Brooke T. Paup, *Chairwoman* Bobby Janecka, *Commissioner* Catarina R. Gonzales, *Commissioner* Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 10, 2025

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

Re: Application by OurCalling, Inc. for New TPDES Permit No. WQ0016272001; TCEQ Docket No. 2025-0081-MWD

Dear Ms. Gharis,

I have enclosed for filing the "Executive Director's Response to Hearing Requests." Please let me know if you have any questions.

Sincerely,

Fernando Salazar Martinez Staff Attorney Environmental Law Division Enclosure

CC: Mailing List

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

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APPLICATION BY OURCALLING, INC. FOR NEW TPDES PERMIT NO. WQ0016272001 BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Hearing Requests on the application by OurCalling, Inc. (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016272001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day.

The Office of the Chief Clerk received timely requests for a contested case hearing request from the following entities and individuals: Ellis County; Kimberley and Mark Curry; Laura J. Garza; Ryan James; Kelly Kern; Thomas G. Pritchett; Clair B. Verchot; and Carolyn Taylor.

The Executive Director recommends that the Commission find that Ellis County is an affected person and grant his hearing request. The Executive Director recommends the Commission denial all remaining requests. Attached for Commission consideration is a satellite map of the area showing the locations of the facility and requestor.

II. FACILITY DESCRIPTION

OurCalling Inc. (Applicant) has applied for new TPDES Permit No. WQ0016272001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.09 MGD. The treated effluent will be discharged to an unnamed tributary, thence to Bear Creek, thence to Red Oak Creek, thence to Upper Trinty River in Segment No. 0805 of the Trinity River Basin. The unclassified receiving water uses are minimal aquatic life use for an unnamed tributary, and high aquatic life use for Bear Creek and Red Oak Creek. The designated uses for Segment No. 0805 are primary contact recreation and high aquatic life use. The proposed wastewater treatment facility will serve the OurCommunity-Ferris project. The OurCommunity-Ferris Wastewater Treatment Facility is a mixed bed biofilm reactor (MBBR). Each phase includes a treatment train with grit removal screen, a flow equalization basin, a MBBR chamber, and a two-stage clarifier system. The draft permit also authorizes the disposal of sludge at a TCEQ-authorized land application site, codisposal landfill, wastewater treatment facility, or facility that further processes sludge. Each phase discharges sludge to a sludge digester, and effluent to a tertiary filtration system and UV disinfection units. The treatment units in each phase discharges sludge to a sludge digester, and effluent to a tertiary filtration system and UV disinfection units.

If this draft permit is issued, the OurCommunity-Ferris WWTF will be located at 231 Wickliffe Road, in Ellis County, Texas 75125 and will be a mixed bed biofilm reactor (MBBR) system. The facility has not been constructed. Geographic coordinates of the outfall location in decimal degrees are provided in the table below.

Outfall Coordinate Location

Outfall Number	Latitude	Longitude
001	32.512074 N	96.571098 W

The effluent limitations in the Interim I, II, and Final phases of the draft permit, based on a 30-day average, are 20 milligrams per liter (mg/L) Five-Day Biochemical Oxygen Demand (BOD₅), 20 mg/L total suspended solids (TSS), 126 colony forming units (CFU) or most probable number (MPN) of *Escherichia coli* (*E. coli*) per 100 mL, and 2.0 mg/L minimum dissolved oxygen (DO). The permittee shall utilize an ultraviolet light (UV) system for disinfection purposes and shall not exceed a daily average *E. coli* limit of 126 CFU or MPN per 100 mL.

In accordance with 30 TAC Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Bear Creek or Red Oak Creek, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected.

Upper Trinity River, Segment No. 0805 is currently listed on the state's inventory of impaired and threatened waters (the 2022 CWA § 303(d) list). The listings are specifically for dioxin in edible tissue and polychlorinated biphenyls (PCBs) in edible tissue. This is a public domestic wastewater treatment facility. The proposed facility is not expected to receive industrial wastewater contributions, therefore the effluent from this facility should not contribute to the dioxin and PCBs in edible tissue impairments of this segment.

A priority watershed of critical concern has been identified in Segment No. 0805 in Ellis County. Therefore, the Least Tern (*Sterna antillarum*), an endangered aquaticdependent species, has been determined to occur in the watershed of Segment No. 0805. However, this applies to Municipal Separate Storm Sewer Systems and Stormwater General Permits only and does not apply to this facility. To make this determination for TPDES permits, TCEQ and the Environmental Protection Agency (EPA) only considered species occurring in watersheds of critical concern or high priority as listed in Appendix A of the United States Fish and Wildlife Service (USFWS) biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The permit does not require EPA review with respect to the presence of endangered or threatened species.

