

TCEQ DOCKET NO. 2022-1586-IWD

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| APPLICATION BY | § | BEFORE THE |
| ROHM AND HAAS TEXAS | § | TEXAS COMMISSION |
| INCORPORATED FOR | § | ON |
| TPDES PERMIT NO. WQ0000458000 | § | ENVIRONMENTAL QUALITY |

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this response to Hearing Requests (Response) on the application by Rohm and Haas Texas Incorporated (Applicant or Rohm and Haas), for renewal with major amendment of Texas Pollutant Discharge Elimination System (TPDES) permit No. WQ0000458000 and on the ED’s preliminary decision. The Office of the Chief Clerk received one hearing request, from Kristen Schlemmer on behalf of Bayou City Waterkeeper (Waterkeeper).

Attached for Commission consideration are the following:

Attachment A—Executive Director’s Satellite Map

I. Description of Facility

Rohm and Haas Texas Incorporated has applied to the TCEQ for a major amendment with renewal to revise the effluent limits to reflect an increase in production and a reconfiguration of the diffuser at Outfall 001 and to revise existing Other Requirement No. 14 to allow more than *de minimis* discharges at Outfall 009 in certain circumstances. The draft permit authorizes the discharge of treated process wastewater, stormwater, treated utility wastewaters, sanitary wastewater, untreated utility wastewater, and stormwater from construction activity at a daily average flow not to exceed 8,400,000 gallons per day via Outfall 001; utility wastewater, non-process area stormwater, hydrostatic test water from clean tankage, and stormwater from construction activity on an intermittent and flow-variable basis via Outfalls 002, 003, and 004; treated process wastewater (primarily when the diffuser sump pump capacity is exceeded at Outfall 001 or other emergency discharge situations occur), stormwater, treated utility wastewaters, sanitary wastewater, untreated utility wastewater, and stormwater from construction activity on an intermittent and flow-variable basis via Outfall 009; and treated process wastewater, stormwater, treated utility wastewaters, sanitary wastewater, untreated utility wastewater, and stormwater from construction activity at a daily average flow not to exceed 2,500,000 gallons per day via Outfall 011.

The applicant currently operates Rohm and Haas Texas Deer Park Plant, a chemical manufacturing plant that produces bulk and specialty organic chemicals, thermoplastic resins, and hydrogen cyanide. As described in the application, the facility is located at 1900 Tidal Road, north of State Highway 225 and west of State Highway 134, in the City of Deer Park, Harris County, Texas 77536.

If the draft permit is issued, the treated effluent will be discharged via Outfalls 001, 009, and 011 directly to the Houston Ship Channel Tidal; via Outfalls 002, and 004 to the Tucker Bayou portion of the Houston Ship Channel Tidal; via Outfall 003 to East Fork Patrick Bayou, thence to Patrick Bayou, thence to the Houston Ship Channel Tidal in Segment No. 1006 of the San Jacinto River Basin. The unclassified receiving water use is no significant aquatic life use for East Fork Patrick Bayou. The designated uses for Segment No. 1006 are navigation and industrial water supply.

II. Procedural Background

The TCEQ received the application for a major amendment with renewal to TPDES permit WQ0000458000 on July 23, 2020, and declared it administratively complete on October 28, 2020. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in (*Houston Chronicle* dba) *Bay Area Citizen* on November 11, 2020, and a Spanish language notice was published in *La Voz* on November 15, 2020. The technical review was complete on October 4, 2021, and the Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published in (*Houston Chronicle* dba) *Pasadena Citizen* on December 22, 2021, and a Spanish language notice was published in *La Voz* on December 22, 2021. The comment period for this application closed on January 21, 2022. 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 Texas Administrative Code (TAC) Chapter 39, 50, and 55.

