, nor did the ED follow her own procedures (outlined in the Statement of Basis), particularly in light of the fact that these dozens of sampling results would demand the ED impose certain effluent limits in the Draft Permit. SpaceX argues the additional sampling results were collected and submitted to

TCEQ pursuant to the MSGP requirements (a claim the ED does not address) and so they cannot be representative. However, this is inconsistent with what is in Ms. Groom's and Ms. Wood's sworn testimony, in which they describe the launch pad's MSGP system as being used for deluge water.[6] Additionally, the ED does dispute the additional data, but has simply failed to explain why she deviated from her own procedures in light of it.

III. PRAYER

For the reasons stated above, Requestors respectfully pray that the Commission grant their requests for reconsideration. Alternatively, Requestors urge the Commission grant their hearing requests and refer the following issues, which are relevant and material to the Commission's consideration of the Application and remain disputed, to State Office of Administrative Hearings:

1) Whether the Draft Permit should be denied or altered based on Applicant's compliance history;
2) Whether the discharge has been properly characterized;
3) Whether the Draft Permit is adequately protective of water quality, including compliance with the Texas Surface Water Quality Standards and TCEQ's Antidegradation policy, and protection of designated uses;
4) Whether the Draft Permit contains terms that are enforceable;
5) Whether the Draft Permit contains adequate monitoring and reporting requirements, including necessary operational requirements;
6) Whether the Draft Permit is adequately protective of the environment, human health, and animal life, including endangered species;

[6] The Tribe and Save RGV's Request for Reconsideration and Request for Contested Case Hearing, Attachment 6, ¶ 8 (Dec. 27, 2024) ("The spreadsheets demonstrate the results of the laboratory testing of the deluge water after the system's operation for tests and launches."); *see also*, *id*. at Attachment 7, ¶ 6.

7) Whether the Draft Permit is consistent with the goals and policies of the Texas Coastal Management Program; and

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on February 3, 2025, a true and correct copy of the foregoing Reply to Responses to Hearing Requests was electronically filed with the Chief Clerk of TCEQ, and that copies were served upon the following parties via electronic mail.

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