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Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 7, 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 CARLAND, INC. FOR
TPDES PERMIT NO. WQ0016449001
TCEQ DOCKET NO. 2025-0289-MWD**

Dear Ms. Gharis:

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

Sincerely,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-0289-MWD

**APPLICATION BY CARLAND,
INC FOR TPDES PERMIT NO.
WQ0016449001**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**OFFICE OF PUBLIC INTEREST COUNSEL’S RESPONSE
TO REQUESTS FOR HEARING**

To the 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 requests for hearing in the above-referenced matter.

I. Introduction

A. Summary of Position

Before the Commission is an application by Carland, Inc. (Applicant or Carland) for a new Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0016449001 which would authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 0.25 million gallons per day (MGD). For the reasons detailed below, OPIC recommends the Commission grant the hearing requests of Terri Baze and Mary McGill. OPIC further recommends the Commission refer the issues specified in Section III.G for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days.

B. Description of Application and Facility

As previously stated, Carland submitted an application to the TCEQ for a new TPDES permit No. WQ00164499001 which would authorize the discharge of

treated domestic wastewater at an annual average flow not to exceed 0.25 MGD. The Applicant proposes to operate Grayson Meadows Village Wastewater Treatment Facility (facility), which would serve Grayson Meadows Village. The facility would be an activated sludge process plant operated in the complete mix mode. The facility would be located approximately 0.63 miles northeast of the intersection of Southmayd Road and Wrangler Drive, Grayson County 76268. The treated effluent would 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.

C. Procedural Background

The TCEQ received the application on November 27, 2023, and declared it administratively complete on January 12, 2024. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on January 26, 2024, in the *Harold Democrat* and published on February 2, 2024, in the *Tex Mex News*. The Notice of Application and Preliminary Decision was published on July 18, 2024, in the *Herald Democrat* and published on July 15, 2024, in the *Tex Mex News*. The public comment period ended on August 19, 2024. The Chief Clerk mailed the Executive Director (ED)'s decision and Response to Comments on January 7, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was February 6, 2025.¹

¹ The Commission received a hearing request from Radd Rotello on February 11, 2025. Because this request was submitted after the deadline, OPIC did not include it in OPIC's analysis of hearing requests.

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 Texas Administrative Code (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. 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 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 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 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.

III. Analysis of Hearing Requests

A. Whether the requestors are affected persons

Terri Baze

The Commission received timely comments and a hearing request from Ms. Baze. Her hearing request raised concerns regarding potential environmental impacts, safety risks – particularly for cattle – and the potential impact on the ongoing use of her property. The ED's GIS map indicates that Ms. Baze's property is located approximately 0.67 miles from the outfall.

Ms. Baze's concerns regarding environmental impact, safety, and the continued use of her property are interests protected by the law under which the application will be considered. *See* 30 TAC § 55.203(c)(1). Given the proximity of Ms. Baze's property to the proposed outfall, OPIC finds that a reasonable relationship exists between the interests claimed and the activity regulated. *See* 30 TAC § 55.203(c)(3). Finally, Ms. Baze's proximity increases the likelihood that the regulated activity will impact the use of her property and the impacted natural resource. *See* 30 TAC § 55.203(c)(4), (5). Therefore, OPIC finds that Ms. Baze qualifies as an affected person in accordance with 30 TAC § 55.203.

Mary McGill

The Commission received timely comments and a hearing request from Mary McGill. The hearing request raised concerns about the proposed discharge crossing her property, safety risks associated with managing and accessing cattle, and the continued use of her property. According to the ED's GIS map, Ms. McGill's property is located approximately 0.75 miles from the proposed outfall. OPIC also notes that McGill Mary C family Trust is listed on the Application's adjacent landowner list with the same address provided in Ms. McGill's hearing request. Although the hearing request was not submitted on behalf of the Trust, it appears that Ms. McGill's property may be located adjacent to the proposed site, as indicated in the Application's adjacent landowner list.

Ms. McGill's concerns regarding safety risks and impacts on the continued use of her property are interests protected by the law under which the application will be considered. *See* 30 TAC § 55.203(c)(1). Given the proximity of

Ms. McGill's property to the proposed outfall, OPIC finds that a reasonable relationship exists between the interest claimed and the activity regulated. *See* 30 TAC § 55.203(c)(3). Finally, Ms. McGill's proximity increases the likelihood that the regulated activity will impact the use of her property and the impacted natural resource. *See* 30 TAC § 55.203(c)(4), (5). Therefore, OPIC finds that Ms. McGill qualifies as an affected person in accordance with 30 TAC § 55.203.

Steve Horstman

The Commission received a timely hearing request from Mr. Horstman during the public comment period. Mr. Horstman opposed the location of the facility because it is adjacent to existing homesites and land he owns that is planned for a future homesite.² He stated that there is ample space further east and downstream that would have less impact on current and future homesites. Mr. Horstman urged the Commission to reject the proposed location and consider future applications in areas farther from the residential development.

The hearing request does not explain how Mr. Horstman has an interest that differs from that of the general public, as required by 30 TAC § 55.201(d)(2). Additionally, a map prepared by ED staff shows that Mr. Horstman is located approximately 34.78 miles from the proposed outfall. After reviewing Mr. Horstman's location on the map and considering the intervening distance, OPIC finds that Mr. Horstman lacks the proximity needed to establish a reasonable relationship between any claimed interest and the regulated activity. Further, the

² We reviewed the Application's adjacent landowner list and did not find Mr. Horstman's name included, and therefore, OPIC is unable to verify whether he owns land adjacent to the proposed site.

intervening distance diminishes any likelihood that the regulated activity will impact his health, safety, or use of property.