III. The Evaluation Process for Hearing Requests

House Bill 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. Senate Bill 709 revised the requirements for submitting public comment and the Commission's consideration of hearing requests. The evaluation process for hearing requests is as follows:

A. Response to Requests

The ED, the Public Interest Counsel, and the Applicant may each submit written responses to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- 1) whether the requester is an affected person;
- 2) whether issues raised in the hearing request are disputed;
- 3) whether the dispute involves questions of fact or of 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 in writing by filing a withdrawal letter with the chief clerk prior to the filing of the ED's RTC;

- 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.

30 TAC § 55.209(e)

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

Affected persons may request a contested case hearing. The request must be made in writing and timely filed with the chief clerk. The request must be based only on the requestor's timely comments and may not be based on an issue that was raised solely in a public comment that was withdrawn by the requester prior to the filing of the ED's RTC. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- 1) give the time, address, daytime 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 shall be responsible for receiving all official communications and documents for the group;
- 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 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 executive director'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. 30 TAC § 55.201(d)

C. Requirement that Requestor be an Affected Person/ "Affected Person" Status

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected" person. 30 TAC § 55.203 sets out who may be considered an affected person.

- 1) 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.
- 2) Except as provided by 30 TAC § 55.103, governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- 3) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - a) whether the interest claimed is one protected by the law under which the application will be considered;
 - b) distance restrictions or other limitations imposed by law on the affected interest;
 - c) whether a reasonable relationship exists between the interest claimed and the activity regulated;
 - d) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
 - e) likely impact of the regulated activity on use of the impacted natural resource by the person;
 - f) whether the requestor timely submitted comments on the application which were not withdrawn; and
 - g) for governmental entities, their statutory authority over or interest in the issues relevant to the application.
- 4) In making affected person determinations, the Commission may also consider, to the extent consistent with case law:
 - a) 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;
 - b) the analysis and opinions of the executive director; and
 - c) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203

D. Referral to the State Office of Administrative Hearings (SOAH)

“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 SOAH for a hearing.” 30 TAC § 50.115(b). 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 whose hearing request is granted; and

3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

IV. Analysis of the Requests

The Executive Director has analyzed the hearing requests to determine whether they comply with Commission rules, if the requestors qualify as affected persons, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

A. Whether the Requestors Complied with 30 TAC §§ 55.201 (c) and (d)

The Executive Director received one timely hearing request, from Kristen Schlemmer on behalf of Bayou City Waterkeeper.

The Executive Director concludes that Bayou City Waterkeeper's hearing request complied with 30 TAC § 55.201(c).

Bayou City Waterkeeper's hearing request provided the name, address, and telephone number of the person that filed the request, Kristen Schlemmer. The hearing request failed to identify Waterkeeper's personal justiciable interest affected by the application and how they would be affected in a manner not common to members of the general public. Additionally, it failed to state the requestor's location and distance from the Applicant's facility.

The Executive Director concludes that Bayou City Waterkeeper's hearing request did not comply with 30 TAC § 55.201(d).

B. Whether the hearing request by group or association complied with 30 TAC § 55.205

1) Bayou City Waterkeeper

Kristen Schlemmer submitted a timely hearing request on behalf of Bayou City Waterkeeper.¹ The hearing request did not identify a member of Waterkeeper that would otherwise have standing to request a hearing in their own right, as required for a request by a group or association.² The issues Waterkeeper raised include whether application documents were publicly available and whether the public participation process was satisfied, antidegradation, and whether the draft permit should be denied or altered based on the Applicant's compliance history. Bayou City Waterkeeper identify their organizational purpose as working with communities affected by flooding and water pollution across the Lower Galveston Bay watershed. They aim to hold industries to the standards set by the Clean Water Act, with the goal of protecting the waters that flow through the bayous, creeks, and neighborhoods into the coastal bays. The Executive Director concludes that the interests the group or association

¹ 30 TAC § 55.205(b)(1).

² 30 TAC § 55.205(b)(2).

seeks to protect are germane to the organization's purpose.³ To have group standing, the hearing request was required to identify an individual that would have standing in their own right to request a hearing, which Bayou City Waterkeeper's request failed to include.

The Executive Director concludes that Bayou City Waterkeeper did not satisfy the requirements in 30 TAC § 55.205 for hearing request by a group or association.