III. <u>PROCEDURAL BACKGROUND</u>

The permit application was received on December 12, 2022, and declared administratively complete on February 8, 2023. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English in the *Waxahachie Daily Light* on February 15, 2023, in English and in Spanish in *La Prensa Comunidad* on February 14, 2023. The ED completed the technical review of the application on April 17, 2023, and prepared the proposed draft permit, which if approved, establishes the conditions under which the facility must operate. The Applicant published the Notice of Application and Preliminary Decision (NAPD) in English in the *Waxahachie Daily Light* on July 26, 2023, and in Spanish in *La Prensa Comunidad* on August 8, 2023. The Applicant published Notice of Public Meeting in the *Waxahachie Daily Light* on January 19, 2024. A public meeting was held on February 20, 2024, at the Ferris Junior High School Cafeteria, 1002 E. 8th Street, Ferris, Texas 75125.

The public comment period ended on February 20, 2024. This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapters 39, 50, and 55. The Texas Legislature enacted SB 709, effective September 1, 2015, amending the requirements for comments and contested case hearings. This application is subject to those changes in the law.

IV. EVALUATION OF HEARING REQUESTS

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

A. Response to Requests

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

Responses to hearing requests much specifically address:

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

¹ 30 Tex. Admin. Code § 55.209(d).

² 30 Tex. Admin. Code § 55.209(e).

B. Hearing Request Requirements

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

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

A hearing request must substantially comply with the following:

- (1) give the name, address, telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who is responsible for receiving all official communications and documents for the group;
- (2) identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.⁴

C. Requirement that Requestor be an Affected Person

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

³ 30 Tex. Admin. Code § 55.201(c).

⁴ 30 Tex. Admin. Code § 55.201(d).

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application, may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
 - (6) whether the requester timely submitted comments on the application which were not withdrawn; and
 - (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- (d) In making this determination, the commission may also consider, to the extent consistent with case law:
 - (1) the merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
 - (2) the analysis and opinions of the ED; and
 - (3) any other expert reports, affidavits, opinions, or data submitted by the ED, the applicant, or hearing requestor.⁵

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

⁵ 30 Tex. Admin. Code § 55.203(a)-(d).

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

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

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

D. Referral to the State Office of Administrative Hearings

When the Commission grants a request for a contested case hearing, the Commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearing (SOAH) for a hearing.⁸ The Commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

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

⁶ 30 TEX. ADMIN. CODE § 55.205(a)(1)-(3).

⁷ 30 Tex. Admin. Code § 55.205(b)(1)-(4).

⁸ 30 Tex. Admin. Code § 50.115(b).

⁹ 30 TEX. ADMIN. CODE § 55.203(d).

V. ANALYSIS OF THE HEARING REQUESTS

For this permit application, the public comment period ended on February 20, 2024, and the time for filing Requests for a Hearing or a Request for Reconsideration (RFR) ended on January 2, 2025. The Commission received timely hearing requests from the following entities and individuals: Ellis County; Kimberley and Mark Curry; Laura J. Garza; Ryan James; Kelly Kern; Thomas G. Pritchett; Clair B. Verchot; and Carolyn Taylor. The Executive Director's analyses determined whether the Request followed TCEQ rules, if the requestor qualifies as an affected person, what issues may be referred for a possible hearing, and the length of that hearing.

A. Whether the Request complies with 30 Tex. Admin. Code §§ 55.201-205.

1. Persons Affected

Ellis County, through its representative, Emily Rogers, submitted timely comments and request for a contested case hearing on July 26, 2023, containing the name, address, and telephone number of Ms. Rogers, pursuant to 30 Tex. Admin. Code § 55.201(d)(1) and (3). The submission also included the permit number as required in the notice and pursuant to 30 Tex. Admin. Code § 55.201(d)(4). Ellis County also submitted timely public comments to form the basis of their hearing request pursuant to 30 Tex. Admin. Code § 55.201(c).

In its request, Ellis County states that it is an affected person because the County has interests related to legal rights, duties, privileges, powers, or economic interests affected by the application that are not common to the general public under 30 Tex. Admin. Code § 55.203. Ellis County stated it has specific statutory authority relating to water quality within its jurisdiction under Tex. Water Code §§ 26.171 and 26.173, and therefore an affected person under 30 Tex. Admin. Code § 55.203.

