

Lori Rowe

From: PUBCOMMENT-OCC
Sent: Thursday, December 9, 2021 10:18 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0001539000
Attachments: 2021.12.08 BCWK comment letter re Oxyvinyls.pdf

MWD
118833

H

Associate to permit no. WQ0001539000

From: kristen@bayoucitywaterkeeper.org <kristen@bayoucitywaterkeeper.org>
Sent: Wednesday, December 8, 2021 4:48 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0001539000

REGULATED ENTY NAME BATTLEGROUNND CHLOR-ALKALI PLANT

RN NUMBER: RN100217363

PERMIT NUMBER: WQ0001539000

DOCKET NUMBER: 2016-2142-IWD-E

COUNTY: HARRIS

PRINCIPAL NAME: OXY VINYLs LP

CN NUMBER: CN600129126

FROM

NAME: Kristen Schlemmer

E-MAIL: kristen@bayoucitywaterkeeper.org

COMPANY: Bayou City Waterkeeper

ADDRESS: 2010 NORTH LOOP W STE 103
HOUSTON TX 77018-8106

PHONE: 5126191583

FAX:

COMMENTS: Bayou City Waterkeeper works with communities affected by flooding and water pollution across the Lower Galveston Bay watershed. We aim to hold industries to the standards set by the Clean Water Act, with the goal of

protecting the waters that flow through our bayous, creeks, and neighborhoods into our coastal bays. As further detailed in the attached letter, we submit these comments and request a contested case hearing to address concerns associated with the impacts of Proposed Industrial Wastewater TPDES Permit No. WQ0001539000 on water quality.



December 8, 2021

Office of the Chief Clerk, Texas Commission on Environmental Quality
Comments submitted electronically via <https://www14.tceq.texas.gov/epic/eComment/>.

**Re: Major Amendment to Industrial Wastewater Permit no. WQ0001539000
Bayou City Waterkeeper's Comments and Request for Contested Case Hearing**

To the Executive Director:

Bayou City Waterkeeper works with communities affected by flooding and water pollution across the Lower Galveston Bay watershed. We aim to hold industries to the standards set by the Clean Water Act, with the goal of protecting the waters that flow through our bayous, creeks, and neighborhoods into our coastal bays. As further detailed below, we submit these comments and request a contested case hearing to address concerns associated with the impacts of Proposed Industrial Wastewater TPDES Permit No. WQ0001539000 on water quality.

I. Background

Since 1995, the applicant OxyVinyls has operated a chlor-alkali manufacturing facility in La Porte, Texas. The chlor-alkali process is an industrial process for the electrolysis of sodium chloride solutions. It is the technology used to produce chlorine and sodium hydroxide (lye/caustic soda) and creates risks to water quality, including increased mercury loads, that must be accounted for through this permit.

The applicant has had a permit for this facility since at least February 20, 2007. Its current permit expired on July 1, 2020. On December 30, 2019, the applicant sought permission for a major amendment to this permit, along with renewal. The major amendment contemplates increasing the discharge of treated wastewater at a volume not to exceed a daily average flow of 2,400,000 gallons per day via Outfall 001; and increasing the effluent limitations for total copper, total lead, total nickel, total zinc, and total suspended solids at Outfall 001.

On October 19, 2021, the Executive Director made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. If approved, the permit will expire in three years. The proposed permit was opened up to public comment, and the applicant triggered a 30-day public notice period with publication of notice in the Pasadena Citizen on November 10, 2021. These public comments are timely because it is being submitted within 30 days of that notice, or before December 10, 2021.

1. The major amendment will authorize increased discharges and raise limits on several pollutants

The existing permit authorizes the discharge of treated process wastewater, utility wastewaters, stormwater, and previously monitored effluent (treated domestic wastewater via Outfall 201), and stormwater commingled with de minimis quantities of process wastewater and utility wastewaters on an intermittent and flow-variable basis via Outfall 002.

The major amendment contemplates increasing the discharge of treated wastewater at a volume not to exceed a daily average flow of 2,400,000 gallons per day via Outfall 001, and increasing the effluent limitations for total copper, total lead, total nickel, total zinc and total suspended solids at Outfall 001.