C. Whether Issues Raised are Referable to SOAH for a Contested Case Hearing

The Executive Director has analyzed issues in accordance with the regulatory criteria. The issues were raised by Bayou City Waterkeeper and were not 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. The Executive Director does not recommend granting the request of Bayou City Waterkeeper to SOAH, however if the Commissioners grant the hearing request, the following issues should be considered in making that determination.

Issue 1: Whether the draft permit and executive director's preliminary decision were publicly available and whether the public participation process was satisfied. (RTC Response 1)

The issue involves a disputed question of fact, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

Issue 2: Whether the draft permit complies with applicable antidegradation requirements. (RTC Response 3)

The issue involves a disputed question of fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. If it can be shown the draft permit does not comply with applicable antidegradation requirements, that information would be relevant and material to a decision on the application. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

Issue 3: Whether the draft permit should be denied or altered based on the Applicant's Compliance History. (RTC Response 4)

The issue involves a disputed question of fact and law, was raised during the comment period, was not withdrawn, and is relevant and material to the issuance of the draft permit. Rohm and Haas Texas Incorporated most recent compliance history rating is 1.39, a satisfactory classification. Should the Commissioners refer this matter to SOAH, the Executive Director recommends referring this issue to SOAH.

³ 30 TAC § 55.205(b)(3).

V. Contested Case Hearing Duration

If there is a contested case hearing on this application, the Executive Director recommends the duration of the hearing be 180 days from the preliminary hearing to the presentation of a proposal for decision to the Commission.

VI. Conclusion

The Executive Director recommends the following actions by the Commission:

1. The Executive Director recommends that the Commission find that Bayou City Waterkeeper is not an affected person and deny its hearing request.
2. Should the Commission find that Bayou City Waterkeeper is an affected person, the Executive Director recommends referring the following timely raised relevant and material issues to SOAH:

Issue 1: Whether the draft permit and executive director's preliminary decision were publicly available and whether the public participation process was satisfied. (RTC Response 1)

Issue 2: Whether the draft permit complies with applicable antidegradation requirements. (RTC Response 3)

Issue 3: Whether the draft permit should be denied or altered based on the Applicant's Compliance History. (RTC Response 4)

3. If referred to SOAH, first refer the matter to Alternative Dispute Resolution for a reasonable period.

Respectfully submitted,

Texas Commission on Environmental Quality

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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on March 8, 2023, the original of the “Executive Director’s Response to Hearing Requests” for TPDES Permit No. WQ0000458000 for Rohm and Haas Texas Incorporated was filed with the TCEQ’s Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



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MAILING LIST
Rohm and Haas Texas Incorporated
TCEQ Docket No. 2022-1586-MWD; TPDES Permit No. WQ0000458000

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INTERESTED PERSON(S)

