

**Lori Rowe**

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**From:** PUBCOMMENT-OCC  
**Sent:** Thursday, December 9, 2021 3:13 PM  
**To:** PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ  
**Subject:** FW: Public comment on Permit Number WQ0000458000  
**Attachments:** 2021.12.09 BCWK comments re Rohm & Haas (1)2.pdf

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**From:** info@bayoucitywaterkeeper.org <info@bayoucitywaterkeeper.org>  
**Sent:** Thursday, December 9, 2021 1:31 PM  
**To:** PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>  
**Subject:** Public comment on Permit Number WQ0000458000

**REGULATED ENTY NAME** ROHM AND HAAS TEXAS DEER PARK PLANT

**RN NUMBER:** RN100223205

**PERMIT NUMBER:** WQ0000458000

**DOCKET NUMBER:**

**COUNTY:** HARRIS

**PRINCIPAL NAME:** ROHM AND HAAS TEXAS INCORPORATED

**CN NUMBER:** CN605605831

**FROM**

**NAME:** Kristen Schlemmer

**E-MAIL:** [info@bayoucitywaterkeeper.org](mailto:info@bayoucitywaterkeeper.org)

**COMPANY:** Bayou City Waterkeeper

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

**PHONE:** 5126191583

**FAX:**

**COMMENTS:** See attached re Major Amendment to TPDES Permit No. WQ0000458000: Bayou City Waterkeeper's Comments, Requests for (1) Extension of Comment Period and Other Comments, (2) Public Meeting, and (3) Contested

Case Hearing Please add us to the permanent mailing list for this file: Bayou City Waterkeeper Attn: Kristen Schlemmer  
2010 N Loop W #103 Houston TX 77018 [info@bayoucitywaterkeeper.org](mailto:info@bayoucitywaterkeeper.org) 713-714-8442



December 9, 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 TPDES Permit No. WQ0000458000  
Bayou City Waterkeeper's Comments, Requests for (1) Extension of Comment  
Period and Other Comments, (2) Public Meeting, and (3) 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 an extension of the comment period to address concerns associated with the impacts of Proposed Industrial Wastewater TPDES Permit No. WQ0000458000 on water quality.

This permit notice reflects activities that could have a significant impact on local water quality and public health. The facility itself is a chemical manufacturing plant that produces bulk and specialty organic chemicals, thermoplastic resins, and hydrogen cyanide--a highly toxic substance that can pose dangers to water quality, aquatic life, and human health if not properly disposed of. The major amendment requests revision of effluent limits and proposes to discharge a massive amount of wastewater and stormwater during construction: 8.4 million gallons *per day* into Outfall 1 and another 2.5 million gallons *per day* into Outfall 11, both of which flow into the Ship Channel. No additional controls are proposed, from what can be discerned from the permit notice.

TCEQ and EPA's ECHO data show that this facility has a track record of problems:

- Nearly 50 incidents requiring an emergency response since 2005, including seven in 2020 and 2021 alone.
- Six violations of its current TPDES permits since 2017, all of which are listed as active.
- Noncompliance with the CWA for eight out of the last 12 quarters.
- Noncompliance with RCRA for six out of the last 12 quarters.
- Noncompliance with CAA for 12 out of the last 12 quarters.

Bayou City Waterkeeper has made attempts to obtain the documentation needed to prepare written comments, including the fact sheet and executive director's preliminary decision and draft permit. These steps include:

- We attempted to locate the documents at the Deer Park Public library. Library staff was unable to find the documents, noting that there were hundreds of unlabeled and unsorted binders left by industrial permit applicants.
- We contacted TCEQ's Public Education Program, which was responsive but only shared documents that were publicly available online, including the permit notice and original permit, before the comment deadline.
- We also left a voicemail with Mr. Michael Snyder, Environmental Specialist, the Rohm & Haas contact listed on the permit notice and have not heard back as of the date of this letter.

For Bayou City Waterkeeper to proceed and make timely and well-informed comments on behalf of the communities we work with, we ask the TCEQ to extend the comment period. Further, we ask the TCEQ to reevaluate the antidegradation review as discussed below. Finally, we request a public meeting and a contested case hearing.