According to the applicant, increasing the discharge of treated wastewater from 2.15 million gallons per day to 2.40 million gallons per day would give the Battleground Facility increased opportunity to treat wastewater from the Stormwater reservoir ("SWR") before discharging wastewater via Outfall 001. The SWR receives highly variable amounts of stormwater and intermittently receives small amounts of wastewater. Water in the SWR is recycled back to treatment in the pH Reliability Tank and effluent from the tank is discharged via Outfall 001. An increase in the daily average flow limit at Outfall 001 will provide the Battleground Facility improved control over water levels in the SW as well as increased opportunity to treat SW wastewater and reduce process wastewater discharges via stormwater Outfall 002.

In conjunction with increased flow for Outfall 001, the applicant also requested increases in mass and concentration-based effluent limitations for copper, lead, nickel, and zinc. The limits in the current TPDES permit are water quality-based effluent limits ("WQBELs"), which are derived from the WQBEL daily average and maximum concentrations, times the discharge daily average flow. The applicant represents that WQBELs may actually decrease depending on the flows the TCEQ uses in WQBEL screening for the receiving water; however, the applicant requests any allowable increases in mass and concentrations. The mass and concentration-based effluent limitations for copper, lead, nickel, and zinc were increased based on the increases in wastewater flows from contributing sources resulting from plant expansion production increases.

Oxy requested to increase the daily average limit for total suspended solids ("TSS") for Outfall 001 from 448 pounds per day to 600 pounds per day based on increased flow and production. The applicant has stated that production levels have increased from 1,585 tons per day in the 2003 TPDES permit application to 1,662 tons per day in the current application. While production and flow have increased, the TSS daily average limit has not changed in the permit since at least 1995. The technology-based effluent limits ("TBELs") in past permit fact sheets have included the ELG-based calculation for TSS for process wastewater only. Oxy requested that allocation calculations for TSS contributions from utility wastewater, stormwater, and domestic wastewater be added to the fact sheet.

According to the TCEQ, the discharge route is via Outfalls 001 and 002 to Phillips Ditch, thence to Santa Ana Bayou, thence to Houston Ship Channel/San Jacinto River Tidal in Segment No. 1005 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic

life use for the Phillips Ditch and high aquatic life use for the Santa Ana Bayou. The designated uses for Segment No. 1005 are non-contact recreation and high aquatic life use. Effluent limitations and conditions established in the draft permit comply with state water quality standards and the applicable water quality management plan. The effluent limits in the draft permit will maintain and protect the existing instream uses.

One major environmental side effect of chlor-alkali plants is the production of toxic mercury.¹ Mercury accumulates in structures and equipment over time that the plant operates.² It also concentrates in soils at the site of the plant, contaminates run-off, and is discharged through wastewater from the site.³ The buildup of mercury in water bodies harms trophic chains in natural environments.⁴ The existing permit does not include any mercury-related effluent limits or monitoring requirements.

The permit also proposes to increase the discharge of other materials notorious for their negative effects on the environment: lead, nickel, and zinc. The presence of lead in water bodies can cause stunted growth and reproduction in plants and animals, in addition to neurological impacts on vertebrates.⁵ Copper and zinc also accumulate in plants and animals, with potentially harmful consequences for human health and the health of ecosystems.⁶

2. The major amendment potentially will affect impaired waters

The facility is located near the Ship Channel and San Jacinto Battleground site, on the east side of State Park Road 1836 (Vista Road) approximately 1,000 feet northeast of its intersection with State Highway 134 (Independence Parkway) in the City of La Porte, Harris County, Texas 77571. Discharges are via Outfalls 001 and 002 to Phillips Ditch, thence to Santa Ana Bayou, thence to Houston Ship Channel/San Jacinto River Tidal in Segment No. 1005 of the San Jacinto River Basin.

