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Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 10, 2025

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

RE: **IN THE MATTER OF THE APPLICATION BY OURCALLING, INC.  
FOR WATER QUALITY PERMIT NO. WQ0016272001  
TCEQ DOCKET NO. 2025-0081-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script, reading "Eli Martinez".

Eli Martinez, Senior Attorney  
Assistant Public Interest Counsel

cc: Mailing List

**TCEQ DOCKET NO. 2025-0081-MWD**

**IN THE MATTER OF THE  
APPLICATION BY OURCALLING,  
INC. FOR WATER QUALITY PERMIT  
NO. WQ0016272001**

**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO HEARING  
REQUESTS**

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

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Requests in the above-referenced matter and respectfully shows the following.

**I. Introduction**

**A. Summary of Position**

Based on the information submitted in the request and a review of the information available in the Chief Clerk's file on this application, OPIC recommends the Commission grant the hearing request of Ellis County. The requestor is an affected person based on their statutory authority over or interest in the issues relevant to the application. OPIC further recommends the Commission refer the issues listed in Section III.B. for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days.

## **B. Description of Facility**

On December 12, 2022, OurCalling, Inc. (OurCalling or Applicant) applied to the TCEQ for a new permit, TPDES Permit No. WQ0016272001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.03 million gallons per day (MGD) in the Interim I phase, a daily average flow not to exceed 0.06 MGD in the Interim II phase, and a daily average flow not to exceed 0.09 MGD in the Final phase. The discharge route for the proposed discharge is to an unnamed tributary, then to Bear Creek, then to Red Oak Creek, then to Upper Trinity River in Segment No. 0805 of the Trinity River Basin. The proposed wastewater treatment facility would serve the OurCommunity-Ferris project.

The OurCommunity-Ferris Wastewater Treatment Facility would be a mixed bed biofilm reactor (MBBR). Each phase would include 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, co-disposal 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.

If this draft permit is issued, the OurCommunity-Ferris WWTF would be located at 231 Wickliffe Road in Ellis County and would be a MBBR system. The facility has not been constructed.

### **C. Procedural Background**

The TCEQ declared the application by OurCalling 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, and in English and Spanish in *La Prensa Comunidad* on February 14, 2023. The ED completed the technical review of the application on April 17, 2023. 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 a Notice of Public Meeting in the *Waxahachie Daily Light* on January 19, 2024. The public meeting was held on February 20, 2024, at the Ferris Junior High School Cafeteria, 1002 E. 8th Street, in Ferris County. The public comment period ended on February 20, 2024.

Timely hearing requests were filed by Kimberly & Mark Curry; Laura J. Garza; Kelly Kern; Thomas G. Pritchett; James Ryan; Carolyn Taylor; Claire B. Verchot; and Emily W. Rogers, on behalf of Ellis County.

### **II. Applicable Law**

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

for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

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

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the 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 and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

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

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

30 TAC § 55.203(c).

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

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

30 TAC § 55.203(d).

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission shall grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application. Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201(d).

### **III. Analysis of Hearing Request**

#### **A. Whether the requestors are affected persons**

##### **1. Ellis County**

The Commission received timely comments and a hearing request from Emily Rogers on behalf of Ellis County. The request states that Ellis County has authority over various functions within its territory, including transportation, emergency services, and health and safety that may be affected by the proposed wastewater treatment plant and its discharge. The County is concerned about potential contamination of surface water within the region that may impact the County's ability to effectively provide emergency services, may impact health and safety by lowering water quality, and negatively impact the County's infrastructure.

The request also states that the County has statutory authority to inspect the public water in its jurisdiction to assess whether the quality of the water meets water quality standards and to determine whether wastewater dischargers are discharging in compliance with the requirements of their permit. Additionally, the County has authority to enter property to make inspections and investigations of conditions relating to water quality and the right to bring a civil suit against any person that violates or threatens to violate Chapter 26 of the Texas Water Code. As an inspector, investigator, and potential enforcer of a TCEQ-issued permit, the request concludes, the County is affected by the issuance of this permit and has a personal interest in ensuring that any permit issued by the TCEQ meets the state-law requirements, is protective of water quality, and is enforceable.

In addition to concerns relating to surface water contamination, the County is concerned about whether notice was issued properly and whether the Applicant has sufficient experience and expertise as a wastewater treatment operator. These interests are protected by the law under which the application will be considered. Further, as a governmental entity with statutory authority over the issues raised in their request, the County's concerns are unique to its jurisdiction and therefore distinguishable from the concerns of the general public. Also, due to Applicant's proposed location within Ellis County, a reasonable relationship exists between the County's claimed interests and the regulated activity. Finally, their shared proximity increases the likelihood that the regulated activity will impact health, safety, use of property, and use of the



impacted natural resource. OPIC correspondingly finds that Ellis County is an affected person and recommends that the Commission grant its hearing request.