### **Comments**

**1. An extension to the comment period is warranted because documents have not yet been shared with the public in a manner sufficient to enable public comment**

As described above, the basic documents needed to enable meaningful public comment have not been provided to the public. They were not able to be located at the library, and the additional contacts listed on the permit notice were not able to provide the additional documents. We ask the TCEQ to make these documents electronically available to the public, renounce this permit for public comment, and initiate a new 30-day comment period.

**2. The TCEQ must begin to publish documents in an electronic format for all permit applications to enable meaningful comment**

The obstacles we have faced in obtaining more information about this permit application are not unusual. We have consistently faced barriers to obtaining the permit files needed to inform our comments—whether that is from traveling a large distance across the greater Houston region to review files or from industry's listed contacts refusing to return calls or answer questions. This is important because community members near facilities like this one rely on organizations like Bayou City Waterkeeper to understand how new permits and permit modifications will affect their local environment, health, well-being, and property interests. We strongly urge the TCEQ to make documents accessible by publishing them in electronic format and include links within the permit notice.

**3. Given the significant amount of wastewater and stormwater authorized for discharge, the antidegradation review is highly suspect**

The notice states that a major amendment is needed to allow "more than de minimis discharges at Outfall 009 in certain circumstances" and allow more than 10 million gallons of wastewater

and stormwater to be discharged into the Houston Ship Channel *on a daily basis*. The Ship Channel already has significant impairments for dioxin and PCB in edible tissue, bacteria in water, toxicity in sediment.

Yet the anti-degradation review concludes that impacts will be de minimis: "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... No significant degradation of water quality is expected in water bodies with intermediate, high, or exceptional aquatic life uses downstream, and existing uses will be maintained and protected."

A "preliminary" review is not sufficient to meet the TCEQ's obligation to conduct an antidegradation review for this permit. Further, the facts provided in the notice and the TCEQ's 303(d) list strongly suggest that this facility stands to have major impacts on water quality.

Further, 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.

The TCEQ should complete, or require the applicant to complete, a robust antidegradation review and allow further comment. This review must adequately show that this major amendment (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. Whether the facility's history of noncompliance and other problems warrants the requested major amendment or requires additional permit amendments that are more protective of public safety, public health, and water quality**

As referenced above, TCEQ and EPA's ECHO data show that this facility has a track record of problems:

- Nearly 50 incidents requiring an emergency response since 2005, including seven in 2020 and 2021 alone.
- Six violations of its current TPDES permits since 2017, all of which are listed as active.
- Noncompliance with the CWA for eight out of the last 12 quarters.
- Noncompliance with RCRA for six out of the last 12 quarters.
- Noncompliance with CAA for 12 out of the last 12 quarters.

This record strongly suggests that the current terms of the permit are not sufficiently protective or being adequately enforced. Before allowing a major amendment that allows the permit holder to increase wastewater and stormwater discharged from its facility and other major changes, the TCEQ should require the applicant to come into compliance with federal and state environmental regulations.

**Request for Public Meeting**

Given the importance of this application and the lack of information publicly available so far, we request a public meeting on this application. This will enable the public to learn about the application, ask questions of the applicant and the TCEQ, and offer formal comments.

**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 that allows meaningful public comment before a hearing can be conducted. Because of this deficiency, the application 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 public participation requirements have been met when the permit application, executive director's preliminary decision, and draft permit were not publicly available, contrary to what was stated in the public notice; or
- Whether the major amendment complies with the antidegradation policy under 30 Tex. Admin. Code § 307.5.
- Whether the facility's history of noncompliance and other problems warrants the requested major amendment or requires additional permit amendments that are more protective of public safety, public health, and water quality.

Thank you for the opportunity to submit these comments and request for extension of comment period. Please add us to the permanent mailing list for this file. Here is contact information for Bayou City Waterkeeper for all further communications related to this permit application:

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

Sincerely,

Kristen Schlemmer, Legal Director  
Mashal Awais, Watershed Specialist  
Bayou City Waterkeeper