Without a personal justiciable interest, a hearing requestor cannot qualify as an affected person. Given that Mr. Horstman did not raise any personal justiciable interest different from that of the general public, OPIC finds that Mr. Horstman does not qualify as an affected person.³

John McGill on behalf of the Citizens of Southmayd and Landowners

The Commission received timely comments and a hearing request from John McGill.⁴ Mr. McGill stated that he would like to request a hearing on behalf of the citizens of Southmayd and landowners who will be directly affected. The hearing request did not include any concerns or explain how the activity, or the facility would impact the requestors, or demonstrate a personal justiciable interest distinct from that of the general public, as required by 30 TAC § 55.201(d)(2).

As explained above, without a personal justiciable interest, a hearing requestor cannot qualify as an affected person. Given that the hearing request

³ While OPIC is unable to find that Mr. Horstman qualifies as an affected person based on the information provided in his hearing request, we do note that pursuant to 30 TAC § 55.211(e), if any requests for contested case hearing are granted in this matter, and a preliminary hearing is convened at SOAH, any person whose request is denied may attend and seek to be admitted as a party.

⁴ Mr. McGill submitted comments expressing concerns about potential harm to land and livestock, the discharge of wastewater onto his property, and negative impacts on property values. The comments also included a list of residents, their property addresses, and phone numbers who are also in disagreement with the facility. However, these concerns were not included in Mr. McGill's hearing request on behalf of the citizens of Southmayd and landowners. Mr. McGill submitted only written comments and did not file a separate hearing request.

did not raise any personal justiciable interest, OPIC finds that citizens of Southmayd and landowners do not qualify as affected persons.⁵

B. Which issues raised in the hearing request are disputed

The affected persons raised the following disputed issues:

1. Whether the draft permit is adequately protective of the environment, as well as the health and safety of the requestors' cattle and livestock;

Raised by: Ms. Baze

2. Whether the draft permit includes adequate provisions to protect the requestors' use and enjoyment of their property;

Raised by: Ms. Baze, Ms. McGill

3. Whether the proposed discharge route is properly characterized in the application, and, as an operational feature of the facility, will function properly; and

Raised by: Ms. Baze, Ms. McGill

4. Whether the proposed discharge will cause excessive erosion.

Raised by: Ms. Baze, Ms. McGill

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

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). The issues listed above are issues of fact.

⁵ While OPIC is unable to find that citizens of Southmayd and landowners qualify as affected persons based on the information provided in the hearing request, we do note that pursuant to 30 TAC § 55.211(e), if any requests for contested case hearing are granted in this matter, and a preliminary hearing is convened at SOAH, any person whose request is denied may attend and seek to be admitted as a party.

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

All of the issues were raised during the public comment period.

E. Whether the hearing request is based on issues raised solely in a withdrawn public comment

No public comments were withdrawn in this matter. Therefore, the hearing request is not based on issues raised in withdrawn public comments.

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

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 a permit. The Commission can only consider issues within its jurisdiction. Therefore, relevant and material issues include those governed by the substantive law relating to the permit at issue. *Anderson v. Liberty Mutual, Inc.*, 477 U.S. 242, 248-51 (1986).

Environmental and Health Impacts

Texas Surface Water Quality Standards (Standards) in 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 state." 30 TAC § 307.1. The Standards also require that "[a] permit must contain effluent limitations that protect existing uses and preclude degradation of existing water quality." 30 TAC § 307.2(d)(5)(D). Additionally, surface waters must not be toxic to humans from ingestion, consumption of aquatic organisms,

or contact with the skin. 30 TAC § 307.4(d). Therefore, Issue Nos. 1 and 2 are relevant and material to the Commission's decision regarding this application.

Suitability of the Discharge Route

The affected persons in this matter have concerns regarding proposed discharge crossing their property and also questioned whether the unnamed tributary would be capable of carrying the effluent discharge proposed in the draft permit. This concern appears to be based on the suitability and functioning of the discharge route. Proper functioning of a discharge route as an operational feature of a wastewater treatment plant may be addressed under 30 TAC § 309.12, which contains requirements related to site selection in order to minimize possible contamination of water in the state.

Further, the 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 state.” 30 TAC § 307.1. An inaccurate or inadequate representation of the effluent route could prevent ED staff from conducting a complete and accurate analysis. Therefore, Issue no. 3 is relevant and material to the Commission’s decision regarding this application and is appropriate for referral to SOAH.

Erosion

The Commission has concluded in other proceedings that the issue of soil erosion is not within TCEQ’s jurisdiction, therefore, Issue No. 4 regarding erosion is not relevant and material.

G. Issues Recommended for Referral

For the reasons stated above, OPIC recommends referral of the following issues:

1. Whether the draft permit is adequately protective of the environment, as well as the health and safety of the requestors' cattle and livestock;
2. Whether the draft permit includes adequate provisions to protect the requestors' use and enjoyment of their property; and
3. Whether the proposed discharge route is properly characterized in the application, and, as an operational feature of the facility, will function properly.

H. Maximum expected duration for the contested case hearing

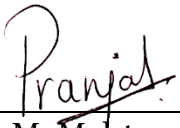
Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 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 estimates that the maximum expected duration of a hearing on this application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

V. Conclusion

For the reasons discussed above, OPIC recommends the Commission grant the hearing requests of Terri Baze and Mary McGill and refer the issues specified in Section III.G for a contested case hearing at SOAH with a maximum duration of 180 days.

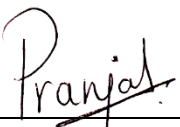
Respectfully submitted,

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By: 
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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2025, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Pranjal M. Mehta

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TCEQ DOCKET NO. 2025-0289-MWD**

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REQUESTER(S):

See attached list.

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