According to the TCEQ, Segment No. 1005 is currently listed on the State's inventory of impaired and threatened waters (the 2020 Clean Water Act Section 303(d) list). The listing is for dioxin in edible tissue and polychlorinated biphenyl (PCBs) in edible tissue in Houston Ship Channel / San Jacinto River Tidal - From Downstream I-10 to Morgans Point (AUs 1005_01, 1005_02, 100_03, and 105_04). Information submitted with the application states that dioxin and PCBs are not manufactured or used in any process at the facility. Further, analytical data reported in the application for PCBs at Outfall 001 does not exceed 7 percent of the calculated daily average water quality-based effluent limitation. Therefore, the proposed effluent discharge is not expected to cause additional loadings of dioxin in edible tissue and PCBs in edible tissue.

¹ Mihaiescu, et al, Environmental Issues within the Chlor-Alkali Manufacturing Industry --Mercury Cell Process, Bulletin UASVM Agriculture 69(2)/2012, available at <https://www.researchgate.net/publication/236154688> Environmental Issues within the Chlor-Alkali Manufacturing Industry -Mercury Cell Process

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ <https://www.epa.gov/lead-air-pollution/basic-information-about-lead-air-pollution>

⁶ <https://www.greenspec.co.uk/building-design/copper-production-environmental-impact/>; *see also* <http://www.idph.state.il.us/envhealth/factsheets/zinc.htm>

The unclassified receiving water uses are minimal aquatic life use for the Phillips Ditch and high aquatic life use for the Santa Ana Bayou. The designated uses for Segment No. 1005 are noncontact recreation and high aquatic life use.

These waters are directly upstream of Burnet Bay and the Ship Channel. Burnet Bay is classified for Aquatic Life Use, Contact Recreation Use, General Use, and Fish Consumption Use. TCEQ, Fact Sheet: Burnett Bay. Based on observation, it continues to be used in a manner consistent with these uses. It has not been assessed for several pollutants of concern. TCEQ, Water Assessment: Burnett Bay.

3. In a review characterized as “preliminary,” the permit application states this major amendment will not contribute to antidegradation of these already impaired waters

The permit application states:

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 Santa Ana Bayou and Segment No. 1005, which have been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The applicant does not specify the criteria or methodology used to conduct its antidegradation reviews. Neither does it explain why its reviews are merely preliminary. As such, it is very difficult to determine whether it correctly predicted how its proposed permit would affect existing water quality uses.

It is unclear why this review is only preliminary.

II. Comments

1. These comments are timely

On October 19, 2021, the Executive Director made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. If approved, the permit will expire in three years. The proposed permit was opened up to public comment, and the applicant triggered a 30-day public notice period with publication of notice in the Pasadena Citizen on November 10, 2021. These public comments are timely because it is being submitted within 30 days of that notice, or before December 10, 2021.

2. Several modifications proposed by this major amendment violate the anti-backsliding principle

a. Legal standard

According to the Clean Water Act ("CWA"), permits issued under the National Pollutant Discharge Elimination System program, including TPDES permits, must include effluent limitations that are as stringent as necessary to meet water quality standards. 33 C.F.R. § 1342(O)(3); 40 C.F.R. § 122.44(d)(l). The CWA requires that such permits being renewed, reissued, or modified contain effluent limitations that are at least as stringent as those in the previous permit. 33 C.F.R. § 1342(O)(1).

EPA and CWA regulations require limitations to control all pollutants that are or may be discharged at a level that "will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard," including both narrative and numeric criteria. 40 C.F.R. § 122.44(d)(l)(i). If a discharge has the reasonable potential to cause or contribute to such an excursion, the permit must contain water quality-based effluent limitations for the pollutant. 40 C.F.R. § 122.44(d)(l)(iii). When a "discharge causes, or has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity." 40 C.F.R. § 122.44(d)(l)(iv).

Additionally, when a discharge "causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity," unless "the permitting authority demonstrates...that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards." 40 C.F.R. § 122.44(d)(l)(v).

When developing water quality-based effluent limitations, the permitting authority must ensure that "The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards" and that "Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by the EPA" 40 C.F.R. § 122.44(d)(l)(vii).