Regarding the proposed facility, Ellis County raises the following issues that it claims will affect their interests: (1) the proposed facility and discharge would pose a risk and detrimental effect on the public health, safety, and welfare of the County's citizens; (2) the Draft Permit does not comply with the Texas Surface Water Quality Standards and antidegradation requirements in 30 Tex. Admin. Code Chapter 307; (3) the Applicant is not an experienced facility and system operator; and (4) the Application may not meet all of the TCEQ's requirements and may not have been properly noticed. Because Ellis County's request specifies its statutory authority relating to water quality within its jurisdiction as required by 30 Tex. Admin. Code § 55.203, and its concerns are related to issues that are relevant and material to the application, the County's request demonstrates a reasonable relationship exists between these interests and the proposed facility. Therefore, the Executive Director recommends that the Commission Find that Ellis County is an affected person and grant its hearing request.

2. Persons Not Affected

The following individuals submitted timely comments and hearing requests: Kimberley and Mark Curry; Laura J. Garza; Ryan James; Kelly Kern; Thomas G. Pritchett; Clair B. Verchot; and Carolyn Taylor.

In these hearing requests, which ranged in length from a single sentence to a paragraph, the requestors expressed general concerns regarding impacts to their property due to the proposed discharge, odors, and flooding. The attached satellite map shows each requestor's distance relative to the proposed facility and outfall, which are as follows:

- Kimberley and Mark Curry: 8.41 miles;
- Laura J. Garza: 1.52 miles from proposed facility, 1.57 miles from proposed outfall;
- Ryan James: 47.58 miles;
- Kelly Kern: 3.77 miles;
- Thomas G. Pritchett and Clair B. Verchot: 3.59 miles;¹⁰ and
- Carolyn Taylor: 3.62 miles.

Upon review of these requests, none adequately articulated how they would be affected in a manner not common to the general public or describe a personal justiciable interest that would likely be impacted by the proposed facility and discharge under the factors listed in 30 Tex. Admin. Code § 55.203(c). Further, their distances relative to the proposed facility and outfall does not corroborate their claims of affectedness. Therefore, the Executive Director recommends that the Commission find these requestors are not affected persons under 30 Tex. Admin. Code § 55.203 and deny their hearing requests.

¹⁰ According to CID, both of these individual requestors reside at the same address.

B. Whether the Issues the Requestor Raised are Referable to the State Office of Administrative Hearings (SOAH).

The Executive Director has analyzed issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the Response to Comments. None of the issues were withdrawn. For applications submitted on or after September 1, 2015, only those issues raised in a timely comment by a requester whose request is granted may be referred.¹¹ The issues raised for this application and the Executive Director's analysis and recommendations are discussed below.

Issue 1. Whether issuance of the Draft Permit will be protective of human health.

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. <u>If the Commission finds that Ellis County is an affected person and</u> <u>grants its hearing request, the Executive Director recommends the Commission refers</u> <u>the issue to SOAH.</u>

Issue 2. Whether the Draft Permit complies with the applicable antidegradation rules under 30 Tex. Admin. Code Chapter 307.

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. <u>If the Commission finds that Ellis County is an affected person and</u> <u>grants its hearing request, the Executive Director recommends the Commission refers</u> <u>the issue to SOAH.</u>

Issue 3. Whether the Draft Permit is protective of water quality and the receiving waters in accordance with the applicable regulations, including the Texas Surface Water Quality Standards.

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. <u>If the Commission finds that Ellis County is an affected person and</u> <u>grants its hearing request, the Executive Director recommends the Commission refers</u> <u>the issue to SOAH.</u>

¹¹ TEX. GOVT. CODE § 2003.047(e-1); 30 TEX. ADMIN. CODE § 55.211(c)(2)(A)(ii).

Issue 4. Whether the Application is accurate and contains all required information.

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. <u>If the Commission finds that Ellis County is an affected person and</u> <u>grants its hearing request, the Executive Director recommends the Commission refers</u> <u>the issue to SOAH.</u>

Issue 5. Whether the Applicant's compliance history should change or alter the terms of the Draft Permit.

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. <u>If the Commission finds that Ellis County is an affected person and</u> <u>grants its hearing request, the Executive Director recommends the Commission refers</u> <u>the issue to SOAH.</u>

Issue 6. Whether the Application was properly noticed under the applicable public notice rules in 30 Tex. Admin. Code Chapter 39.

