

**TCEQ DOCKET NO. 2025-0289-MWD**

<b>APPLICATION BY CARLAND, INC.</b>	<b>§</b>	<b>BEFORE THE</b>
<b>FOR TEXAS POLLUTANT</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>DISCHARGE ELIMINATION SYSTEM</b>	<b>§</b>	
<b>PERMIT NO. WQ0016449001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**CARLAND, INC.'S RESPONSE TO HEARING REQUESTS**

TO THE HONORABLE COMMISSIONERS:

COMES NOW, Applicant Carland, Inc. (Applicant) and files this Response to Hearing Requests relating to the issuance of proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016449001, and would respectfully show the following:

**I. SUMMARY OF RESPONSE**

The Texas Commission on Environmental Quality (TCEQ or Commission) received hearing requests from five individuals, none of whom meet the definition of an affected person. Accordingly, the Commission should deny all hearing requests, and if it refers this case to the State Office of Administrative Hearings (SOAH) for hearing, direct that the proceeding not exceed 180 days consistent with section 2003.047(e-2)(1) of the Texas Government Code.

**II. BACKGROUND**

Applicant seeks authorization to discharge treated domestic wastewater from a wastewater treatment plant (WWTP) that will serve single family homes in a residential development known as the Grayson Meadows Village, located in Grayson County, Texas. The proposed TPDES permit would allow a daily average flow of 0.25 million gallons per day (MGD) in one phase which is considered a minor discharge. The Draft Permit proposes effluent limitations of 10 mg/L five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), 15 mg/L total suspended solids (TSS), 3 mg/L ammonia-nitrogen (NH<sub>3</sub>-N), 126 colony forming units (CFU) of *E. coli* per 100 ml, and 4.0 mg/L minimum dissolved oxygen (DO).

According to the Executive Director (ED),<sup>1</sup> these limits comply with the Texas Surface Water Quality Standards (TSWQS) and the State of Texas Water Quality Management Plan, and the proposed discharge will not impair existing water quality, which the ED's staff confirmed through a Tier 1 and 2 antidegradation review. Treated effluent will be discharged to an unnamed tributary, then to Deaver Creek, then to Big Mineral Creek, then to Lake Texoma in Segment No. 0203 of the Red River Basin. The designated uses for Segment No. 0203, which is approximately 13 miles from the discharge point, are primary contact recreation, public water supply, and high aquatic life use (ALU). In accordance with 30 Texas Administrative Code (TAC) § 307.5 and 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. The ED further concluded that no Tier 2 antidegradation review is required since no water bodies with exceptional, high or intermediate ALU are present within the stream reach assessed. No significant degradation of water quality is expected and existing uses will be maintained and protected. In all technical respects, the proposed permit complies with all Commission rules and policy.

### **III. AUTHORITY**

Hearing requests must meet the criteria set out in 30 TAC § 55.201, including the requirements that the request be based on comments not withdrawn and the request identified the requestor's location and distance relative to the proposed facility or activity.<sup>2</sup> In addition, "for applications filed on or after September 1, 2015, [the hearing request] must be based only on the requestor's timely comments."<sup>3</sup> That means that if the requestors identified in Section IV below did not file comments during the comment period, their requests may not be considered. Similarly, if a requestor filed a comment and hearing request prior to the 30-day hearing request period following the ED's Response to Comments (RTC) but did not address a legal right, duty, privilege, power, or economic interest that is different than members of the general public and filed no

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<sup>1</sup> April 18, 2024, ED's Statement of Basis/Technical Summary and Executive Director's Preliminary Decision at 2.

<sup>2</sup> 30 TAC § 55.201(c), (d)(2).

<sup>3</sup> 30 TAC § 55.201(c).

further pleading substantiating their standing, that requestor may not be considered an “affected person.”

For a hearing request to be granted, an “affected person” with a personal justiciable interest must demonstrate a non-speculative injury resulting from the granting of the permit. Section 55.203 provides the standing criteria for the individual requestors in this case, as follows:<sup>4</sup>

- (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 general public does not qualify as a personal justiciable interest.
- (b) Except as provided by § 55.103 of this title (relating to Definitions), 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;
  - (6) for a hearing request on an application filed on or after September 1, 2015, whether the requester 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.

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<sup>4</sup> The map attached as **Exhibit A** shows the physical location of all individual requestors relative to the proposed site.

- (d) In determining whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the commission may also consider the following:
  - (1) the merits of the underlying application and supporting documentation in the commission’s 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. . . .

The individuals identified in Section IV below lack a justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.<sup>5</sup>

#### IV. RESPONSE TO HEARING REQUESTS

Five total hearing requests were received – all should be denied. Of those filings, one was untimely,<sup>6</sup> and none of the rest raised relevant and material issues (i.e., flooding, erosion and property values) that were within the jurisdiction of TCEQ in TPDES permitting cases. Also several commenters/requestors are not located on the discharge route and/or filed comments prior to the RTC but never filed actual hearing requests substantiating their standing by identifying any legal right, duty, privilege, power, or economic interest that would make them uniquely affected by the application.

Applicant’s specific responses to the filings received are as follows:

1. **Radd Rotello**, 1609 Swindle Rd., Howe, Texas 75459-1717. The February 11, 2025 request should be denied as **untimely** as it was received by the TCEQ after the February 6, 2025 deadline for hearing requests.<sup>7</sup> Moreover, Mr. Rotello is not an affected person in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c), (d) as his property is not adjacent to Applicant’s property, it is not located on the discharge route, and most of his concerns relating to flooding and erosion are not relevant and material to a TPDES permitting case as they are outside

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<sup>5</sup> 30 TAC § 55.203(a).