The CWA only allows a permit to be modified to contain a less stringent effluent limitation applicable to a pollutant if:

- (A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;
- (B) (i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit...;

(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

33 C.F.R. § 1342(O)(2).

b. Allowing increases in total copper, total lead, total nickel, and total zinc violates the anti-backsliding principle

Oxy-Vinyls requests increases in concentration and mass based effluent limitations for total copper, total lead, total nickel, and total zinc. The permit application states that "The mass and concentration based effluent limitations for copper, lead, nickel, and zinc were increased based on the increases in wastewater flows from contributing sources resulting from plant expansion production increases," and contends that the alterations meet the 40 CFR Part 122.44(l)(2)(i)(A) anti-backsliding exemption involving cases where "Material and substantial alterations or additions to the permitted facility occurred after permit issuance, which justify the application of a less stringent effluent limitation."

However, Oxy-Vinyls cannot claim the exemption under 40 CFR Part 122.44(l)(2)(i)(A), because the modifications to its facility do not constitute "material and substantial alterations or additions," nor do they fall under any other exemptions listed in 33 C.F.R. § 1342(O)(2); Oxy-Vinyls's increasing wastewater flows that increase effluent levels of copper, lead, nickel, and zinc, is not a circumstance that justifies this exception to the anti-backsliding principle of 33 C.F.R. § 1342(O).

Nor can Oxy-Vinyls claim an exemption based on new information that would justify less stringent effluent limitations as compared to those set by the prior permit. 33 C.F.R. § 1342(O)(B). Oxy-Vinyl's situation also does not merit other exemptions that would justify reevaluation, such as events over which the permittee has no control, or a situation in which the permittee has installed treatment facilities to meet the prior permit's effluent limitations that have

been properly operated and maintained but still do not meet the prior effluent limitations. 33 C.F.R. § 1342(O).

Because none of the regulatory exemptions apply to Oxy-Vinyls that would allow it to comply with less stringent effluent limitations, the conditions of its draft permit would constitute a violation of the Clean Water Act's anti-backsliding principle. Failing to incorporate effluent standards in its draft permit that are either just as stringent or more stringent than those in the prior permit would therefore place it in non-compliance with the requirements of state and federal law.

c. Allowing an increase in the daily average total suspended solids effluent limitations at Outfall 001 violates the anti-backsliding principle

Oxy-Vinyls also requested an increase in its daily average limit for total suspended solids ("TSS") for Outfall 001 from 448 pounds TSS per day to 600 pounds TSS per day "based on increased flow and production." It argues that its production levels have increased from 1,585 tons per day in the 2003 TPDES permit application to 1,662 tons per day in the current permit application, and that its effluent limitations should similarly increase.

Oxy-Vinyls states that its Battleground Facility is subject to effluent limitations and guidelines ("ELG"s) at 40 C.F.R. § 415 Subpart F that allows for a TSS mass discharge of 0.51 pounds TSS per thousand pounds per day of production. Since its current production level is 3,324 thousand pounds per day of production, it contends that its allocation is 1,695 pounds per day TSS as a daily average. This would mean that its request of 600 pounds TSS per day was only 35 percent of its allocation.

Oxy-Vinyls also states that the technology-based effluent limitations ("TBELs") in prior permit fact sheets should have included the ELG-based calculation for TSS contributions from utility wastewater, storm water, and domestic wastewater, but instead only listed the ELG-based calculation for TSS for process wastewater.

For these reasons, Oxy-Vinyls argues that increasing its effluent limitation standards meets the 40 CFR Part 122.44(l)(2)(i)(A) anti-backsliding exemption involving cases where "Material and substantial alterations or additions to the permitted facility occurred after permit issuance, which justify the application of a less stringent effluent limitation."

However, just as Oxy-Vinyls cannot claim the exemption under 40 CFR Part 122.44(l)(2)(i)(A) to allow an increase in total copper, total lead, total nickel, and total zinc effluent limitations at Outfall 001, it also cannot claim this exemption to allow an increase in the daily average total suspended solids effluent limitations at Outfall 001.