The issue involves a disputed question of mixed fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. <u>If the Commission finds that Ellis County is an affected person and</u> <u>grants its hearing request, the Executive Director recommends the Commission refers</u> <u>the issue to SOAH.</u>

VI. <u>EXECUTIVE DIRECTOR'S RECOMMENDATION</u>

The Executive Director recommends the following actions by the Commission:

- 1. Find that Ellis County is an affected person, and grant its hearing request.
- 2. Find that all remaining reqeustors are not affected persons and deny their requests.
- 3. Should the Commission decide to refer this case to SOAH:
 - a. refer the case to Alternative Dispute Resolution for a reasonable time; and
 - b. refer the identified issue above in Section V.B to SOAH for a contested case hearing.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel, Executive Director

Phillip Ledbetter, Director Office of Legal Services

Charmaine Backens, Deputy Director Environmental Law Division

Fernando Salazar Martinez, Staff Attorney Environmental Law Division State Bar No. 24136087 P.O. Box 13087, MC 173 Austin, Texas 78711-3087 Phone: (512) 239-3356 Email: Fernando.martinez@tceq.texas.gov

REPRESENTING THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

VII. <u>CERTIFICATE OF SERVICE</u>

I certify that on March 10, 2025, the Executive Director's Response to Hearing Requests for TPDES Permit No. WQ0016272001was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic delivery, interagency mail, or by deposit in the U.S. Mail.

Fernando Salazar Martinez, Staff Attorney State Bar No. 24136087

MAILING LIST OurCalling, Inc. TCEQ Docket No./TCEQ Expediente N.º 2025-0081-MWD; TPDES Permit No./TPDES Permiso N.º WQ0016272001

FOR THE APPLICANT/PARA EL SOLICITANTE

Wayne Walker, CEO and Pastor OurCalling, Inc. P.O. Box 140428 Dallas, Texas 75214

Charles Gillespie, President Consulting Environmental Engineers, Inc. 150 North Harbin Drive, Suite 408 Stephenville, Texas 76401

Victoria Lahr, Project Manager Authors Building Group 500 Industry Way Proper, Texas 75078

<u>REQUESTER(S)/SOLICITANTE(S)</u> See attached list/Ver listado adjunto.

<u>FOR THE EXECUTIVE DIRECTOR/PARA</u> <u>EL DIRECTOR EJECUTIVO</u> via electronic mail/vía correo electrónico:

Fernando Salazar Martinez Staff Attorney Texas Commission on Environmental Quality Environmental Law Division, MC-173 P.O. Box 13087 Austin, Texas 78711

Abdur Rahim, Technical Staff Texas Commission on Environmental Quality Water Quality Division, MC-148 P.O. Box 13087 Austin, Texas 78711 Ryan Vise, Deputy Director Texas Commission on Environmental Quality External Relations Division Public Education Program, MC-108 P.O. Box 13087 Austin, Texas 78711

<u>FOR PUBLIC INTEREST COUNSEL/PARA</u> <u>ABOGADOS DE INTERÉS PÚBLICO</u> via electronic mail/vía correo electrónico:

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

<u>FOR ALTERNATIVE DISPUTE</u> <u>RESOLUTION/PARA LA RESOLUCIÓN</u> <u>ALTERNATIVA DE DISPUTAS</u> via electronic mail/vía correo electrónico:

Kyle Lucas Texas Commission on Environmental Quality Alternative Dispute Resolution, MC-222 P.O. Box 13087 Austin, Texas 78711

FOR THE CHIEF CLERK/PARA EL SECRETARIO OFICIAL via eFilings:

Docket Clerk Texas Commission on Environmental Quality Office of Chief Clerk, MC-105 P.O. Box 13087 Austin, Texas 78711 https://www.tceq.texas.gov/goto/efilings

REQUESTER(S)/SOLICITANTE(S)

On behalf of Ellis County: Rogers, Emily W BICKERSTAFF HEATH DELGADO ACOSTA LLP Ste C400 1601 S Mopac Expy Austin Tx 78746-7009

Curry, Kimberly & Mark 1440 Hunsucker Rd Palmer Tx 75152

Garza, Laura J. 1011 Wickliffe Rd Ferris Tx 75125-9788

Kern, Kelly 1010 Slate Rock Rd Ennis Tx 75119-0201

Pritchett, Thomas G. 411 S Old Walnut Ennis Tx 75119-9446

Ryan, James 1300 Spring Ridge Ln Flower Mound Tx 75028-3780

Taylor, Carolyn 377 Eleven League Rd Ennis Tx 75119-0298

Verchot, Claire B. 411 S Old Walnut Ennis Tx 75119-9446

Attachment A