<sup>6</sup> Pursuant to 30 TAC § 55.201(a), hearing requests were due no later than 30 days after the Office of Chief Clerk transmitted the ED’s Response to Comments or by **February 6, 2025**.

<sup>7</sup> While Mr. Rotello also signed the petition, described below, the petition does not include any statement that it is a request for contested case hearing nor provide any information relating to the petitioners’ individual standing claims.

of the jurisdiction of the TCEQ. Furthermore, any stated water quality concerns are common to the general public and fail to demonstrate a justiciable interest.

2. **Terri Baze**, 809 Dagnan Rd., Howe, Texas 75459-1751. The request should be denied because all the issues raised by Ms. Baze – flooding and erosion – are not relevant and material to a TPDES permitting case as they are outside the jurisdiction of the TCEQ. Moreover, Ms. Baze is not an affected person in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c), (d) as her property is not located on the discharge route nor adjacent to the WWTP site.

3. **Mary Cecilia McGill**, 781 Dagnan Rd., Howe, Texas 75459-1703. The request should be denied because all the issues raised by Ms. McGill – flooding and erosion – are not relevant and material to a TPDES permitting case as they are outside the jurisdiction of the TCEQ.

4. **Tommy Dodson**, 117 Bandana Drive, Whitesboro, Texas 76273 -1428; This is a **comment, not a hearing request**. There is no request for contested case hearing, evidentiary hearing, public hearing or any kind of review forum. Mr. Dodson's transmittal is merely public comment voicing concerns on several issues – property values, air contamination and alternative septic systems – that are not relevant and material to a TPDES permitting case as they are outside the jurisdiction of the TCEQ. Mr. Dodson is also not an affected person in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c), (d) as his property is not located on the discharge route.

5. **Steve Hortsman**, 108 Hidden Valley Airpark, Shady Shores, Texas 76208. This request filed before the RTC (but not followed up with any pleading substantiating standing or a justiciable interest) should be denied because Mr. Hortsman is not an affected person in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c), (d). The address provided in his hearing request near Denton, Texas is over 34 miles from the WWTP. While Mr. Hortsman claims to own land “immediately to the north” that is “planned for a future homesite,” he fails to provide a specific address to identify this property. Moreover, his request is non-specific and relates to the proximity of the WWTP to existing and future homesites, generally, without specifying any issues that are relevant and material to a TPDES permitting case. In order to have a justiciable interest,

Mr. Hortsman must show that a concrete, particularized, actual or imminent injury faces him due to Carland's TPDES permit and a hypothetical or speculative injury is not enough.<sup>8</sup>

6. **John Kyle McGill**, 429 Dagnan Rd., Howe, Texas 75459-1701. The July 16, 2024 request should be denied because the request for "public hearing," does not state that it is an individual request for contested case hearing on his behalf, but states that it is filed on behalf of the citizens of Southmayd and landowners, generally. This request does not identify any issues, including issues that are relevant and material to a TPDES permitting case. The request also fails to identify any member of a group or association, let alone a formal name for a group or association, who would have standing in their own right to qualify for associational or group standing in accordance with 30 TAC § 55.205.

Also on July 16, 2024 but in another filing, Mr. McGill filed 64 identical email comments all of which were received at 3:53 PM. These comments show that they were filed by Mr. McGill and they include the same paragraph, stating opposition and disagreement on the basis of flooding and property values which are not relevant and material to a TPDES permitting case as they are outside the jurisdiction of TCEQ. Attached to these comments is a petition signed by 63 other people (in addition to Mr. McGill), 52 of whom live at the different addresses. These comments were logged into the TCEQ's Commission Integrated Database by the Office of Chief Clerk in the names of the individuals who signed the petition, not the person who submitted them. The petition includes a one-line instruction, "[i]f you are interested in protesting the sewer plant that will be dumping water across our land, please sign below," but contains no other information relating to the legal right, duty, privilege, power, or economic interest of the individual petitioners that would make each individual an affected person consistent with TCEQ's rules. Nowhere in the petition is there a request for contested case hearing nor assertion of justiciable interest by any of the individual petitioners nor the one individual, Mr. McGill, who submitted them.

If, contrary to his explicit statements, Mr. McGill's July 16, 2024 requests were actually intended as individual hearing requests, he did not follow-up the request after the RTC substantiating his standing. Thus, Mr. McGill has not only failed to demonstrate how he is an affected person in accordance with Texas Water Code § 5.115 and 30 TAC § 55.203(c), (d)

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<sup>8</sup> *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008).

demonstrating that his concerns are not common to the general public and demonstrating a justiciable interests, but he has also not articulated relevant and material issues that are within the jurisdiction of the TCEQ in a TPDES permitting case.

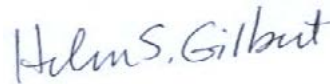
## **V. CONCLUSION**

Since no timely hearing request has identified a justiciable interest and relevant and material issues within TCEQ's jurisdiction in TPDES permitting cases, none of the hearing requests should be granted.

## **VI. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully prays that the Commission deny all hearing requests; and if it grants any hearing requests, that the case be referred for an evidentiary hearing not to exceed 180 days.

Respectfully submitted,



By: \_\_\_\_\_

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## CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on this 7th day of April 2025:

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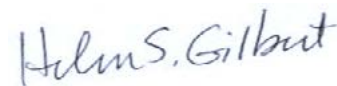
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