Importantly, the modifications to its facility do not constitute "material and substantial alterations or additions," nor do they fall under any other exemptions listed in Clean Water Act § 1342(O)(2). That is, in this case, Oxy-Vinyls's increase in effluent levels of daily average total

suspended solids is not a circumstance that justifies this exception to the anti-backsliding principle of 33 C.F.R. § 1342(O).

Nor can it claim an exemption based on new information that would justify less stringent effluent limitations as compared to those set by the prior permit. 33 C.F.R. § 1342(O)(B). Oxy-Vinyl's situation also does not merit other exemptions that would justify reevaluation, such as events over which the permittee has no control, or a situation in which the permittee has installed treatment facilities to meet the prior permit's effluent limitations that have been properly operated and maintained but still do not meet the prior effluent limitations. 33 C.F.R. § 1342(O).

Because none of the regulatory exemptions apply to Oxy-Vinyls that would allow it to comply with less stringent effluent limitations, the conditions of its draft permit would constitute a violation of the Clean Water Act's anti-backsliding principle. Failing to incorporate effluent standards in its draft permit that are either just as stringent or more stringent than those in the prior permit would therefore place it in non-compliance with the requirements of state and federal law.

3. Neither the applicant nor TCEQ has performed a proper antidegradation review

Texas's antidegradation policy prohibits regulated activities from having any negative impact on surface water, regardless of whether that impact meets water-quality criteria and uses. See 30 Tex. Admin. Code § 307.5. Regulated activities include "actions regulated under state and federal authority that would increase pollution of the water in the state. Such actions include authorized wastewater discharges, total maximum daily loads (TMDLs), waste load evaluations, and any other miscellaneous actions, such as those related to man-induced nonpoint sources of pollution, that may impact the water in the state." 30 Tex. Admin. Code § 307.5(a). This project's impacts on water quality subject it to this policy.

The program's antidegradation policy applies to, "Anyone discharging wastewater that would constitute a new source of pollution or increased source of pollution from any industrial, public, or private project or development," and requires "a level of wastewater treatment consistent with the provisions of the Texas Water Code and federal environmental laws. See 40 C.F.R. § 258.1; Tex. Admin. Code § 307.5(5). "Degradation" means to lower water quality by more than a "de minimis" extent, but not to the extent that an existing use is impaired." Tex. Admin. Code at § 307.5(b)(2). Antidegradation refers to maintaining and protecting surface water that already meets or exceeds fishable/swimmable quality levels.

Where a regulatory decision would lower water quality in waters that exceeded the minimum standards, the anti-degradation policy requires two separate and independent showings: the lowering of water quality must (1) not be harmful to any assigned or attainable use of the receiving waters; and (2) be necessary for important economic or social development.

Oxy-Vinyls concedes a Tier II review is needed but states the review is only preliminary. This does not suffice. The applicant must complete this antidegradation review. Nothing about the information provided suffices to show that the modifications requested will (1) not be harmful to

any assigned or attainable use of the receiving waters or (2) is necessary for any important economic or social development.

4. To adequately protect water quality and public health, the permit should contain an effluent limit and monitoring requirement for mercury

Chlor-alkali facilities may produce mercury, which should be monitored in effluent. The Industrial Wastewater Application Technical Report included with the Executive Director's preliminary decision shows that mercury was present in samples taken from Outfall 1 and Outfall 2. Technical Report at page 16, Table 2; page 17, Table 2. But the draft permit contains no requirements requiring testing or monitoring for mercury at either outfall.

a. Mercury is a priority pollutant that requires ongoing monitoring

Elemental mercury is toxic to humans by ingestion or contact with human skin by vapor, methylmercury or any other form.⁷ To put the danger of mercury's presence in effluent in perspective, just 1 ng/L (nanogram per liter) is equivalent to .000001mg/L (milligrams per liter). This is equivalent to 000000001/g (grams).² A pound of weight in your hand is essentially 453.592g (grams).³ Symptoms of mercury poisoning include poor muscle coordination, tingling and numbness in fingers and toes.⁴ In pregnant mothers, there are some studies that "suggest that children of mothers with blood mercury levels as low as 30 to 40 ng/ml may exhibit delayed development and subtle nervous system effects during early childhood."⁵ Some reports suggest that similar blood mercury levels may be associated with visual, nervous, or cardiovascular system effects in adults."⁶