## 2. Individual Requestors

Timely hearing requests were received by the Commission from James Ryan, Carolyn Taylor, and Laura Garza. Each of these requests either solely states that a contested case hearing is being requested, or otherwise generally expresses a concern that does not specifically identify a particular justiciable interest he or she believes will be adversely affected in a manner not common to members of the general public. Additionally, the ED has created a map that indicates each of these requestors lives between 1.72 and 47.33 miles from the proposed outfall. Due to the intervening distance, there is an insufficient likelihood the regulated activity will impact the health and safety of these persons or the use of their property to be determined affected persons under the Commission's rules.

Additional timely hearing requests were submitted by Kimberly & Mark Curry, Kelly Kern, Thomas G. Pritchett, and Claire B. Verchot. These requestors raised concerns regarding regionalization, notice, erosion, odors, and potential negative impacts to surface water and aquatic and terrestrial life. These interests are protected by the law under which the application will be considered. However, the ED's map indicates that these requestors live between 3.71 and 8.51 miles from the proposed facility's outfall. Due to the intervening distance, there is an insufficient likelihood the regulated activity will impact the

health and safety of these persons or the use of their property to be determined affected persons under the Commission's rules.

**B. Which issues raised in the affected requestor's hearing request are disputed**

The affected person's hearing request raises the issues of whether surface water quality will be negatively impacted by the proposed facility, whether notice was properly issued, and whether the Applicant has sufficient experience and expertise as a wastewater treatment operator. There is no agreement between the requestor and the ED on these issues.

OPIC recommends that the following disputed issues of fact be referred to SOAH for a contested case hearing:

- Whether the Draft Permit requires sufficient professional expertise and experience relating to system operation.
- Whether the Draft Permit will protect surface water quality.
- Whether notice was properly provided to the public in accordance with Chapter 39 of the Commission's rules.

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

The issues raised by Ellis County are issues of fact. If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A).

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

The issues raised in Ellis County's request were raised in the comment period and have not been withdrawn. *See* 30 TAC §§ 55.201(c) and (d)(4), 55.211(c)(2)(A).

**E. Whether the affected person's hearing request is based on issues raised solely in a withdrawn public comment**

No public comments were withdrawn. Therefore, Ellis County's hearing request is not based on any withdrawn public comments.

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

The hearing request raises issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). In order to refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny this permit. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-251 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated "[a]s to materiality, the substantive law will identify which facts are material...it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs"). Relevant and material issues are those governed by the substantive law under which this permit is to be issued. *Id.*

## 1. System Operation

The Applicants is required to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations, and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies. The Draft Permit also contains various operational requirements relating to proper operation of the facility.<sup>1</sup> Therefore, the issue of whether the Draft Permit requires sufficient professional expertise and experience relating to system operation is a relevant and material issue that may be referred to SOAH for a contested case hearing.

## 2. Water Quality

Additionally, the Commission is responsible for the protection of water quality under TWC Chapter 26 and 30 TAC Chapters 307 and 309. The Texas Surface Water Quality Standards (Standards) in 30 TAC Chapter 307 require that the proposed permit “maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the

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<sup>1</sup> For example, Operation Requirement No. 1 requires the Applicant to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained at all times; Operational Requirement No. 9 requires that domestic wastewater treatment plants be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined by 30 TAC Chapter 30.

state.” 30 TAC § 307.1. The issue of surface water quality is therefore a relevant and material issue that may be referred to SOAH for a contested case hearing.

### 3. Notice

Lastly, various notice requirements are contained in Chapter 39 of the Commission’s rules and required for water quality permits, including requirements to publish the NORI and NAPD, mail notice to certain entities, and provide a copy of the application for public viewing. The issue of notice is therefore a relevant and material issue that may be referred to SOAH for a contested case hearing.

### **G. Maximum Expected Duration of Hearing**

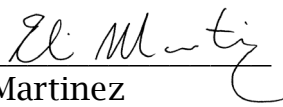
Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September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

#### IV. Conclusion

OPIC recommends that the Commission grant the hearing request of Ellis County and refer the matter to SOAH for an evidentiary hearing on the issues in Section III.B above for a hearing duration of 180 days.

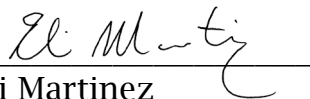
Respectfully submitted,

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By:   
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#### CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2025, the original of the Office of Public Interest Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

  
Eli Martinez

**MAILING LIST  
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TCEQ DOCKET NO. 2025-0081-MWD**

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**REQUESTER(S):**

See attached list.

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