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Attachment A

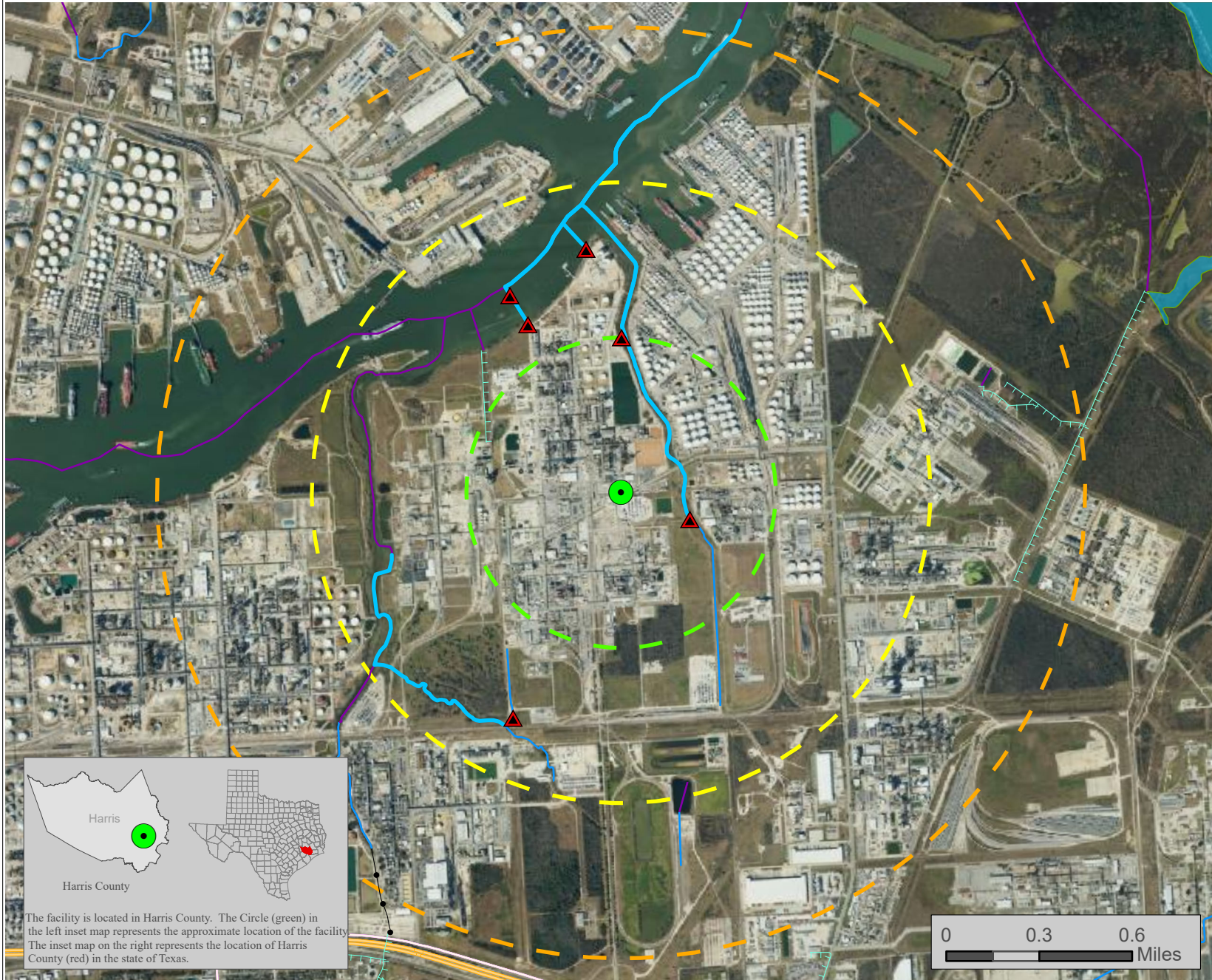
Rohm and Haas Texas Incorporated WQ0000458000

Map Requested by TCEQ Office of Legal Services
for Commissioners' Agenda



*Protecting Texas by
Reducing and
Preventing Pollution*

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087
Date: 11/14/2022
CRF 0080062
Cartographer: cshrade

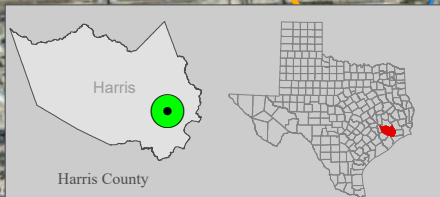


- Requestor
- ▲ Outfalls
- Facility
- ⌋ ⌋ 0.5 mi Radius
- ⌋ ⌋ 1.0 mi Radius
- ⌋ ⌋ 1.5 mi Radius
- 1 mi Discharge Routes
- Waterbodies
- Watercourses**
- Connector
- ⌋ ⌋ Canal/Ditch
- — ● Pipeline
- Stream/River
- Artificial Path
- Coastline

The requestor, Kristen Schlemmer on behalf of Bayou City Waterkeeper, is located 20.99 miles from the facility.

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.



The facility is located in Harris County. The Circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Harris County (red) in the state of Texas.