As water soluble methylmercury, mercury can accumulate in the tissue of fish.⁷ Through bioaccumulation, this methylmercury finds its way into humans and affects the nervous and cardiovascular systems as well as eyesight.⁸ Of particular vulnerability to methylmercury or mercury in any form, such as vapor from small bodies of water contaminated with mercury, are fetuses in pregnant mothers, elderly people and children.⁹ The potential for mercury to vaporize or even contaminate ground water is greater without definitive limits.

Excluding a total effluent limit for mercury will compound the chances for water contamination, which places at risk area residents who eat mercury contaminated fish, come into contact with mercury vapor, or methylmercury in soil or water. Here, the potential for toxicity is present and can be much more efficiently regulated and kept from human contact via mercury vapor or methylmercury in water and soil by testing for mercury before it is discharged into the environment.

b. The permit must include a limit on and monitoring for mercury

⁷ Centers for Disease Control and Prevention, Toxic Substances Portal: mercury (2015) <https://www.atsdr.cdc/phs/phs.asp?id=112&tid=24> Last visited 12/3/18.

Under § 307.4(d) of Title 30 of the Texas Administrative Code, the criteria to protect aquatic life from chronic toxicity applies to surface waters with aquatic life use of limited, intermediate, high, or exceptional as designated by §307.10. See 30 Tex. Admin. Code § 307.4(d). Toxic criteria to protect human health for consumption of fish apply to waters with a sustainable or incidental fishery as described in §307.6(d). Chronic toxicity is defined as toxicity that continues for a long-term period after exposure to toxic substances. See 30 Tex. Admin. Code § 307.3(a)(12). This chronic exposure may produce sub-lethal effects but also may kill aquatic life. An incidental fishery is defined as a level of fishery that applies to water bodies that are not considered to have a sustainable fishery, but that have an aquatic life use of limited to exceptional. See 30 Tex. Admin. Code § 307.3(a)(31).

At a minimum, the general criteria for Texas Surface Water Quality Standards under § 307.4(d) applies based on the designated uses of the receiving waters. Given the potential for chlor-alkali facilities to produce mercury and sampling results confirming the presence of mercury in effluent, TCEQ should find good cause and include limits on mercury effluent and a monitoring requirement with this major amendment.

III. Request for contested case hearing

Bayou City Waterkeeper requests a contested case hearing, but requests the hearing be held when the time is proper. The applicant must submit a complete application, containing an adequate antidegradation review, before a hearing can be conducted. Because of this deficiency, the application for a major amendment remains incomplete, and should not be submitted to SOAH until it is complete. But once the ED determines this application is complete, Bayou City Waterkeeper requests a contested case hearing to address the following issues:

- Whether the major amendment violates the anti-backsliding principle by allowing increases in concentration and mass-based effluent limitations for total copper, total lead, total nickel, and total zinc;
- Whether the major amendment violates the anti-backsliding principle by allowing increases in the daily average total suspended solids effluent limitations at Outfall 001; and
- Whether the major amendment complies with the antidegradation policy under 30 Tex. Admin. Code § 307.5.
- Whether the permit is adequately protective of water quality and public health by not including an effluent limit or monitoring requirement for mercury.

Thank you for the opportunity to submit these comments and request for contested case hearing. Here is contact information for Bayou City Waterkeeper for further communications related to this permit application:

**Bayou City Waterkeeper
Attn: Kristen Schlemmer
2010 N Loop W #103
Houston TX 77018
info@bayoucitywaterkeeper.org
713-714-8442**

Sincerely,

Kristen Schlemmer, Legal Director
Kelley McIntire, Legal Fellow
Bayou City Waterkeeper